
**BRIEF SUBMITTED BY THE MISSISSIPPI FREEDOM
DEMOCRATIC PARTY**

For The Consideration of

**CREDENTIALS SUBCOMMITTEE OF THE DEMO-
CRATIC NATIONAL COMMITTEE, THE DEMO-
CRATIC NATIONAL COMMITTEE, CREDENTIALS
COMMITTEE OF THE DEMOCRATIC NATIONAL
CONVENTION, DELEGATES TO THE DEMOCRATIC
NATIONAL CONVENTION.**

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**BRIEF SUBMITTED BY
THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY**

Introduction

The question whether to seat the delegation of the Mississippi Freedom Democratic Party or the delegation of the "regular" or "traditional" Mississippi Democratic Party may well prove the most significant contest before the Democratic National Convention of 1964. For the issue is not simply which of two groups wears shiny badges of accreditation, but, far more fundamentally, whether the National Democratic Party takes its place with the oppressed Negroes of Mississippi or their white oppressors, with those loyal to the National Democratic Party or those who have spewed hatred upon President Kennedy and President Johnson and the principles to which they dedicated their lives. In the final analysis, the issue is one of principle: whether the National Democratic Party, the greatest political instrument for human progress in the history of our nation, shall walk backward with the bigoted power structure of Mississippi or stride ahead with those who would build the State and the Nation in the image of the Democratic Party's greatest leaders—Thomas Jefferson, Andrew Jackson, and Franklin D. Roosevelt.

This is a legal brief and as such will cover both the facts and the law. But the legal precedents are necessarily limited, for the courts of this country have many times made clear that they will not decide political questions or intervene in disputes between rival delegations seeking recognition at a party convention.¹ This Convention and only this

¹ *Davis v. Hambrack*, 58 S.W. 779, 109 Ky. 276 (1900); *Phelps v. Piper*, 67 N.W. 755, 48 Neb. 724 (1896); *Smith v. McQueen*, 166 So. 788, 232 Ala. 90 (1936); *Wood v. State*, 142 So. 747, 169 Miss. 790 (1932).

Convention can decide who are the proper delegates permitted to join in its deliberations.² As Governor Paul B. Johnson said in his keynote address to the Mississippi Democratic Party Convention on July 28, 1964, the question of which delegation to seat "is a decision that the National Party will have to make." And this was also conceded ten days earlier by Mississippi Democratic Party Chairman, Bidwell Adam, who said that the National Convention "could seat them [Freedom Party] if they wanted to . . . They could seat a dozen dead dodos brought there in silver caskets and nobody could do anything about it."³ Without appreciating Mr. Adam's analogy, the principle is clear beyond peradventure of doubt that this Convention is the court of last resort.

But the sparsity of legal precedents does not mean an absence of legal principles and guideposts to assist the Convention in arriving at its choice between two rival delegations. We believe that the rules of the Convention and accepted legal principles, as applied to the facts of this dispute, demonstrate overwhelmingly that the only valid decision this Convention can make—both in law and in equity—is to seat the delegation duly chosen by the state convention of the Mississippi Freedom Democratic Party on August 6, 1964.

The Freedom delegation comes as "bona fide Democrats who have the interests, welfare and success of the Democratic Party at heart, and will participate in the Convention in good faith . . ."⁴ We come as volunteers to lend sup-

² 18 Am. Jur., Elections, §136; *Cain v. Page*, 42 S.W. 336, 19 K.L.R. 977 (1897); *Kearns v. Howley*, 41 A. 273, 188 Pa. 116 (1898).

³ *New York Times*, July 20, 1964, p. 21.

⁴ Resolution of the Democratic National Committee contained in February 26, 1964 Call For the 1964 Democratic National Convention.

port to the nominees of this Convention and to spread the principles and platform of the Democratic Party. We come as representatives of a functioning political organization; for this and other reasons⁵ the challenge of the Freedom Party has no counterpart anywhere else in the South. And we come with the support of State Democratic Conventions or State Democratic Committees of California, Colorado, District of Columbia, Massachusetts, Michigan, Minnesota, New York, Oregon, Washington and Wisconsin who have recognized the legality of our position and the justice of our cause.

The "traditional" Mississippi delegation does not come as "bona fide Democrats" willing to "participate in the Convention in good faith . . ."⁶ The delegates to the state convention of the Mississippi Democratic Party on July 28th arrived in cars bearing Goldwater bumper stickers,⁷ "openly voiced themselves during recess and prior to the convention being called to order, as favoring the candidacy of Senator Barry Goldwater,"⁸ adopted a Goldwater platform,⁹ and then recessed until September 9 "for the purpose of allowing the Convention to swing to Goldwater . . ."¹⁰ This recess is the regular short interlude which takes place once every 4 years to attend the National Convention while the rest of the time is spent in calling President Kennedy a "dimwit"¹¹ and President Johnson a "counterfeit con-

⁵ See *Law Enforcement in Mississippi*, a Special Report of the Southern Regional Council, July 14, 1964, which concluded that Mississippi is "not like any place else" (p. 6).

⁶ See n. 4, *supra*.

⁷ *New York Times*, July 29, 1964, p. 18.

⁸ *Jackson Clarion-Ledger*, July 29, 1964, p. 18.

⁹ See pp. 22 to 23, *infra*.

¹⁰ *Jackson Clarion-Ledger*, July 29, 1964, p. 18.

¹¹ See p. 24, *infra*.

federate.”¹² Indeed, it is not clear why the “traditional” Party leaders should even want to send delegates to the Convention of a national party from which they regularly declare their independence and to which they continuously profess deep-seated animosity. Quite likely it is because they do not want any other group—e.g. the Mississippi Freedom Democratic Party—to function in Mississippi as the representative of the National Party. Obviously, this strategy of fighting against the National Party and still not allowing any other group to represent it in Mississippi is what Governor Johnson had in mind when, in his keynote to the July 28th state convention, he said “this is a time . . . for carefully-designed strategy . . . for judiciously-chosen words.” But no matter how “judiciously-chosen” the words, the “carefully-designed strategy” is one of “bad faith” to the National Democratic Party.

We are not only willing to serve the National Democratic Party here *and in Mississippi*, we assert our right and our determination to do so. We hope that the delegates of the Freedom Party may be placed on the temporary rolls of the Convention by the Democratic National Committee or Subcommittee¹³ and that the contest may end at that point. If it does not, we hope that a majority of the Credentials Committee of the Convention will determine that the Freedom Party be placed on the permanent rolls of the

¹² See p. 25, *infra*.

¹³ The Democratic National Committee has always heard challenges prior to determining which of two groups should be placed on the temporary rolls. For example, the Credentials Subcommittee of the Democratic National Committee heard the dispute over which Puerto Rican delegation should be seated in 1960 prior to the National Committee’s action on the temporary rolls. Certainly the challenge made by the Freedom Party is at least as significant to the future of the Democratic Party as that made by the Puerto Rican rivals in 1960.

Convention. But if unsuccessful there, too, we are determined to put our case before the delegates themselves.¹⁴ We are confident that the assembled representatives of this great, liberal Party will not turn its back on those who have sacrificed so much to support it.

STATEMENT OF FACTS

I

WHY THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY WAS FORMED

A. Negroes Have Traditionally Been Excluded From All Participation in the Mississippi Democratic Party

(i) *Party Runs State.* The Mississippi Democratic Party runs the State of Mississippi. It controls the Legislative, Executive and Judicial Branches of the Government of the State. All 49 Senators and all but one of the 122 Representatives are Democrats. There is no substantial Republican Party; there is no third party. There is just the Mississippi Democratic Party and its leaders are the State. As Governor Johnson said in his keynote to the "traditional" state convention, the Mississippi Democratic Party "holds all but a handful of the elective and appointive offices, from constable to governor . . . for the past 89

¹⁴ We understand that 10% of the 108-member Credentials Committee or eleven members may file a minority report (Cannon, *Democratic Manual for the Democratic National Convention of 1964*, p. 35) and that a majority of eight State delegations may obtain a roll call (*Id.*, p. 54). We are sending a copy of this Brief to Speaker John McCormack, the Permanent Chairman of the Convention, and to Senator John O. Pastore, the Temporary Chairman of the Convention, and are calling their attention to this footnote, so that they may be advised of the intentions of the Freedom Party and may in turn advise us if they have any different construction of the rules of the Convention.

years, [it] is the framework, or the structure, through which Mississippians maintain political unity, and operate self-government.”

(ii) *Party prevents Negro Registration.* The Mississippi Democratic Party uses its powers to exclude Negroes from registering and voting. Though Negroes represent over 40% of the State’s population, all voter registrars in Mississippi are white. Today only some 28,500 Negroes are registered in Mississippi, as compared to 500,000 whites. This represents only 6.7% of the 435,000 Negroes 21 years of age in the State; this 6.7% should be compared with 39.1% in Georgia, 51.1% in Florida and 57.7% in Texas, and even Governor Wallace’s Alabama has over three times as high a percentage of registered Negroes as does Mississippi.¹⁵ While Negro registration in other Southern States increased sharply in recent months and years,¹⁶ Mississippi went in the other direction; “the best estimate of 1962 registration indicates a drop in registration of 534.”¹⁷

Keeping Negroes from registering and voting has been accomplished in a myriad of ways. The legislature and the white voter registrars have combined to make an obstacle course out of the simple process of registration. A series of state laws culminating in 1962 gives unlimited discretion to the white registrars to find that Negro applicants cannot interpret the constitution, cannot understand the obligations of citizenship, are not of good moral character,

¹⁵ See report of Southern Regional Council for complete study of Negro registration in South. *Washington Post*, Aug. 3, 1964, p. 2.

¹⁶ *Ibid.* For example, in the two years ending this past April, Negro registration in South Carolina increased by 32,140—more than the total Mississippi Negro registration.

¹⁷ *Report of the United States Commission on Civil Rights—1963*, p. 20.

etc. As Professor Russell H. Barrett of the University of Mississippi said in a recent speech:

“First, the whole pattern of voting requirements and of the registration form is calculated to make the process appear to the voter to be a hopelessly formidable one. The pattern is supposed to bristle with complexities which culminate in the publication of the would-be voter’s name in the local newspaper for two weeks. A major purpose of all this is to so overwhelm the voter that he will not have the audacity even to attempt registration. Behind this approach is supposed to be—and all too often is—a collection of fears that someone will challenge the voter’s moral character, that he may be prosecuted for perjury, or that he may be subjected to economic or other pressures if he attempts to register. Those who have for years controlled state politics assume that this fear will be a powerful weapon against voter registration, yet the plain fact is that it is by far the most vulnerable of their defenses . . .

“A second important point is that the law provides no clear or meaningful standards for its highly general requirements. These now familiar generalities require the voter to be able to explain any section of the constitution, to describe the obligations of citizenship, and to demonstrate to the Circuit Clerk that he is good moral character. It is clear that those requirements were stated vaguely for one simple reason, to permit the Registrar to apply different standards to different people.

“. . . it is worth quoting what was said in 1955 by the man who was then President of the Mississippi Circuit Clerks’ Association, Rubel Phillips. In complaining about the burden placed by the new law on circuit

clerks, he said, 'Many clerks feel the law is discriminatory and that a burden is placed on them to disfranchise many persons who have been voting for years. . . . Lawyers with less than 10 years of experience probably wouldn't be able to answer the questions properly . . . ' ''¹⁸

If the Negro finally does surmount all these hurdles, cruel economic harassment follows. Jobs are lost, credit withdrawn, supplies refused. Indeed, the 1962 Mississippi law expressly provides for publication of the names and addresses of applicants in the newspapers, enabling economic pressure to be applied during the registration process.¹⁹

If the Negro should be able to run the registration obstacle course and brave the economic reprisals, dangers to life and limb are very real.

* In 1955, Lamar Smith, a Negro, was killed after urging other Negroes to vote in a gubernatorial election. He was shot to death on the Brookhaven, Miss., courthouse lawn. A grand jury refused to indict the three men who were charged with the slaying.

* In 1961, Herbert Lee, a Negro active in voter registration activities in Liberty, Miss., was shot to death by a member of the Mississippi State Legislature. Representative E. E. Hurst, a Citizens' Council member, was vindicated by the coroner's jury, which ruled the murder a "justifiable homicide."

* In 1964, a witness to the Lee killing, Louis Allen, was shot to death near his home. Allen had been harassed by local police officials several times since

¹⁸ *Mississippi Free Press*, April 18, 1964, p. 1, 4.

¹⁹ Mississippi Code, § 3212.7, approved May 26, 1962. See also *Washington Daily News*, August 12, 1964, p. 27.

the Lee killing. Local authorities there say they have not come up with any clues in the Allen killing.

