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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 7, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. *M*UHLMANN
SUBJECT: D.C. Circuit Court of Appeals Decision

In a 6-5 split decision, the D.C. Circuit ruled that the National Park Service could not enforce its regulation to prevent demonstrators in Lafayette Park from sleeping overnight, to dramatize the plight of the homeless. Shortly before the scheduled demonstration, the Justice Department obtained a stay of the decision from the Chief Justice.

The Justice Department is now deciding whether to file a petition for certiorari to ask the Supreme Court to overturn the D.C. Circuit's opinion. We definitely should seek Supreme Court review in order to set this area of the law straight. Justice appears inclined to file for certiorari. The petition is due June 7.

OFFICE OF POLICY DEVELOPMENT**STAFFING MEMORANDUM**

DATE: 3/14/83 ACTION/CONCURRENCE/COMMENT DUE BY: 3/21/83
SUBJECT: DC Court Decision on Sleeping in the Parks

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
✓ PORTER	☐	☒	TURNER	☐	☐
BARR	☐	☒	D. LEONARD	☐	☐
BLEDSON	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	HOPKINS	☐	☐
BRADLEY	☐	☐	PROPERTY REVIEW BOARD	☐	☐
CARLESON	☐	☐	OTHER		
DENEND	☐	☐		☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐		☐	☐
GALEBACH	☐	☐		☐	☐
GARFINKEL	☐	☐		☐	☐
GUNN	☐	☐		☐	☐
B. LEONARD	☐	☐		☐	☐
LI	☐	☐		☐	☐
MONTOYA	☐	☐		☐	☐
ROCK	☐	☐		☐	☐
ROPER	☐	☐		☐	☐
SMITH	☐	☐		☐	☐
✓ UHLMANN	☒	☐		☐	☐
ADMINISTRATION	☐	☐		☐	☐

REMARKS:

THE WHITE HOUSE

WASHINGTON

March 14, 1983

MEMORANDUM FOR MIKE UHLMANN

FROM: EDWIN L. HARPER 

SUBJECT: DC Court Decision on Sleeping in the Parks

Would you please look into U.S. Court of Appeals No. 82-2445, Community for Creative Non- Violence v. James G. Watt, which essentially rules that the National Park Service cannot keep people from sleeping in the parks as a matter of their right of free speech.

We should be sure to vigorously contest this point of view.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 7, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. ULLMANN
SUBJECT: Internal EEO Reform

The issue is whether to centralize in EEOC the processing of EEO complaints made against federal agencies. OMB and EEOC favor centralization, for reasons of efficient allocation of resources, and speed and fairness in the resolution of complaints. (See attached memo.) I concur.

Clarence Thomas is now preparing a memorandum outlining the options for how to achieve this end.

- o Centralization can be performed by Executive Order, since processing of complaints was originally assigned to agencies by an Executive Order.
- o Another option is to do it by EEOC regulation -- but an Executive Order is a more appropriate way to make a change that affects all executive branch agencies.

EEOC should have its written proposal to OMB by late April. OMB plans to negotiate with EEOC over the additional budget resources that EEOC will need to carry out additional responsibilities in processing federal complaints.

I suggest we leave the initiative in the hands of OMB and take a good look at EEOC's proposal when it arrives.

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 3/29/83 ACTION/CONCURRENCE/COMMENT DUE BY: 4/8/83SUBJECT: Internal EEO Reform

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BLEDSON	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	HOPKINS	☐	☐
BRADLEY	☐	☐	PROPERTY REVIEW BOARD	☐	☐
CARLESON	☐	☐	OTHER		
DENEND	☐	☐		☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐		☐	☐
GALEBACH	☐	☐		☐	☐
GARFINKEL	☐	☐		☐	☐
GUNN	☐	☐		☐	☐
B. LEONARD	☐	☐		☐	☐
LI	☐	☐		☐	☐
MONTROYA	☐	☐		☐	☐
ROCK	☐	☐		☐	☐
ROPER	☐	☐		☐	☐
SMITH	☒	☐		☐	☐
UHLMANN	☒	☐		☐	☐
ADMINISTRATION	☒	☐		☐	☐

REMARKS:

What should we be doing in this area?



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

BU

3/28

MEMORANDUM

March 11, 1983

To: Joe Wright
From: Mike Horowitz *MH*
Subject: Internal EEO Reform

I received a phone call today from Clarence Thomas who indicated that, quite to his surprise, Pat Schroeder pressed him yesterday at oversight hearings to reform internal EEO processing by moving it away from individual agencies and into EEOC.

I have set up a Tuesday afternoon (3:30) meeting with Thomas to discuss this matter. According to Thomas, now that Schroeder is strongly on our side, and has promised to push hard to implement the reform, we may be able to move on an expedited basis to do what we have long wanted to do.

