

SPECIAL ASSISTANT TO
THE ATTORNEY GENERAL



12/16/81
To: Jon Rose

Jon:

Attached is a redraft of
our Memo to Ed Meese. Please
note in particular the language
of limitation on p. 2.

I have not made any
changes in the "cover letter" to Meese.
Please give me a call after you have
had a chance to review and reflect.

Hank

Memorandum

*Civil rights
Immigration
Refugee
Policy*



[Handwritten signature]

Subject The Need for a New Cabinet Council to Address Certain Law Enforcement Issues	Date October 22, 1981
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To The Attorney General

From Hank Habicht *[Signature]*
Special Assistant to
the Attorney General

As you know, in certain areas of law enforcement, Department of Justice jurisdiction is not exclusive, but rather overlaps with that of other departments. In many of these areas, the mechanism for coordinating policy and implementation is grossly inadequate. Three areas in which the need for coordination clearly exists are narcotics enforcement, immigration and refugee policy and civil rights.

Proceeding from the assumptions that the most effective means of coordination in these areas is the Cabinet Council mechanism, and that it is unlikely that three new Cabinet Councils would be approved, the attached draft memorandum proposes a broad "Cabinet Council on Interagency Law Enforcement Matters" (or Federal Law Enforcement Coordination) which the Attorney General would chair and which could address law enforcement issues of direct interest to other agencies. Manifestly, the charter of such a broad Cabinet Council must be carefully drawn to prevent a broadening of the agenda to all Justice Department matters, including criminal law enforcement generally.

My own recommendation would be to seek a more narrowly defined Council. Above all, we must continue to campaign for a Cabinet Council on Narcotics Enforcement -- a top priority which requires more coordinated high-level attention. It would also be logical to propose a "Cabinet Council on International Law Enforcement Matters" which could include both narcotics enforcement and immigration and refugee policy. These subject areas involve analogous issues and are of interest to largely the same set of agencies. Moreover, other matters of international law enforcement not covered by the Trade Policy Committee could also be appropriately raised in this forum.

Including civil rights matters in the above-described proposal may make it look too much like a Cabinet Council on Justice Policy, thus risking an erosion of the authority and independence of the Attorney General. I agree that we must coordinate civil rights policy throughout the Administration,

but suggest that this coordination can be accomplished through existing means, such as the Cabinet Council on Human Resources or the Federal Legal Council. To the extent that civil rights and immigration (alien rights) questions overlap, they could be addressed jointly in these fora. Finally, the Attorney General could also use his authority to coordinate non-discrimination regulations under Executive Order 12250, or OMB's interest in consolidating civil rights enforcement as a basis for creating an Interagency Task Force on Civil Rights Enforcement separate from the Cabinet Council structure.

In any event, the attached draft includes civil rights in the proposed Cabinet Council for your consideration. I would be interested in your thoughts on the foregoing, or on the attached draft.

MEMORANDUM FOR THE PRESIDENT

Subject: CABINET COUNCIL ON INTERAGENCY
LAW ENFORCEMENT MATTERS

The Cabinet Council structure can be an effective means of formulating joint policy recommendations to the President and addressing subject areas which transcend the jurisdictional boundaries of individual agencies. Further, the Cabinet Council mechanism permits Executive agencies to use the effective lines of communication established by Craig Fuller's operation to exchange views on matters of interagency concern.

Most criminal law enforcement matters lie solely within the jurisdiction of the Department of Justice, due not only to express statutory requirements but also to considerations of sound policy. However, certain law enforcement activities of pressing importance to the Administration are, by their nature, interagency in character. Thus, enforcement matters affecting commercial and competitive policies are addressed by the Cabinet Council on Commerce and Trade (and the Trade Policy Committee). Similarly, important environmental enforcement matters affecting the jurisdictional interests of a number of federal agencies are addressed in the Cabinet Council on Natural Resources and the Environment.