- * In 1962, Mrs. Fannie Lou Hamer of Ruleville, Miss., Vice Chairman of the Freedom Party delegation here, was fired from her plantation job, where she had worked for 18 years, the same day she had gone to the county courthouse to attempt to register. The plantation owner informed her that she had to leave if she didn't withdraw her application for registration.
- * Leonard Davis of Ruleville was a sanitation worker for the city until 1962, when he was told by Ruleville Mayor Charles M. Dorrrough, "We're going to let you go. Your wife's been attending that school." Dorrrough was referring to the Student Nonviolent Coordinating Committee registration school in Ruleville.
- * Marylene Burkes and Vivian Hillet of Ruleville were severely wounded when an unidentified assailant fired a rifle through the window of Miss Hillet's grandparents' home. The grandparents had been active in voter registration work.
- * In Rankin County in 1963, the sheriff and two deputies assaulted three Negroes in the courthouse who were applying to register, driving the three out before they could finish the forms.
- * In Philadelphia, Mississippi, in 1964, three students, part of the 1964 summer registration drive, were killed.²⁰

²⁰ *Mississippi—Subversion of the Right to Vote*, Pamphlet of the Student Nonviolent Coordinating Committee, Atlanta, Georgia, 1964. This pamphlet reports each of the above examples except the last—which requires no documentation.

In the words of the Mississippi Advisory Committee to the United States Commission on Civil Rights, a body composed entirely of Mississippians, "terror hangs over the Negro in Mississippi and is an expectancy for those who refuse to accept their color as a badge of inferiority."²¹ And the Southern Regional Council, a body composed entirely of Southerners, recently documented "the almost unrestrained lawlessness which is permitted within the state against one class of people."²²

Strange as it may seem, even obstacle course registration, intense economic pressure and frightening terror are not all. The statutes of Mississippi provide that "No person shall be eligible to participate in any primary election unless he . . . is in accord with the statement of the principles of the party holding such primary, which principles shall have been declared by the state convention of the party holding the primary . . ."²³ And, carrying this out, the 1960 Platform and Principles of the Mississippi Democratic Party adopted June 30, 1960, provides:

"We hold as a prerequisite to voting in the Mississippi Democratic Primaries, or otherwise participating in the affairs of the Mississippi State Democratic Party, that the voter shall subscribe to the principles and platform of the party, and shall thereby repudiate his affiliation with any other party whatsoever, and affirm his allegiance to the Democratic Party of the State of Mississippi and to its principles and platform."

Probably the single most sacred principle of the Mississippi Democratic Party is segregation. The 1960 Platform provides:

²¹ *Report on Mississippi*, January, 1963, p. 23.

²² See n. 5, *supra*.

²³ Mississippi Code, §3129.

“We believe in the segregation of the races and are unalterably opposed to the repeal or modification of the segregation laws of this State, and we condemn integration and the practice of non-segregation.”

The resolution at the 1964 State Convention on July 28 provides:

“We believe in separation of the races in all phases of our society. It is our belief that the separation of the races is necessary for the peace and tranquility of all the people of Mississippi and the continuing good relationship which has existed over the years.”

In a nutshell, the Mississippi Democratic Party makes a belief in segregation a prerequisite to participation in its affairs and thus in the political life and government of the State. A Negro's mere belief in his own dignity and the United States Constitution makes him ineligible to participate in the political processes of Mississippi.

(iii) *Total Exclusion of Negroes.* Never was the exclusion of Negroes more successfully carried on than in the selection of the delegation representing the Mississippi Democratic Party at this Convention.

Negroes in several parts of Mississippi attempted to attend the June 16th precinct meetings of the “traditional” Party. These meetings, in which all registered voters are theoretically entitled to participate, form the base of a pyramid which culminates in the Democratic State Convention. It is in the course of this series of meetings (precinct, county and state conventions) that state party officials and National Convention delegates are elected. In this Presidential election year the registered Negroes, though few in number, were fighting not only for their right to be included in the Party, but also to insure that the State Party would

remain loyal to the candidates of the National Democratic Party in November. To accomplish this, they pressed for the election of delegates who shared their views, as well as for the adoption of resolutions affirming loyalty to the national ticket.

The amount of Negro activity in the precinct meetings was sharply circumscribed at the outset by the outstanding fact of Mississippi politics: the almost complete disfranchisement of Negro voters. The climate of fear that pervades the state acted as a further check: a sworn affidavit from a resident of Neshoba County, for example, explains that no Negroes went to precinct meetings there 'because it was impossible . . . to make the attempt . . . without suffering great economic and physical harm.'²⁴ This is, of course, the county where the three students were killed in June.

But despite the obstacles, many Negroes did attempt to participate in the precinct, county and state conventions. To no avail.

In many precincts Negroes went to their polling stations before the time designated by statute for the precinct meetings (10:00 AM), but were unable to find any evidence of a meeting. Inquiries addressed to public officials proved futile: some officials denied knowledge of any meeting, others claimed that the meeting had already taken place. In these precincts Negroes proceeded to hold their own meetings and elected their own delegates to the county conventions. In other precincts Negroes found the white precinct meetings, but were excluded. In Hattiesburg Negroes were told that they could not participate without poll tax receipts, despite the recent Constitutional amendment outlawing such requirements. In still other precincts Negroes were allowed to attend the meetings, but were restricted in some way

²⁴ This and other affidavits referred to are in the possession of the counsel for the Freedom Party.

from exercising their full rights: some were not allowed to vote, some were not allowed to nominate delegates from the floor, others were not allowed to take part in choosing those who tallied the votes. In several meetings the Negroes were unable to introduce their resolution calling for loyalty to the National Party; in others they were unable to bring their "loyalty" resolutions to a vote; and in the three instances where "loyalty" resolutions were brought to a vote, they were overwhelmingly defeated.

On June 23, 1964, Negroes tried to take part in the second level of Democratic Party meetings, the county conventions. Most of them had been elected delegates to the county level by all-Negro precinct meetings. One, however, was a delegate from a multi-racial meeting in Jackson. In Madison county, Negro delegates were excluded by a claim that the meeting was of the County Executive Committee (not a convention) and was thus open only to members. In Leflore county, the white convention officials refused to recognize the Negroes' credentials. In Washington county, Negro delegates were not allowed to participate meaningfully—the meeting refused even to consider their resolution of loyalty to the National Democratic Party. And so on.²⁵

By the time the apex of the pyramid was reached—the state convention—there was not a single Negro delegate in a state with 435,000 Negroes of voting age. *The exclusion was complete.* Furthermore, and possibly even more significant here, there was not a single delegate to the state convention, white or black, willing even to *offer* a resolution of support for the National Democratic Party.

(iv) *Conclusion.* There has not been a single Negro State office holder in Mississippi since 1892—the inevitable

²⁵ The facts concerning the precinct and county conventions are documented by affidavits and statements in the possession of the counsel for the Freedom Party.

result of this total exclusion from the political process. Negroes have been harassed and brutalized by the officials of a state wholly controlled by the "traditional" Democratic Party. Yet, despite the hopelessness and tragedy of their position, the Negroes of Mississippi have maintained their belief in the democratic process and in the Democratic Party.

B. The Mississippi Freedom Democratic Party Desires to Work Within the Framework of the National Democratic Party

At its convention on August 6, 1964, the Mississippi Freedom Democratic Party unanimously resolved that, "We deem ourselves part and parcel of the National Democratic Party and proudly announce our adherence to it. We affirm our belief that the National Democratic Platform of recent years has been a great liberal manifesto dedicated to the best interest of the people of our Nation of all races, creeds and colors."

These were not just words to bring to this Convention. Those who organized the Freedom Party had a deep dedication to the National Democratic Party. They did not seek an alliance with Republicans; they did not try to form a third party. They sought and still seek to be a part of the National Democratic Party.

Indeed, earlier this year and despite the obstacles that have been outlined above and more, the Freedom Party ran candidates in the June 2nd Democratic primary. Mrs. Victoria Gray, Freedom Party National Committeewoman, opposed Senator John Stennis; Mrs. Fannie Lou Hamer, likewise a Freedom delegate, opposed Representative Jamie L. Whitten; the Reverend John Cameron opposed Representative William M. Colmer; and Mr. James Houston opposed Representative John Bell Williams. Defeat cannot

blur this very real effort to work within the framework of the Democratic Party.

These primary candidates of the Freedom Party ran on the Platform of the National Democratic Party. They articulated the needs of all the people of Mississippi, such as anti-poverty programs, medicare, aid to education, rural development, urban renewal, civil rights. They identified themselves with the National Party and its leaders. They demonstrated, even before the August 6th Freedom Party state convention, that they were "part and parcel of the National Democratic Party."

* * * * *

That is the story of why the Mississippi Freedom Democratic Party was formed—because the Negroes of Mississippi, totally excluded from political life by the Mississippi Democratic Party, nevertheless made their choice to work within the framework of the National Democratic Party. Now we turn from *why* the Mississippi Freedom Democratic Party was formed, to its organization and its operation.

II

ORGANIZATION AND OPERATION OF THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY

(i) *Freedom Party Formed.* The Mississippi Freedom Democratic Party was officially established at a meeting in Jackson, Mississippi, on April 26, 1964. The 200 to 300 delegates present elected a temporary state executive committee of 12 persons and the committee met regularly thereafter. The Party is open to all Democrats in Mississippi of voting age, regardless of race, creed or color.

(ii) *Freedom Party Follows Law.* The Mississippi Freedom Democratic Party has made every possible

effort to follow the laws of Mississippi regulating political parties.

- * It prepared a Freedom Registration Form and enrolled voters into the Freedom Party. As of the moment of the completion of this Brief, over 50,000 Mississippi residents of voting age were registered in the Freedom Party. Rev. Robert Spike, Executive Director of the Commission on Race and Religion of the National Council of Churches, described the Freedom Registration as “a remarkable achievement in the face of the most serious obstacles.”²⁶
- * During the weeks of July 19 and 26, 1964, there were precinct meetings in 26 counties throughout the State of Mississippi. An estimated total of 3500 persons participated in these meetings.
- * During the week of July 27, 1964, county conventions were held in 35 counties at which a total of 282 delegates were elected to the state convention. In 9 of the 35 counties the Freedom Party was unable to hold precinct meetings in the precincts because of various forms of harassment; instead, the precinct meetings were held immediately preceding the county conventions.
- * Some county meetings in addition to the 35 were held in Jackson, since holding them in the proper coun-

²⁶ In November, 1963, 83,000 Mississippi citizens, largely Negroes barred from the “traditional” Party, voted for Mr. Aaron Henry (Chairman of the Freedom delegation here) for Governor in a mock election. Only the cruelest harassment prevented the Freedom Party from doubling that figure in the present registration. The type of harassment ranged from the murder of the three boys in Philadelphia down to the beating of two Freedom registration workers driving a truck containing Freedom registration forms.

ties would have endangered lives. Neshoba county, with the county seat at Philadelphia, Mississippi, was an example of such a county.

- * On August 6, 1964, 240 delegates assembled at the Freedom Party state convention in Jackson to elect the officers of the Freedom Party, choose the delegation to this Convention and adopt a Platform and Principles.
- * Efforts were made to register the Freedom Party with the Secretary of State of Mississippi both before and after the state convention of August 6th, but all such efforts were rebuffed.

The figures on Freedom Party registration and the attendance at precinct and county conventions demonstrate the seriousness with which the Party has gone at its task of organizing a state party to serve the National Party. And all of this was accomplished in the face of ugly harassment and intimidation.

Harassment took a variety of forms. Requests made in Sunflower County, Lauderdale County, and Madison County for maps or descriptions of precinct boundaries were not even answered. Attempts to publicize precinct meetings as required by state law proved futile as newspapers and radio stations refused to print the advertisements or to announce them. In some areas of the state it was felt that the meetings could not be safely publicized as earlier announcements had led to bombings or attempted burnings in Pike County. In Leake County a radio station requested the Party to withdraw its announcement. The manager of the station, displaying letters from the mayor, the chief of police, and the sheriff, feared reprisals against the property of the station as well as the families of the employees of the sta-

tion. Meetings were often followed by arrests of local participants for minor driving offenses or interrogation of those who had attended. In one case, a truck carrying Freedom Registration forms was detained for over a day, two of its occupants taken to jail and beaten and two other of its occupants told to start walking back to Jackson. These incidents only complemented the continual harassment of the Party. In one day, June 24, 1964, the Jackson office of the Council of Federated Organizations reported 16 incidents of intimidation or violence, and other days in which ten or more such incidents were reported were not uncommon.²⁷

(iii) *Freedom Party Convention*. The Freedom Party convention of August 6 democratically elected a National Committeeman (Rev. Edwin King), a National Committeewoman (Mrs. Victoria Gray), 44 delegates and 22 alternates to the Convention. They are honorable, hard-working and loyal Mississippians; ²⁸ their names are set forth in Appendix B, but addresses and biographies, in the possession of counsel, are withheld for reasons of personal safety. Many of them are making great personal sacrifices to attend this Convention; they do so because of their deep dedication to the liberal principles of the National Democratic Party.²⁹

The delegates to the state convention unanimously ex-

²⁷ The facts concerning harassment and intimidation are documented by affidavits and statements in the possession of the Counsel for the Freedom Party.

