MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 24, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Equal Pay Act Statistics

On the face of the data, enforcement looks pretty good. Maryalice Williams, who ought to know, thinks the numbers are credible and impressive, and absent some particular reason for questioning them, I defer to Maryalice.

DOCUMENT NO. 097679 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 9/17/82 ACTION/CONCURRENCE/COMMENT DUE BY: 9/23/82

SUBJECT: Processing of Equal Pay Act Complaints

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

REMARKS:

Michael Uhlmann:

Could you check on the Administration's record in litigating Equal Pay Act cases and send us a brief memo on the Administration's record as compared to the previous Administration. Attached are some papers from Marialice Williams at OMB. Thanks.

E. Rock

Please return this tracking sheet with your response

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

EQUAL PAY ACT

TABLE 7

EPA COMPLAINT PROCESSING: WORKLOAD AND WORKFLOW

	1982	1983	1984 Current Policy	1984 Agency Request	1985	1986	1987	1988
Complaints in Process	1,900	1,350	1,900	1,900	2,500	2,750	2,750	2,750
Complaints Received for Processing	1,300	2,000	2,200	2,200	2,350	2,350	2,350	2,350
Directed Investigations Initiated	350	750	1,100	1,100	1,100	1,100	1,100	1,100
Complaints Closed	2,200	2,200	2,700	2,700	3,200	3,200	3,200	3,200
Complaints Forwarded	1,350	1,900	2,500	2,500	2,750	3,000	3,000	3,000
Complaint Inventory (Months)	9.8	8.3	9.1	9.1	9.5	10.4	10.4	10.4
Benefits								
Total People	1,100	1,100	1,350	1,575	1,575	1,575	1,575	1,575
Dollars ($000)	$2,500	$2,500	$2,750	$3,200	$3,200	$3,200	$3,200	$3,200
Average Dollar Benefit	$3,300	$3,300	$4,000	$4,700	$4,700	$4,700	$4,700	$4,700

Subunit: Title VII, ADEA and EPA Enforcement

Objectives

1. To maintain the efficient delivery of service to victims of employment discrimination through systems of the Commission designed to achieve timely resolution of charges and complaints.

2. To enhance enforcement of the statutes under the agency's jurisdiction through joint compliance-legal staff efforts that selectively identify and target individual charges with class issues, directed investigations (under ADEA and EPA) and Commissioner charges (under Title VII) in order to obtain remedy and relief for affected persons subject to patterns and practices of employment discrimination.

3. To obtain significant backpay and injunctive relief for victims of discrimination through a selective and balanced litigation program.

4. To maintain a high level of staff productivity with concomitant quality of charge processing through quarterly review of field office performance against goals, annual on-site review of field office adherence to Commission policies and operational procedures, and delivery of training to enhance compliance and litigation skills.

Highlights and Accomplishments

FY 82/83

1. In FY 83, 100% of the Title VII pre-1979 backlog will have been eliminated (Table 5).

2. Settlements are being achieved for 38% of Title VII charges resolved in rapid charge processing with a 22% settlement rate for ADEA and 25% for EPA.

3. In FY 82 charge settlements accrued benefits to over 54,700 people; dollar benefits reached almost $57 million. In FY 83 dollar benefits will reach $51.3 million and 49,000 people are expected to be benefitted (Tables 4, 5, 6, and 7).

4. Processing procedures were implemented in FY 82 to harmonize the processing of ADEA and EPA charges/complaints with Title VII processing systems including the application of the fact-finding process to ADEA charges.

5. In FY 83, 1,400 charges will be recommended to District Office Legal Units for litigation. In FY 82, 240 lawsuits were authorized and 370 are projected for FY 83, a 54% increase; and a total of 250 consent decrees and settlements were entered into in FY 82 with an additional 275 projected for FY 83 (Table 8).

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 27, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Bankruptcy Reform

The last official word I had on this issue was that it had been taken up in a Legislative Strategy meeting during the week before last. My knowledge of what transpired there is informal and secondhand, but it was apparently agreed that an Article III resolution of the problem would be most desirable.