You may remember that Thomas pledged to move in this direction at last month's budget meeting in your office.

cc: Chris DeMuth
Ken Clarkson

*Mike - OK - Good. Put
TOGETHER A 2-PAGER
FOR WEESE MGT. MEETING.*

JW



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 5 1983

MEMORANDUM

TO: Joe Wright

FROM: Mike Horowitz *MH*

SUBJECT: Internal EEO Complaint Processing

INTRODUCTION

-- Several options were considered. Clearly, the best approach to reforming processing of EEO complaints against Federal agencies would be to centralize it in the EEOC.

-- There appear to be no legal impediments to this proposal. The function was assigned to agencies by Executive Order, and can probably be consolidated through Executive Order. Statutory requirements for Federal complaint processing are minimal. Since all applicable statutes provide for trials de novo in Federal District Court, the strict requirements of the Administrative Procedure Act do not apply (although procedural fairness is clearly expected).

DISCUSSION

-- In 1984, the Federal Government will spend an estimated \$82.8 million on EEO counseling and complaint processing--a 49% increase over 1981 expenditures for these activities.

-- The current procedures are much more cumbersome than those for the private sector. There are twice as many steps in Federal sector processing. There is but one administrative determination on the merits for private sector complaints, but as many as four for Federal complaints

-- They are, therefore, much more expensive. For example, agencies spent \$44 million in 1982 to close 15,759 formal complaints under these procedures, compared with the EEOC's direct costs of \$49 million to close 68,890 complaints--a number that includes complex class actions-- in the private sector.

-- The apparent conflict of interest in agency self-investigation of complaints has long been criticized. In addition, smaller agencies frequently contract out investigations, creating exorbitant costs and poor results.

-- Federal employees, agencies, the Supreme Court, and Congress have criticized the current procedures. In a recent political break, Clarence Thomas reports that Representative Schroeder recently pressed him on centralizing processing in the EEOC.

-- During 1979, the EEOC participated in a pilot project in which they processed 400 Federal EEO complaints using an adaptation of the private sector procedures. The average time for processing complaints fell from 440 days to 106.

CONCLUSION

-- Processing of these complaints should be centralized in the EEOC, and conducted under procedures similar to those for the private sector.

-- The first and biggest advantage of the proposal is that it would resolve Federal complaints faster and more economically while being demonstrably fair to all concerned.

-- Second, all agencies would benefit. Agencies devote more than 2200 professional FTEs and a substantial number of clerical and other support personnel to EEO counseling and complaint processing. The EEOC would receive a to-be-negotiated portion of these FTEs (up to 1000). The Administration could use the remainder to reduce Federal personnel levels, or agencies could receive a windfall for implementing their missions. There would be other savings, not the least of which would result from treating Federal and private sector employees alike (e.g., simply requiring that Federal, like private employees, take annual leave and travel to an EEOC office for an intake interview introduces a desirable element of "self-selection").

-- Third, it enables the Administration to substantially augment civil rights protections for individuals without increasing overall resources. Complaint processing bureaucracies in the individual agencies have scant incentive to increase their efficiency (more efficiency means fewer staff). On the other hand, while the Administration has been extremely generous in allocating scarce domestic resources to EEOC, those increases are insufficient to preclude a rapidly growing charge inventory. This increasing inventory will require EEOC to realize efficiencies possible through improved procedures and correction of personnel problems the agency will undoubtedly inherit from the agencies.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 7, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: Correspondence with Mrs. Joyce Haws Concerning Busing

Fred Ryan's correspondence with Mrs. Haws is merely the latest episode in her tireless efforts to voice her anti-busing views in a meeting with the President. To this end, she has thus far written Duberstein, Caveney, Dole, Baker, Rosebush, Sadleir, three letters to the President himself, and one to the First Lady. And three Congressmen and one Senator (Metzenbaum, no less) have sent us letters on her behalf.

She received a substantive answer, from Anne Higgins, on September 20, 1982, concerning the President's position on busing, as well as numerous replies to the above-mentioned letters.

Presidential Scheduling has already informed her twice -- January 17 and February 9 -- that the President is not available to meet with her.

I do not believe we could add anything by sending her yet another White House letter.

*P.S. In case you lack light bedtime reading,
I can furnish an such-thick file
from Central Files*

Extending the Civil Rights Commission: A Skirmish Before the Battle

Last week the President transmitted to Congress his bill to extend the life of the Civil Rights Commission. The bill stakes out a responsible position, fulfills in a generous way our commitment to extend the Commission, and helps set the stage for speedy confirmation of our new nominees to the Commission.

The bill contains these provisions: (1) twenty-year extension of the life of the Commission, through the year 2003, (2) provision for staggered six-year terms for Commission members, and (3) budget of \$12,180,000 for the Commission for fiscal year 1984.

Commission members currently serve indefinite terms -- holding tenure until their replacements are confirmed. To initiate staggered six-year terms, our bill provides that the first six appointments pursuant to this legislation will be made in three pairs. One pair, each of a different party, will be appointed for a term of two years; another pair for a term of four years; and a third pair for a term of six years.