²⁸ The delegation has 64 Negroes and 4 whites. The Party is open to all Democrats, and the number of whites on the delegation was limited solely by the number willing to brave certain reprisal.

²⁹ By secret ballot, as required by Mississippi statute, Mr. Aaron Henry and Mrs. Fannie Lou Hamer were elected Chairman and Vice Chairman of the delegation, respectively. Mrs. Annie Devine was elected Secretary.

pressed their dedication to the National Party in the following Statement of Loyalty:

“As members of the Mississippi Freedom Democratic Party:

“1. We undertake to assure that voters of the State of Mississippi will have the opportunity to cast their election ballots for President Lyndon B. Johnson and the Vice Presidential nominee selected by the Democratic National Convention at Atlantic City, and for electors pledged formally or in good conscience to the election of President Johnson and the Vice Presidential nominee, under the Democratic Party label and designation.

“2. We go farther than the above undertaking required by the rules of the Democratic National Convention and pledge to work dauntlessly for the election of President Lyndon B. Johnson and the Vice Presidential nominee selected by the Atlantic City convention.

“3. We deem ourselves part and parcel of the National Democratic Party and proudly announce our adherence to it.

“4. We affirm our belief that the National Democratic Platform of recent years has been a great liberal manifesto dedicated to the best interest of the people of our Nation of all races, creeds, and colors. We will proudly support the 1964 platform and the 1964 candidates of the Democratic National Party.”

The Convention also adopted a platform supporting full employment, collective bargaining, food stamp programs, medicare, civil rights, reapportionment, job retraining, an anti-poverty program, United Nations, foreign aid, and

the Peace Corps. In a word, it identified itself with the basic programs and principles of the National Democratic Party.³⁰

(iv) *Freedom Party Delegates Certified.* The Freedom Party delegates elected at the August 6th convention were certified to the Chairman, John W. Bailey, and the Secretary, Mrs. Dorothy Vredenburgh Bush, of the Democratic National Committee that same day and the certification was delivered to Mr. Bailey's office on August 7th, the day after the convention. This certification was contained in a letter of August 6th from Mr. Lawrence Guyot, Chairman of the Freedom Party, to Mr. Bailey, requesting that the delegation be seated in place of the delegation chosen on July 28th by the Mississippi Democratic Party. This challenge followed an earlier letter from Mr. Aaron Henry, previous chairman of the Freedom Party, to Mr. Bailey, dated July 17, 1964, challenging "the delegation of the 'regular' Democratic Party" and asserting "the right of the delegation of the Mississippi Freedom Democratic Party to be seated at the National Convention as the true representative of Mississippi Democrats." Mr. Bailey was invited in the July 17th letter to attend the state convention on August 6th or send an observer, but he was not able to do so. The text of the Freedom Party letters of July 17th and August 6th are set forth in Appendix B.

³⁰ The Platform and Principles of the Mississippi Freedom Democratic Party, adopted at the state convention on August 6th, is set forth in full in Appendix A.

III

OPERATION OF THE MISSISSIPPI DEMOCRATIC PARTY

(i) *“Traditional” Party Asserts Independence.* Whereas the Freedom Party has made every effort to work within the framework of the National Democratic Party, the “traditional” Party has been at equal pains to demonstrate its independence of the National Party. The Mississippi Democratic Party has over and over again declared in public speeches and printed matter that it is not a part of the National Democratic Party. The campaign literature for the election of Governor Paul B. Johnson, in November of 1963, could not be clearer on this point: “Our Mississippi Democratic Party is entirely independent and free of the influence or domination of any national party” . . . “The Mississippi Democratic Party, which long ago separated itself from the National Democratic Party, and which has fought everything both national parties stand for . . .” “Both the National Democratic Party and the National Republican Party are the dedicated enemies of the people of Mississippi.”³¹ As late as June 25th of this year, Governor Johnson announced, “We haven’t left the National Democratic Party, the National Democratic Party has left us.”³² Former Governor Ross Barnett flatly stated that “there is no place for Mississippi today in national Democratic or Republican parties.”³³ Former Governor J. P. Coleman said, “This party has always been separate and distinct from the national party.”³⁴ And Bidwell Adam, State Democratic Chairman, publicly announced he was

³¹ *The Johnson Journal*, Vol. III, 1963, p. 1.

³² *Jackson-Clarion-Ledger*, June 26, 1964, p. 14.

³³ *Biloxi-Gulfport Daily Herald*, March 26, 1963, p. 1

³⁴ *Biloxi-Gulfport Daily Herald*, May 10, 1963, p. 1.

“through with the National Democratic Party. The National Democratic Party will have to get somebody else to carry their banner.”³⁵ Governors Coleman, Barnett and Johnson and State Chairman Adam, the leaders of the “traditional” party, may sing a different tune through their underlings at this Convention, but they cannot hide the words they use in Mississippi—that they will have nothing whatever to do with the National Democratic Party.

(ii) *“Traditional” Party Opposes National Platform.* The Mississippi Democratic Party has done far more than merely shout that it is not a part of the National Democratic Party. More fundamentally, it has opposed, and today opposes, everything for which the National Party stands.

On August 16, 1960, after the Kennedy-Johnson ticket was nominated, the recessed state convention resolved “that we reject and oppose the platforms of both National Parties and their candidates.” Their leaders—the same leaders who are sending a delegation to this Convention—successfully campaigned for unpledged electors who cast their votes against President John F. Kennedy and Vice President Lyndon B. Johnson.

At their state convention just last month the “traditional” Party passed resolution after resolution opposing everything which the Democratic National Party has done and for which it stands. The state convention called for the repeal of the Civil Rights Act of 1964 which it denounced “as a naked grasp for extreme and unconstitutional Federal power” and “a betrayal of the American people.” It favored “getting the United States out of the United Nations, and the United Nations out of the United States.” It favored limiting the jurisdiction of the Supreme Court and removing certain of its members. The general philosophy

³⁵ *Montgomery Advertiser*, September 29, 1962, p. 7A.

of the “traditional” state convention was probably best expressed in the following resolution:

“We express our admiration, and appreciation of Governor Ross R. Barnett and Governor George C. Wallace, of Alabama for their able, courageous, patriotic and effective work in awakening the American people to the utter necessity of the return of this country to true Constitutional Government and individual freedom.

“We are greatly indebted to Governor Wallace for his tremendous visit to Mississippi, and he and Governor Barnett occupy a permanent place in the heart of every true Mississippian.”³⁶

(iii) “*Traditional*” Party Attacks National Leaders. The violent opposition of the “traditional” party to the National Democratic leaders is almost too well known to repeat in this Brief. Governor Johnson may now speak with “judiciously-chosen” words so he can get his delegation seated here, but he was not so judicious in his campaign in 1963. Time after time he referred to the “Kennedy albatross” around the neck of his opponent or around the country’s neck.³⁷ Four days before his election, Governor Johnson shouted that “my determination is to do anything I can to get the Kennedy dynasty out of the White

³⁶ This resolution sanctifying Governor Wallace only highlights the irony of excluding the Alabama delegation (apparently everyone agrees to this exclusion), while at the same time even considering the seating of the “traditional” Mississippi delegation. The 20 years of political perfidy of the “traditional” Mississippi Party makes the Alabama record seem almost like one of continued loyalty.

³⁷ See e.g. *Biloxi-Gulfport Daily Herald*, July 2, 1963, p. 11; *id.*, July 18, 1963, p. 26; *Jackson Clarion-Ledger*, July 17, 1963, p. 1; *Time Magazine*, August 16, 1963, p. 17.

House.”³⁸ Johnson’s campaign advertisement spoke of eliminating “Kennedyism from our state”;³⁹ he said the choice was between “political dictatorship sponsored by John Kennedy” or constitutional government.⁴⁰ He said that unless President Kennedy is defeated in 1964, “you’ve seen your last free election;”⁴¹ and only this past July 28th at the state convention, Governor Johnson repeated his belief that this “threatens to be the last free election in this fair land.” Johnson said point number one in his program “will be to spearhead an all-out effort to secure cooperation from other governors and leaders to get the Kennedys out of the White House”⁴²—small wonder, too, since he had already referred to them as “dimwits”.⁴³ An official Johnson campaign ad showed a picture of a bed in which President Kennedy had slept and then stated: “Make sure that Kennedy never sleeps there again . . .”⁴⁴ As though to clinch the matter, Governor Johnson’s victory statement after his election proclaimed to the voters that “your victory is one over the Kennedys, the Adlai Stevensons and the northern Democratic overlords who also would like to destroy our way of life.”⁴⁵ And as recently as August 13 of this year, the Washington Post reported that Governor Johnson laced into the Johnson Administration as that “shifting, vacillating, crawfish government in Washington.”

Other spokesmen for the “regular” party have also made

³⁸ *Jackson Clarion-Ledger*, Nov. 2, 1963, p. 8.

³⁹ *Biloxi-Gulfport Daily Herald*, August 16, 1963, p. 9.

⁴⁰ *Biloxi-Gulfport Daily Herald*, August 17, 1963, p. 1.

⁴¹ *Biloxi-Gulfport Daily Herald*, Sept. 5, 1963, p. 9.

⁴² *Memphis Commercial Appeal*, October 26, 1963, p. 9.

⁴³ *Biloxi-Gulfport Daily Herald*, July 18, 1963, p. 26.

⁴⁴ *Biloxi-Gulfport Daily Herald*, July 9, 1963, p. 6.

⁴⁵ *Jackson Clarion-Ledger*, Nov. 7, 1963, p. 1.

clear their violent opposition to the National Party's leaders. Former Governor Ross Barnett, the true hero of the "traditional" state convention, has time and again referred to President Johnson as a "counterfeit confederate". On the 4th of July of this year he termed President Johnson a "counterfeit confederate who resigned from the South and may one day soon resign from the white race as well . . ." ⁴⁶ A few days later he said, "I would vote for Senator Goldwater before I would vote for Lyndon Johnson, a counterfeit confederate." ⁴⁷ And on July 22nd the *Clarion-Ledger* reported from Houston, Texas: "Calling Lyndon Johnson 'a counterfeit confederate,' Barnett said 'he'll need more than an 87-vote landslide in Texas' to win the November election."

Governors Johnson and Barnett have been ably assisted by other leaders of the "traditional" party in their attacks upon Presidents Kennedy and Johnson. Mrs. Florence Sillers Ogden of Rosedale, sister of the Speaker of the Mississippi House of Representatives, "flayed the Kennedy administration and called on America's woman-power to turn back the tide of constitutional destruction which is engulfing the nation . . . Never, never vote for a liberal . . . [We stand for] free enterprise and prayer in the schools [and oppose] 'Kennedys, disarmament, and Communism' " ⁴⁸ Congressman John Bell Williams said that "Kennedy is the most predatory chief executive of all time. If we don't stop him and his brother Bobby, human liberty will disappear from this nation and the face of the earth." ⁴⁹ Judge Thomas Brady, temporary chairman at the recent "traditional" state convention, went beyond attacks on

⁴⁶ *Jackson Clarion-Ledger*, July 6, 1964, p. 5.

⁴⁷ *Jackson Clarion-Ledger*, July 18, 1964, p. 8.

⁴⁸ *Jackson Clarion-Ledger*, Jan. 20, 1963, p. 10.

⁴⁹ *Biloxi-Gulfport Daily Herald*, July 23, 1963, p. 7.

Presidents Johnson and Kennedy and called Speaker Sam Rayburn, who presided over Democratic National Conventions more often than any man in history, "that egg-headed man from Texas who is an arch-traitor to the South."⁵⁰

Quite possibly a short excerpt from the *Jackson Clarion-Ledger* just after President Kennedy was assassinated best sums up the Mississippi "hate" campaign against the leaders of the National Democratic Party:

"At Pascagoula, attorney Robert Oswald resigned as president of the Mississippi Young Democrats. 'The tragic event in Dallas, Texas, in the light of the 'Hate the Kennedy' attitude of the leadership of the Mississippi Democratic Party and its present administration should require no further explanation for my action.'"⁵¹

(iv) "*Traditional*" Party Villifies Negroes. This attitude of hatred towards Presidents Kennedy and Johnson, who worked so hard and effectively for civil rights, is hardly surprising when one pauses to consider the almost barbaric attitude of the leadership of the "traditional" Party to Negro citizens. To seat the delegation of Paul B. Johnson and Ross Barnett, while barring the Freedom Party from the convention door, would be a deliberate insult to the Negroes of America who support the National Party at the behest of those who would destroy it.

