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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 24, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Women's Legal Defense Fund Comments on OFCCP Regulations

Reference No. Ø72473PD

The commennts you referred over to me on 6/15 are well known and of long standing. They have been fully considered by DOL and by the Vice-President's Regulatory Reform Task Force. Boyden Gray, the Labor folks, and I have met and talked with their representatives on numerous occasions during the past year. Every effort has been made to accommodate their interests, but on the matters of greatest symbolic and substantive importance to them -- specifically, class action back pay, the effects test, and quotas -- their doctrinal position is 180 degrees opposed to that of the Administration.

7

Deregulation

I. Basic Objectives

1) Permit new regulations only where
   a) market forces or state regulation is inadequate
   b) there is substantial evidentiary support for need for regulation
   c) benefits outweigh the costs

2) Review existing regulations for revision or examination pursuant to above criteria

3) Monitor legislative deregulatory initiatives - such as
   a) Clean Air and Clean Water
   b) Regulatory Reform Legislation
   c) Communications
   d) Financial Services
   e) Natural Gas

II.

III. Major Achievements

1) Adoption and implementation of executive order that requires White House review and cost-benefit analysis and that has withstood court challenge
2) Reduction of new regulations, as evidenced by drop in number of proposed rules, 1/3 reduction in paper in Federal Register and more than 50% reduction in agency appeal caseload at D.C. Circuit
3) Identification of 111 major existing regulatory programs for review, with only 36% completed so far but with numerous major completions scheduled for this summer (the savings to date run into the billions in both annual and capital costs)
4) Regulatory reform legislation (essentially codifying Executive Order) has passed the Senate, is awaiting floor action in House, where chances that Speaker will let it go to a vote are better than 50/50. Clean Air Act amendments are very uncertain but still possible.

IV. Key Issues

Completion of 111 targeted reviews, and legislative changes in Clean Air, Clean Water, Communications, financial services (banking, securities, insurance, S&L's), Natural gas - and possibly also civil rights enforcement (consolidating duplicative agency functions), and food safety (Delaney Clause).

Baptists Switch on School Prayer

The power of the social issues was demonstrated this week when the Southern Baptists reversed their longstanding opposition to school prayer.

Southern Baptists over the years have been strong advocates of the separation of church and state doctrine. As a result, they, along with the other major religious groups, supported the Supreme Court decision in 1973 outlawing prayer in the public schools.

At their convention late last week, the Baptists reversed this historic role and strongly supported the President's proposed Constitutional Amendment on school prayer. This is extremely significant and could be a major factor in the eventual passage of the proposal. (The Baptists have 13.7 million members and are a significant voting block throughout the South.)

> Liberal columnist Tom Wicker observes that, if the GOP exploits school prayer and other key social issues, such as abortion, the party could score big in Southern and Border state congressional races this Fall despite economic conditions. (A copy of his New York Times column is attached.)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 1, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Women's Issue Initiative -- Federal law requiring equal pay for equal work (Reference No. 072699)

Existing Federal statutes already ensure equal pay for equal work. We need further guidance on what kind of additional statute the senior staff has in mind. (Attached is a copy of the directions we have received so far.)

I. Equal Pay For Equal Work

Wage discrimination occurs when one class of people is paid less than another class for doing substantially the same job; for example, male and female machine assemblers (or truck drivers, secretaries, elementary school teachers, etc.) working side by side, doing jobs that are essentially indistinguishable from one another, producing similar results.

There are already two Federal statutes that prohibit such discrimination and require "equal pay for equal work":

1. Equal Pay Act of 1963: This statute provides in pertinent part:

> No employer . . . shall discriminate . . . on the basis of sex by paying wages to employees . . . for equal work on jobs the performance of which requires equal skill, effort and responsibility, and are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system, (ii) a merit system, (iii) a system which measures earnings by quantity or quality of production, or (iv) a differential based on any factor other than sex . . . .

While requiring equal pay for "equal" work, court decisions have established that the word "equal" does not mean "identical". The test is rather one of substantial equality. Jobs are deemed equal if the job duties are "closely related" or "very much alike" and are substantially equal in terms of skill, effort and responsibility, and are performed under similar working conditions.

In a comparison of jobs that are substantially equal, job titles, job classifications, and job evaluations are not controlling. Application of the equal-pay mandate depends on the job requirements and actual duties performed. Thus, courts have found, for example, the work of male janitors and female maids "substantially equal".