Certain other law enforcement matters of particular policy importance to the Administration could also benefit from coordination through the Cabinet Council mechanism. For example, there is a compelling need to demonstrate the highest level of Executive Branch commitment to a strong narcotics enforcement policy. Narcotics enforcement involves a number of individual agencies and departments which engage in less than ideally coordinated efforts in responding to a sophisticated and pervasive international network of narcotics trafficking organizations. Second, improving our scheme of laws and enforcement policies regarding immigration and refugee matters is manifestly of interagency concern. Indeed, the Interagency Task Force means of developing Administration immigration and refugee policy recommendations worked quite effectively. [Finally, enforcement of our broad array of civil rights laws and regulations, while a matter falling largely within Department of Justice jurisdiction, is one which also implicates the jurisdictional and policy interests of a number of federal agencies.]

Each of the foregoing subject areas requires immediate high-level Administration attention. Because of overlapping agency responsibilities in these areas, I think that the Cabinet Council mechanism could substantially improve the policy formulation process. Therefore, I propose the formation of a Cabinet Council on Interagency Law Enforcement Matters [Federal Law Enforcement Coordination]. Based upon the views of the

White House and interested departments and agencies, key subject areas involving overlapping agency jurisdiction would be designated as focal points for Cabinet Council activities.

All current Cabinet members would be nominal members of the Cabinet Council. Committees would be formed to address individual subject areas. Because the Department of Justice is charged with the broadest scope of responsibility for law enforcement activity, the Attorney General would be the logical Chairman Pro Tempore of the Cabinet Council. The Executive Secretary of the Cabinet Council could be appointed from the Office of Policy Development with a Deputy assigned to each constituent committee.

The two [three] subject areas identified above are the most logical areas of emphasis for Committee assignments. In my view, a most urgent priority for improved Executive Branch coordination is in the area of narcotics enforcement. The Committee on Narcotics Enforcement should comprise:

1. Attorney General - Chairman
2. Secretary of State
3. Secretary of Defense
4. Secretary of the Treasury
5. Secretary of Health & Human Services
6. Secretary of Transportation
7. Director of Central Intelligence
8. The Vice President

9. Counsellor to the President
10. Chief of Staff

This Committee could be subdivided into working groups which would deal with ongoing policy issues and coordination of law enforcement operations. Some suggested groups would be:

1. Enforcement Generally (and Intelligence) -- chaired by Department of Justice.
2. Drug Abuse Prevention and Treatment -- chaired by the Department of Health & Human Services.
3. Diplomatic and Foreign Activities -- chaired by the Department of State.

A Cabinet Council Committee on Immigration and Refugee Policy could continue on a more permanent basis the work of the President's Task Force in this area. In that regard, the Committee membership could mirror that of the Task Force and would comprise working groups on such subject areas as:

1. Border enforcement and interdiction -- chaired by Department of Justice
2. International Refugee and Asylum Matters -- chaired by Department of State

3. Domestic Policy Issues -- chaired by the Department of Health & Human Services

[Finally, a Committee on Civil Rights enforcement matters can address the urgent need to coordinate regulatory and enforcement activity and to eliminate redundant and unduly intrusive federal agency activities. Of course, the Committee would have to be structured to avoid charges of undue politicization of the Justice Department's exercise of prosecutorial discretion in civil rights law enforcement. The members of a Civil Rights Committee would include:

1. Attorney General (Chairman)
2. Secretary of Health & Human Services
3. Secretary of Education
4. Secretary of Labor
5. Secretary of Housing & Urban Development
6. Director, Office of Management & Budget
7. Director, Office of Policy Development
8. Vice President
9. Counsellor to the President
10. Chief of Staff

The Committee thus constituted could identify specific matters of Civil Rights regulation and policy which warrant working group attention.]

The Cabinet Council structure better enables the Administration to speak with one voice on a number of important issues. That need to speak in unison and to coordinate Administration actions is also compelling in the areas outlined above, thus warranting formation of a new Cabinet Council at the earliest feasible date.

Memorandum

DRAFT



Subject Proposed Cabinet Council on Federal Legal Policy	Date November 24, 1981
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To
The Attorney General

From
Hank Habicht
Special Assistant to
the Attorney General

Among the benefits of the Cabinet government scheme conceived by the President is its ability to provide the President with regular access to his top management officials' expertise in matters of substantive policy, and to ensure that Cabinet officers are truly part of a coordinated Administration policy team, thus minimizing the need for them to act individually as advocates for their own Departments. Further, the subdivision of the Cabinet into specialized Cabinet Councils comprising only those Departments most directly interested in specific subject areas has done much to streamline and to focus this important deliberative process.

