

The File

October 13, 1967

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OMF/daw
DJ 171-1-3

Gardner v. Alabama
Nos. 24468, 24561

This afternoon Reid Barnes telephoned me while Mary Lee Stapp was present in his office. He called me to inquire whether I was interested in seeing a draft of Alabama's statement of compliance before the Supreme Court took any action on the projected petition for certiorari. He said that Mrs. Stapp had sent a copy of this draft to Mr. Yourman and that he thought I would also like to see a copy since I was in charge of the case. I did not inform him that Mr. Yourman had already sent me a copy of the draft statement of compliance that had been sent to him by Mrs. Stapp. I therefore said that I was interested in receiving a copy of the statement and I suggested that since Mr. Yourman and Mrs. Stapp had already established a working relationship on this they could exchange comments on the draft with each other. I also asked whether this draft statement of compliance had the approval of the Alabama Department. Mr. Barnes was hesitant about this but he said that unofficially it was approved by the Alabama Department or at least the deputy commissioner of that Department.

In the course of the conversation we came to discuss the problem as to when the mandate of the Court of Appeals would issue if certiorari were denied. I said that the clerk of the Court of Appeals told me that the mandate would issue immediately.

cc: Chrono Dunbaugh
 Owen Marblestone
 Rose Mrs. Rosenberg
 Fiss

Mr. Barnes said that he thought there might be further action needed by the Court of Appeals. I responded that I was unsure of this but that I would have some-attorney look into this.

In the course of the conversation the question was raised whether it would be advisable to inform the Supreme Court in the petition for certiorari that negotiations are proceeding on the content of the statement of compliance that would have to be submitted if certiorari were denied. Mr. Barnes said that he would have to think about this. He also said that the petition for certiorari would be filed well within the deadline (October 22, 1967) and that we would be notified immediately of its filing.

After speaking with Mr. Barnes, I telephoned Mr. Yourman, of HEW, and informed him of the content of this conversation. He also asked for a copy of a draft of our response to the petition for certiorari.