The undisputed leader of the Mississippi Democratic Party is Governor Paul B. Johnson. Mr. Johnson's attitude is, purely and simply, one of bigotry. On July 9, 1963, he bragged that "in the past few years we lost 270,000 good-

⁵⁰ Silver, James W., *The Closed Society* (1963), p. 50.

⁵¹ *Jackson Clarion-Ledger*, Nov. 23, 1963, p. 5.

for-nothing lazy Negroes . . .”⁵² On July 27, 1963, he said that Mississippi needs “an education program to teach some of our Negroes that they are wasting their time staying in Mississippi.”⁵³ Along the same lines, he said, “You can’t ask . . . Negro leaders what they want. You . . . tell ’em what they’re going to get.”⁵⁴ And in the *Citizens Council Magazine* for December, 1963, he is quoted as saying: “I am proud to have been part of the resistance last Fall to Meredith’s entrance at Ole Miss”—resistance for which he is now under criminal charges for contempt of federal court. During his 1963 campaign, he repeatedly said, “You know what the NAACP stands for: Niggers, alligators, apes, coons and possums.”⁵⁵ And on July 3rd of this year, when Governor Johnson was asked if owners of public accommodations should comply with the Civil Rights Act signed by President Johnson the day before, he told newsmen, “I don’t think they should.”⁵⁶ And a few days later, Johnson refused even to talk with Commerce Secretary Luther Hodges and former Governor LeRoy Collins, President Johnson’s civil rights relations team.⁵⁷

Governor Ross Barnett, Paul Johnson’s co-leader of the “traditional” Party and his co-defendant in the criminal contempt case, has a similar attitude towards Negroes. Only last month he cried out, “Let there be no misunderstanding regarding my position and my determination to unfinch-

⁵² *Jackson Clarion-Ledger*, July 9, 1963, p. 10.

⁵³ *Jackson Clarion-Ledger*, July 27, 1963, p. 6.

⁵⁴ *Life Magazine*, Feb. 7, 1964, p. 4.

⁵⁵ *Time Magazine*, Aug. 16, 1963, p. 17.

⁵⁶ *Jackson Daily News*, July 3, 1964, p. 2. Again illustrating how Mississippi stands aloof from the changing South, Governor Johnson’s statement on the Civil Rights Act should be compared with that of those numerous other Southern leaders who have called for compliance.

⁵⁷ *Jackson Clarion-Ledger*, July 8, 1964, p. 1.

ingly and steadfastly continue to support Governor Wallace as long as he is in the race.”⁵⁸ Nothing less could have been expected from the Governor, who, like Governor Wallace, was in open and malicious defiance of the Supreme Court and the President of the United States. Flatly stating that “there is no case in history where the Caucasian race has survived social integration,”⁵⁹ he interposed the rights of the Sovereign State of Mississippi against the Federal Government. His disregard of constitutional authority impelled President Kennedy to use federal marshals and troops so that a single Negro could enter the University of Mississippi.

The bigotry of both Governors Barnett and Johnson toward the Negroes of their State is nowhere better evidenced than in their successful warfare against public school integration. Governor Johnson, in a speech to the Citizens Council on October 25, 1963, made clear his determination to keep Negro children out of white schools at any cost:

“As your governor, and as a man, I will resist the integration of any school anywhere in Mississippi. The closing of our schools is not the only answer. *We can and will maintain a system of segregated schools!* When local authorities are organized to resist and not surrender, your governor has great powers which have not yet been used.

“We learn from our mistakes. I am proud to have been part of the resistance last Fall to Meredith’s entrance at Ole Miss. Mississippi stirred the admiration of the world by her spirited stand against the Federal invaders. Yet, it is plain now that we might have done more, and should do more the next time. Interposition

⁵⁸ *Jackson Clarion-Ledger*, July 18, 1964, p. 1.

⁵⁹ *Memphis Commercial Appeal*, Sept. 14, 1962, p. 1.

of your governor's body between the forces of Federal tyranny and his people, including our children, is a price not too great to pay for racial integrity. I pledge you here tonight that I am prepared to pay such a price! Remember, there is no such thing as 'token' integration. So-called 'token' integration is just a break in the levee that leads to the flood."⁶⁰

What this means in further Mississippi violence only time can tell. Federal court orders are already in existence requiring partial integration of schools in Jackson, Biloxi and Leake County, Governor Johnson has yet to withdraw the position he so vigorously espoused before the Citizens Council last fall.

Possibly the most notorious bigot in the leadership of the "traditional" Party is Judge Thomas Brady, who acted as temporary chairman of the "traditional" state convention on July 28th and is the present "traditional" National Committeeman. He is the author of the famous "Black Monday" in which he called for the formation of a 49th state where Negroes could be sent and in which he termed the CIO and NAACP "Communist-front organizations."⁶¹ In 1957 in an address to a California audience, Brady, who doubles as a State Supreme Court Judge, told his audience:

"I can, however, safely say that based upon the tests which are available from World War I, and from personal experience, there is a vast gulf of difference between the I. Q. of the Negro of the South, as well as in America, and the average white man. It is because of an inherent deficiency in mental ability, of psychological and temperamental inadequacy. It is because of in-

⁶⁰ *The Citizen*, Official Journal of the Citizens' Councils of America, December, 1963, p. 10.

⁶¹ Brady, Tom P., *Black Monday* (1955), p. 73, 69.

difference and natural indolence on the part of the Negro. All the races of the earth started out at approximately the same time in God's calendar, but of all the races that have been on this earth, the Negro race is the only race that lacked mental ability and the imagination to put its dreams, hopes and thoughts in writing. The Negro is the only race that was unable to invent even picture writing."⁶²

Equally degrading to Negroes is this statement by Judge Brady:

"The purpose of this comparison is not to embarrass or humiliate anyone. You can dress a chimpanzee, housebreak him, and teach him to use a knife and fork, but it will take countless generations of evolutionary development, if ever, before you can convince him that a caterpillar or a cockroach is not a delicacy. Likewise the social, political, economic and religious preferences of the negro remain close to the caterpillar and the cockroach . . . It is merely a matter of taste. A cockroach or caterpillar remains proper food for a chimpanzee."⁶³

In 1960, Judge Brady was the only National Committeeman who refused to take the loyalty oath required by the rules of the Democratic National Convention. He returned to Mississippi and supported the unpledged elector slate against those pledged to John F. Kennedy and Lyndon B. Johnson and termed the Democratic Platform "very similar to the Constitution of the Union of Soviet Socialist Repub-

⁶² Address by Judge Tom Brady to the Commonwealth Club of California at San Francisco, Oct. 4, 1957.

⁶³ Black Monday, p. 12.

lies. . . .”⁶⁴ Only recently he called for an economic boycott against businessmen who voluntarily comply with the Civil Rights Act.⁶⁵ Although he has never previously had the gall to present his credentials to the Democratic National Committee, the “traditional” state convention had the effrontery to elect him as a delegate to this Convention.⁶⁶

(v) “*Traditional*” Party for Goldwater. The “traditional” state convention of July 28 showed the true colors of that Party in more ways than just electing Brady a delegate. The delegates arrived in cars bearing Goldwater bumper stickers,⁶⁷ “openly voiced themselves during recess and prior to the Convention being called to order as favoring the candidacy of Senator Barry Goldwater”⁶⁸ and then recessed until September 9 “for the purpose of allowing the Convention to swing to Goldwater . . .”⁶⁹ As Richard Corrigan reported to the *Washington Post* from Jackson on August 2, 1964:

“In their convention last week, the Democrats muffled their enthusiams for Sen. Goldwater to protect their delegation to Atlantic City. They voted to send an un-instructed delegation and resolved that the national convention’s nominees will appear on the ballot here next November, come what may.

“The Jackson convention took these steps to head off

⁶⁴ *Jackson Clarion-Ledger*, October 26, 1960, p. 14.

⁶⁵ *Jackson Daily News*, July 8, 1964, p. 6.

⁶⁶ Recently, Brady has even announced that he will attend the Democratic National Committee meeting prior to the Convention. *Memphis Commercial Appeal*, August 6, 1964, p. 18. Brady’s successor as committeeman will be E. K. Collins, who, on Sept. 25, 1962, proclaimed: “We must win this fight regardless of the cost in human lives.” *Silver*, n. 50, p. 118.

⁶⁷ See n. 7, *supra*.

⁶⁸ See n. 8, *supra*.

⁶⁹ See n. 10, *supra*.

the challenge of the Mississippi Freedom Democratic Party, a bi-racial pro-Johnson organization which will try to unseat the regulars at the national convention.

“When the State convention reconvenes on Sept. 9 it is expected to endorse Sen. Goldwater.”

But all this was only the final act of 20 years of political perfidy by the Mississippi Democratic Party, to which we now turn.

(vi) *Twenty Years of Political Perfidy.* In 1944, the Mississippi State Democratic Convention freed its presidential electors from the obligation to vote for the National Convention nominees.

In 1948, the Mississippi delegates bolted the National Democratic Convention. National committee members and other leaders of the Mississippi Democratic Party disassociated themselves from the National Democratic nominees and supported the “States Rights” candidates. The Governor of Mississippi, Fielding L. Wright, joined the States Rights ticket as Vice Presidential nominee and helped capture the State for Strom Thurmond.

In 1952 and 1956 the Mississippi Democratic Party continued this guerrilla warfare against the National Party. It redoubled its efforts to exclude Negroes loyal to the National Party and it “interposed” segregation against the principles of the National Party. Nevertheless, in both the 1952 and 1956 National Conventions, the “regulars” were seated at the expense of loyalist delegations seeking the right to support the National Party.

In 1960 the “traditional” state convention recessed so its delegation could attend the National Convention. After the nomination of President Kennedy and Vice President Johnson, the reconvened state convention rejected these candidates and opposed the platform adopted by the National

Party. With the vociferous support of then Governor Barnett, the unpledged electors won the November election and all eight Mississippi electoral votes were cast for Senator Byrd of Virginia.

In 1964 history is about to repeat. As we have already seen, the "traditional" convention recessed so it could send delegates to this Convention and then reconvene "for the purpose of allowing the [State] Convention to swing to Goldwater . . ." ⁷⁰ Can this Convention blind itself to what everybody sees?

(vii) "*Traditional*" Party Leaders Duck Convention. The "traditional" Party's contempt for the National Party is evidenced once more in the delegation which it is sending to this convention. Governor Johnson is not a delegate; neither is the Lieutenant Governor, the Attorney General, ex-Governor Barnett, ex-Governor Coleman, Senator Stennis, Senator Eastland, any of the five Congressmen, or even the Party Chairman. As George Carmack, a Scripps-Howard staff writer, reported from Jackson the day after the Convention, this is a "Joe Doakes delegation." ⁷¹

The state convention had obvious reasons for sending a "Joe Doakes delegation." There is no one among the group who can be asked to make a pledge to the National Convention or whose pledge, if asked and given, would bind the leaders of the "traditional" Party. There is no one to pledge the leadership of the Party to support President Johnson. There is no one to pledge the leadership to admit Negroes to the Party in the future. There are only the Joe Doakeses to warm the Mississippi seats at the National Convention and thus to keep the Freedom delegates from being seated. We believe we have the right to ask whether

⁷⁰ See n. 10, *supra*.

⁷¹ *Washington Daily News*, July 29, 1964, p. 7.

this Convention is going to prefer the Johnson-Barnett minions to loyal Democrats who have been crushed under their boots.

(viii) *Conclusion.* For 20 years, the Mississippi Democratic Party has not wanted to be a part of the National Party. It has claimed its independence of the National Party and its leaders have spewed hatred upon the candidates and principles of the National Party. Why, then, do they come here every four years and ask to be seated in the National Party? The answer is not far to seek. While the "traditional" Party does not want to be a part of the National Party, it does not want any other group to represent the National Party in Mississippi.⁷² They want their cake and they want to eat it, too. They want the seats at the National Convention (so no one else can have them and represent the National Party back in Mississippi) and they want to be independent. They are engaged in political preclusive buying—they are trying to buy the seats at the Convention so the Freedom delegates won't get them, but they don't want to pay for the seats with loyalty to the National Party.

