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THE WHITE HOUSE

WASHINGTON

CABINET COUNCIL ON LEGAL POLICY

10:00 a.m.

August 5, 1982

Room 330 OEOB

AGENDA

1. Immigration Legislation (CM#210)

2. Bankruptcy Court Jurisdiction after Northern Pipeline Construction Co. v. Marathon Pipeline Co. (CM#283)

3. CCLP Working Group on Drug Supply Reduction (CM#224)

MINUTES
CABINET COUNCIL ON LEGAL POLICY

August 5, 1982
10:00 a.m., Room 330 OEOB

Attendees: See attached list.

1. Immigration Reform Legislation (CM #210)

As an informational item, David Hiller, Associate Deputy Attorney General, briefed the Council on the status of the pending immigration reform legislation (S.2222).

Mr. Hiller reported that the bill is on the Senate calendar and is among those items that the Senate leadership is trying to act on before the August recess. He indicated that the House's counterpart bill was out of subcommittee but that Chairman Rodino will await Senate action before taking the bill up in full committee.

Mr. Hiller reported on ongoing efforts to obtain the Administration's three amendments which the CCLP decided to pursue at its June 28, 1982, meeting.

a. Mr. Hiller was optimistic about our chances for achieving an amendment that would tighten the terms of legalization. He reported that, so far, 45 Senators would support this measure.

b. We are making less headway with an amendment that modifies language seeming to require a national ID system and provides for legislative veto. Mr. Hiller reported that Senator Simpson is actively resisting this change and that, to date, only 16 Senators have expressed support for such an amendment.

c. Senator Kennedy has introduced the Administration's amendment on the confidentiality of asylum hearings. Mr. Hiller thought adoption likely.

The Council questioned Mr. Hiller about the details of our legislative strategy and the outlook. Various ways of obtaining favorable consideration of our amendments and of moving the legislation along were also suggested and discussed.

2. Bankruptcy Court Jurisdiction

As an informational item, Assistant Attorney General Jonathan Rose briefed the Council on the Supreme Court's recent decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., a case in which the Court invalidated the broad grant of jurisdiction made to bankruptcy courts by the Bankruptcy Act of 1978.

Mr. Rose advised the Council that the court had stayed its order until October 4, 1982, but that, unless Congress has reconstituted the bankruptcy courts by that time, those courts will cease to function. The Attorney General expressed the hope that the Supreme Court would extend its stay if there was some visible sign of progress in the Congress.

Mr. Rose outlined the three main options being considered by the Department of Justice: (1) returning to the pre-1978 system with referees serving as adjuncts to the district court; (2) keeping the existing system but narrowing the courts' jurisdiction; and (3) elevating bankruptcy courts to Article III courts with over 200 new Article III judges.

Mr. Rose suggested that the situation may provide an opportunity to get Congress to address the needs of the judiciary generally and to consider pending proposals to increase district and circuit court judgeships.

Secretary Schweiker stated that he did not like the third option -- creating over 200 new Article III bankruptcy judges. Mr. Fielding pointed out that the newly-created Claims Court might run into the same problem as the bankruptcy court. Secretary Watt stressed the importance of a bill that would restrict venue in the District of Columbia in suits against the U.S.

3. Working Group on Drug Supply Reduction (CM #224)

Associate Attorney General Rudy Guiliani gave an update briefing on the CCLP Working Group on Drug Supply Reduction. He indicated that the Group's five task forces had prepared draft papers that will be ready for consideration by the Council shortly.

Mr. Guiliani reported on: (1) the progress of the South Florida Task Force; (2) the creation of Law Enforcement Coordination Committees; and (3) the involvement of the FBI in handling drug offenses.

There was discussion about the large drug harvest in California and the possibility of urging an aggressive eradication program in that State prior to November.

The Attorney General concluded the meeting by stressing the importance of getting the Administration's Crime Package to the Senate floor.

The meeting adjourned at 11:10 a.m.

CABINET COUNCIL ON LEGAL POLICY

August 5, 1982

PARTICIPANTS

The Attorney General, Chairman Pro Tempore

Secretary Watt
Secretary Donovan
Secretary Schweiker
Fred Fielding, Counsel to the President
Edwin Harper, Assistant to the President for Policy Development
Loren Smith, Chairman, Administrative Conference of the U.S.
Under Secretary Hovde
(Representing Secretary Pierce)
Admiral James Gracey, Commandant of the U.S. Coast Guard
(Representing Secretary Lewis)
Peter Wallison, General Counsel
(Representing Secretary Regan)
Sherman Unger, General Counsel
(Representing Secretary Baldrige).
R. Tenney Johnson, General Counsel
(Representing Secretary Edwards)
Diego Assencio, Assistant Secretary for Consular Affairs
(Representing Secretary Shultz)

William Barr, Acting Executive Secretary
Becky Norton Dunlop, Director, Office of Cabinet Affairs

For Presentation:

Jonathon Rose, Assistant Attorney General
Office of Legal Policy
Rudolph Giuliani, Associate Attorney General
David Hiller, Associate Deputy Attorney General

Additional Attendees:

Kenneth Cribb, Jr., Assistant Counsellor to the President
James Cicconi, Special Assistant to the President and Special Assistant to the Chief of Staff
Annelise Anderson, Associate Director, Office of Management and Budget
David Platt, Office of the Vice President
Richard Williams, White House Drug Office
Dan Leonard, White House Drug Office
Charlie Smith, Office of Planning and Evaluation
Michael Guhin, National Security Council
Alan Nelson, Immigration and Naturalization Service
Jim Medas, Office of Intergovernmental Affairs

Office of the Attorney General
Washington, D. C. 20530

DISCUSSION MEMORANDUM

Re: Immigration Legislation

I. INTRODUCTION

There is a possibility that consideration of the immigration reform bill (S. 2222) will begin in the Senate this week. It is among the items that the Senate leadership is trying to act on before the August recess (including the balanced budget amendment, the debt ceiling bill, and the reconciliation bill). The Administration supports Senate passage of S. 2222 with three amendments agreed upon at the Cabinet Council meeting of June 28 regarding legalization, worker identification, and asylum hearings.

80 in favor

The inter-agency legislative group, led by the Justice Department, has actively pursued congressional liaison work. Every Senator has been contacted, either personally or through staff, and briefed with regard to the Administration's remaining three concerns in an effort to enlist sponsors and support for the Administration's proposed amendments. The White House Congressional Liaison Office was briefed concerning these efforts on Tuesday, August 3. Justice will continue to coordinate needed White House involvement through the Liaison Office.

Timing remains of the essence if we are to have immigration reform this year. Although the bill (H.R. 6517) cleared the House Subcommittee on May 17, Chairman Rodino has not set a date for consideration by the full House Judiciary Committee, but instead will await Senate action. With so few legislative days remaining, favorable Senate action at the earliest possible time is critical!

There is broad general support in the Senate for immigration reform. Of the 89 Senators expressing views, 88 generally support S. 2222. Many particular issues are highly contentious, however, and more than 20 floor amendments are expected. There may be difficulty containing the debate within the days available in the absence, so far, of a governing time agreement.

II. THE ADMINISTRATION AMENDMENTS

A. Legalization

The Administration is seeking an amendment to the terms of legalization now contained in S. 2222. At present, the bill offers immediate permanent resident status to illegal aliens here before 1978, and temporary status to those who came here between 1978 and 1982, with adjustment to permanent status after two years. An estimated 4.8 million aliens would be eligible.

The new permanent residents would be eligible for all welfare benefits available to U.S. citizens. The temporary residents would be provided medical assistance and aid to the blind, aged, and disabled. OMB has estimated that the additional Federal and state welfare costs for FY 1982-86 could be $10.2 billion.

The Administration concluded that these terms are overly broad, especially as they pertain to welfare benefits. We are seriously concerned that these terms are so liberal that they would encourage more illegal migration, would appear to reward illegal entry, and would be unfair to Americans who must pay the cost and to would-be immigrants who wait patiently and legally to enter.

It was decided at the Cabinet Council meeting of June 28 that the Administration should seek a middle ground that would better limit costs and the appearance of unfairness. Accordingly, the Attorney General wrote to Chairman Thurmond stating the Administration's support for an amendment providing that illegal aliens here before 1976 be offered permanent status, and that those who came between 1976 and 1981 be given temporary status, with adjustment to permanent status after four years. An estimated 3.6 million people would be eligible.

The permanent residents would be eligible for welfare benefits on the same basis as citizens, but the temporary residents would not be entitled to federal welfare programs. OMB estimated that the added state and federal costs in FY 1983-86 would be $1.7 billion.

There is considerable support for tightening up the terms of legalization. Of the 63 Senators expressing views, 46 have indicated they would support a more restrictive legalization. We are now working to solidify support for the Administration amendment or an amendment along similar lines.

B. Worker Identification

The Administration has objected to language in S. 2222 requiring that the President within three years "create a secure system" to determine the employment eligibility of American

workers as a means of enforcing the employer sanctions provisions of the bill. Among our concerns were the possibility that the language could be read to require creation of a national ID card, and a provision giving the Judiciary Committees an unconstitutional legislative veto over the President's determination what kind of system was required.

It was decided at the Cabinet Council meeting of June 28 that the Administration would continue efforts to remove the objectionable language but would support enactment of S. 2222 even if those efforts fail. The Attorney General recommended amending language to the Senate, and the legislative group is continuing efforts to arrange sponsors and support for these changes.

Senator Simpson has resisted the Administration's proposed changes, however, and there is broad sentiment in the Senate to follow his lead on this issue. Simpson argues that his language will not lead to a national ID card and that the Administration is simply backsliding on the need to control the use of fraudulent identification documents. Moreover, Congress historically has been unsympathetic to the Administration's position on legislative vetoes. (Despite the Administration's objections, a legislative veto was included in the Regulatory Reform bill by a vote of 70 to 23.) Nonetheless, 16 Senators have expressed interest in the Administration's amendment, and we will continue our efforts on its behalf.

C. Asylum Hearings

S. 2222 provides that asylum hearings shall be open to the public unless the applicant requests that they be closed. The Administration has recommended that the bill be amended to restore the current statutory rule, i.e., that the hearings be closed to the public unless the applicant requests that they be open. The Administration believes that the current rule better protects the confidentiality of these sensitive proceedings. Senator Kennedy has introduced the Administration's amendment, and the change appears likely of passage.