Individual employees who believe they have been discriminated against are authorized to bring suit for underpaid wages and overtime compensation plus additional "liquidated damages". The Secretary of Labor can also sue.

2. Title VII of the Civil Rights Act of 1964: This statute states in pertinent part:

> . . . it shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The act thus prohibits sex discrimination in all employment practices, including hiring, firing, promotion, compensation, and other terms, privileges, and conditions of employment. The act covers all private employers of 15 or more persons; labor unions with 15 or more members; all educational institutions; federal, state, and local governments; employment agencies; and joint labor-management committees that provide apprenticeship or training. Complaints can be filed by individuals who believe they have been discriminated against or can be initiated by the EEOC.

II. The "Comparable Worth" Debate

The principle of "equal pay for equal work" is adequately secured by existing federal statutes. This is really not the major issue.

The real controversy in the wage discrimination area arises from a new concept being pushed by some feminist groups, the ACLU and other liberal organizations -- the "comparable worth" doctrine. This doctrine would go far beyond requiring equal pay for functionally equal work; it would mandate equal pay for work which is determined by the government to be of "comparable value".

Proponents of this concept argue that the reason women earn 57% of the wages earned by men is that much of the female work force is concentrated in the lower pay levels of a few occupational groups, such as clerical workers, and that the wages for these entire job categories have been artificially depressed because the jobs were held by women. It is argued that the government should require that the wages of these occupational groups be increased to the level of groups which perform work of "comparable value to the employer". Under this doctrine, there would be no requirement that jobs be similar. Equal pay would be mandated where the jobs had "comparable value". "Value" would <u>not</u> be determined by the market.

Thus, for example, under the doctrine of comparable worth, secretaries would seek the same wages as accountants, nurses the same wages as interns, etc.

The Equal Pay Act is clearly limited to jobs which are substantially equal and therefore activists are focusing their efforts on Title VII to gain judicial acceptance of the "comparable worth" doctrine. Recently, in a Title VII case, the Supreme Court left open the possibility that the statute could be construed as embodying the "comparable worth" doctrine. Activists are now engaged in a carefully planned litigation strategy to lead the courts step-by-step down that road.

III. <u>Need for Further Guidance</u>

Given the state of existing law, what kind of Federal statute does the senior staff have in mind?

It seems clear to me (1) that existing Federal law adequately secures the concept of equal pay for equal work; and (2) that the doctrine of comparable worth is totally antithetical to our market system and to our political philosophy. At bottom, it is predicated on the Marxist "labor theory of value". Its implementation would involve the government dictating the wage levels for all categories of workers based on a non-market (and essentially political) determination of their "value" and would upset <u>all</u> bargained-for labor agreements.

DOCUMENT NO. 072699 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 6/30/82 ACTION/CONCURRENCE/COMMENT DUE BY: ASAP

SUBJECT: 8:00 am Meetings

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	OTHER		
FAIRBANKS	☐	☐	______	☐	☐
FERRARA	☐	☐	______	☐	☐
GUNN	☐	☐	______	☐	☐
B. LEONARD	☐	☐	______	☐	☐
MALOLEY	☐	☐	______	☐	☐
SMITH	☐	☐	______	☐	☐
UHLMANN	X	☐	______	☐	☐
ADMINISTRATION	☐	☐	______	☐	☐

Remarks:

(UHLMANN) ACTION

Women's Issue Iniative

- Federal law requiring equal pay for equal work. Some business in some locality. (Mike Uhlmann should explore this option ASAP)

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

Please return this tracking sheet with your response.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 2, 1982

FOR: EDWIN L. HARPR

FROM: MICHAEL M. UHLMANN

SUBJECT: Planning Update

I believe that my second revision (attached) comports with the criteria laid down at the last meeting.

The truth of the matter is that under the general rubric of Administration of Justice, we have already achieved, or will shortly be on the verge of achieving, most major goals. The most conspicuous exception, as you are aware, is EEO policy, which is now under review by the Working Group.

The rest consists mainly of cats and dogs -- e.g., if we get our crime package through, and if we get an acceptable immigration reform bill through, almost everything else save EEO represents defensive activities, i.e., avoiding dumb-dumb activities.

In attempting to set a rough agenda for future CCLP activities, therefore, I am hard-pressed to think of long-term issues for which CCLP ought to be lying in wait. Most of its actions, aside from revisitations on crime, immigration, narcotics, and civil rights, will consist of hard-to-predict crises of the moment. (The Boulder City antitrust exemption is a good example.)