Rodino, as you may recall, has had a clean Article III bill reported from his committee. He originally proposed to take it up on the Suspension Calendar this week but that effort was stymied late last week. Rodino is now pushing to have the bill taken up this Thursday, but with each passing day he is losing support among his Democratic colleagues. Increasingly, the argument is being heard that it is madness for the Democrats to hand the President 220-odd Article III appointments.

Meanwhile, on a related front, the Chief Justice (who has been in orbit about the Article III possibility for some time) has let it be known that the Rodino bill would deal a damaging blow to the integrity of the federal judicial system. That argument has not gained a wide audience outside partisans of the judicial branch. Nevertheless, the judiciary has made enough of a stink that some folks on the Hill who previously found an Article III resolution acceptable are now looking for an alternative compromise. Justice is said to be working on such an alternative in an effort to salvage what we can from the deteriorating position on the Hill.

I was told last week that the matter was being coordinated by the Legislative Strategy Group (in effect, not to worry) and inferred that DOJ and Legislative Affairs were working hand in glove.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 27, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Handicapped Policy; Strategy Concerning Department of Education's Proposed Revisions to P.L. 94-142 Regulations

Over the past two weeks, Steve Galebach and I have familiarized ourselves with the Department of Education's proposed revisions to regulations under P.L. 94-142, the Education for All Handicapped Children Act. The proposed revisions have brought intense criticism from all segments of the handicapped community, with only scattered, lukewarm support from school administrator groups.

This morning, in a meeting with Mike McConnell and Chris Demuth of OMB and Boyden Gray and Richard Breeden of the Vice President's Task Force, we discussed what courses of action are open to us at this point. There was general agreement that our current course is politically untenable:

- The proposed regulations are subject to legislative veto; the current proposal would surely lose in Congress, and even a substantially revised one would face very tough going in the current climate.

- To have the proposed regulations pending during the elections makes it almost impossible for Republican candidates to avoid taking a position and repudiating us.

- We are especially vulnerable to charges of cutting back on family involvement and the mainstreaming of handicapped students with their non-handicapped peers.

- Even though federalism concerns cut against the 94-142 program, this program is one of the most difficult contexts in which to reestablish federalism, and we would do better to reform other areas of handicapped policy first, where we have a chance of succeeding.

Since Secretary Bell has been called to testify on this issue before a House Subcommittee on Wednesday of this week, basic strategy decisions need to be made at this point. Chris Demuth is calling Secretary Bell to set up a meeting to brief him on the situation and the various options.

I recommend that Galebach and I brief you more fully on this matter today.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 30, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Situation Re Proposed Changes to Regulations Under P.L. 94-142

I. The Problem

Department of Education staffers are meeting this afternoon with staffers of the House Subcommittee on Select Education to define the precise extent of the pullback that Secretary Bell proposed yesterday to make on the 94-142 regulations.

Quick-reaction decisions may be needed in the near future to ensure we get smoothly out of the mess these proposed regulations have created. Hence, the following background memo on this problem.

The proposed changes to the regulations under P.L. 94-142, the Education for All Handicapped Children Act (see attached summary of changes) have placed us in a politically untenable and potentially disastrous situation:

- The changes have been the target of overwhelming public criticism and have received only scattered, lukewarm support -- far less than we expected.
- Department of Education made serious blunders in setting up the hearings, creating an even more hostile environment.
- We have been totally unable to take the offensive or to defend our regulations persuasively -- Education cannot even show any identifiable cost savings.
- We face overwhelming hostility in Congress; we lost a 93-4 vote in the Senate on a resolution by Weicker critical of the proposed changes, and Republicans on the House Education and Labor Committee have indicated support for the Biaggi Resolution condemning the proposed changes.

II. Background

P.L. 94-142 is of great importance to the entire handicapped community, including many Reaganite relatives of handicapped children. The pattern of Department of Education conduct has convinced an unusually broad spectrum of people that the Department is fundamentally hostile to the whole 94-142 program:

- The Department supported a proposed block grant for this program, while resisting block grants for many other educational programs.
- The Department drafted changes to the 94-142 statute, but found too much opposition on Capitol Hill to introduce them.
- The program was targeted for 30% budget reduction in the 1982-1983 budgets.

Every one of these efforts has been stopped by overwhelming opposition in Congress. Now the Department's proposed regulatory changes are being viewed as one more effort in a continuing campaign against 94-142.

