

John Doar
Assistant Attorney General
Civil Rights Division

Sept. 21, 1967

Owen M. Fiss
Special Assistant

DJ 171-1-3

Gardner v. Alabama
Nos. 24468, 24561

Immediately upon learning of the Court of Appeals decision in the Alabama welfare case, I telephoned Mr. Reid Barnes to assure him of our willingness to assist him and the State Agency in any way we could in coming into compliance with the requirements of Title VI. On September 1, a telegram was sent from the Director of Social and Rehabilitation Services of the Department of Health, Education and Welfare to the Commissioner of Welfare of Alabama, offering the assistance of his Department in this matter. In a telegram dated September 8, 1967, the Commissioner of Welfare advised HEW that he was studying the Court of Appeals' decision and that he would contact HEW if he wished to avail himself of the offer of assistance. Subsequent to the decision, HEW has forwarded funds to the Alabama Department to take care of expenditures during the 30 day stay granted by the Court of Appeals.

We have received no subsequent communications from the State Department of Pensions and Security and in light of the fact that the stay is to expire one week from today, I telephoned Mr. Reid Barnes. In the course of the conversation I learned the following:

(a) The people in Montgomery have decided to apply to the Supreme Court for certiorari in this case. Mr. Barnes indicated to them that he would not be able to handle the case for them in the Supreme Court;

cc: Records
Chrono

D. Rose
Owen
Fiss

(b) That earlier today the State Attorney General's Office applied to Judge Gewin for a stay so as to enable them to apply for certiorari to the Supreme Court. Apparently, we have been served by a letter, which was mailed this morning or last night, which we have not yet received;

(c) That the Alabama Department of Welfare has prepared a statement of compliance which Mr. Barnes now has in his possession, which he believes complies with the requirements of the Court of Appeals. However, he is not authorized to release this statement of compliance to HEW;

(d) He has criticized the pertinent State officials in waiting so long before taking this action. He thought that the State should submit the statement of compliance and then apply to the Supreme Court for certiorari. He also said that this has become "a political case" and that he wants to stay out of politics;

(e) He stated that he would call me by telephone if there are any subsequent developments that I should be notified of.

I believe that the Government should take the position that a stay should be denied by the Court of Appeals and the Supreme Court so that Alabama should be required to submit a statement of compliance immediately. The legal issues will not be mooted or adversely affected by this statement of compliance

prior to determination on the petition for certiorari. I also recommend : (a) that we contact Judge Gevin's Chambers and ask for an opportunity to be heard on the Motion for a Stay and (b) that the clerk of the Supreme Court be notified and advised by the Solicitor General's office that the United States wants to be heard on any application for a stay made to that Court by the State of Alabama.