The predictable part of the agenda would thus be limited to something like the following:

1. Civil Rights

    a. EEO policy

    b. Changes in enforcement structure

2. Abortion

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 6, 1982

FOR: EMILY ROCK

FROM: MICHAEL M. UHLMANN

SUBJECT: 072467PD

As previously indicated, the only item germane to me was #6, Civil Rights Policy, which is being reviewed by the special working group chaired by Harper.

DOCUMENT NO. 072467 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 7/2/82 ACTION/CONCURRENCE/COMMENT DUE BY: 7/6/82

SUBJECT: Issues for Discussion with the President

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	X	☐	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	X	☐	GRAY	☐	☐
BRADLEY	X	☐	HOPKINS	☐	☐
CARLESON	X	☐	OTHER		
FAIRBANKS	☐	☐	______	☐	☐
FERRARA	☐	☐	______	☐	☐
GUNN	X	☐	______	☐	☐
B. LEONARD	☐	☐	______	☐	☐
MALOLEY	☐	☐	______	☐	☐
SMITH	☐	☐	______	☐	☐
/UHLMANN	X	☐	______	☐	☐
ADMINISTRATION	☐	☐	______	☐	☐

Remarks:

Attached is the rush request from 6/15/82. Would you please review the list from Craig Fuller. Responses were not received from everyone. If you did send in a response when this was requested on 6/16, please send over a copy with a cover memo.

Thanks.

Please return this tracking sheet with your response.

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

'Kusn

DOCUMENT NO. 072467 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 6/15/82 ACTION/CONCURRENCE/COMMENT DUE BY: 6/16/82

SUBJECT: Issues for Discussion with the President

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	X	☐	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	X	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	X	☐	OTHER		
FAIRBANKS	☐	☐	____________	☐	☐
FERRARA	☐	☐	____________	☐	☐
GUNN	X	☐	____________	☐	☐
B. LEONARD	☐	☐	____________	☐	☐
MALOLEY	☐	☐	____________	☐	☐
SMITH	☐	☐	____________	☐	☐
UHLMANN	X	☐	____________	☐	☐
ADMINISTRATION	☐	☐	____________	☐	☐

Remarks:

Associate Directors:

Please give me an immediate update on the status of the issues in your area which are contained in the attached list from Craig Fuller.

Let Emily Rock know ASAP which topics can be ready for submission in writing to Craig Fuller on Wednesday. What other topics are ready for Presidential discussion which should be added to the list?

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

Please return this tracking sheet with your response.

THE WHITE HOUSE

WASHINGTON

OFFICE OF
POLICY DEVELOPMENT

1982 JUN 15 A 7:22

June 14, 1982

MEMORANDUM FOR EDWIN HARPER

FROM: Craig L. Fuller

SUBJECT: Issues for Discussion with the President

Items which are to be discussed with the President are as follows:

		Working Group Paper Completed	Decision Memo Completed	Paperwork Received by OCA
1.	Cigarette labelling	----	No	No
2.	Urban Policy Statement	No	----	No
3.	Mandatory Retirement	?	?	No
4.	Troubled industries	No	----	No
5.	Gold Commission Report	Yes	----	No
6.	Civil Rights Policy	No	----	No
7.	Federal Plan for Assistance to Black Colleges	No	----	No
8.	Long Term Soviet Grain Agreement	----	No	No
9.	Product Liability	6/23	----	No

As you can see, none of these issues are ready for the Cabinet yet. We are tentatively planning for the Urban Policy Statement to be discussed Friday, June 18.

Any other items which you know are ready for Presidential discussion should be added to this list and any paperwork on the above mentioned subjects which you can have prepared by Wednesday will permit us to schedule additional items for Friday and for next week.

cc: Edwin Meese III

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 6, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Monthly Activities for June

Major Activities Completed

- After numerous negotiating sessions with Administration and outside parties, completed tuition tax credit bill and supporting materials. Transmitted to Congress. Successful negotiations with Hill sponsors.
- Participated in various IG and SIG meetings on Law of the Sea, preparatory to NSC meeting on June 28. Prepared briefing papers for Meese/Harper.
- Preparation of materials for CCLP meeting on immigration legislation and municipal antitrust liability.
- Prepared comprehensive briefing book on Women's Issues.
- Resolved dispute over Administration position on Ancient Indian Land Claims. Assisted in preparation of Hill testimony.
- Participated in various meetings leading to final draft report on Emergency Mobilization.
- Prepared papers for and presented options to CCCT meeting on TRIS legislation.