The issues under debate in Congress shape up as follows:

- o Length of extension. We are going one better than the civil rights community, who are proposing a 15-year extension in a bill introduced by Congressman Edwards.
- o Terms of office. Changing from indefinite to specified terms will bring the Civil Rights Commission into line with the current practice for the EEOC and similar agencies. Civil rights groups, however, may want life tenure or a specification that members can be removed before their terms expire "for cause" only. By remaining silent on removal power, our bill will allow removal at the will of the President, as for other similar agencies and commissions.
- o Subpoena authority. Civil rights groups will seek to give the Commission nationwide subpoena power (in place of its current authority to issue subpoenas within a 50-mile radius of a Commission hearing). We favor continuing the Commission's current authorities and procedures intact.

By introducing our bill at this point, we remove ourselves from the defensive position of merely reacting to legislative proposals of the civil rights community. Ours is a good bill to be for.

The extension of the Commission, however, is merely a skirmish preliminary to the larger battle over the President's four new nominees.

Implementation Update Initiative Assignments

Employment Initiatives	Roger Porter
Enterprise Zones	Robert Carleson
Tuition Tax Credits	Robert Carleson
Science and Math Education	Robert Carleson
Education Saving Account	Robert Carleson
Education Reorganization	Robert Carleson
Education Vouchers	Robert Carleson
Federalism Initiatives	Robert Carleson
Health Care Initiatives	Robert Carleson
Workfare Initiatives	Robert Carleson
School Prayer	Michael Uhlmann-White House: high priority
Crime Initiatives	Michael Uhlmann-White House: highest priority
Immigration	Michael Uhlmann-DOJ: high priority
Women's Initiatives	Michael Uhlmann-White House: high priority
Civil Rights Commission	Michael Uhlmann-White House: immediate high priority
Regulatory Reform Initiatives	Michael Uhlmann-White House: medium priority
Bankruptcy Reform	Michael Uhlmann-Justice Dept. priority
Antitrust	Michael Uhlmann-White House: moderate
Fair Housing	Michael Uhlmann-DOJ and HUD: priority
Clean Air Act	Danny Boggs high priority
Natural Gas Decontrol	Danny Boggs
Energy Reorganization	Danny Boggs
Marine and Port Development	Danny Boggs
Clean Water Act	Danny Boggs
Trade Policy Initiatives	Wendell Gunn
R&D Initiatives	Wendell Gunn
Procurement Reform	Ralph Bledsoe

CRIME INITIATIVES

Policy Decisions

1. Take Executive action to strengthen and coordinate federal law enforcement, particularly in the war against drugs and organized crime.
2. Seek and obtain legislation to reform and strengthen federal criminal justice system.
3. Appoint persons to the federal bench who share the President's philosophy on criminal justice matters.

Implementing Actions

1. Launched nationwide drug/organized crime effort, modeled on South Florida experience.
2. Established law enforcement coordinating committees in each federal district.
3. Proposed the most comprehensive crime legislation ever proposed by a President, with basic reforms in such areas as: sentencing, bail, criminal forfeiture, habeas corpus, exclusivonary rule, insanity defense, death penalty, etc.
4. Expanded federal training facilities for state and local officers.
5. Continuing to make sound judicial appointments.

Implementation Steps Remaining

1. Achieve Senate passage of crime bill by end of the first session, and press hard for House passage throughout the second session.
2. Carry out a more aggressive communication program to convey our achievements.

Legislative Status

1. Senator Thurmond developing a plan of action. Tentative plan to hold a series of eight hearings starting in late April; get bill out of Committee before August recess; passed in Senate by end of first session.

Presidential Involvement

1. Transmitted legislation to Congress on March 16.
2. Mentioned crime bill in SOTU.

Media Coverage

1. Cursory coverage of crime bill.
2. Substantial editorial give-and-take on our exclusionary rule proposal.

Speech Themes

1. The Administration has made concrete gains in the war against crime.
2. The Administration has proposed fundamental reforms that will strengthen the criminal justice system and deserve the support of all Americans.
3. The Administration has made and will continue to make judicial appointments that will give greater recognition to the rights of society as against those of the criminal.

Proposed Future Activities

1. Major national TV address on crime as soon as Senate passes our crime legislation (probably beginning of second session).
2. Meeting with victims of crime/families upon completion of review of Victims Task Force Report (May-June).
3. Visit to one of the newly established offices of a regional drugs/organized crime task force.
4. WH ceremony honoring federal officers who have made noteworthy contributions to war on drugs.

Related Problems/Issues

1. None.

WOMEN'S INITIATIVE

Policy Decisions

1. Submit legislation to remedy inequities based on sex in employer pension systems.
2. Take actions to promote enforcement of child support laws.
3. Take action to encourage better private child care.

Implementing Actions

1. CCLP has developed a set of pension reform legislative proposals that can be supported by the Administration. Proposals will be addressed in CCHR at meeting dealing with women's issues.
2. Administration has developed legislation to strengthen the Child Support Enforcement Program.
3. Administration has undertaken program to encourage better private child care. Program coordinated by PSIO.
4. Brief filed in SPIRT case on pension equity.

Implementation Steps Remaining

1. Through CCHR, finalize pension reform legislation.
2. Through CCHR, decide whether child support package will be sent to Hill separately or as part of AFDC amendments and whether the package should include IRS refund offsets in non-AFDC cases.