III. Political Situation Re Proposed 94-142 Regulatory Changes

We face a nearly certain legislative veto if we promulgate final regulations in anything like their proposed form. Even if we delete several of the proposed changes, the regulations will probably be vetoed because of a widespread perception that the whole proposal is a watering down of the 94-142 program. Handicapped groups have succeeded in casting our changes as part of an effort to gut the 94-142 program (even though the changes would actually accomplish very little), and also to cut back on parental control and the mainstreaming of handicapped students in public schools.

Our chance of accomplishing anything positive by our current course is virtually nil. The downside risks, if we do not alter course, are severe:

- Democrats can make such an effective campaign issue of our proposed changes that most and possibly all Republican candidates will be pressured into repudiating our position.
- We face likely attacks from some of our normal allies, such as George Will, on grounds that we are retreating from the President's commitment to parental and family rights.

- If we simply postpone final promulgation of the regulations, rather than withdrawing them, we will simply invite unanimous criticism from the handicapped community for our future changes in handicapped regulations, as a way to keep us intimidated on 94-142.

IV. Analysis

We should stop butting our head against a brick wall on 94-142. Every initiative in this area has been trounced by the Congress, and we are now simply asking them to do it to us again.

We have far more important deregulatory objectives in other areas of handicapped policy -- especially Justice and Transportation regulations under Section 504 of the Rehabilitation Act of 1973. We have received drafts of reasonable proposed regulations from both agencies which do make substantial cost savings and should gain substantial public approval.

However, the climate created by the proposed 94-142 revisions is so hostile that even reasonable revisions of other handicapped regulations are likely to arouse insuperable opposition among the public and in Congress.

As a result, it now appears that we can advance successfully on other more important fronts of handicapped policy only by withdrawing on the 94-142 front.

V. Secretary Bell's Proposed Changes

Secretary Bell proposed yesterday to withdraw six of the most controversial changes, concerning:

- Parental consent prior to evaluation or initial placement.
- Least restrictive environment.
- Related services.
- Timelines.
- Attendance of evaluation personnel at individualized education program (IEP) meetings.
- Qualifications of personnel.

It is unclear what will be the outcome of this afternoon's meeting with Subcommittee staff. We will report as soon as we learn the outcome.

VI. Recommendations

- We need to make sure we reach a prompt, firm, and clearcut resolution of this issue, so that it does not remain a major campaign issue and does not linger on as an impediment to other regulatory initiatives in the handicapped area.

- Either a total withdrawal or a clearcut withdrawal of the most controversial provisions is needed; having already given the appearance of "caving," Secretary Bell should not be allowed to renew intense political controversy on this issue.

- To assure the more responsible handicapped groups of our good faith, and to pave the way for positive regulatory improvements in the future, we should issue a Presidential or White House statement outlining the general principles of our handicapped policy and assuring the public that we wholeheartedly support the positive accomplishments of the 94-142 program.

SUMMARY OF 94-142 REGULATION CHANGES

The following proposed changes to the 94-142 regulations have given rise to the current controversy:

I. Diminished Parental Involvement

1. Parental consent not needed for evaluation and initial placement.

2. Specific requirements for manner of attempting to notify parents are deleted; authorities need only make "reasonable efforts."

3. At the meeting to devise the child's IEP, a person familiar with the child's evaluation is no longer required to be present.

4. "Related services" no longer include parent training and counselling, one of the most cost-effective ways of helping handicapped children.

5. The IEP need no longer be drafted during the meeting with parents.

6. Authorities are no longer required to disclose beforehand evidence they plan to introduce at the IEP meeting with parents.

7. Parents may no longer receive public funding for an independent evaluation of their child's needs.

8. Authorities no longer need inform parents of free or low-cost legal services available to them in the hearing process.

II. Diminished Incentive to "Mainstream" Handicapped Students

1. New provision says they need not be mainstreamed if "substantial and clearly ascertainable disruption" would result.

2. Requirement is now deleted that a handicapped child be placed in a school "as close as possible to the child's home."

3. Deleted provision for participation of handicapped children with non-handicapped children in extra-curriculars and non-academic activities (e.g., meals, recess).

4. Schools no longer need offer a "continuum" of alternative placements for handicapped children.

5. Schools may place "reasonable limitations" on the "related services" they provide, based on location, frequency, etc., of needed services.