Ongoing

- Heading CCHR Working Group on Indian Policy Statement (Barr).
- Working Group established on women's pension equity.

Upcoming

- Will be working intensively on outlines for an alternative regime in lieu of the LOS Treaty.
- Will need to finalize Administration position on McClure-Volkmer bill (gun control deregulation) this month.
- Review of options on product liability legislation for CCCT meeting week of July 12.
- May need updated Administration position on abortion legislation this month.

OPD STAFFING AND TRACKING MEMORANDA

DATE	SUBJECT	DUE DATE	DOCUMENT NO.
6/16	CBS News Poll Women	6/21	Ø72481
6/7	Columbus Commission	6/17	Ø72355 Ø76746
6/16	Welfare Women - Job Search Program	7/2	Ø7249Ø
6/18	CAB Decision Polskie Linie Lotnicze	6/24	Ø6539Ø
6/15	Clearance for EMPB members	open	Ø7251Ø
6/23	ERA - Women's Issues Update for Meese, Baker, Dole, Cicconi, Tutweiler, Gergen, Bistany Analysis of Brad's analysis	Thursday?	
6/23	Municipal Antitrust Liability	6/28	Ø72556
6/23	Women's Issues Gergen's paper	6/28	Ø72612

THE WHITE HOUSE

WASHINGTON

July 7, 1982

Dear Mr. Bolger:

Enclosed is a copy of a letter our office received from Mr. Keith Kahle regarding problems he has encountered with the Postal Service.

I have notified Mr. Kahle that I would forward his letter to you and ask that you respond directly to him.

If your office could answer Mr. Kahle's questions, I would be interested in receiving a copy of your response.

Thank you for your cooperation.

Sincerely,

WPBarr

William P. Barr
Deputy Assistant Director
for Legal Policy

Hon. William F. Bolger
Postmaster General
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

4500 ranch view road, fort worth, texas 76109 817/924-8754

KEITH KAHLE

OFFICE OF
POLICY DEVELOPMENT

1982 APR 10 P 5:16

April 5, 1982

Assistant to the President
for Policy Development
White House Office of
Policy Development
White House
1600 Pennsylvania Avenue
Washington, DC 20500

Attention: Mr. Martin Anderson

Dear Sir:

I would appreciate information on White House policy as related to public service, budget requests and future anticipated funding.

A number of years ago when postage rates were substantially increased, the federal government assured the Congress and the public "--that all mail moving over 500 miles would go by air where US certificated, schedule airline service was available." This no longer exists other than on a very, very limited basis, even between the major cities of our nation. Of course, the medium-size to small-size communities simply are handcuffed with extremely poor mail service.

In addition, the schedule airlines of the nation as an industry, as you and your staff are, no doubt, aware, are suffering financial hardships that are worsening each week. You can take a particular market; for example, from Washington, DC to the Dallas/Fort Worth metroplex area and find there are many flights a day to those areas by US certificated, schedule airlines. Very, very seldom does a flight leave either end of the line going to the other filled to capacity with mail.

Actually, it takes from five to seven days to get a regular letter from Washington, DC to the Dallas/Fort Worth area or from the Dallas/Fort Worth area to Washington. This, of course, is completely unacceptable. In addition to this same situation, the medium-size to small-size communities of our nation are handicapped with worse mail service than that between big cities. I would appreciate knowing, "What's your policy?" What is the policy today, for 1983 and for 1984 in regard to solving this problem where service is available by the trunk, regional, or commuter airlines?

I look forward to your reply.

Sincerely,

Keith Kahle psw

Keith Kahle

"Have A Sunshine Day"

EEOC

I. Basic Objectives:

1. Reduce discrimination; increase equal employment opportunity.

2. Enforce age discrimination in Employment Act of 1967.

3. Enforce Title VII of Civil Rights Act of 1961.

4. Enforce Equal Pay Act of 1963.

5. Enforce Section 501 of Rehabilitation Act of 1963 (Federal sector only).

II. Major Achievements:

1. Provided effective remedial relief:

-- 61,785 Title VII charges resolved in 1981.

-- 9,905 age and equal pay complaints resolved in 1981.

III. Key Issues:

1. Affirmative Action Policy Statement. (9,9)

2. Improve Management of EEOC. (7,7)

IV. Resource Review:

Year	1981	1982	1983
Budget Authority	.141	.139	.145
Outlays	.134	.143	.142

COMMISSION ON CIVIL RIGHTS

I. Basic Objectives:

1. Examination and monitoring of civil rights issues.
2. Investigate and report on denials of civil rights.
3. Collect and disseminate information concerning civil rights.
4. Monitor Federal agencies for discrimination.