III. OTHER FLOOR AMENDMENTS

Numerous other amendments will be offered on the floor, most of which the Administration plans to resist.

Among them is Senator Huddleston's proposal to place refugees within the overall cap on legal immigration. The Administration opposes this amendment, believing that refugee admissions should continue to be governed by the 1980 Refugee Act, which provides for annual Presidential determinations after consultations with the Congress.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 23, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: CCLP Action on Bankruptcy
(Ref. 090666)

Cabinet Affairs has given DOJ an August 25 (Wednesday) deadline for the decision memo on bankruptcy.

Attached is a memo from Bill Barr to Jonathan Rose. As indicated there, our objective should be to have proposed legislation ready to transmit to Congress when it returns on September 8. (You may recall that the Supreme Court's stay expires on October 4, and we must have some visible sign of progress if we hope to have it extended.)

The Attorney General returns from his vacation on August 25, the same day the decision memo is due. At that time, we will have the option of promptly holding a CCLP meeting without the President or forwarding a decision memo to the President in California.

In the meantime, we have asked Rose to prepare alternative draft bills for the two basic options -- an Article I court and an Article III court.

If we are to meet our deadline, we are going to have to get more action out of Justice than we have been able to get over the past six weeks. In mid-July, Dick Hauser and I met with Rose and Paul McGrath to discuss this issue. It was agreed then that Rose was to take soundings on the Hill and that DOJ would complete its internal deliberations on the issue within about two weeks. Despite continuous prodding, it appears we have gotten little action on either of these fronts. When DOJ was pressed for a substantive CCLP meeting in early August on this matter, what we got was an "informational" meeting on August 5. Since that time, Bill Barr has pressed hard for a decision memo and a substantive CCLP meeting. The AG has been on vacation, and Rose appears to have spent a week at the ABA convention. Now that he is back, he says he needs at least until August 25 to take soundings on the Hill and to prepare the decision memo.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 18, 1982

FOR: JONATHAN C. ROSE
Assistant Attorney General

FROM: WILLIAM P. BARR WPB
Acting Executive Secretary
Cabinet Council on Legal Policy

SUBJECT: CCLP Meeting on Bankruptcy Court Jurisdiction

As we have discussed, it is imperative that we move ahead rapidly in proposing legislation to remedy the defects in the jurisdiction of the bankruptcy courts. The Supreme Court's stay expires on October 4, 1982. We must formulate our position and be ready to propose legislation in the first week of September when Congress returns from recess.

This is to confirm that Justice Department will complete the decision memorandum on this issue and transmit it to the Office of Cabinet Affairs by close-of-business on Wednesday, August 25.

After Cabinet Affairs has received the papers, it will schedule a CCLP meeting at the earliest possible time, unless it is determined that a Presidential decision memorandum will suffice.

DOCUMENT NO. 090666 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/17/82 **ACTION/CONCURRENCE/COMMENT DUE BY:** 8/19/82

SUBJECT: CC-Legal Policy Minutes

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
✓ PORTER	☐	X	TURNER	☐	☐
✓ BARR	X	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	PROPERTY REVIEW BOARD	☐	☐
DENEND	☐	☐	OTHER	☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐
MONTOYA	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
✓ UHLMANN	☐	X	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

Remarks:

WHen will CCLP finish on Bankruptcy position? Need to have a position and strategy FAST!

Please return this tracking sheet with your response.

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

THE WHITE HOUSE
WASHINGTON

AUG 16 1982

CABINET AFFAIRS STAFFING MEMORANDUM

DATE: 8-16-82 NUMBER: --------- DUE BY: -------

SUBJECT: CABINET COUNCIL ON LEGAL POLICY Minutes - August 5 meeting

	ACTION	FYI
ALL CABINET MEMBERS	☐	☑
Vice President	☐	☐
State	☐	☐
Treasury	☐	☐
Defense	☐	☐
Attorney General	☐	☐
Interior	☐	☐
Agriculture	☐	☐
Commerce	☐	☐
Labor	☐	☐
HHS	☐	☐
HUD	☐	☐
Transportation	☐	☐
Energy	☐	☐
Education	☐	☐
Counsellor	☐	☐
OMB	☐	☐
CIA	☐	☐
UN	☐	☐
USTR	☐	☐
CEA	☐	☐
CEQ	☐	☐
OSTP	☐	☐
ACUS, Smith	☐	☑
_____	☐	☐

	ACTION	FYI
Baker	☐	☑
Deaver	☐	☐
Clark	☐	☑
Darman *(For WH Staffing)*	☑	☐
Harper	☐	☑
Jenkins	☐	☑
F. Fielding	☐	☑
C. Turner	☐	☑
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
CCCT/Gunn	☐	☑
CCEA/Porter	☐	☑
CCFA/Boggs	☐	☑
CCHR/Carleson	☐	☑
CCLP/Uhlmann	☐	☑
CCNRE/Boggs	☐	☐

REMARKS: Attached for your information are the minutes of the August 5 meeting of the CCLP.

RETURN TO:

☐ Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

☑ Becky Norton Dunlop
Director, Office of
Cabinet Affairs
456-2800

THE WHITE HOUSE

WASHINGTON

CABINET COUNCIL ON LEGAL POLICY

10:00 a.m.