Legislative Status

1. Administration legislation not yet transmitted to Hill. Hearings scheduled on pension equity.

Presidential Involvement

1. None.

Media Coverage

1. Little discernable coverage on child support and child care initiatives.

2. Substantial press coverage on the pension equity issue and related lawsuits. Thrust of coverage has been on issue itself, rather than Administration position, although SPIRT brief mentioned.

Speech Themes

1. The Administration has a solid record of accomplishments on issues of concern to women.

Proposed Future Activities

1. Address on Administration's achievements on matters of concern to women.
2. President visits on-site day care center sponsored by Womens' Bureau of Department of Labor.
3. President visits a Church-sponsored day care center and home day care center run by Mrs. Hanna, advocate of reduced regulation.
4. President speaks to conference of businessmen about need to use ERTA tax incentives to provide child care or speaks to state and local officials about need to relax unnecessary barriers to private child care.

Related Problems/Issues

1. Feminist groups will continue to push total abolition of sex distinctions in insurance.

FAIR HOUSING INITIATIVE

Policy Decisions

1. Seek more effective enforcement of the Fair Housing laws.

Implementing Actions

1. HUD continuing, through grants and technical assistance, to increase ability of State and local agencies to handle complaints.
2. HUD continuing to assist in forming local Community Housing Resource Boards to initiate affirmative marketing and other voluntary efforts to assure fair housing.
3. Department of Justice and HUD are considering legislative proposals to strengthen enforcement of Fair Housing Laws. Attorney General and Secretary of HUD meeting to discuss proposals on April 18. Options will be presented at CCLP meeting held after April 18.

Implementation Steps Remaining

1. Through CCLP, finalize fair housing legislative proposal.
2. Through CCLP, determine implementation strategy and timetable.

Legislative Status

1. Various bill proposing amendments to the Fair Housing laws have been introduced in both the House and Senate. No Administration proposal has been transmitted.
2. No further action.

Presidential Involvement

1. None.

Media Coverage

1. None.

Speech Themes

1. The Administration is committed to the strengthening and enforcement of civil rights laws.
2. The Administration's goal is a color-blind society, and our objective is to restore "civil rights" as an individual right.

Proposed Future Activities

1. Further appropriate activities and nature of Presidential involvement to be discussed at CCLP meeting.

Related Problems/Issues

1. The development and articulation of a coherent overall civil rights posture, particularly our posture on affirmative action.

SCHOOL PRAYER

Policy Decisions

1. Press for Constitutional Amendment to allow individual and group prayer by students in public schools.
2. Urge federal courts, in appropriate cases, to allow prayer in the schools.
3. Express approval of legislative approaches to guarantee non-discrimination toward religious speech in voluntary student meetings in the public schools.

Implementing Actions

1. President's School Prayer Amendment resubmitted to Congress.
2. Solicitor General's decision not to file briefs in favor of school prayer in Lubbock and Mobile cases.
3. President endorsed idea of legislative approach guaranteeing non-discrimination toward religious speech without choosing between Hatfield and Denton approaches.

Implementation Steps Remaining

1. Administration testimony in Senate committee hearings.
2. Pressing for committee approval and floor votes.

Legislative Status

1. ~~Hearings on School Prayer Amendment scheduled in Senate Judiciary Committee for April 29 and May 2. No hearings scheduled in House.~~
2. Hearings on Hatfield and Denton Bills tentatively scheduled by Senator Hatch for April 28 and 29.

Presidential Involvement

1. Called for passage of School Prayer Amendment in radio address on January 22, 1983, and in addresses to National Religious Broadcasters in January, National Prayer Breakfast in February, and National Association of Evangelicals in March.
2. Transmitted Presidential message, fact sheet, and School Prayer Amendment to Congress on March 8.

Media Coverage

1. Op-ed piece by Gary Bauer on school prayer appeared in Washington Post.
2. Media response has been muted thus far this year.

Speech Themes

1. Restoring freedom of religious expression in the public schools.
2. Countering judicial activism that goes against intent of the Constitution.
3. Applying the principle that government may not discriminate against voluntary speech based on its content, including its religious content.

Proposed Future Activities

1. Provide vigorous testimony by Administration witnesses at Senate hearings on School Prayer Amendment.
2. Provide vigorous testimony by Administration witnesses at Senate hearings on Hatfield and Denton bills.
3. Place articles by Administration spokesmen, such as Gary Bauer, in the Christian press to highlight the degree to which federal courts have banned all forms of prayer from schools.
4. Place an article by Brad Reynolds acknowledging religious liberty as a civil right of concern to the Justice Department.

Related Problems/Issues

1. House will sit on this issue. We need to pass a measure through the Senate and put heat on House Democrats for frustrating the popular will.

CIVIL RIGHTS COMMISSION

Policy Decisions

1. Extend the life of the Commission through the year 2003.
2. Replace holdover Commission members with the President's nominees.