The Democratic Party has permitted this political double dealing for two decades. After 20 years, the questions before the Convention are becoming clear: Is the National Party once again going to seat those who oppose it? Is it going to seat the representatives of a recessed state convention that

⁷² On August 12, 1964, the "traditional" Party obtained a temporary restraining order forbidding the Freedom Party from using the word "Democratic" in its name. This order is obviously a nullity—no state can deny Negroes participation in its Democratic Party and then bar them from forming a state group of their own to represent the National Democratic Party in that state. More significantly here, this is simply another device to keep the National Party out of Mississippi.

will find a method of supporting Barry Goldwater on September 9? Or is it, at long last, going to seat loyal Democrats ready and willing to support the National Party, its candidates and its principles?

We turn now to the legal answers to these questions.*

* The above statement of facts has been reviewed for accuracy by Barney Frank, Teaching Fellow in Government and General Education at Harvard University, who spent substantial time in Mississippi collecting facts for the Freedom Party. Many others assisted in providing the facts outlined above.

**LEGAL ARGUMENTS FOR SEATING MISSISSIPPI
FREEDOM DEMOCRATIC PARTY**

I

**The Rules of the Convention Forbid the Seating of the
"Traditional" Mississippi Democratic Party Delegation.**

The 1956 and 1960 Democratic National Conventions adopted the following rules:

"(1) It is the understanding that a State Democratic Party, in selecting and certifying delegates to the Democratic National Convention, thereby undertakes to assure that voters in the State will have the opportunity to cast their election ballots for the Presidential and Vice Presidential nominees selected by said Convention, and for electors pledged formally or in good conscience to the election of these Presidential and Vice Presidential nominees, under the Democratic Party label and designation;

"(2) It is understood that the Delegates to the Democratic National Convention, when certified by the State Democratic Party, are bona fide Democrats who have the interests, welfare and success of the Democratic Party at heart, and will participate in the Convention in good faith, and therefore no additional assurances shall be required of Delegates to the Democratic National Convention in the absence of credentials contest or challenge. . ."

The Democratic National Committee has recommended that the rules quoted above again "be adopted as rules applicable to the 1964 Democratic National Convention." In line with this recommendation, these rules are contained

in the Call for the 1964 Democratic National Convention issued by Chairman John M. Bailey on February 26, 1964.⁷³

These two rules, considered separately or considered jointly, prevent the seating of the "traditional" Mississippi Democratic Party. We deal with each paragraph of the rules separately.

A. Paragraph (1) of the Rules Forbids the Seating of the Delegation of the "Traditional" Party Because That Party Has Not and Can Not Give the Required Assurances Concerning the November Ballot.

Paragraph (1) of the rules requires a State Democratic Party in certifying delegates to this convention to undertake to assure that voters in the State will have the opportunity to vote for the presidential and vice presidential nominees selected by the Convention with pledged electors under the Democratic Party label and designation.⁷⁴ The "traditional" Democratic Party has not and under the laws of Mississippi cannot give this assurance; thus its delegation cannot be seated at this Convention.

On March 2, 1963, the Mississippi State Legislature at the "1st Extraordinary Session of 1963" amended the laws of Mississippi to keep electors pledged to the nominees

⁷³ Cannon, *Democratic Manual for the Democratic National Convention of 1964*, p. 15.

⁷⁴ Paragraph (1) of the rules is solidly based on the Constitution. Where a state authorizes a political party to choose its nominees for presidential electors in a state-controlled party primary election and to fix qualifications for the candidates, it is no violation of the Federal Constitution for the party to require the candidates for the office of presidential elector to take a pledge to support the party's National Convention choices for President and Vice President or for the Party's officers to refuse to certify as a candidate for presidential elector a person otherwise qualified who refuses to take such a pledge. *Ray v. Blair*, 343 U.S. 214 (1952).

of the Democratic National Convention off the ballot in 1964 and to put unpledged electors on the ballot in their place. Section 4 of Senate Bill No. 1522 adopted by the legislature on that date provides that “a primary election shall be held the first Tuesday in September in the year of the general election for President and Vice President . . .” Section 3 provides that at this September primary election there is to be on the ballot a slate of electors supporting the candidates for president and vice president of the national political party if 10% of the membership of the state convention so determines; also, upon motion supported by 10% of the membership of the state convention, a group of unpledged electors is to be on the primary ballot. Under Section 4 “the group of electors receiving the most votes at said [primary] election shall be placed upon the ballot in said general election as the electors of the said political party in this state, and no other group of electors shall be placed upon the said ballot as such electors of the said political party in this state.”

The purpose of this 1963 law is as clear as its language—to keep electors pledged to the presidential and vice presidential nominees of the national ticket off the ballot. The sponsors of the bill described it as an attempt to keep Kennedy off the ballot as a Democrat in Mississippi.⁷⁵ Under the plan, two sets of electors would be proposed, one for the national ticket and one against. Whichever set lost would have to run as independents in the final presidential election. “Legislative backers said the move would show before election time that Democratic sentiment in the state was opposed to the National Administration . . .”⁷⁶ And the *Johnson Journal* (Vol. III) in sup-

⁷⁵ *Biloxi-Gulfport Daily Herald*, March 26, 1963, p. 1.

⁷⁶ *Biloxi-Gulfport Daily Herald*, April 4, 1963, p. 1.

porting the candidacy of Paul B. Johnson for Governor stated as follows :

“ ‘The Free Elector Plan is the foundation to future political independence for Mississippi and, as your governor, I shall utilize my every resource to assure the success of this plan.’ Lt. Gov. Paul B. Johnson, who steered the enabling legislation to Senate passage earlier this year, has made this commitment to the the great majority of Mississippians who join with him in demanding that the decent, conservative citizens of America take the offensive in the national struggle against alien ideologies.

“ ‘The Free Elector Plan is designed to withhold the electoral votes of several states (17 now have the necessary laws) from the presidential candidates of both national political parties so that, in a close contest like the 1960 election, these withheld votes would constitute the ‘balance of power.’ ”

In view of the language and purpose of last year’s Mississippi law, it is impossible for the “traditional” State Democratic Party to undertake to assure that President Johnson and his vice presidential running mate will be on the ballot in November with pledged electors. On the contrary, under existing Mississippi law, President Johnson must subject himself to a primary contest under the most unfavorable and improbable circumstances. In simple terms, the President of the United States and the head of the Democratic Party is required to run a primary election for the privilege of a place on the ballot under the name of his own party. Certainly this is the farthest thing from an *assurance* that he will be placed on the ballot with pledged electors. And what happened at the

July 28th "traditional" state convention in no way changes this. Let us examine what did in fact happen there.

To begin with, the "traditional" Party adopted a resolution stating that:

"In keeping with the fair-play of Chapter 32 of the Laws of Mississippi of the First Extraordinary Session of 1963 providing for one slate of electors to support the candidates for President and Vice-President of the National Democratic Party, and a separate slate of electors who have announced their purpose not to support the said candidates of the National Democratic Party, that the voters of Mississippi will definitely have the opportunity, in the November, 1964, General Election, to cast their election ballots for the Presidential and Vice-Presidential Nominees selected by the National Democratic Party at the Atlantic City Convention with electors pledged to support said Nominees."

The pledge contained in the above resolution is meaningless under the existing laws of the State of Mississippi. Unless electors pledged to President Johnson and his running mate win the September primary,⁷⁷ there is no way of their getting on the ballot under existing Mississippi law. Apparently, Governor Paul Johnson understands this very well. Thus he "said in his keynote address [at the State Convention] that he was ready to call a special session of the Legislature 'to make sure that everyone in the state has a right to a choice' in November."⁷⁸

Even Governor Johnson now recognizes that, under the

⁷⁷ It now appears unlikely that there will even be a September primary as required by law.

⁷⁸ *New York Times*, July 29, 1964, p. 18.

existing laws of Mississippi, President Johnson and his running mate will not be on the ballot in November with pledged electors. He therefore promised to call a special session of the legislature to get President Johnson on the ballot. *But he has not done it.* The significant point is that the Governor, after saying he would call a special session of the legislature to change the law of Mississippi, has failed to do so and there is nothing to stop the reconvened convention of September 9th from reversing the meaningless pledge it gave at its July 28th Convention.

Furthermore, and equally importantly, the resolution of the "traditional" Party quoted above is *not* in conformance with paragraph (1) of the rules. Paragraph (1) requires that there be assurance that the presidential and vice presidential nominees will be on the ballot with pledged electors "*under the Democratic Party label and designation.*" The resolution of the "traditional" Party does not mention "*under the Democratic Party label and designation*"; that resolution would be fully met if the electors for President Johnson and his running mate were placed on the ballot as independents, but this would, of course, wholly fail to satisfy paragraph (1) of the rules.

Nor can this refusal to promise to put the electors for President Johnson and his running mate on the ballot "*under the Democratic Party label and designation*" possibly be considered an oversight. Paragraph (1) of the rules is crystal clear. The Freedom Party with no real experience in politics followed the rule with precision (see p. 19, *supra*). The "traditional" Party had a reason for leaving out this part of the pledge—they wanted to find a way of letting Mississippians vote Democratic and still not vote for President Johnson. Consequently, they decided to withhold the Democratic Party label and designation from President Johnson, so they could use it for

unpledged electors or for electors pledged to Senator Goldwater.

As pointed out earlier in this Brief, Mississippi is sending a Joe Doakes delegation which can pledge nothing as far as the leadership of the "traditional" Party is concerned. Thus, any pledge by the delegates at this Convention to put the electors for President Johnson and his running mate "under the Democratic Party label and designation" would be meaningless. What is more, such a pledge would be worthless for the "traditional" Party violated the pledge it gave four years ago on this same point. At that time, in accordance with the rules of the National Convention, the "traditional" Party undertook to assure that the electors for President Kennedy and Vice President Johnson would be on the ballot "under the Democratic Party label and designation." After making this pledge, the "traditional" Party put *two* slates of electors on the ballot under the designation of "the Democratic Party of the State of Mississippi"—one pledged to Kennedy-Johnson and one unpledged. In other words, after promising to give the nominees of the 1960 Convention the benefit of the Party label, it added a slate of unpledged electors under that Party label and thus rendered the label worthless in violation of its pledge under paragraph (1) of the rules. As if to compound their infraction of the rules, the Mississippi "traditional" Party leaders then supported the unpledged slate as the real Democratic Party of the State of Mississippi.

This is the situation as the Democratic Convention meets at Atlantic City: the laws of Mississippi prevent President Johnson and his running mate from being on the ballot with pledged electors; the Governor promises a special session, but does not call it and instead awaits a reconvened session of the state convention to determine

his course. The state convention adopts a resolution which is meaningless under the laws of Mississippi and which does not meet the rules because it does not promise the Party label to President Johnson and his running mate (a provision of the rules which it breached in 1960). If the rules of this Convention are to mean anything, the "traditional" state delegation cannot be seated under paragraph (1).

B. *Paragraph (2) of the Rules of the Convention Forbids the Seating of the Delegation of the "Traditional" Party Because The Delegates Do Not Come As "Bona Fide Democrats" Willing to "Participate in the Convention in Good Faith."*

Paragraph (2) reads in full as follows:

"(2) It is understood that the Delegates to the Democratic National Convention, when certified by the State Democratic Party, are bona fide Democrats who have the interests, welfare and success of the Democratic Party at heart, and will participate in the Convention in good faith, and therefore no additional assurances shall be required of Delegates to the Democratic National Convention in the absence of credentials contest or challenge"

This provision is clear. First, it means that, "in the absence of credentials contest or challenge," all delegates who meet the requirements of paragraph (1) with respect to candidates being on the ballot will be seated without any issue being made of good faith. But, second, it equally means that in the *presence* of credentials contest or challenge, the delegates must demonstrate that they "are bona fide Democrats who have the interests, welfare and success of the Democratic Party at heart, and will participate in the Convention in good faith." In a nutshell, where, as

here, there is a contest or challenge, the delegates must demonstrate their good faith to the Convention. To read paragraph (2) any other way would be to violate the standard rule of construction requiring that "each word will have a meaning, and not so read that one word will cancel out and render meaningless another. . . ." ⁷⁹

Although the history of this paragraph (2) is scant, what history there is also supports the construction that paragraph (2) is an addition in substantive requirement to paragraph (1) and that challenged delegates must demonstrate their good faith. The addition of this second paragraph to supplement the undertaking in the first paragraph was a concession to the "Loyal Democrats," at the time led by Governor Daniels of Texas, who feared that the Loyalists in the South would be destroyed by a weaker pledge.⁸⁰ Two challenges were presented in 1956 and the issue was whether the "traditional" delegations from Mississippi and South Carolina could conform to paragraph (2) of the rules:

"To the South Carolina 'loyalists' Rawlings [Chairman of the Credentials Committee] explained that delegates elected in accordance with the rules of their state would be seated unless it were demonstrated that they 'are not Democrats to the point where they do not comply with the Call.' He re-read the Call and inquired whether it had been read to the state convention and 'whether or not those delegates subscribed to *those resolutions*.' The state chairman of the official party assured him that it had been read at the convention, and that the delegates were elected subject

⁷⁹ *Tonis v. Board of Regents of U. of State of New York*, 67 N.E. 2d 245, 248, 295 N.Y. 286, 293 (1946).