August 5, 1982

Room 330 OEOB

AGENDA

1. Immigration Legislation (CM#210)

2. Bankruptcy Court Jurisdiction after Northern Pipeline Construction Co. v. Marathon Pipeline Co. (CM#283)

3. CCLP Working Group on Drug Supply Reduction (CM#224)

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Mr. Guiliani reported on: (1) the progress of the South Florida Task Force; (2) the creation of Law Enforcement Coordination Committees; and (3) the involvement of the FBI in handling drug offenses.

There was discussion about the large drug harvest in California and the possibility of urging an aggressive eradication program in that State prior to November.

The Attorney General concluded the meeting by stressing the importance of getting the Administration's Crime Package to the Senate floor.

The meeting adjourned at 11:10 a.m.

CABINET COUNCIL ON LEGAL POLICY

August 5, 1982

PARTICIPANTS

The Attorney General, Chairman Pro Tempore

Secretary Watt
Secretary Donovan
Secretary Schweiker
Fred Fielding, Counsel to the President
Edwin Harper, Assistant to the President for Policy Development
Loren Smith, Chairman, Administrative Conference of the U.S.
Under Secretary Hovde
(Representing Secretary Pierce)
Admiral James Gracey, Commandant of the U.S. Coast Guard
(Representing Secretary Lewis)
Peter Wallison, General Counsel
(Representing Secretary Regan)
Sherman Unger, General Counsel
(Representing Secretary Baldrige)
R. Tenney Johnson, General Counsel
(Representing Secretary Edwards)
Diego Assencio, Assistant Secretary for Consular Affairs
(Representing Secretary Shultz)

William Barr, Acting Executive Secretary
Becky Norton Dunlop, Director, Office of Cabinet Affairs

For Presentation:

Jonathon Rose, Assistant Attorney General
Office of Legal Policy
Rudolph Giuliani, Associate Attorney General
David Hiller, Associate Deputy Attorney General

Additional Attendees:

Kenneth Cribb, Jr., Assistant Counsellor to the President
James Cicconi, Special Assistant to the President and Special Assistant to the Chief of Staff
Annelise Anderson, Associate Director, Office of Management and Budget
David Platt, Office of the Vice President
Richard Williams, White House Drug Office
Dan Leonard, White House Drug Office
Charlie Smith, Office of Planning and Evaluation
Michael Guhin, National Security Council
Alan Nelson, Immigration and Naturalization Service
Jim Medas, Office of Intergovernmental Affairs

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 18, 1982

FOR: JONATHAN C. ROSE
Assistant Attorney General

FROM: WILLIAM P. BARR WPB
Acting Executive Secretary
Cabinet Council on Legal Policy

SUBJECT: CCLP Meeting on Bankruptcy Court Jurisdiction

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COMMUNICATIONS MEETING
August 13, 1982

Cabinet Council on Legal Policy

- Abortion: On Monday (August 16) Senator Helms will introduce anti-abortion amendment to debt ceiling bill. Cloture vote may be taken as early as mid-week.

- Tuition Tax Credits: Senate Finance will hold "final" mark-up on either Monday or Tuesday morning. We expect much discussion on adequacy of anti-discrimination provisions. Brad Reynolds will appear.

- School Prayer: On Wednesday (August 18) Ted Olson is testifying before Senate Judiciary on School Prayer Amendment.

- Law of the Sea: On Monday (August 16) Senate Foreign Relations will hold hearing on Law of the Sea. Attacks on President's position on Treaty expected.

PRESERVATION COPY

CCLP 8/5/82

1. Immigration

AG
Hiller
- on calendar
- 80 senators support
- seeking 3 changes
  - legalization
    optimistic we can achieve 45 senators so far support
  - ID
    - removal of leg vehs, etc.
    - less headway
    - Simpson actively resisting
    - pushing our views
  - confidentiality
  - Huddleston amendment

Schweicker: contact

Annelise: who is offering amendments
AG Laxalt, Symmond, DeConcini are possible on legalization
Asylum: [redacted] Kennedy
ID: 16 senators expressed interest

Fielding: ? support for? = Hill 30-40

2. Bankruptcy

pending proposals to increase judges.

AG ~~visited~~ Rose briefing
provides opportunity to get Congress to address needs of jud. generally

THE WHITE HOUSE
WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

DATE: 8-4-82 NUMBER: 077413CA DUE BY: _____

SUBJECT: Cabinet Council on Legal Policy - August 5, 1982

10:00 a.m. - 330 OEOB

	ACTION	FYI
ALL CABINET MEMBERS	☐	☐
Vice President	☑	☐
State	☑	☐
Treasury	☑	☐
Defense	☐	☑
Attorney General	☑	☐
Interior	☑	☐
Agriculture	☐	☑
Commerce	☑	☐
Labor	☑	☐
HHS	☑	☐
HUD	☑	☐
Transportation	☑	☐
Energy	☐	☑
Education	☐	☑
Counsellor	☑	☐
OMB	☑	☐
CIA	☐	☑
UN	☐	☑
USTR	☐	☑
CEA	☐	☐
CEQ	☐	☐
OSTP	☐	☐
ACUS, Smith	☑	☐
_____	☐	☐

	ACTION	FYI
Baker	☑	☐
Deaver	☐	☐
Clark	☑	☐
Darman *(For WH Staffing)*	☑	☐
Harper	☑	☐
Jenkins	☐	☑
F. Fielding	☑	☐
C. Turner	☑	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
_____	☐	☐
CCCT/Gunn	☐	☐
CCEA/Porter	☐	☐
CCFA/Boggs	☐	☐
CCHR/Carleson	☐	☐
CCLP/Uhlmann	☑	☐
CCNRE/Boggs	☐	☐

REMARKS: The Cabinet Council on Legal Policy will meet Thursday, August 5, at 10:00 a.m. in Room 330 OEOB.

