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August 21, 1967

MEMORANDUM FOR THE ATTORNEY GENERAL

I have already advised you of the three-judge court in Lee v. Macon County enjoining HEW from terminating any Federal financial assistance in Alabama without prior court approval. The court's holding and its issuance of the injunction against the Department are based on three determinations. The court determined that Lanett and the other school systems named in the March 22 decree were subject to a final order of a court. (This is the language of HEW regulations.) It determined that by terminating federal financial assistance to the named school districts the Secretary was undertaking administrative supervision or review of a judicial decree. It concluded that the Secretary, by doing so, interfered with the decree.

HEW recommends that we do not appeal. A copy of their letter is attached. HEW is not concerned about the precedent value of this case, but believes that appeal might interfere with school progress in Alabama under state-wide court supervision. I concede some risk of that. On the other hand, the decision is wrong and, in my opinion, likely to have a restrictive effect on HEW enforcement policies in the future.

The court's handling of this problem is not a sensible way of synchronizing administrative and judicial responsibility.

Our people are studying the decision carefully. I have also called the case to the attention of Ralph Spritzer; but I wanted you to be aware of it.

JOHN DOAR
Assistant Attorney General
Civil Rights Division

cc: Deputy Attorney General