⁸⁰ Holtzman, *The Loyalty Pledge Controversy in the Democratic Party*, 1960, p. 21.

to the Call and would subscribe to the *rules* proposed in it.”⁸¹ (*italics supplied*)

The Mississippi Democrats also agreed to conform to the Call assuring the Chairman that the state convention had been conducted “in absolute compliance with the Call.”⁸²

That same year, 1956, Adlai Stevenson stated that he was not then in accord with the loyalty oath. “But, speaking generally, I just don’t believe that honorable men who have been elected to high office *as Democrats and by Democrats* will come to a Democratic Convention if they are publically, secretly, or even conditionally pledged to support the Republican candidate. . . .”⁸³

Indeed, this was the interpretation put on paragraph (2) by the Chairman of the Credentials Committee of the National Convention in 1956. A rival Mississippi delegation appeared to challenge the “traditional” Party. The following colloquy took place:

“Sweetland: ‘Now, under the rules under which we are now operating, under the present rules of the Democratic National Committee, isn’t an exception made in requiring a pledge of loyalty to the Party in the case of contested delegations, where such pledges may be required?’ ”

“Rawlings: ‘Yes, I think that is true.’ ”⁸⁴

Under paragraph (2) of the rules, there can be little question that where, as here, there is a contest or chal-

⁸¹ Holtzman, *op. cit.*, p. 26.

⁸² Holtzman, *op. cit.*, p. 26.

⁸³ Holtzman, *op. cit.*, p. 24.

⁸⁴ *Official Proceedings of the Democratic National Convention*, 1956, p. 822.

lenge, the challenged delegation must show its good faith. *And this the "traditional" delegation cannot do.*

As we have already seen, the "traditional" state convention recessed so it could reconvene in September and then come out for Goldwater (see pp. 31 to 32, *supra*). The "regulars" of Mississippi are unwilling to throw in their lot with the National Democratic Party. They proclaim their independence of it; they attack its leaders; they support its opposition. They bar Negroes (overwhelmingly for President Johnson) from voting. They come here for the sole purpose of warming 68 seats so that loyal Democrats cannot have them. It is hard to conjure up anything more clearly bad faith than coming to a Convention not to help the National Party win, but rather to exclude someone else.

* * * * *

Both under paragraph (1) and paragraph (2) of the rules the Mississippi Democratic Party delegation cannot legally be seated. The only procedure at this Convention under which the "traditional" delegation could possibly be seated would be to suspend the rules and seat them *despite the rules*. Yet everyone knows that the "traditional" Mississippi delegation could not obtain the votes of two-thirds of the delegates to this Convention needed to suspend the rules and seat them; they could not get one-third or one-sixth to take such action. Certainly it is not the task of the Credentials Subcommittee of the National Committee or the Credentials Committee of the Convention to suspend the rules. Rather it is their duty to interpret and apply the rules—so doing, the "traditional" delegation cannot possibly be seated.

II

The Delegation of the "Traditional" Party Should Not Be Seated Because the State Convention Which Selected and Certified it was Illegal and Unconstitutional.

It is hard to believe that anyone—even the "traditional" Party itself—will have the temerity to challenge the proposition that the state convention which selected and certified the "traditional" delegation was both illegal and unconstitutional. For the state convention of the "traditional" Party was the culmination of a process of exclusion of Negroes in blatant violation of the Fourteenth and Fifteenth Amendments to the Constitution. Negroes were excluded from every aspect of the political process leading up to the state convention—registration, precinct conventions predicated on registration, county conventions and finally the state convention—and this exclusion permeated and invalidated the state convention.⁸⁵ It is thus unnecessary to go beyond this simple proposition. Nevertheless, to make assurance doubly sure, we are adding the points contained in the succeeding pages.

A. The Convention of the "Traditional" Party was Illegal and Unconstitutional Because That Party Runs the State of Mississippi and Uses Its Power to Exclude Negroes From Registration and Participation in the Political Processes of the State.

Nowhere else in this country has a single party such pervasive control of the entire state governmental machinery as has the Mississippi Democratic Party. As Governor

⁸⁵ *Nixon v. Herndon*, 273 U.S. 536 (1927); *Nixon v. Condon*, 286 U.S. 73 (1932); *United States v. Classic*, 313 U.S. 299 (1941); *Smith v. Allwright*, 321 U.S. 649 (1944); *Terry v. Adams*, 345 U.S. 461 (1953); *Davis v. State*, 23 So. 2d 87, 156 Fla. 178 (1945).

Paul Johnson said in his keynote address to the July 28th state convention:

“The Mississippi Democratic Party, for the past 89 years, is the framework, or the structure, through which Mississippians maintain political unity, and operate self-government.”

Hence that Party is almost solely responsible for the daily state-sponsored discrimination against Negroes in all areas of life in violation of the Fourteenth Amendment. And that Party, through its control of the State, is the primary barrier to the aspiration of Mississippi Negroes to vote—all in violation of the Fourteenth and Fifteenth Amendments.

Yet, 20 years ago, the Supreme Court ruled that a political party may not obstruct the free exercise of the right to vote. The leading case, *Smith v. Allwright*,⁸⁶ forbids the exclusion of Negroes from primaries through the denial of party membership pursuant to a resolution of the party convention. In the *Allwright* decision, the Supreme Court quoted extensively from a Texas opinion to make a point no less applicable to Mississippi:

“Since the right to organize and maintain a political party is one guaranteed by the Bill of Rights of this State, it follows that every privilege essential or reasonably appropriate to the exercise of that right is likewise guaranteed,—including, of course, the privilege of determining the policy of the party and its membership.”⁸⁷

In a later decision, *Terry v. Adams*, the Supreme Court refused to allow the evasion of the Constitutional responsi-

⁸⁶ 321 U.S. 649 (1944).

⁸⁷ *Id.*, at 655, quoting *Bell v. Hill*, 74 S.W. 2d 113, 120, 123 Tex. 531, 546 (1934).

bilities outlined in *Smith v. Allwright*. Since its own primaries were subject to state regulation and therefore to Constitutional requirements, the Democratic Party of Texas had simply ratified the results of the primaries of the Jaybird Party which claimed the right to exclude Negroes, having declared itself a voluntary club. The Supreme Court pierced the facade and found that the real purpose of the Texas Democratic Party, not unlike that of the Mississippi Democratic Party here, was to “strip Negroes of every vestige of influence in selecting officials who control the local county matters that intimately touch the lives of citizens.”⁸⁸

No stronger case for unseating a delegation from a state party committed to racial segregation can be found than these words from the Supreme Court in the *Allwright* opinion:

“The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any State because of race. This grant to the people of the opportunity for choice is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied.”⁸⁹

The Supreme Court’s decisive language is a mandate that the “traditional” Mississippi delegation be unseated for its participation in discriminatory practices that rob Negroes of the franchise.

⁸⁸ 345 U.S. 461, 470 (1953).

⁸⁹ *Smith v. Allwright*, 321 U.S. 649, 664 (1944).

B. *The "Traditional" Party and Its Convention Are Regulated in Detail By the State and Its Actions in Excluding Negroes Are State Action in Violation of the Fourteenth Amendment.*

The State of Mississippi not only regulates party primaries, but also provides an extensive scheme for the regulation of the internal affairs of political parties and their state conventions.⁹⁰ Significantly, this scheme of state control is not at the mere suffrance of the legislature, but is a constitutional duty imposed by Article 12 of the Mississippi Constitution, which requires in Section 24 that:

"The legislature shall enact laws to secure fairness in party primary elections, conventions, and other methods of naming party candidates."

Using its authority under this section, the Mississippi legislature has declared that "It shall be unlawful for any person or group of persons to set up or establish any political party in this state, except in the manner provided by the laws of this state . . ." ⁹¹ When this section is read together with the quoted section of the Mississippi Constitution, the conclusion is unavoidable that the state has undertaken to regulate political parties, thereby creating a relationship between state and party not unlike that recognized between state and primary in the cases that have come before the Supreme Court.⁹²

The type of state regulation prescribed for political parties and state conventions closely parallels legislation regulating state primaries. A party must register with the

⁹⁰ See *Mississippi Code*, § 3105 et seq.

⁹¹ *Mississippi Code*, § 3107-06.

⁹² See n. 85 and pp. 47 to 49, *infra*.

state before it can conduct primaries or elections.⁹³ A wealth of detailed regulations surrounds the election of the state, district, and county committees of a party as well as the party convention itself.⁹⁴ The statute, for example, prescribes the mode of selection of delegates, the number of votes each county has at the convention, the apportionment of delegates, etc.⁹⁵ Whenever the statute requires the convening of the electors of the party, its language belies an interpretation condoning exclusion.⁹⁶ The barring of Negroes from the state convention is thus at odds with Mississippi law. And the extensive state regulation of the "traditional" state Democratic Party would, if followed, free a body intimately and officially tied in with voting rights from the unfairness that would and has tainted the electoral process in violation of the Fifteenth Amendment.

It is more than coincidental that the type of state regulation prescribed for political parties and state conventions in Mississippi closely parallels legislation regulating state primaries in Mississippi and the rest of the country. For the purpose of both kinds of legislation is precisely the same—to insure fairness in the pre-election procedure so that free elections will not be subverted somewhere early in the process. What has been said of the state's relation

⁹³ *Mississippi Code*, § 3107-03.

⁹⁴ *Id.*, § 3107.

⁹⁵ *Ibid.*

⁹⁶ For example, Sec. 3154, providing for the election of municipal executive committees mandates that the chairman of the county executive committee "shall . . . call a mass meeting of the electors of their political faith," and Sec. 3155 requires publication of that call, for a three-week period preceding the mass meeting, apparently to assure the largest representation.

to party primaries is equally applicable to the convention situation :

“Under the holding in *Smith v. Allwright*, any statutory regulation or recognition of a primary election would seem to be sufficient to warrant the conclusion that the state had taken the party and its officials as their agents in the conduct of a necessary part of the whole electoral process, and as a matter of public policy had elected to treat the party primary as a legitimate part of that process.⁹⁷

Whether or not the exclusion is from primaries or from the convention of the chief political organ of the state, the result is the same—ostracism from political activity based solely on race. The Democratic National Convention should not ratify the unconstitutional practices of the State of Mississippi by seating delegates whose position in their state and Party flows from layers of unconstitutional conduct, and who are pledged to continue the subjugation of a people in violation both of the Constitution and the law.

* * * * *

It is no answer to this fundamental legal and Constitutional argument to suggest that it might also be applicable to one or more other southern states. To begin with, there are no contesting delegations in any of the other southern states. Furthermore, Mississippi “is not like any place else.”⁹⁸ Its exclusion process—from registration, from precinct conventions, from county conventions, from the state convention—is so complete that *not a single Negro*

⁹⁷ *Annotation*, 151 A.L.R. 1121, 1122.

⁹⁸ *Special Report, Southern Regional Council, Law Enforcement in Mississippi*, July 14, 1964, p. 6.

was permitted in the state convention which elected the delegates to Atlantic City. In other words, Mississippi Negroes were not merely hampered in joining in the selection of delegates to this Convention; they were totally excluded from the process of choice. Not only in this respect, but also in the state-wide and unending harassment and terror used to keep Negroes from the polling booth, Mississippi differs from other southern states.

Finally, it should never be forgotten that it is a crime to exclude Negroes from voting.⁹⁹ The "traditional" delegation to this Convention is part and parcel of a conspiracy to commit that crime. While criminal action is not possible in Mississippi because white juries will not convict white men for excluding Negroes from political processes, it is a totally different thing for delegates at this Convention to condone these felonies. This Convention would, indeed, be compounding a felony if it were to seat the "traditional" delegation and turn away the Mississippi Freedom Democratic Party.

III

Any Fair Comparison of the Two Parties Can, in Law and in Equity, Lead Only to the Seating of the Delegation Representing the Freedom Party.

As has been pointed out earlier, Mississippi is not like any place else, and that is the starting point of any legal analysis of the relative merits of the two delegations.