Implementing Actions

1. Transmitted bill to Congress to extend life of Commission.
2. Selected four nominees for Commissioner, and one for Staff Director, who are now in clearance.

Implementation Steps Remaining

1. Expedite clearance of nominees.
2. Send names to Senate as soon as possible and press for quick confirmation.

Legislative Status

1. Civil Rights Commission Chairman Clarence Pendleton testified before the House Subcommittee on the Constitution on April 7, 1983, in support of the President's bill.
2. Hearings to be scheduled in Senator Hatch's Subcommittee on the Constitution.
3. Expeditious Senate hearings on four new nominees will be needed as soon as possible after the names are sent up.

Presidential Involvement

1. Committed to extension of Commission in State of the Union address.
2. Transmitted Presidential message, fact sheet, and legislation to the Congress to extend life of Commission, on April 6, 1983.

Media Coverage

1. Low-key coverage of President's bill to extend Commission.

2. Extensive media coverage of Commission attacks on Administration policies, which must be expected to continue until our new nominees are confirmed.

Speech Themes

1. Commission should protect and promote the rights of individuals, not become an advocate for special interest groups.
2. The Administration is vigorously protecting rights of individuals from all forms of discrimination, including quotas.

Proposed Future Activities

1. Expedite, soonest, clearance of nominees. Discuss with Thurmond idea of having all nominees heard as a panel, with floor action as soon as feasible thereafter.
2. Develop communications plan to get the views of our new nominees before the public, and to spark debate especially on those issues most favorable to President.
3. Arrange interviews for nominees with selected journalists, so that interviews can be published immediately after nominations are made.
4. Place articles about our nominees in selected media outlets that are sympathetic to President's concept of civil rights.

Related Problems/Issues

1. None.

REGULATORY REFORM INITIATIVES

Policy Decisions

1. Continue to support the Regulatory Reform Bill that passed the Senate last year.
2. Support "Fast Track Legislation," which would allow the President to designate bills reforming up to 10 regulatory statutes each year; those bills to be brought to expeditious vote in committee and on the floor of each House.

Implementing Actions

1. Regulatory Reform Bill has been reintroduced in the House, but not in the Senate.
2. "Fast Track Legislation" has been developed in-house, and tentatively approved by Justice and OMB.

Implementation Steps Remaining

1. Call attention to our deregulatory accomplishments.
2. Review status of Administration efforts at deregulation.
3. Decide whether to push Fast Track Legislation.

Legislative Status

1. Regulatory Reform Bill does not appear likely to move in either Senate or House this year.

Presidential Involvement

1. None since December, 1982, when President wrote letters urging House leaders to bring the Regulatory Reform Bill to a floor vote.

Media Coverage

1. None since last Congress.

Speech Themes

1. Administration accomplishments in deregulation.

Proposed Future Actions

1. Review status of regulatory reform initiatives in CCLP.
2. Issue summary of Administration's deregulatory efforts, calling attention to accomplishments.
3. Address by Vice President calling attention to need for system in Congress to provide expeditious consideration for regulatory reform proposals, and proposing "Fast Track Legislation" as a solution (if approved by President).
4. Address by President this summer recounting the accomplishments of Vice President's Task Force and saying that the major improvements left to be done in the area of regulatory reform must come by legislation.
5. Presidential meeting in Oval Office with committee chairmen to set future course for regulatory reform strategy.

Related Problems/Issues

1. None in particular, although a broad range of federal regulations are related to our overall initiative.

BANKRUPTCY COURT REFORM

Policy Decisions

Establish a court system, consistent with the Supreme Court's ruling in Northern Pipeline, to permit the timely and efficient adjudication of bankruptcy claims.

Implementing Actions

Pursuant to instructions from senior staff, DOJ has had the lead in negotiating among congressional, business, and judicial interests.

Implementing Steps Remaining

1. Passage of bill through Congress.

Legislative Status

1. Administration has worked with bi-partisan group of Senate Judiciary members to produce the Dole bill, which has been approved by the full Committee. The bill would create 229 Article I bankruptcy judges and 84 Article III judges (60 district, 24 circuit judges). Floor action in the Senate is imminent.
2. On the House side, the struggle is taking place primarily within Democrat ranks. Kastenmeier has circulated a "Dear Colleague" expressing concern about the patronage that would fall into Republican hands under leading legislative proposals, and urging codification of the "interim rule" fashioned by the judiciary toward the end of last year.

Rodino, nevertheless, is holding fast to his own preferred solution -- Article III status for 227 bankruptcy judges (who would have no power outside their bankruptcy jurisdiction), with a 3-year staggering requirement for appointment beginning in October, 1983.

3. Rodino is now trying to get a Rule for his bill.

Presidential Involvement

No presidential involvement has so far been necessary and none is recommended at the moment. If the House continues to delay after the Senate acts, or if following passage of the House bill House conferees drag their feet, a presidential intervention may be desirable.

Media Coverage

None to speak of, save in the trade press, with virtually no criticism of the Administration.

Speech Themes

1. None.

Proposed Future Activities

1. Momentum is now our way. If the Senate enacts the Dole bill, opportunities for pressure on the House will increase.
2. Absent the need for presidential intervention to break a legislative log-jam, the only remaining activity of note would be a signing ceremony.