6. Schools no longer need provide services to administer medicine to handicapped students who need injections, etc., at school (e.g., diabetic children).

7. State educational associations are instructed to place handicapped children in institutions, without regard to judgment of parents or local authorities, when the state deems such action would "best serve" the child.

III. Miscellaneous

1. "Qualified personnel" no longer defined as state-certified.

2. New provisions allow disciplining of misbehavior not "caused by" a child's handicapped condition.

3. Time periods allowed for state action are generally increased by 50% or left to state discretion to set "reasonable" timelines.

4. New simplified procedure is created for evaluating children whose handicaps are not "severe or complex."

5. New regs require the local agency where the child resides to subsidize his care in an out-of-state boarding school.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 30, 1982

FOR: EDWIN L. HARPER

FROM: WILLIAM P. BARR

SUBJECT: Military Manpower Task Force Meeting

Fifteen months ago the Task Force was formed to study the volunteer army and to make recommendations on improving it.

Tomorrow (October 1; 1530 hours) there is a meeting to discuss and approve the Task Force's report to the President.

One major issue I expect to be raised at the meeting relates to the formula for determining military pay. DOD favors (and the report recommends) setting pay based on the ECI unless the President determines a deviation is necessary. This, in effect, puts the political burden on the President of justifying a deviation. CEA and OMB have favored giving the President greater discretion in setting military pay. I would be inclined to support the CEA/OMB position.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 30, 1982

FOR: EDWIN L. HARPER

FROM: STEPHEN H. GALEBACH

SUBJECT: Anti-Busing and School Prayer Provisions in Department of Education Appropriation Act of 1983

I have now gotten a report from the staff of the Republican Whip in the House:

- This bill will not come up on the House floor until the lame duck session.

- Sections 304, 305(A), and 306 are already contained in Department of Education appropriation acts of past years and will simply continue the current situation, under which the Department of Education is forbidden to take action requiring school districts to bus students for purposes of forced racial integration.

- Section 305(B) may be a new section. (I am working to get a definitive answer and should have one soon.) If it is a new section, it would have a novel impact on the block grant created last year for funds to subsidize busing in local school districts for purposes of racial balance. Section 305(B) would, at least as it appears on the surface, prevent these block grant funds from being used for their stated purpose.

- Section 307 would not have any real effect, since funds appropriated under this Act are not now used to prevent voluntary prayer and meditation in the public schools.

The provisions referred to in this memo are contained on the three attached sheets.

GENERAL PROVISIONS

SEC. 301. None of the funds appropriated by this title for grants-in-aid of State agencies to cover, in whole or in part, the cost of operation of said agencies, including the salaries and expenses of officers and employees of said agencies, shall be withheld from the said agencies of any State which have established by legislative enactment and have in operation a merit system and classification and compensation plan covering the selection, tenure in office, and compensation of their employees, because of any disapproval of their personnel or the manner of their selection by the agencies of the said States, or the rates of pay of said officers or employees.

SEC. 302. Funds appropriated in this Act to the American Printing House for the Blind, Howard University, the National Technical Institute for the Deaf, and Gallaudet College shall be subject to audit by the Secretary of Education.

SEC. 303. None of the funds provided herein shall be used to pay any recipient of a grant for the conduct of research an amount equal to as much as the entire cost of such research.

SEC. 304. No part of the funds contained in this title may be used to force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88-352, to take any action to force the busing of students; to force on account of race,

creed or color the abolishment of any school so desegregated; or to force the transfer or assignment of any student attending any elementary or secondary school so desegregated to or from a particular school over the protest of his or her parents or parent.

SEC. 305. (a) No part of the funds contained in this title shall be used to force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to require the abolishment of any school so desegregated; or to force on account of race, creed, or color the transfer of students to or from a particular school so desegregated as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

(b) No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

SEC. 306. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest

the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing or clustering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 307. No funds appropriated under this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

This title may be cited as the "Department of Education Appropriation Act, 1983".

TITLE IV—RELATED AGENCIES

ACTION

OPERATING EXPENSES

For expenses necessary for Action to carry out the provisions of the Domestic Volunteer Service Act of 1973, $129,073,000, of which $11,831,000 shall be available to carry out title I, part A of said Act and not more than thirty-five per centum of such sum shall be obligated in any single calendar quarter of the fiscal year.