The agenda and related papers are attached.

RETURN TO:

☐ **Craig L. Fuller**
Assistant to the President
for Cabinet Affairs
456-2823

☑ **Becky Norton Dunlop**
Director, Office of
Cabinet Affairs
456-2800

Attendees for the Cabinet Council on Legal Policy

August 5, 1982

Office of the Attorney General:	The Attorney General ✓ Jonathan Rose ✓ Rudolph Giuliani ✓
Secretary of State:	~~Davis Robinson~~ ?
Secretary of the Treasury:	Peter Wallison ✓
Secretary of the Interior:	Secretary Watt ✓
Secretary of Commerce:	Sherman Unger ✓
Secretary of Labor:	Secretary Donovan ✓
Secretary of HHS:	~~David Swoap~~ Schweicker ✓
Secretary of HUD:	Donald Hovde ✓
Secretary of Transportation:	Admiral James Gracey ✓
Director, OMB:	Annelise Anderson ✓
Counsellor to the President:	Kenneth Cribb ✓
Chief of Staff:	James Cicconi ✓
Counsel to the President:	Fred Fielding ✓
Exec. Secretary, CCLP:	William Barr (for Michael Uhlmann) ✓
White House Drug Office:	Richard Williams ✓ Dan Leonard ✓

Harper

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 4, 1982

EXECUTIVE SECRETARIES ISSUES

Cabinet Council on Legal Policy

Meeting Date	Issue
Mid-August	Bankruptcy Reform Legislation
End of August	Review of Working Group Report on Equity for Women
Post-election	Pension Equity for Women

PRESERVATION COPY

S. Fl. Task Force

Cocaine in Colombia decreased 25%
Cocaine in Florida up by almost 11
little is getting through in Florida

now concerns: ① drugs turn areas
② stockpiling

first concern already occurring

- But for the first time, we are asserting control over drug dealers.
- Relief to Florida law enf. community

Considering use of model for other areas.

Law Enf. Coord. Committees

- created a few months ago
- US Attorneys forms ctm of all law enf. entities w/ area - advise on use of resources in that area

71 Meetings / 20 days filed

- drug is ~~uniformly~~ principle problem 2nd

in Jan. -

PRESERVATION COPY

HUD - status of City of Boulder

PRESERVATION COPY

Loren Smith –
which option would use least resources
Rose: fiddling w/ Art I system per Chief Justice
Schweiker – doesn't like creating 200 new judges
AG (rep to Watt) 6 week trip bomb – AG hopeful we could get extension
Unger notes many cases under each filing & it is those creating problem (newly created)
Fielding – US Claims Ct. – could it run into same problem
Less of a chance; but confusion in opinions make it undesir
Watt: asked about venue bill
Rose: pending in Senate, hasn't

THE WHITE HOUSE

WASHINGTON

CABINET COUNCIL ON LEGAL POLICY

10:00 A.M.

AUGUST 5, 1982

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3. CCLP Working Group on Drug Supply Reduction (CM#224)

U.S. Department of Justice

Office of Legal Policy

Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

August 3, 1982

TO: William P. Barr
Deputy Assistant Director
Office of Policy Development

FROM: Jonathan C. Rose JCR
Assistant Attorney General

SUBJECT: Cabinet Council on Legal Policy Meeting

Attached are the proposed agenda for the Cabinet Council on Legal Policy meeting and discussion papers for the immigration and bankruptcy items. We will forward to you tomorrow the paper on the status of criminal legislation if it is to remain on the agenda. There will be no paper accompanying the report on the status of the Drug Working Group.

Attachments

Office of the Attorney General
Washington, D. C. 20530

MEETING OF THE CABINET COUNCIL ON LEGAL POLICY

10:00 A.M.

AUGUST 4, 1982

AGENDA

1. Immigration Legislation

2. Bankruptcy Court Jurisdiction after Northern Pipeline Construction Co. v. Marathon Pipeline Co.

3. Status of Criminal Justice Legislation As of August 2, 1982

4. CCLP Working Group on Drug Supply Reduction

Office of the Attorney General
Washington, D. C. 20530

DISCUSSION MEMORANDUM

Re: Immigration Legislation

I. INTRODUCTION

There is a possibility that consideration of the immigration reform bill (S. 2222) will begin in the Senate this week. It is among the items that the Senate leadership is trying to act on before the August recess (including the balanced budget amendment, the debt ceiling bill, and the reconciliation bill). The Administration supports Senate passage of S. 2222 with three amendments agreed upon at the Cabinet Council meeting of June 28 regarding legalization, worker identification, and asylum hearings.