Related Problems/Issues

1. None.

ANTITRUST REFORMS

Policy Decisions

At Cabinet meeting in March, President approved 4-point legislative package subject to legislative soundings to be taken by Justice.

Implementing Action

AAG Baxter has had preliminary discussions with bi-partisan members of Congress. Very favorable preliminary reactions to the patent/intellectual property amendments. Rodino quoted in N.Y. Times on April 12 as supportive of the centerpiece of the package, i.e., de-trebling of damages for so-called "rule-of-reason" cases.

Implementing Steps Remaining

1. Introduce bill in Congress.
2. Enlist business community support.
3. Develop communications strategy.
4. Enact bill.

Legislative Status

Some bi-partisan support seems assured. Hearings likely on both sides of the Hill once package is transmitted.

Presidential Involvement

Other than the March Cabinet meeting, presidential activity has been limited to a brief allusion in his speech in San Francisco on international trade.

Media Coverage

Light coverage in major media following Cabinet meeting, generally neutral in tone. Somewhat heavier coverage in trade press, but without controversial fanfare. Once legislative package is transmitted, heavier coverage can be expected.

Speech Themes

1. Reasonable antitrust laws can assist economics recovery at the same time they protect the public from anti-competitive practices.

Proposed Future Activities

1. Modest revisions in package being made following discussions on Hill. Final version can be expected from DOJ week of April 11.
2. Upon receipt of DOJ final package, OPD will prepare fact sheet, transmittal letter.
3. Communications strategy should be established, involving W.H., DOJ, Commerce representatives.
4. Major effort should be made by OPD/OPL to enlist business community support.

Related Problems/Issues

1. None.

IMMIGRATION REFORM

Policy Decisions

1. In 1981, Administration submitted reform package, significant portions of which were incorporated in the Simpson-Mazzoli bill, which in turn became the leading legislative vehicle.
2. In April, 1982, President agreed to support Simpson-Mazzoli with certain changes.

Implementing Actions

1. Interagency group, led by Justice, attempted to negotiate changes favorable to Administration throughout 1982.
2. Simpson-Mazzoli, as passed by the Senate (80-19), did not contain all the changes we sought. Five areas of dispute:
 - (a) coverage limit on employer sanctions;
 - (b) nature of identification system to weed out putative illegal workers;
 - (c) terms and conditions of legalization;
 - (d) conflict between labor and agricultural interests over temporary worker program;
 - (e) changes in the law governing legal immigrants.
3. Major outreach effort, coordinated by DOJ and involving many other agencies, conducted during 1981-82 on behalf of Administration's bill.

Implementing Steps Remaining

1. Review status at CCLP meeting.
2. Devise legislative strategy.

Legislative Status

1. Simpson and Mazzoli reintroduced their bills in roughly the same form they were in toward the end of the 97th Congress.
2. In the Senate, subcommittee mark-up produced a bill essentially identical to the bill which passed 80-19 last year. Full committee mark-up scheduled for April 19, with floor action as soon as Simpson can get it. Skids are greased.

3. House subcommittee marked up during week of April 4, effecting major changes from last year's committee bill. Specifically:
 - o more generous legalization terms;
 - o for the first time, certain pro-grower provisions;
 - o substantial increases in INS authorization.
4. Full House Judiciary expected before May 15 deadline for authorization bills.
5. Floor action possible by July.

Presidential Involvement

Since original Administration bill was submitted presidential action has been limited. Lack of consensus within Congress has to date made this presidential "distance" generally advisable.

Speech Themes

1. None.

Media Coverage

Heavy, mostly favorable comments by major media during past 2 years.

Proposed Future Activities

1. Legislative status needs to be reviewed by President. CCLP meeting tentatively set for week of April 18. Out of that meeting should come a detailed legislative strategy.
2. Until that strategy is set, no presidential activity is advisable on this issue.

Related Problems/Issues

1. Major concern in this area is development of a nation divided by language and culture; reconsideration of bilingual/bicultural education policy is relevant.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 11, 1983

FOR: EDWIN L. HARPER
FROM: MICHAEL M. UHLMANN
SUBJECT: Talking Points; Civil Rights Commission
Report on Women and Children

I have gone over the Civil Rights Commission report, and I think we have some good responses to it. Attached are talking points for the press office.