MEMORANDUM

File

THE WHITE HOUSE

WASHINGTON

September 30, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN
STEPHEN H. GALEBACH

SUBJECT: Long-Range Strategic Planning Concerning the Family

This is a very preliminary outline of ways in which federal policy could be shifted to become more pro-family, or at least less anti-family in various areas. We are continuing to explore these ideas and discuss them with various outside groups that have an interest in the subject matter; we expect to have a detailed analysis and presentation of various options available by the time of the elections.

I. Defining the Objective

As a preliminary to discussion of various family "issues," we have attempted to define the primary objective of our family policy: To preserve the integrity of the family and to affirm the role of the family as the basic organic unit of society --

- o The preferred institution for the nurture of children, including the inculcation of civic virtues.
- o The proper and most efficient provider of care for those who lack total independence for reasons such as age or incapacity.
- o The principal educator of children, both in directly educating them and in selecting and supervising educational instrumentalities for them.
- o The basic economic unit -- within which decisions are made about division of labor, allocation of resources, saving, investment, consumption.

II. Specific Proposals

A. Tax Policy.

- o Review tax code to ensure that all inequities toward married women have been eliminated: e.g., marriage tax penalty (recently eliminated by us), inheritance taxes with differential treatment toward surviving

wife and surviving husband, inequities in social security benefits.

- o Review existing tax deductions under the Code to see if any should be eliminated in favor of increasing the personal and dependent exemptions.

- o Design tax credits and deductions to be neutral toward wives who choose to work in marketplace and wives who choose to raise family as full-time job: e.g., increase dependent deduction rather than increasing daycare credit, thus giving equal benefit to mothers who choose either option.

B. Family Care of Aged and Handicapped.

Katie Becket

- o Discontinue those aspects of federal policy that encourage families to place handicapped children in institutions, which are far more costly than home care.

- o Shift flow of federal funds for the handicapped away from large institutions and toward small-scale family-based and community-based care systems.

- o Target developmental disability program (designed for severely handicapped children) toward assistance to families that have such children.

- o Give approval and emphasis to those handicapped programs that favor family involvement and prepare handicapped individuals for participation in work force.

C. Upholding Parental Authority.

- o Frame laws and regulations to respect parental authority over the prescription and use of drugs, devices, and operations on under-age children, including birth control and abortion.

- o Ensure that legal briefs prepared by Department of Justice recognize the role of family as an important institution having a legitimate authority over basic decisions within the family: e.g., discipline, nurture of children, religious training.

D. Assisting Those Who Lack Family-Based Care Outside Family-Based Support Systems.

- o Review federal regulations concerning adoption to minimize red tape and administrative burdens, and, where appropriate, to encourage adoption.

- Promote and publicize the Adolescent Family Life program, recently funded by Congress to support care facilities for unwed mothers.

E. Education.

- Support tuition tax credits as a way to leave resources within the family sufficient for effective choice of proper education for children.

F. Federal Impact on State Family-Related Programs.

- Make clear that federal pension funds are community property which may be divided by state divorce courts equitably between husband and wife.

- Determine whether the federal government could better assist in the enforcement of child support payments.

G. Keeping Families Intact.

- Reform welfare programs to stop encouragements for break-up of families.

- Use some family planning funds to research what factors contribute to intact and stable families.

H. Family Planning.

- Assess performance of Adolescent Family Life program and direct family planning funds where they deal with problems of unwed pregnancy in most effective and most humane way.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 30, 1982

FOR: EDWIN L. HARPER

FROM: WILLIAM P. BARR

SUBJECT: Update on Bankruptcy

Ed Schmults and Jon Rose have been negotiating with Senators Dole, Thurmond, and East Wednesday night and Thursday.

Late Thursday a package was put together and agreed to which includes the Article III court that we want, several general court reform measures, and several substantive changes to the bankruptcy law that are important to Senator Dole and the commercial credit sector.