The inter-agency legislative group, led by the Justice Department, has actively pursued congressional liaison work. Every Senator has been contacted, either personally or through staff, and briefed with regard to the Administration's remaining three concerns in an effort to enlist sponsors and support for the Administration's proposed amendments. The White House Congressional Liaison Office was briefed concerning these efforts on Tuesday, August 3. Justice will continue to coordinate needed White House involvement through the Liaison Office.

Timing remains of the essence if we are to have immigration reform this year. Although the bill (H.R. 6517) cleared the House Subcommittee on May 17, Chairman Rodino has not set a date for consideration by the full House Judiciary Committee, but instead will await Senate action. With so few legislative days remaining, favorable Senate action at the earliest possible time is critical!

There is broad general support in the Senate for immigration reform. Of the 89 Senators expressing views, 88 generally support S. 2222. Many particular issues are highly contentious, however, and more than 20 floor amendments are expected. There may be difficulty containing the debate within the days available in the absence, so far, of a governing time agreement.

II. THE ADMINISTRATION AMENDMENTS

A. Legalization

The Administration is seeking an amendment to the terms of legalization now contained in S. 2222. At present, the bill offers immediate permanent resident status to illegal aliens here before 1978, and temporary status to those who came here between 1978 and 1982, with adjustment to permanent status after two years. An estimated 4.8 million aliens would be eligible.

The new permanent residents would be eligible for all welfare benefits available to U.S. citizens. The temporary residents would be provided medical assistance and aid to the blind, aged, and disabled. OMB has estimated that the additional Federal and state welfare costs for FY 1982-86 could be $10.2 billion.

The Administration concluded that these terms are overly broad, especially as they pertain to welfare benefits. We are seriously concerned that these terms are so liberal that they would encourage more illegal migration, would appear to reward illegal entry, and would be unfair to Americans who must pay the cost and to would-be immigrants who wait patiently and legally to enter.

It was decided at the Cabinet Council meeting of June 28 that the Administration should seek a middle ground that would better limit costs and the appearance of unfairness. Accordingly, the Attorney General wrote to Chairman Thurmond stating the Administration's support for an amendment providing that illegal aliens here before 1976 be offered permanent status, and that those who came between 1976 and 1981 be given temporary status, with adjustment to permanent status after four years. An estimated 3.6 million people would be eligible.

The permanent residents would be eligible for welfare benefits on the same basis as citizens, but the temporary residents would not be entitled to federal welfare programs. OMB estimated that the added state and federal costs in FY 1983-86 would be $1.7 billion.

There is considerable support for tightening up the terms of legalization. Of the 63 Senators expressing views, 46 have indicated they would support a more restrictive legalization. We are now working to solidify support for the Administration amendment or an amendment along similar lines.

B. Worker Identification

The Administration has objected to language in S. 2222 requiring that the President within three years "create a secure system" to determine the employment eligibility of American

workers as a means of enforcing the employer sanctions provisions of the bill. Among our concerns were the possibility that the language could be read to require creation of a national ID card, and a provision giving the Judiciary Committees an unconstitutional legislative veto over the President's determination what kind of system was required.

It was decided at the Cabinet Council meeting of June 28 that the Administration would continue efforts to remove the objectionable language but would support enactment of S. 2222 even if those efforts fail. The Attorney General recommended amending language to the Senate, and the legislative group is continuing efforts to arrange sponsors and support for these changes.

Senator Simpson has resisted the Administration's proposed changes, however, and there is broad sentiment in the Senate to follow his lead on this issue. Simpson argues that his language will not lead to a national ID card and that the Administration is simply backsliding on the need to control the use of fraudulent identification documents. Moreover, Congress historically has been unsympathetic to the Administration's position on legislative vetoes. (Despite the Administration's objections, a legislative veto was included in the Regulatory Reform bill by a vote of 70 to 23.) Nonetheless, 16 Senators have expressed interest in the Administration's amendment, and we will continue our efforts on its behalf.

C. Asylum Hearings

S. 2222 provides that asylum hearings shall be open to the public unless the applicant requests that they be closed. The Administration has recommended that the bill be amended to restore the current statutory rule, i.e., that the hearings be closed to the public unless the applicant requests that they be open. The Administration believes that the current rule better protects the confidentiality of these sensitive proceedings. Senator Kennedy has introduced the Administration's amendment, and the change appears likely of passage.

III. OTHER FLOOR AMENDMENTS

Numerous other amendments will be offered on the floor, most of which the Administration plans to resist.

Among them is Senator Huddleston's proposal to place refugees within the overall cap on legal immigration. The Administration opposes this amendment, believing that refugee admissions should continue to be governed by the 1980 Refugee Act, which provides for annual Presidential determinations after consultations with the Congress.

Office of the Attorney General
Washington, D. C. 20530

DISCUSSION MEMORANDUM

Re: Bankruptcy Court Jurisdiction after Northern Pipeline Construction Co. v. Marathon Pipeline Co.

I. INTRODUCTION

In its recent decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., a majority of the Supreme Court invalidated the broad grant of jurisdiction made to the bankruptcy courts by the Bankruptcy Act of 1978.