In order to illustrate this point, let us take a hypothetical case. Suppose Senator John Doe of State X, leading a conservative delegation to the Democratic National Convention, was challenged by a liberal delegation headed by Governor Richard Roe. The Convention would have little

⁹⁹ 18 U.S.C. §§ 241, 242.

difficulty in finding a standard to use in determining which of the two delegations to seat. The standard could only be: "Which of the delegations better represents the registered Democratic voters of State X?" Since State X has a primary election for delegates to the National Conventions, all that the Democratic National Convention would have to do would be to determine which group was elected in the Democratic primary. And the same situation would apply in State Y where two delegations were sent to the Democratic National Convention representing rival state conventions—the question would be which of those two state conventions better represented the registered Democrats of State Y?

But this test simply does not work in Mississippi. Over forty per cent of the population, *the group most likely to support the nominees of this Convention*, has been excluded from the "traditional" Party and thus from the political processes of the State of Mississippi. The "traditional" Party cannot ask this Convention to use the test as to who represents the registered Democratic voters of Mississippi when it has itself blocked the Negroes represented by the Freedom Party from becoming registered voters. In more legal terms, the "traditional" Party is estopped from contending that Freedom Party people are not registered voters when it is solely responsible for their not being registered.

What then should be the standard to determine which of the two competing Mississippi groups is to be seated at this Convention? Based on the legal precedents available and applying them to a situation where one of the contesting groups is excluded from the other contesting group, the following standard should govern: Where two groups, each representing a substantial number of Democratic voters or potential Democratic voters, appear at the Con-

vention and ask to be seated, the Convention should choose that group which exhibits good faith to the National Party and carries on its activities fairly and openly. Or, to couch this standard in terms of paragraph (2) of the rules discussed earlier (pp. 43 to 46, *supra*), the Convention should choose that group which has "the interests, welfare and success of the Democratic Party at heart, and will participate in the Convention in good faith. . . ."

It is clear, of course, that the Freedom Party does represent a substantial number of actual and potential Democratic voters. Its registration of over 50,000 persons accomplished in the face of harassment and terror is a remarkable achievement, and there can be little doubt that the Party actually represents the full Negro potential vote of 435,000 Mississippi Negro citizens, as well as at least some white citizens. The ability of the Freedom Party to carry on precinct meetings and county conventions throughout the State and to carry on a state convention in the face of this same harassment and terror demonstrates the great depth of feeling for the Freedom Party among the Negroes of Mississippi. Its Statement of Loyalty (p. 19, *supra*) and its other activities demonstrate that it has the ability and the intention to operate in accordance with the rules of the National Party. In a word, *it is not a paper party*; it is a real party with a great potential for the future. It is the only hope for the National Democratic Party in Mississippi.

Two points remain to be developed. First, the legal precedents do in fact support the proposition that the Convention should choose the group which exhibits good faith to the National Party and carries on its activities fairly and openly. Second, applying such a standard, the Convention must choose the delegation representing the Freedom Party.

A. *The Standard to Govern Convention Action is Which of the Two Groups Exhibits Good Faith to the National Party and Carries on Its Activities Openly and Fairly*

Democratic National Conventions from 1836 to 1960 have many times been faced with competing delegations.¹⁰⁰ Whatever may have been in the minds of the delegates to the Conventions when these conflicts were resolved, the standard utilized to determine the outcome of the contests was not articulated. Indeed, the most common method of resolving those conflicts has been the seating of both delegations without the adoption of a standard. But in no single instance were the equities as clearly with one side or the other as they are with the delegation of the Freedom Party here. In light of this, and especially in light of the violations of the rules by the "traditional" Party (Point I) and the illegality of its state convention (Point II), the only result consonant with fairness and equity is the seating of the Freedom Party and the exclusion of the "traditional" Party.

Though the precedents from earlier conventions are not helpful in providing a standard to resolve the present conflict, judicial precedents do offer certain base-line standards, despite the current reluctance of courts to intervene in the disputes of political parties.¹⁰¹ Since judicial intervention in political matters has always been cautious, these decisions, largely from a period when courts more readily took such cases, yield a moderate and minimum

¹⁰⁰ For the convenience of the delegates to this Convention, we set forth in Appendix C a summary of these contests.

¹⁰¹ For a particularly complete opinion emphasizing the inadequacy of courts to handle disputes within parties, as well as a survey of some of the important cases, see *Stephenson v. Board of Election Commissioners*, 76 N.W. 914, 118 Mich. 396 (1898).

standard of fairness not alone for courts but wherever the concern is with what is equitable.

Judgments as to fairness almost always require looking beyond the trappings of mere form. One decision, recognizing how inadequate is the standard based on "which of the two nominating conventions was the regular one,"¹⁰² offered a more penetrating standard similar to that embodied in paragraph (2) of the rules of the Convention dealing with delegate qualifications.¹⁰³ The convention "organized and conducted more in consonance with the principles of honesty and good faith which should govern men" was to be recognized. Where the essential fair dealing was missing, courts often shunned the easy decision for the group appearing on the surface to be regular or traditional.¹⁰⁴ These decisions stand for the important proposition that legality, while incorporating form, procedure, and precedent, also transcends them, at least to the extent that what is clearly unfair is seldom legal.

The single most serious defect offending fairness that emerges from the judicial decisions is the failure of a state convention to fairly represent all members of the party. "Every elector of a particular party faith or belief is entitled to be represented in the conventions and primaries of his party when party measures are to be taken, or delegates are to be selected . . ."¹⁰⁵ The almost exclusive and supreme powers of state conventions to govern their own affairs assumes, as one court put it, that "such conventions are . . . organized assemblages of electors or delegates fairly representing the entire body of electors of

¹⁰² *Spencer v. Maloney*, 62 Pac. 850, 852, 28 Colo. 38, 48 (1900).

¹⁰³ See p. 36, *supra*.

¹⁰⁴ See e.g., *In re Woodworth*, 16 N.Y. Supp. 147 (1891).

¹⁰⁵ *State v. Hogan*, 62 Pac. 583, 584, 24 Mont. 383, 393 (1900). See also 18 Am. Jur. Elections, § 135.

the political party which may lawfully vote for the candidates of any such convention.”¹⁰⁶ The decisions leave the requirement of fair representation a near-axiom in such matters by their repeated emphasis on the simple proposition that “a convention must be a representative body.”¹⁰⁷ And they leave no doubt that an unrepresentative convention is illegal. One decision put it bluntly: “No action by a state convention could validate a nomination . . . where the convention making it does not properly represent the electors of the district.”¹⁰⁸

The failure fairly to represent is most offensive where it flows from deliberate and arbitrary exclusion, as in Mississippi. The only ground for exclusion recognized in the decisions is best stated in a well known recent case, *Ray v. Gardner*,¹⁰⁹ where the Supreme Court of Alabama recognized the right to “exclude from party action all persons save those holding a present party allegiance.” The “traditional” Democratic Party in Mississippi, whose “party allegiance” is questionable at best, has tossed away this standard to replace it with a requirement of belief in racial segregation (pp. 10-11, *supra*).

Moreover, the Freedom Party has met the test of exclusion found in the few cases which discuss such a situation. The court in *State v. Weston*,¹¹⁰ refused to seat a group which claimed it had been excluded from a Democratic Party county convention because, as the court pointed up, there had indeed been an “opportunity for all claiming to be delegates to present their credentials to the regularly

¹⁰⁶ *State v. Rotwitt*, 46 Pac. 370, 372, 18 Mont. 502, 507 (1896).

¹⁰⁷ *State v. Johnson*, 46 Pac. 533, 534, 18 Mont. 548, 552 (1896).

¹⁰⁸ *State v. Hogan*, 62 Pac. 583, 587, 24 Mont. 383, 395 (1900); see also *State v. Weston*, 70 Pac. 519, 27 Mont. 185 (1902).

¹⁰⁹ 57 So. 2d 824, 826, 257 Ala. 168 (1952).

¹¹⁰ See n. 108, *supra*.

appointed committee of the convention [and] the contesting delegates made no attempt to be admitted to the convention by presenting their credentials to the proper committee or otherwise.” In contrast, Mississippi Negroes made futile attempts all over the state to do just what *State v. Weston* impliedly requires, instead of what it disapproves as premature—“immediately proceed[ing] to organize another convention.” Similarly, the court in another case, *State v. Johnson*,¹¹¹ held that “if such electors fail or decline to send delegates to the convention or if delegates sent disagree or act unwisely, then other matters may arise.” But the wholesale refusal of Mississippi Democratic Party officials to admit or hear the Freedom Party people at all levels from precinct meetings to state convention left them with the choice of organizing their own convention or remaining outside the party. No court has frowned upon independent action under such circumstances of arbitrary exclusion; surely no political body would require citizens to choose to remain outside the party under the same circumstances.

The “traditional” Democratic Party of Mississippi, in excluding all except those committed to segregation, is entitled to no greater recognition than was the convention at issue in *State v. Johnson*, where the call was issued to “gentlemen whom I knew to be in sympathy with the principles of the financial plank of the party.”¹¹² The Court found that this convention was illegal because no “opportunity” had been given all the electors “to say whether or not they desire their . . . principles to be represented.” The result was the same in a case where a county was excluded.¹¹³

¹¹¹ 46 Pac. 533, 535, 18 Mont. 548, 552 (1896).

¹¹² *Ibid.*

¹¹³ *State v. Rotwitt*, 46 Pac. 370, 18 Mont. 502 (1896).

Exclusion from a state convention based on race and belief on matters of race is at least as serious as exclusion based on differences in economic policy or geographical location. The resulting illegality, long recognized in our law as offensive to the most elementary principles of fairness, arises from the arbitrary denial of voice and vote. The representatives and proceedings of a convention illegal when judged by the decisions of courts and unfair when judged by ordinary standards of fair play, deserve no recognition by a national convention with the power to make the fair and legal choice.

B. The Freedom Party Delegation Must Be Seated Under Any Standard Relating to Fairness and Good Faith

We shall not repeat the Statement of Facts here. But every word in that Statement demonstrates the Freedom Party's good faith towards the National Party and the "traditional" Party's bad faith.

The Freedom Party has demonstrated its good faith by:

- * Remaining within the Democratic Party despite the persecution of the Mississippi Democratic Party.
- * Building a substantial organization over the opposition of the "traditional" Party and opening it to *all* Democrats.
- * Undertaking to assure that Mississippi voters will have the opportunity to vote for President Johnson and his running mate with pledged electors under the Democratic Party label and designation.
- * Pledging to work dauntlessly for the election of President Johnson and his running mate.
- * Proudly announcing their adherence to the National Democratic Party.

- * Affirming their belief in the Democratic platform.
- * Risking harassment and even death to participate in this Convention.

The "traditional" Party has demonstrated its bad faith by:

- * Excluding Negroes (the group most likely to support President Johnson) from registration and from the Party, by harassment and terror.
- * Repeatedly proclaiming its independence of the National Party.
- * Opposing the platform and principles of the National Party.
- * Spewing hatred upon Presidents Kennedy and Johnson.
- * Viciously attacking Negroes and Negro organizations.
- * Enacting laws to keep the National Party off the ballot.
- * Recessing their convention so that they can turn to Goldwater.
- * Coming here only to keep the Freedom Party from being seated.

The contrast is clear; the choice is clear.¹¹⁴

¹¹⁴ The suggestion has been made that the legal case for ousting the "Traditional" Party has been more clearly established than the legal case for seating the Freedom Party. *But these cases are really functions of each other.* The National Democratic Party must have loyal representation in Mississippi. If the "Traditional" Mississippi Party will not provide it, the National Party must look elsewhere

Conclusion

The Democratic Party cannot fight the white backlash by surrendering to it. The seating of the Freedom delegation is legally and equitably right. The liberal principles upon which the Democratic Party has grown great demand that it stand with the Freedom Party at this Convention. The Democratic Party has won over the years when it stood fast for principle; it cannot win this time by hauling down the flag.

Respectfully submitted,

JOSEPH L. RAUH, JR.,
ELEANOR K. HOLMES,
H. MILES JAFFE.

and the National Convention may legally seat a loyal group representing substantial numbers of citizens, in the interest of building such representation in Mississippi for the future. The fact that the loyal group may be small today—or that many of its members have been barred from registering by the harassment and terror of the disloyal group—hardly demonstrates that the best interests of the National Party will not be served by seating the loyal group and thus helping it to grow. Indeed, the seating of both delegations on numerous occasions in the past (see Appendix C) was obviously designed to encourage groups other than the “regular” group in the hope they would one day help the National Party.

APPENDIX A

Platform and Principles of the Mississippi Freedom Democratic Party

The Freedom Democratic Party, believing that racial equality is only the first step in solving the basic problems of poverty, disease and illiteracy confronting American society, welcomes the participation of all Mississippi citizens in a joint effort to realize the goals of economic growth and individual self-fulfillment in a spirit of humane concern for the welfare of every person.