The chances are exceedingly remote that we will be able to get this to the floor on Friday. Senator Baker has announced that he will not take up anything unless there is a unanimous consent agreement. As of 6:30 Thursday evening, it appeared that Senator Metzenbaum would refuse to consent because he objects to some of the substantive changes being sought by Senator Dole. Justice is planning to go in to ask for an extension of the stay either late Friday or over the weekend.

MINUTES
CABINET COUNCIL ON LEGAL POLICY

September 30, 1982
2:00 p.m., Cabinet Room

Attendees: See attached list.

1. Organized Crime and Narcotics (CM #302)

The Attorney General briefed the President and the Council on the links between organized crime and drug trafficking. He outlined the Administration's progress to date in combatting the crime problem, including the establishment of an Attorney General's Task Force on Violent Crime; the reorganization of the D.E.A. and its consolidation with the F.B.I.; the creation of Law Enforcement Coordinating Committees within most federal districts; the success of the South Florida drug-interdiction operation; the passage of needed legislation, such as changes in the Posse Comitatus Act and the Tax Reform Act; increased activities in dealing with food stamp fraud and the arrest of fugitives; and improvements in law enforcement training.

He then proposed a new program for combatting organized crime and narcotics:

(1) Establish multi-agency Task Forces, modeled after the South Florida operation, in 10 regions of the country.

(2) Increase efforts to pass numerous crime-related proposals now pending on the Hill.

(3) Announce (a) a White House Conference and/or (b) a Presidential Commission on Organized Crime.

(4) Coordinate federal training of state and local officials with federal efforts against organized crime and narcotics.

(5) Use the Cabinet Council on Legal Policy and its working groups as forums for discussion and coordination of policy in this area.

(6) Establish program to energize all governors and other state officials on behalf of a similar undertaking within their own jurisdictions.

(7) Publish an annual report to the President and Congress on progress in this area.

The Attorney General estimated that the cost of this new program would be approximately $200 million over the next fiscal year, exclusive of military operational costs.

The proposal received general support, although concern was expressed that the budget review process should be employed before any final decision was reached on details.

It was agreed that an early meeting of the Budget Review Board would be convened to consider the proposal, after which the Council would meet again.

2. Legal Equity for Women (CM #185)

The Attorney General presented his first quarterly report, pursuant to Executive Order 12336, on federal laws, regulations, and policies which may discriminate on account of sex. After a brief discussion, it was agreed that further questions or comments could be raised at a future meeting.

CABINET COUNCIL ON LEGAL POLICY

September 30, 1982

PARTICIPANTS

The President

The Attorney General
Secretary Weinberger
Secretary Watt
Secretary Block
Secretary Donovan
Secretary Schweiker
Secretary Pierce
Secretary Edwards
Edwin Meese III
Edwin Harper, Assistant to the President for Policy Development
Fred Fielding, Counsel to the President
Loren Smith, Chairman, Administrative Conference of the U.S.
Deputy Secretary Dam
    (Representing Secretary Shultz)
Deputy Secretary McNamar
    (Representing Secretary Regan)
Deputy Secretary Trent
    (Representing Secretary Lewis)
Deputy Director Wright
    (Representing Director Stockman)
Chairman Feldstein

Richard Darman, Assistant to the President and Deputy to the
    Chief of Staff
Elizabeth Dole, Assistant to the President for Public Liaison
Craig Fuller, Assistant to the President for Cabinet Affairs

Michael Uhlmann, Executive Secretary
Becky Norton Dunlop, Director, Office of Cabinet Affairs

For Presentation:

Rudolph Giuliani, Associate Attorney General
Jonathan Rose, Assistant Attorney General for Legal Policy
William Webster, Director, FBI

Additional Attendees:

William Barr
Jim Cicconi
Kenneth Cribb
Tony Dolan
Carlton Turner
Sherman Unger, General Counsel, Department of Commerce
    (Representing Secretary Baldrige)
John Walker, Department of Treasury

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 5, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: New Crime Package -- Draft Ed Meese Letter to Christian Science Monitor

As you requested, attached is a draft response for Ed Meese's signature to the Christian Science Monitor editorial -- "The Wrong Crime Bill."

The piece could be either a letter to the editor or an op-ed piece. We would recommend an op-ed if possible.