Talking Points for Civil Rights Commission
Report on Women and Children

- o The Civil Rights Commission today issued a report on "Disadvantaged Women and Their Children," showing that the break-up of families over the past decade is responsible for poverty among many women and children. This is hardly news. The facts have been long known and commented upon for a number of years.
- o The President has long been concerned over the weakening in the family structure in our society, and the Commission's report confirms that the breakdown of the family has serious economic as well as social consequences. Whether this is a civil rights issue, though, is not so clear.
- o As for the particular plight of women who find themselves left to support a family on their own, the President has recognized the needs in this area and has taken strong action to:
 - offer generous tax credits for expenses of child care to enable parents, especially single parents, to work freely outside the home;
 - enforce federal laws guaranteeing equal pay for equal work;
 - strengthen child support enforcement mechanism;
 - keep in place the safety net during the past recession for those who cannot work.
- o The Commission's flirtation with the "comparable worth" doctrine is not a way to guarantee civil rights for anyone. The day we have judges deciding whether librarians should make the same pay as chemists, or typists the same as painters, is the day we have a socialist economy -- and that will not happen while Ronald Reagan is President.
- o The President welcomes further ideas to meet the needs of working mothers and all parents who have to support children -- recognizing that nothing will help so much as a rebounding economy with inflation kept at its current low level.
- o The Commission's report seems incapable of distinguishing between a civil rights issue and a social program or spending priority issue.
 - In testimony before the House just last week, the Commission was criticized for trying to make "civil rights" issues out of what are essentially competing demands for public benefit.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

April 12, 1983

FOR: T. KENNETH CRIBB
FROM: WILLIAM P. BARR
SUBJECT: Op-Ed Piece for Mr. Meese on Exclusionary Rule

Attached is my draft of a proposed response to the Garbus op-ed piece in the New York Times last week.

I have given a copy of the draft to Kevin Hopkins for his comments.

cc: Edwin L. Harper

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 4/5/83 ACTION/CONCURRENCE/COMMENT DUE BY: open
SUBJECT: "Excluding Justice" from New York Times

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
✓ BARR	☒	☐	D. LEONARD	☐	☐
BLED SOE	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	HOPKINS	☐	☐
BRADLEY	☐	☐	PROPERTY REVIEW BOARD	☐	☐
CARLESON	☐	☐	OTHER		
DENEND	☐	☐		☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐		☐	☐
GALEBACH	☐	☐		☐	☐
GARFINKEL	☐	☐		☐	☐
GUNN	☐	☐		☐	☐
B. LEONARD	☐	☐		☐	☐
LI	☐	☐		☐	☐
MONTOYA	☐	☐		☐	☐
ROCK	☐	☐		☐	☐
ROPER	☐	☐		☐	☐
SMITH	☐	☐		☐	☐
✓ UHLMANN	☒	☐		☐	☐
ADMINISTRATION	☐	☐		☐	☐

REMARKS:

Excluding Justice

By Martin Garbus

President Reagan is moving quickly before the United States Supreme Court and the Congress to overturn the exclusionary rule, which prohibits prosecutors from using illegally seized evidence to try to convict a defendant. By virtue of Supreme Court decisions interpreting the Constitution that date to 1914, illegally obtained evidence cannot be used against a defendant. If the Administration's position succeeds, the Constitution will be undermined.

The Administration is now seeking, in a case before the Court and in a bill introduced in Congress, a "good-faith" exception to this constitutional rule. This exception would permit the judge and jury to use the evidence if they concluded that a law-enforcement officer had acted in good faith — although he had acted illegally and in violation of the Constitution — in seizing the evidence.

If the Administration's position is accepted, it will create one set of laws for those in power and another for those not in power. It will give permission for one class of citizens to violate the Constitution and be rewarded while others who break the law are to be punished.

A few examples show the danger of the Administration's position.

Under the Reagan approach, all that a law-enforcement officer need say in order to get illegally seized evidence used to obtain a conviction is that he did not know that the law required that counsel be present when the incriminating statement was made; that he failed to give the constitutionally required Fifth Amendment warning against self-incrimination either because he forgot or did not know he had to; that he broke down the door because he thought — it turns out he was wrong — that the defendant was destroying the evidence.

President Reagan claims that the public is losing faith in a legal system that is not stopping crime. He rejects the decision of the Framers of our Constitution, who concluded that constitutional protections are not too costly a price to pay for a democratic society, even if there are rare unprosecuted crimes. Morality, President Reagan believes, is on the side of the good-faith exception. This is myopic.

On the contrary, the good-faith exception encourages violations of the law. Under the good-faith exception, a court, at the very time that it declared that an officer had acted in an unconstitutional manner, would nonetheless deprive its own declaration of any practical meaning by approving the use of the wrongfully seized evidence.

It would thereby give law enforcement immense uncontrolled power.

But excluding unlawfully obtained evidence encourages lawful activity, discourages unlawful activity and reinforces the central role of courts in declaring and enforcing the Constitution.

The good-faith exception places a premium on ignorance and encourages lying. Under the good-faith exception, the courts would become participants in illegal acquisition of evidence for use at trial — activity that ultimately becomes institutionalized. Of all things, ignorance of the law would constitute a defense on the part of a police officer who claims that evidence should be admitted! There would be deterioration both in police training and police sensitivity to constitutional protections, thereby encouraging wholesale violations. The number of illegal searches of homes and other invasions of privacy would increase dramatically. There would be no deterrent against them.

The good-faith exception would encourage prosecutors and police officers, who know better, to say that they did not understand the law or that

Martin Garbus, formerly associate director of the American Civil Liberties Union, and author of "Ready for the Defense," is a trial lawyer.