With all humility we ask the guidance of Almighty God in these difficult times. May his power and spirit fill us all as we approach these problems that beset us all.

We pledge to support the candidates and principles adopted by the National Democratic Party at its convention in Atlantic City in August, 1964.

National Affairs

BE IT RESOLVED:

1. That we support the 1960 National Democratic Party platform, specifically insofar as the following principles apply to the State of Mississippi.
 - a. Full employment as a fundamental objective of national policy and the necessity for federal aid to the depressed areas of Mississippi and the rest of the nation.
 - b. Strong state and national action to eliminate artificial barriers to employment based on race, sex, religion, or national origin.
 - c. The right to a job requires the full restoration of collective bargaining, and the repeal of anti-labor legislation designed to prevent the effective organization of unions.
 - d. The right of every farmer, tenant, sharecropper and migrant worker to a decent living through the raising of farm incomes and wages, national and

state legislation affecting wages and living conditions, food stamp programs to feed needy children, the aged and the unemployed, and the expansion of school lunch and milk programs.

- e. Medical care benefits to be provided as part of the Social Security insurance system.
2. That we wholeheartedly endorse the program embodied in the Civil Rights Law of 1964 and that we demand both state and national officials to implement the principles of this law.
3. That we insist that all officials of the state and national governments take steps to insure the impartial registration of all qualified voters in the State of Mississippi. We urge vigorous enforcement of the civil rights laws to guarantee the right to vote to all citizens in all areas of the country. We urge the abolition of the literacy test as a voting requirement. We further urge use of the 14th Amendment clause which allows for a reduction in Congressional representation when qualified voters are not registered.
4. That we vigorously support the Supreme Court school desegregation decision of 1954 and demand that immediate measures should be undertaken by the state and national governments to guarantee that the decision be enforced in the State of Mississippi.
5. That we support the Supreme Court re-apportionment decision of 1964 and call for a just system of representation in every legislative body in the United States consistent with the principle that each individual has an equal vote.
6. That we believe that an extensive job re-training program should be vigorously pursued by both the state and national governments in order that middle-aged people who are victims of an era of economic transition may continue to be self-sufficient members of the community.

7. That we applaud the start which has been made toward the amelioration of poverty under Presidents John F. Kennedy and Lyndon B. Johnson in such measures as area redevelopment, a broadened minimum wage, manpower training, food stamp legislation, and the omnibus anti-poverty measure. We call for the intensification of these programs during the next four years under continued liberal Democratic leadership and for the integration of these efforts with a creative public works program.
8. That we strongly endorse the efforts of Presidents John F. Kennedy and Lyndon B. Johnson to achieve international development and cooperation through such measures as support of the United Nations, a vigorous foreign aid program, attempts to bring about control of nuclear weapons, and the creation of the Peace Corps.
9. That we applaud the advance of freedom throughout the world and advocate American cooperation with the United Nations in a peaceful effort to eradicate tyranny in those areas of the world—such as South Africa, Angola, Southern Rhodesia, Hungary, and East Germany—where it still prevails.
10. That we oppose attempts by any nation or bloc to impose alien political systems or ideologies—communist or otherwise—on any other nation.
11. That we vigorously condemn extremist and hate groups such as the Ku Klux Klan, the White Citizens' Council, the Association for the Preservation of the White Race, the John Birch Society, and the Black Muslims.

Mississippi Affairs

BE IT RESOLVED:

1. That we urge careful consideration of the use of federal funds in Mississippi to insure that such grants will not be used for the perpetuation of segregation.

Specifically :

- a. That we oppose the use of federal funds for the construction or maintenance of segregated community facilities in Mississippi.
 - b. That we advocate the establishment of a state Fair Employment Practices Committee to assist in reviewing cases of employment discrimination.
2. That we advocate careful supervision of the use of federal funds in order that the withholding of federal funds will no longer be used as a means to threaten and harass Mississippi citizens who try to exercise their constitutional rights.
 3. That we look for the appointment of federal referees to supervise all Mississippi electoral procedures—from the first attempt to register to vote to the final counting of ballots—until all citizens of the state can rest assured of a meaningful voice in a democratic society.
 4. That we advocate a substantial reduction in the state sales tax and a proportionate increase in the income tax.
 5. That we condemn the use of state tax monies to support the Sovereignty Commission and other organizations whose aim is to perpetuate the segregated society.

APPENDIX B

MISSISSIPPI FREEDOM DEMOCRATIC PARTY
Post Office Box 3127
Jackson, Mississippi

July 17, 1964.

Mr. John M. Bailey, Chairman,
Democratic National Committee,
1730 K Street, N.W.,
Washington 6, D.C.

Dear Mr. Bailey:

I am writing as Chairman of the Mississippi Freedom Democratic Party to inform you that the Party will send a full delegation of delegates and alternates to the Democratic National Convention in Atlantic City next month. Our delegation will represent Democratic residents of the State of Mississippi who are loyal to the United States Constitution and to the National Democratic Party and most of whom are barred from the "regular" Democratic Party by terroristic and other unconstitutional methods. We hereby challenge the delegation of the "regular" Democratic Party and assert the right of the delegation of the Mississippi Freedom Democratic Party to be seated at the National Convention as the true representative of Mississippi Democrats. We shall present our case in full to the Democratic National Committee and the Democratic Convention in accordance with established procedures. We request tickets, floor privileges, badges, housing, and all the rights that accrue to a regular delegation.

Our delegation will be chosen through a nominating process of precinct and county meetings, district caucuses, and a state convention in accordance with Mississippi law. The procedure will be similar to that of the "regular" party except that our meetings will be open to all Democrats, while their meetings effectively bar Negroes.

You or your personal representative or representatives are invited to attend as observers our State Convention, which will be held in Jackson on August 6, 1964.

Yours for a National Democratic Party landslide in 1964!

(Signed) AARON HENRY,
Chairman,
Mississippi Freedom Democratic Party.

MISSISSIPPI FREEDOM DEMOCRATIC PARTY
 Post Office Box 3127
 Jackson, Mississippi

August 6, 1964.
 By Hand.

Mr. John M. Bailey, Chairman
 Democratic National Committee
 1730 "K" Street, N.W.
 Washington, D. C. 20036

Dear Mr. Bailey:

On July 17, 1964, Mr. Aaron Henry, acting Chairman of the Mississippi Freedom Democratic Party, wrote and informed you that, at the State Convention of the Mississippi Freedom Democratic Party on August 6, there would be elected delegates and alternates to the Democratic National Convention in Atlantic City.

This is to inform you officially that the State Convention of the Freedom Party met in Jackson earlier today, and to further inform you that I have now been elected chairman of the Freedom Party.

The State Convention consisted of delegates from county conventions which, in turn, were predicated upon precinct conventions, as required by Mississippi law.

The State Convention elected a delegation to the National Convention and the members of this delegation are listed in full on the attachment. I hereby certify on behalf of

the Mississippi Freedom Democratic Party that these delegates and alternates were duly elected by the Freedom Party at its State Convention on this date, that they are loyal to the United States Constitution and to the National Democratic Party and are the true representatives of Mississippi Democrats. They are therefore entitled to be seated at the Atlantic City Convention in place of the "regular" delegation which seeks to be seated in violation of the Rules of the Convention and the Constitution of the United States and with total disloyalty to the National Party.

Mr. Aaron Henry has been elected Chairman of the delegation to the National Convention. I ask that he be permitted to appear before the Credentials Subcommittee of the National Democratic Committee, along with our Counsel, Joseph L. Rauh, Jr., to present our case for seating on the temporary rolls of the Convention and before the Credentials Committee of the Convention to present our case for seating on the permanent rolls of the Convention. A Brief on the factual and legal aspects of this contest is being prepared by Mr. Rauh and will be submitted to your office not later than noon, Tuesday, August 18.

Yours for a National Democratic Party landslide in 1964!

Sincerely yours,

(SIGNED) LAURENCE GUYOT,
Chairman,
Mississippi Freedom Democratic Party.

Certified by:

_____, _____, (SIGNED)
MRS. PEGGY J. CONNOR,
Secretary,
Mississippi Freedom Democratic Party.

Enclosure

MISSISSIPPI FREEDOM DEMOCRATIC PARTY DELEGATION :

National Committeewoman: Mrs. Victoria Gray

National Committeeman: Rev. Edwin King

Chairman of the delegation: Mr. Aaron Henry

Vice-chairman of the delegation: Mrs. Fannie Lou Hamer

Secretary: Mrs. Annie Devine

Delegates:

Mrs. Helen Anderson
 Dr. A. D. Beittel
 Mrs. Elizabeth Blackwell
 Mrs. Marie Blalock
 Mr. Sylvester Bowens
 Mr. J. W. Brown
 Mr. Charles Bryant
 Mr. James Carr
 Miss Lois Chaffee
 Mr. Chois Collier
 Mr. Willie Ervin
 Mr. J. C. Fairley
 Mr. Dewey Green
 Mr. Laurence Guyot
 Mrs. Winson Hudson
 Mr. Johnny Jackson
 Mr. N. L. Kirkland
 Miss Mary Lane
 Rev. Merrill W. Lindsay
 Mr. Eddie Mack
 Mrs. Lula Matthews
 Mrs. Yvonne MacGowan
 Mr. Charles McLaurin
 Mr. Leslie McLemore
 Mr. Robert Miles
 Mr. Otis Millsaps
 Mrs. Hazel Palmer
 Rev. R. S. Porter
 Mr. Willie Scott
 Mr. Henry Sias

Alternates:

Mr. C. R. Darden
 Mrs. Ruby Evans
 Mr. Oscar Giles
 Mr. Charlie Graves
 Mrs. Pinkie Hall
 Mr. George Harper
 Mrs. Macy Hardaway
 Mr. Andrew Hawkins
 Mr. William Jackson
 Mrs. Alta Lloyd
 Rev. J. F. McRee
 Rev. W. G. Middleton
 Mr. Joe Newton
 Mrs. M. A. Phelps
 Mrs. Beverly Polk
 Mr. Henry Reaves
 Mr. Harold Roby
 Mrs. Emma Sander
 Mrs. Cora Smith
 Rev. R. L. T. Smith
 Mrs. Elmira Tyson
 Mr. L. H. Waborn

Delegates :

Mr. Robert Lee Stinson

Mr. Slate Stallworth

Mr. E. W. Steptoe

Mr. Joseph Stone

Mr. Eddie Thomas

Mr. James Travis

Mr. Hartman Turnbow

Mr. Abraham Washington

Mr. Clifton R. Whitley

Mr. Robert W. Williams

Mr. J. Walter Wright

APPENDIX C

Summary of Contested Delegations—Democratic National Conventions

Year	State	Action taken ¹
1836	Pa.	Both delegations seated and split vote of the state.
1848	N.Y.	Both delegations appeared before the Credentials Committee without voting rights. Both seated, splitting the vote of the state.
1852	Ga.	Both delegations again seated, splitting the vote of the state.
1856	Mo.	Delegation seated which was originally approved by the Committee on Arrangements.
1860	N.Y. (Charleston, S.C.)	Majority report of Credentials Committee approved, seating pro-Douglas delegation.
1864	Ky.	Both delegations seated, splitting the vote of the state.
1880	Mass. N.Y.	Both delegations from Mass. seated and split vote of state. Only one faction from N.Y. was seated.
1896	Neb.	Ruling by the Credential Committee favoring contesting delegates reversed a decision by the National Committee.

¹ 1836-1956 Adapted from Richard C. Bain. *Convention Decisions and Voting Records* (Wash. The Brookings Institution, 1960).

Year	State	Action taken ¹
1900	D.C. Okla. Territory Indian Territory	Both delegations from each was seated splitting the vote of each.
1904	Ill.	Contesting delegation lost in a floor vote on credentials.
1912	S.D.	Floor upheld delegation approved by the National Committee and defeated that substituted by the Credentials Committee.
1936	P.R. C.Z. Minn.	Both sets of delegations from each state seated and their votes were split.
1944	Tex.	Both delegations seated and split the vote of the state.
1952	Tex. Miss.	“Regular” delegation seated while contesting delegation lost out.
	Va. La. S.C.	Delegation challenged over compliance with requirements of the Moody (Loyalty Oath) resolution. All were seated following verbal pledges of support.
1956	Miss. S.C.	Delegations challenged over loyalty issue again. The delegations were seated after accepting the “Loyalty Pledge.”
1960	P.R.	Both delegations seated and split the vote of the state. ²

¹ 1836-1956 Adapted from Richard C. Bain. *Convention Decisions and Voting Records* (Wash. The Brookings Institution, 1960).

² *New York Times*, July 12 and 13, 1960.