Editor

Christian Science Monitor

The Christian Science Publishing Society

One Norway Street

Boston, Massachusetts 02115

To the Editor:

Last month the President proposed legislation to strengthen the criminal justice system in three critical areas. The bill will (1) define and limit the insanity defense; (2) reform the exclusionary rule so that evidence seized by police acting in good faith will not be suppressed; and (3) set rules for federal review of state criminal proceedings to reduce delay and duplication, and to seek greater finality in the criminal justice process.

Your September 17 editorial attacking the President's bill was seriously misleading.

The editorial stated that the bill would "basically abolish the insanity defense." In fact, the bill would treat the insanity issue as part of the determination of whether the defendant had the requisite state of mind for the offense. Under this approach, insanity would be a defense if, for example, the defendant were so deluded that he did not know he had a gun in his hand or did not know he was shooting at a human being. But if the defendant knew he was shooting at a human being for the purpose of killing or harming, he could still be found guilty, even if he were acting out of an irrational belief. A defen-

dant's mental disorder would remain relevant in mitigation of punishment and in determining whether a defendant would be treated punitively or therapeutically after conviction.

The Administration's bill would largely eliminate the unseemly spectacles fostered by the current insanity defense, including the degradation of criminal trials into swearing matches between teams of opposing psychiatrists, and favoritism toward well-heeled defendants who can afford an impressive array of expert witnesses. Our approach has been endorsed by numerous legal scholars, bar associations and psychiatrists.

The editorial also criticizes the Administration's proposal to reform the exclusionary rule. The editorial's attack on this aspect of the bill is ill-informed and unfounded.

The exclusionary rule is a judge-made rule that bars the use of evidence against a defendant in a criminal trial if the evidence was obtained by the police in an improper manner. The courts have sought to justify this rule as a deterrent to police misconduct; however, an increasing number of judges and scholars are challenging it. They point out that the rule does nothing to punish the policeman who has acted improperly; that it punishes innocent citizens who are victimized by the criminals who are set free; and that the real beneficiaries of the rule are guilty criminals who are set free no matter how heinous their crime.

If the deterrent argument has any validity at all, it is only in cases in which the police have <u>consciously</u> misbehaved. The rule has no deterrent effect where a police officer honestly and

reasonably believes that his search is proper. Despite this, the rule has, over the years, been expanded beyond its purpose, and has been applied to suppress evidence seized by police who reasonably believed they were acting properly and whose errors were technical in nature. Clearly, the interests of justice are not served by freeing a known criminal because a police officer makes an innocent mistake in interpreting the complex, frequently ill-defined and ever-changing law governing searches and seizures.

The Administration's bill would restore the exclusionary rule to its proper role by restricting its application to those cases where it would in fact act as a deterrent. Under the proposal, the rule would not be invoked where the police have obtained evidence in the reasonable, good faith belief that their acts were lawful. A number of federal courts have already adopted this position, and the Administration bill would make it uniform throughout the federal system.

The editorial also criticizes the Administration's proposed reforms of habeas corpus procedures, claiming that our bill would "take away the process by which a defendant can seek to have a conviction overturned," a process which "protects those persons who may in fact be truly innocent . . . or who may have been given excessively harsh sentences." These claims are totally false.

The writ of habeas corpus is a means whereby the constitutional propriety of state criminal proceedings can be reviewed in federal court, over and above the many layers of review provided in state courts and direct review of state judgments in the Supreme Court. Traditionally, the writ was understood to be an extraordinary remedy. In recent years, however, this once extraordinary remedy has been converted into a routine means for seeking continual review of state convictions, often on frivolous grounds. So used, it distorts the proper relationship between federal and state government, undermines the need for finality of judgment in criminal proceedings, and introduces needless duplication of effort.

The Administration remains firmly committed to protecting rights secured by the Constitution, including those of criminal defendants in state criminal proceedings. It believes, however, that the interests of justice are not served by allowing, as the present system does, endless opportunities to second-guess state court judges and juries.

The Administration bill is designed to limit unjustified federal review of state convictions by (1) barring review of a claim not properly raised in state proceedings, unless the state failed to provide an opportunity to raise the claim consistent with federal law; (2) establishing a one-year limit to apply for the writ following exhaustion of state remedies; and (3) requiring deference to state court determinations of factual and legal issues which have been fully and fairly adjudicated in state

proceedings. Reforms of this kind are supported by a majority of the Justices of the Supreme Court, many other eminent federal judges, leading scholars concerned with federal court jurisdiction, and by virtually all state judges and attorneys general.