II. Major Achievements:

1. 7 studies completed; 10 in process
2. 2,690 complaints processed
3. 800,000 copies of publications distributed

III. Key Issues:

The CRC, as an independent advisory commission, is not subject to direction by the Executive Branch.

IV. Resource Review:

Year	1981	1982	1983
		(in thousands)	
BA	12,153	12,318	11,626
O	12,137	11,900	11,700

GENERAL GOVERNMENT FUNCTION -- DEREGULATION

I. Basic Objectives:

1. Overall: (a) promote consumer welfare; (b) increase productivity; (c) enhance competition.

2. Permit new regulations only where
   a) market forces or state regulation is inadequate
   b) there is substantial evidentiary support for need for regulation
   c) benefits outweigh the costs

3. Review existing regulations for revision or examination pursuant to above criteria.

4. Monitor top priority legislative deregulatory initiatives --
   a) Clean Air and Clean Water
   b) Regulatory Reform Legislation
   c) Communications
   d) Financial Services
   e) Natural Gas

II. Major Achievements:

1. Adoption and implementation of executive order that requires White House review and cost-benefit analysis and that has withstood court challenge.

2. Reduction of new regulations, as evidenced by drop in number of proposed rules, 1/3 reduction in paper in Federal Register and more than 50% reduction in agency appeal caseload at D.C. Circuit.

3. Identification of 111 major existing regulatory programs for review, with only 36% completed so far but with numerous major completions scheduled for this summer (the savings to date run into the billions in both annual and capital costs).

4. Regulatory reform legislation (essentially codifying Executive Order) has passed the Senate, is awaiting floor action in House, where chances that Speaker will let it go to a vote are better than 50/50. Clean Air Act amendments are very uncertain but still possible.

III. Key Issues:

1. Perception that program has aborted. (5,9)

2. Completion of 111 targeted reviews and legislative

initiatives:

a) Clean Air and Clean Water
b) Communications
c) Financial Services
   -- banking
   -- securities
   -- insurance
   -- S & L's
d) Natural Gas
e) Civil Rights Enforcement
f) Food Safety (9,9)

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 8, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Resale Price Maintenance
(Reference #085039)

Background

The Sherman Act prohibits agreements that unreasonably restrain trade.

To determine whether an agreement constitutes an unreasonable restraint, the courts have divided agreements into two classes:

1. Agreements that are illegal per se. Certain types of agreements -- those which the courts believe almost always result in substantial restraint, without any redeeming pro-competitive benefits -- are treated as "illegal per se". If an agreement is found to be one of these types (e.g., horizontal price-fixing agreement among competitors), it is automatically condemned. The court will not permit any inquiry into purpose or effect of such a restraint in a given case.

2. Agreements subject to the Rule of Reason. The legality of other types of agreements is determined on a case-by-case basis by application of a Rule of Reason under which the court assesses whether the restraint will promote or suppress competition. The extent to which the parties' objectives can be achieved by a less anti-competitive arrangement may be considered.

Most "horizontal" agreements among competing firms are treated as per se illegal. (E.g. price fixing, division of markets, group boycotts.)

No single rule governs "vertical" agreements between firms at different levels of production and distribution. Some are condemned as per se illegal (e.g. tying arrangements). Others are subjected to full-scale Rule of Reason analysis. (E.g. exclusive dealing or requirements contracts).

Resale Price Maintenance (RPM) is a vertical restraint by which a seller (e.g., a manufacturer) sets either a maximum or minimum price at which his buyer (e.g., a wholesaler) can resell the product. In 1911 the Supreme Court held RPM agreements *per se* illegal, and this is still the law.

Recent Trends

Over the past 30 years or so, there has been intense debate among antitrust experts as to whether it is appropriate to apply the draconian *per se* rule to vertical restraints. A school of "consumer-welfare economics" has arisen, which seeks to bring greater economic rationality to antitrust laws. Proponents of this school have argued that vertical restraints generally enhance efficiency, are rarely anti-competitive, and indeed may foster interbrand competition. They have urged the Supreme Court to abandon the inflexible *per se* approach with regard to vertical restraints and to assess the legality of such restraints on a case-by-case basis under the Rule of Reason.