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somehow they got their facts wrong. Police officers, professionally committed to stopping crime, would often shade the truth to insure convictions. Not so many years ago, police officers believed that they could stop and frisk a suspect to see if he was carrying any narcotics. When the law was changed and the officer first had to have probable cause to believe that the individual had narcotics, the practice of stopping and frisking did not change. Only the police officers' testimony changed. They began to testify that from 20 feet away they saw the defendant take narcotics out of his pocket and drop them on the floor. A New York City judge, who had seen dozens of cases in which each police officer testified in an identical way, remarked that if all the police testimony concerning all the dropping of narcotics were true, there would be a white cloud constantly blanketing Manhattan.

Law is what law does. It is impossible to ask the people of this country to abide by the Constitution when the courts and the prosecutors are given unlimited license to ignore that Constitution. Our society does not require and should not permit convictions based on illegally obtained evidence.

Suppose inspectors found that a nuclear power plant was emitting radiation and was a threat to the community, but, in their investigation, the inspectors had technically breached the legal rights of the plant's owners. What would the American people think of a suggestion that, to deter such future breaches, the inspectors' findings should be suppressed and the plant be permitted to operate regardless of its impact on the public safety? Such a suggestion would be considered perverse.

Yet this is the approach the Supreme Court is following in the criminal law area under the "exclusionary rule", the rule that prohibits the use in a criminal trial of any evidence seized by police in a manner later found to be illegal -- no matter how incriminating the evidence, how heinous the crime, or how reasonably the police acted. This rule is not mandated by the Constitution. Adopted by the Court in 1911 and imposed on all the states in 1961, it reflects a policy judgment by a majority of the Court that suppressing improperly seized evidence is a good way of deterring police misconduct.

The rule is a form of judicial hostage-taking. In essence, judges law-abiding citizens as hostages to ensure the good behavior of the police. If the police misbehave, judges do not punish the police -- they punish society by releasing criminals.

Decades of experience cast doubt on the rule's efficacy as a deterrent. Of the seven empirical studies that have been done, six have concluded that the rule is not an effective deterrent; the seventh is inconclusive. This should come as no surprise, since the rule does nothing to discipline the errant officer. The only one actually punished is society.

The social costs of maintaining the rule are extremely high:

- o Criminals are permitted to go free. One recent study estimates that in one year up to 55,000 serious criminal cases were dropped nationwide because of the rule. Chillingly, a recent National Institute of Justice study finds: "[T]o a substantial degree, individuals released . . . were those with serious criminal records who appeared to continue to be involved in crime after their releases."
- o The limited resources of the criminal justice system are diverted from the central task of determining a defendant's guilt or innocence into adjudicating whether the police blundered. A 1979 GAO study showed that about one-third of criminal defendants in federal cases try to suppress evidence.
- o The rule distorts the truth-finding function of the courts and undermines public respect for the legal and judicial system.

The most fundamental flaw of the rule is that it has been expanded into cases where it has no possible deterrent effect. Deterrence works only where a police officer knows or should know that what he is doing is wrong. Yet, the exclusionary rule has been applied like a meat ax -- making no distinction between a case where the officer is culpable and one where he is acting in a reasonable, good faith manner.

Thus, the rule has been unthinkingly applied where police have scrupulously followed procedures and obtained a search warrant, only to have a judge later decide that the warrant on which they relied was defective. Applying the rule in these cases makes no sense. How does throwing out evidence deter police misconduct when the police honestly thought they were going by the book.

Nor does it make sense to apply the rule where the police have acted reasonably in an admitted gray zone. In some areas, search law is ill-defined, and it is not uncommon for closely-divided judicial panels to spend years dissecting a single case with scholastic rigor -- debating such fine points as whether a paper bag should have the same protection as a suitcase. When a policeman believes he is acting lawfully, having made a reasonable, split-second decision on a close question in an uncertain area of law, no deterrent purpose is served by releasing a criminal because the officer is later found to have been mistaken.

While many legal scholars have called for abolition of the exclusionary rule, the Administration has proposed a more modest step -- restricting the rule only to those cases where it could act as a deterrent. Under this proposal, the rule could not be invoked where police have obtained evidence in the reasonable, good faith belief that their acts were lawful.

On April 4, the Times ran an op-ed piece by Martin Garbus of the ACLU criticizing the Administration's proposal. Unfortunately, Mr. Garbus' article is based entirely on a false premise.

Mr. Garbus argues that the good faith exception would allow evidence to be admitted so long as the police officer simply says that he thought he was acting legally. This is wrong. Under our approach, the availability of a suppression remedy would depend upon an objective assessment of whether a well-trained, reasonable officer should have known under the circumstances that his action was prohibited. Ignorance of the law would be no excuse. This approach will leave intact the incentives for the police to learn about and honor Fourth Amendment rights. But when a policeman acts in an objectively reasonable fashion, the evidence obtained from the search will be admissible. Two federal circuits have already adopted this good faith exception, and the police have acquired no "unlimited license to ignore the Constitution" in those areas. Mr. Garbus' parade of horrors exists only in his imagination.