As you know, you are a member of three Cabinet Councils and the Trade Policy Committee. However, these groups do not address a number of extremely important legal policy issues -- such as narcotics enforcement, immigration and civil rights -- which ought to receive Cabinet emphasis.

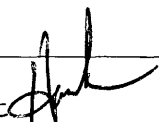
Despite the historic temptations at the White House to resolve policy matters -- for logistical and other reasons -- without full Cabinet Council deliberations, the President still appears to be committed to the Cabinet Council system. As long as that system remains in place, legal policy issues of interagency concern warrant a position of equal dignity on the Cabinet agenda. Accordingly, attached are a proposed memorandum to the President and cover memorandum to Ed Meese which urge formation of a "Cabinet Council on Federal Legal Policy." (This Council could also subsume the work of the Federal Legal Council, which was a Carter creation in any event.)

The advantages of the proposed Cabinet Council are that it:

Memorandum



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Subject Proposed Cabinet Council on Federal Legal Policy	Date December 14, 1981
To See List Below	From Hank Habicht 

Attached, for discussion purposes, is a revised draft of our papers proposing formation of a Cabinet Council on Federal Legal Policy. The principal revisions reflect the suggestion that the decision memorandum be addressed to Ed Meese.

Attachment

Addressees:

✓ The Attorney General

The Deputy Attorney General

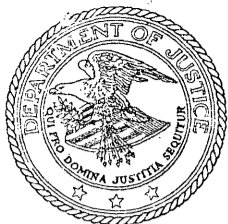
Rudy Giuliani
Associate Attorney General

Jon Rose
AAG/Office of Legal Policy

Ted Olson
AAG/Office of Legal Council

Stan Morris
Associate Deputy Attorney General

Ken Starr
Counselor to the Attorney General



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

The Honorable Edwin Meese, III
Counselor to the President
The White House
Washington, D.C.

Dear Ed:

Some time ago you and I discussed the advisability of establishing a Cabinet Council on Law Enforcement. As you know, I, on balance, found such a proposal unwise because I feared that the establishment of a Council with such a title could create an undesirable misconception of undue involvement by the White House and other agencies in operational law enforcement decisions regarding investigations and prosecutions which should properly be the province of the Justice Department alone.

However, I agree with you that there are a number of important areas of legal policy which require high-level interagency coordination. Most prominent among these are narcotics enforcement, civil rights, and immigration policy. In each of these areas, the Administration must both establish new policy directions and improve presently inefficient and overlapping enforcement structures. Of course, the President has already committed himself to the creation of a Cabinet-level task force on drug enforcement. We must at a minimum follow-up on that commitment.

In my view all of the foregoing policy areas warrant the interagency coordination and high-level focus of a separate Cabinet Council. In addition, there are undoubtedly other issues which will arise in the fields of civil and administrative law which will also deserve Cabinet-level attention.

I therefore propose in the attached Memorandum the formation of a Cabinet Council on Federal Legal Policy which could immediately begin policy coordination in the critical areas of narcotics enforcement, civil rights and immigration, and could also address other important legal policy issues identified in

the future. I would like an opportunity to discuss this matter with you further at your earliest convenience. If you agree with the proposal set forth in the Memorandum, we are prepared to move quickly to help set up this new Cabinet Council.

Sincerely,

William French Smith



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

MEMORANDUM FOR EDWIN MEESE, III

CREATION OF A CABINET COUNCIL ON FEDERAL LEGAL POLICY

The Cabinet Council structure has proven to be an effective device to formulate interagency policy recommendations to the President. It also has successfully provided the President with regular access to the substantive expertise of each member of his Cabinet in a constructive way.

Most criminal law enforcement matters lie solely within the jurisdiction of the Department of Justice. However, a number of legal policy issues of pressing importance to the Administration are, by their nature, interagency in character. Some of these are already dealt with by existing Cabinet Councils. For example, legal issues affecting commercial and competitive policies are addressed by the Cabinet Council on Commerce and Trade (and the Trade Policy Committee). Similarly, important environmental law enforcement matters affecting the jurisdictional interests of a number of federal agencies are addressed in the Cabinet Council on Natural Resources and the Environment.