The Court stayed its judgment until October 4, 1982 1/ in order to give Congress time to reconstitute the bankruptcy courts in a manner that is constitutional. If no action is taken by the Congress by that time, the bankruptcy courts will cease to function, and, indeed, it is arguable that no federal bankruptcy jurisdiction will exist after that date. Even if, as is more likely, the federal district courts would retain their jurisdiction over bankruptcies pursuant to 28 U.S.C. 1334, they are not equipped to handle the current caseload of the federal bankruptcy court system.

II. THE NORTHERN PIPELINE DECISION

The Supreme Court held unconstitutional in the Northern Pipeline case the grant of jurisdiction to the bankruptcy courts over all traditional common law claims in which a bankrupt debtor is a party. The Court found that such claims could be adjudicated only by judges who enjoyed life tenure and the protection from salary diminution which Article III of the Constitution requires. The bankruptcy courts, however, are composed of so-called "Article I" judges appointed to 14-year terms, whose tenure and salary are not given the constitutional protections provided under Article III.

Because it felt that the unconstitutional portions of the jurisdictional grant contained in the 1978 Act could not

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1/ The Supreme Court reconvenes on October 4. It may well have chosen that date so that it could grant, if necessary, a further stay of the Northern Pipeline decision.

readily be severed from the constitutional portions, the Court majority struck down the jurisdictional section in its entirety. The extent to which an Article I court could constitutionally assert jurisdiction over bankruptcy matters was, however, left quite unclear by the decision. In part, this confusion is the result of the disagreements over the issue among the justices, expressed by the various opinions filed in the case -- the plurality opinion of the Court was joined by only four justices, two more justices concurred with the result but not the reasoning, and three dissented.

III. PURPOSE OF THE 1978 BANKRUPTCY ACT REFORMS

Prior to 1978, bankruptcy proceedings were conducted primarily by referees in bankruptcy who were appointed by the district court judges in each district. The Bankruptcy Act replaced these referees with a system of about 220 bankruptcy judges operating independently from the district courts, with jurisdiction expanded to all matters "related to" a bankruptcy proceeding.

The 1978 Bankruptcy Act sought to achieve four major goals. The first was to consolidate in one forum all proceedings related to a bankruptcy in order to make bankruptcy proceedings shorter, more efficient, and less costly. The second was to attract more qualified persons as bankruptcy judges. Third, the 1978 reforms were intended to eliminate alleged cronyism on the bankruptcy bench by providing for presidential appointment of bankruptcy judges. Finally, the 1978 Act sought to limit the expense and inflexibility of the reforms by providing bankruptcy judges with fixed terms of office without protection against salary diminution and without a judicial retirement plan. The Northern Pipeline plurality clearly believed that all of these goals cannot be constitutionally achieved.

IV. OPTIONS FOR RESTRUCTURING THE BANKRUPTCY COURTS

As a general matter, there exist three broad alternatives for restructuring the bankruptcy courts. The first would be to return to a system similar to that which existed prior to 1978. The second would be to grant Article III status to the bankruptcy judges. The third alternative would be to continue the bankruptcy courts as Article I courts, but to narrow their jurisdiction sufficiently to eliminate the problems presented by Northern Pipeline.

A. Return to a Referee or "Adjunct" System

The referees handling bankruptcy claims prior to 1978 served, in effect, as adjuncts to the Article III district courts. Consequently, constitutional problems of the nature identified in Northern Pipeline were not present or at least minimized.

One alternative would be to restructure the bankruptcy courts along the pre-1978 lines, with bankruptcy judges to be appointed by the district judges and to serve under the supervision of the district courts. District courts would have broad powers of review of bankruptcy court orders. While the constitutionality of the pre-1978 system was never challenged, it is our opinion this arrangement would pass constitutional muster. However, it presents a mixture of advantages and disadvantages.

Advantages. Under a referee or "adjunct" system, it would be possible to maintain the broad jurisdictional grant established by the 1978 reforms. All proceedings could be concentrated in the hands of a single referee, albeit under the supervision of the district court. Because of its broad powers of review, there would, however, obviously be a need for greater district court involvement in the bankruptcy process. This may necessitate the creation of a number of new district judgeships.

This solution would allow for the greatest flexibility. The number of adjunct bankruptcy judges could be increased or diminished freely and only a comparatively small number of new Article III judges would be needed. It would also be possible to leave the difficult questions as to which matters should be referred to adjuncts for determination and the scope of review of such determinations to the Judicial Conference to promulgate by Rule or to the district courts to decide on a case-by-case basis, thereby obviating the need to delineate functions by statute. 2/

Disadvantages. Because district judges would appoint

2/ It is not possible to discern from the Northern Pipeline decision any clear line of demarcation between those issues which may be adjudicated by an Article I court and those issues which must be adjudicated by an Article III court. The plurality in Northern Pipeline indicated that those matters which are "public rights" may be adjudicated by non-Article III courts. In the context of a bankruptcy proceeding, it is not at all clear which rights are public and which are private. The plurality indicated that a discharge in bankruptcy "may well be a public right", and other precedent suggests this to be the case. However, a bankruptcy proceeding involves many issues which are ancillary to the grant of a discharge, e.g., the staying of law suits, collecting assets, and allowing or disallowing claims. In varying degrees, all of these functions require a bankruptcy judge to adjudicate questions of private civil law. Without any guidance from the Court, it is an open question which of these and similar adjudicatory functions may be performed by a non-Article III judge.