The bill discussed above is not this Administration's first anti-crime proposal. Also pending on the Hill is the Violent Crime and Drug Enforcement Act in which we have proposed numerous reforms, including bail reform measures that would make it more difficult for dangerous defendants to be released prior to trial or during appeals, and reforms of the sentencing system that would abolish parole and require judges to operate within guidelines that will assure a greater likelihood of punishment.

The Administration's anti-crime proposals are the products of extensive study and consultation. They are all important and integral parts of our war against crime. They deserve the support of the American people.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 5, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: National Council on Educational Research

The National Council on Educational Research is in effect the board of directors of the National Institute of Education. Unlike typical advisory bodies, the Council has important substantive policymaking responsibilities.

Although the Council has fifteen slots, none of them is currently filled. President Reagan nominated twelve persons for the Council during spring 1982. Senator Kennedy has held up every one of the nominations, and we have heard that he is threatening to hold them up indefinitely.

It would be absurd to allow Senator Kennedy to frustrate us forever on this matter.

We should consider recess appointments for the entire Council, so they can start their work.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 5, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: EEOC Enforcement
(Ref. 097774)

By way of a one-pager, attached is a short paper done by Clarence Thomas in anticipation of the Post article.

As a follow-on, I have asked Clarence to provide a comprehensive analysis by the middle of next week. (A copy of my memo to Clarence is attached).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

OFFICE OF
THE CHAIRMAN

SEP 27 1982

FY 81 6.137
FY 82 9.692
litigation =
collected

Ms. Nancy Hodapp, Staff Assistant
Office of Cabinet Affairs
The White House
Washington, D.C. 20500

Dear Ms. Hodapp:

Reference is made to the President's remarks at the National Black Republic Council Dinner in which the following statements were made:

> "The record of the Equal Employment Opportunity Commission, EEOC, is equally impressive. Under the first full year of this administration, the Commission dramatically increased its activity over the previous year. The number of charges of discrimination processed by the Commission increased by 25 percent. The number of persons assisted through negotiated remedies increased by 15 percent. And total back pay and other compensation provided in negotiated remedies increased by 60 percent.
>
> Similarly, the number of suits filed by the Commission increased by 13 percent. And the number of suits settled by voluntary agreement increased by 25 percent."

25%

It appears that the information contained in his speech was taken from the EEOC Enforcement Litigation Activity/Monetary Benefits 12 Month Comparison Report for FY 1980 and 1981, the EEOC Compliance Production Comparison Report for FY 1980 and 1981, and possibly the attached News Release dated December 16, 1981. The basic problem with the statement can be summarized simply by saying that our Fiscal Year reports were translated into the phrase which erroneously indicated that it covered the first full year of "this administration". As you know, the Fiscal Year dates from October to October and therefore the data was not compiled on a calendar year basis. Thus, the information contained four months of productivity and results which took place prior to President Reagan taking office.

Attached please see the reports to which I refer noted by paper clips in the appropriate areas.

Sincerely,

Clarence Thomas

Clarence Thomas

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 5, 1982

FOR: CLARENCE THOMAS

FROM: MICHAEL M. UHLMANN

SUBJECT: Administration's EEOC Enforcement Record

We appreciate your quick response to the Post articles challenging the President's statements on our EEOC enforcement record.

As a follow-on to our luncheon meeting the other day, Ed Harper has requested the following:

1. A comprehensive and detailed analysis of this Administration's EEOC enforcement record (both race and sex).

2. A quantitative and qualitative comparison of our record with the Carter Administration's.

3. Your analysis of the best case that we can make for our record.

4. Your assessment of our vulnerabilities.

We need this by this middle of next week.

DOCUMENT NO. 097774 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 9/30/82 **ACTION/CONCURRENCE/COMMENT DUE BY:** 10/7/82

SUBJECT: Reagan Contradicted on Civil Rights Enforcement

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

REMARKS:

Are you on top of this? I'd like a one pager on this general topic of EEOC's pursuing cases.

Please return this tracking sheet with your response

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

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 5, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: National Council on Educational Research

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