However, certain other legal policy matters do not currently lie within the purview of any existing Cabinet Council. Some of these are of particular importance to the Administration and warrant the high level emphasis and coordination which the Cabinet Council mechanism provides. For example, the President has already directed the formation of an interagency task force on narcotics enforcement to accord proper emphasis to this urgent problem. Narcotics enforcement involves a number of individual agencies and departments which are currently not well coordinated to respond to a sophisticated and pervasive international network of narcotics trafficking organizations. A second example is the necessity of improving our implementation of laws and enforcement policies regarding immigration and refugee matters by a number of different agencies. Finally, a number of Departments and agencies have partial responsibility for regulatory and enforcement efforts concerning civil rights. While this Department is assuming the lead responsibility for reevaluating the Federal role in civil rights enforcement, our efforts in this area would be greatly enhanced by a formal interagency coordinating mechanism.

The foregoing areas are related in that each requires immediate high-level Administration attention, each involves matters of interest to more than one Executive branch agency, and each can be said to involve mixed questions of law and policy. Because of overlapping agency responsibilities, I believe that a new Cabinet Council could substantially improve development and implementation of administration policies in these areas. Therefore, I propose the formation of a Cabinet Council on Federal Legal Policy, which could address an array of issues limited only by the obvious need to avoid discussion of individual cases, criminal prosecutions, or related specific law enforcement issues.

I would contemplate that all current Cabinet members would be nominal members of the Cabinet Council. Sub-Committees would be formed to address individual subject areas. Because the Department of Justice is charged with the broadest scope of responsibility in matters of legal policy and law enforcement, the Attorney General would be the logical Chairman Pro Tempore of the Cabinet Council. An Executive Secretary of the Cabinet Council could be appointed from the White House ~~Office of Policy Development~~. Other needed ~~staff~~ ^{personnel} resources could be provided from this Department. Staff.

The three subject areas identified above would seem to be the most logical substantive areas for immediate Committee assignments. In my view, a top priority should be to carry out the President's commitment to improve Executive Branch coordination in narcotics enforcement. A proposed Committee on Narcotics Enforcement should in my view include:

1. The Attorney General - Chairman
2. The Secretary of State
3. The Secretary of Defense
4. The Secretary of the Treasury
5. The Secretary of Health & Human Services
6. The Secretary of Transportation
7. The Director of Central Intelligence
8. The Vice President
9. The Counsellor to the President
10. The White House Chief of Staff

This Committee could be subdivided into working groups which would deal with ongoing policy issues and coordination of narcotics law enforcement activities. Some of these groups might be:

1. Narcotics Enforcement and Intelligence -- chaired by Department of Justice.
2. Drug Abuse Prevention and Treatment -- chaired by the Department of Health & Human Services.
3. Diplomatic and Foreign Activities Relating to Narcotics -- chaired by the Department of State.

A Cabinet Council Committee on Immigration and Refugee Policy would continue on a permanent basis the earlier work of the Presidential Task Force in this area. Thus, the Committee membership could mirror that of the prior Task Force and could consist of working groups on such subject areas as:

1. Border Enforcement and Interdiction -- chaired by Department of Justice.
2. International Refugee and Asylum Matters -- chaired by Department of State.
3. Domestic Policy Issues -- chaired by the Department of Health & Human Services.

Finally, a Committee on Civil Rights policy might address the urgent need to coordinate the often inconsistent and unduly burdensome Federal regulatory and enforcement activities in this important area. The members of a Civil Rights Committee could include:

1. Attorney General (Chairman)
2. Secretary of Health & Human Services
3. Secretary of Education
4. Secretary of Labor
5. Secretary of Housing & Urban Development
6. Director, Office of Management & Budget
7. Director, Equal Employment Opportunity Commission
8. Director, Office of Policy Development
9. Vice President
10. Counsellor to the President
11. White House Chief of Staff

In my view the establishment of a Cabinet Council on Federal Legal Policy would permit a more effective and unified governmental effort in important policy areas not now treated by existing Cabinet Councils. I therefore recommend to you the establishment of the Cabinet Council on Federal Legal Policy. I would of course be happy to discuss this subject with you, or to present this proposal to the President, as soon as it would be convenient.

WILLIAM FRENCH SMITH
ATTORNEY GENERAL

Decision: Approve _____
Disapprove _____
See me _____

I thought that, while it may be unlikely that the President would be able to attend, he may want to send greetings for him