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October 9, 1967

To: Ralph S. Spritzer  
Acting, Solicitor General

From: David L. Norman, Chief  
Policy and Coordination Section  
Civil Rights Division

Subj: Jones v. Alfred H. Mayer Company

Here are a few suggestions on the draft of the memorandum in Jones v. Alfred H. Mayer Company.

1. I think the first numbered paragraph is far too high-pitched, stating the obvious in terms not entirely appropriate for a memorandum to the Supreme Court.

2. I think some attention should be given to articulating the interest of the United States in this case and in the resolution of it. As presently written it appears that this memorandum merely tells the Court that the "question is one of large public importance and merits this Court's review." I think it is entirely

proper for the United States to tell the Court not only that it believes the questions presented are important but that it believes the Court below decided them incorrectly. This is particularly true with the argument stemming from Marsh v. Alabama where we pretend to say nothing more than that "we urge that the Court consider whether the facts of the present case bring it within the scope of this rule."

3. As we stated in our memorandum of October 6 on this case, we do not recommend that the United States participate as amicus in this case for the purpose of urging that Section 1981 be construed to reach private action. While there are elements of restraint in the argument in the memorandum involving this point those elements are lost in the general discussion and that discussion may make it more difficult to later explain why we believe the Court need not, and should not, reach the issue in this case. It will be somewhat difficult to explain why we do not believe the Court need reach the question of the scope of 1982 when we -- at the certiorari stage -- state that this

is one of the large public issues that warrants the Court's attention. We, therefore, can not subscribe to the third numbered paragraph of the memorandum and we believe instead that the memorandum should be confined to a statement of our position on the state action issue.