bankruptcy judges, the bankruptcy courts once again would be open to charges of cronyism. Even if the President appointed bankruptcy judges initially, if district judges have the power to reappoint those judges, cronyism charges might reappear. It is more difficult to attract well-qualified attorneys to serve as judicial "adjuncts" than as independent judges. Finally, the same interests that lobbied so intensively for the 1978 bankruptcy reforms would strongly oppose this arrangement as a return to the inefficient and discredited pre-1978 system. The Judiciary will probably oppose the creation of such a system because it would impose additional duties on district judges, who historically have shunned bankruptcy work. Chairman Rodino has strongly supported the creation of a specialized Article III bankruptcy court prior to 1978 and he continues to do so.

B. Keep the Present System, But Narrow Bankruptcy Court Jurisdiction

A second option would be to retain the present system, but narrow bankruptcy court jurisdiction to eliminate the features found objectionable by the Court in Northern Pipeline. To implement this system, we would continue to have bankruptcy judges serve fixed terms and provide no protection from reduction of salary. Those matters which bankruptcy judges could not constitutionally adjudicate would be referred to the district courts for resolution.

Advantages. The greatest advantage of this option would be that it would permit us to retain almost intact the bankruptcy court system established in the 1978 reforms. It would operate more independently than the pre-1978 referee system; it would be somewhat cheaper and more flexible than an Article III system; and it would attract better judges than the referee system. In addition, because it gives additional jurisdiction to the district courts, it would lay the basis for creating more federal district judges. Although creation of new district court judgeships would encounter opposition, particularly in the House, the exigencies of the Northern Pipeline decision give us some leverage over this opposition.

Disadvantages. Because it is unclear just which claims Article I courts may or may not decide, 3/ it would be extremely difficult to delineate by statute the respective jurisdictions of the bankruptcy courts and of the district courts. This question could be left to case-by-case resolution; however, there would be endless litigation of this question, and we might end up with the Supreme Court once again throwing out whatever line Congress or the lower courts finally were to draw. A second disadvantage to this system would be that any bifurcation of jurisdiction between the bankruptcy and district courts

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3/ See p. 3 n.2, supra.

will result in less efficient and more prolonged bankruptcy proceedings. 4/

C. Create Additional Article III Judges

The safest solution to the problems raised by Northern Pipeline would be to create additional Article III judgeships. This would have the following pros and cons.

Advantages. The problems raised by the Northern Pipeline decision would be settled while the substantive and procedural reforms of the 1978 Act could be retained. It would also ensure that all proceedings related to an individual bankruptcy would be heard before one judge.

Disadvantages. The Judicial Conference and many influential Senators are very strongly opposed to making bankruptcy judges Article III judges. This opposition is based primarily on the belief that the infusion of 200 or so Article III bankruptcy judges lessens the prestige of an Article III judgeship. There are also less persuasive arguments that

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4/ It would be possible to limit the problems with bifurcated jurisdiction by implementing one of several "sub-options" of this Article I arrangement. Congress might, for example, create a limited number of "senior" bankruptcy judges who would be Article III judges. "Senior" bankruptcy judges would hear those claims which bankruptcy judges themselves could not hear; because the senior judges would be part of the bankruptcy court, we could expect them to work more closely with the bankruptcy courts than district judges would. A second idea would be to create the bankruptcy courts as "adjuncts" of the district courts for this purpose. Whenever a bankruptcy court had a Northern Pipeline-type claim that it could not itself adjudicate fully, it would act on behalf of the district court as a referee or special master. The bankruptcy court would hold evidentiary hearings and make recommended findings of fact and conclusions of law to the district court. The district court would review the bankruptcy court's recommendations (under either a de novo or "substantial evidence" standard), and adopt them if proper. Thus, the bankruptcy court would conduct most proceedings in each bankruptcy case.

this would be expensive, 5/ primarily because of the size of judicial retirement benefits, and inflexible 6/ because of the difficulty of reducing the size of the bankruptcy judiciary in the future.

V. CONCLUSION

The Department of Justice has not yet concluded its evaluation of these options. It is clear, however, that the Administration must determine its position on this matter very shortly if it is to affect the course of the legislative efforts to address this problem that have already begun in Congress.

5/ There is no constitutional requirement that bankruptcy judges be paid salaries commensurate with those paid to other Article III judges. Miscellaneous expenses could also be minimized. For example, it is not be necessary to provide bankruptcy judges with the same number of law clerks or secretaries as other Article III judges have, nor need salaries of support staff be the same as those paid in the case of Article III judges.

6/ It has been argued that should the number of bankruptcy petitions decline, there would exist a number of federal judges with insufficient work. It should be noted that bankruptcy judges could sit in other types of cases. See Glidden Co. v. Zdanok, 370 U.S. 530 (1962). Further, should Congress eventually decide to handle bankruptcies by some unforseeable means which entirely dispensed with the need for judges, Congress could probably abolish the bankruptcy courts entirely.