

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

F.

TO : Mr. John Doar
Assistant Attorney General
Civil Rights Division

FROM : Ralph S. Spritzer *RS*
First Assistant to the Solicitor General

SUBJECT: Lee et al. v. Macon County et al.

DATE: August 23, 1967

RSS:mch

*Beley - make copy
for my file. return
original to Doar
mch*

This is in reply to your memorandum of August 20, 1967, enclosing a copy of the letter which you received from Alanson Willcox, General Counsel of HEW.

My initial reaction is that Mr. Willcox's ultimate conclusion, i.e., that we not appeal from the injunction issued against the Secretary, makes sense, even though there may be good reason to question the correctness of the court's view of the role of HEW under Title VI. If, as Mr. Willcox says, the district court has adopted essentially all of the standards embraced by HEW's guidelines and is acting resolutely to implement them on a broad front, I do not think that this is a good vehicle for pursuing a doctrinal dispute. We, too, are in favor of results and we are apparently getting effective assistance from this three-judge court on a scale never previously obtained in the State of Alabama. Failure to appeal will not bind us to an acceptance of any errors that the court may have expressed in its opinion. It will not prevent HEW from taking such administrative action in other situations as it believes warranted; nor will it prevent this Department from defending such actions and litigating elsewhere issues to which this district court has addressed itself. If the ruling in question represented a decision of the Fifth Circuit which would be binding on all courts within that circuit in the absence of Supreme Court review, the tactical problem would be quite different. But breezes from one district court opinion do not make a summer.

Finally, I take note of the fact that we will presumably be filing a motion to affirm the judgment which the three-judge court has entered against the State Board of Education and the State Superintendent. It seems to me that we would somewhat undermine our chances of securing a summary affirmance on that branch of the case if we were to take an independent appeal with respect to the validity of the injunction issued against the Secretary.

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Ralph S. Spritzer
Office of the Solicitor General

DATE: August 20, 1967

FROM *JD* John Doar
Assistant Attorney General
Civil Rights Division

SUBJECT:

There is attached a letter from the General Counsel of HEW about the decision of a three-judge court in Lee v. Macon County.

I believe the decision to be wrong and bad precedent as to the authority of a three-judge court, and possibly very bad precedent to synchronize judicial and administrative responsibility in an area of the civil rights enforcement.

I would appreciate it if you would give me your reaction to the letter.

Ralph S. Spritzer
Office of the Solicitor General

August 20, 1967

John Doar
Assistant Attorney General
Civil Rights Division

There is attached a letter from the General Counsel of HEW about the decision of a three-judge court in Lee v. Macon County.

I believe the decision to be wrong and bad precedent as to the authority of a three-judge court, and possibly very bad precedent to synchronize judicial and administrative responsibility in an area of the civil rights enforcement.

I would appreciate it if you would give me your reaction to the letter.