In the last few years, proponents of this viewpoint have become ascendant in the antitrust community. There are signs that the Supreme Court may be responding. Recently, it applied a Rule of Reason approach in assessing the legality of a territorial restriction on a dealer -- a vertical restraint that had previously been subject to the *per se* rule.

Leading spokesmen for "consumer welfare economics" include Bill Baxter, Jim Miller, Bob Bork (recently appointed by the President to the D.C. Circuit), and Richard Posner (recently appointed by the President to the 7th Circuit), all of whom have helped to shape the Administration's antitrust policy.

The Statements that Precipitated the Correspondence to You

Over the past year, Baxter and Jim Miller have made statements and given speeches attacking application of the *per se* rule to vertical restraints. In the past few months, Baxter has stated that under many circumstances RPM agreements are justified and that the Antitrust Division is looking for an appropriate case in which to intervene as an *amicus* to urge the Supreme Court to reverse the longstanding presumption against RPM agreements.

Enforcement of Existing Law

Until the Supreme Court revisits the issue, the current law clearly is that RPM agreements are illegal *per se*.

The fact that Baxter has recently made remarks in defense of RPM agreements will probably not lead businessmen to adopt such practices to any significant extent. The Department of Justice has historically not been active in challenging vertical restraints. Enforcement has been done mainly by the FTC and private enforcement actions. These checks will continue.

Although Chairman Miller agrees with Baxter, the FTC is still challenging vertical restraints. Indeed, just yesterday the FTC struck down an RPM agreement adopted by Russell Stover Candies, Inc. The vote was 3-1 (with Miller dissenting).

Further Background on RPM

Attached is an excellent and brief discussion by Professor Ernest Gellhorn of RPM agreements and the antitrust issues they raise.

Possible Courses of Action

1. Do nothing; permit Baxter to proceed as planned. (I do not know of anyone within the Administration who disagrees with Baxter's view that the Supreme Court should reexamine the applicability of the *per se* rule to RPM agreements.)

2. Ask Baxter to prepare a report for CCLP explaining his position.

3. Set up CCLP working group. This should only be done *after* #2.

In any event, we can certainly meet with the AGMC people.

between buyer and seller rather than by a seller offering his products at lower prices. Many of the boycott cases already examined, therefore, fall within this category.

A. RESTRICTIONS ON DISTRIBUTION

1. RESALE PRICE MAINTENANCE (RPM)

Among the earliest cases of vertical restraint heard by antitrust courts were those involving efforts by manufacturers to set the prices below which retailers could not subsequently resell their products. In the still leading case of Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U.S. 373 (1911) a manufacturer of a proprietary medicine (produced according to a secret, but unpatented, formula) sued a wholesaler on the grounds that the latter obtained the plaintiff's medicine at cut prices by inducing others to breach their price agreements with Dr. Miles. In turning aside the manufacturer's effort to enjoin breaches of his established resale prices, the Court ruled that a manufacturer who sells his medicine to a wholesaler is not entitled to restrict its resale through intereference with the purchaser's pricing decisions. Relying on the common law's hostility towards equitable servitudes on chattels,

the Court noted that "a general restraint upon alienation is ordinarily invalid" and where its purpose is to destroy competition by fixing prices the restraint is "injurious to the public interest and void." While this analysis of the common law's protection of the alienation of property can be challenged.[2] the importance of the case from an antitrust viewpoint lies in its formalistic reliance on property law doctrines in deciding whether a vertical restraint violates the Sherman Act. The Court seemingly ignored the economic purpose of the arrangement and its effect on consumer welfare, except indirectly in its assertion that once a product has been sold (and title passed) "the public is entitled to whatever advantage may be derived from competition in the subsequent traffic." Other cases applied an identical rule to forbid resale price maintenance of patented or copyrighted items.

2. The resale price requirement does not in fact prevent alienation in that it merely limits pricing opportunities, not resale. Moreover, equivalent common law protections are still available to limit the purchaser's "freedom"—namely, the purchaser cannot disparage the goods and he is also liable to his customers for any defects even though the latter were the result of defective design or manufacture. Finally, even under the common law the legality of a trade restraint usually depended upon its reasonableness (see p. 6 supra), and the Court in *Dr. Miles* made no effort to assess the interests promoted by resale price maintenance or its effects.

The soundness of this rule, which automatically condemns RPM agreements as a matter of policy, seems debatable. (And despite the established character of this rule, it is still worth discussing since it is the foundation of other antitrust issues involving vertical transactions, many of which are still open questions.)

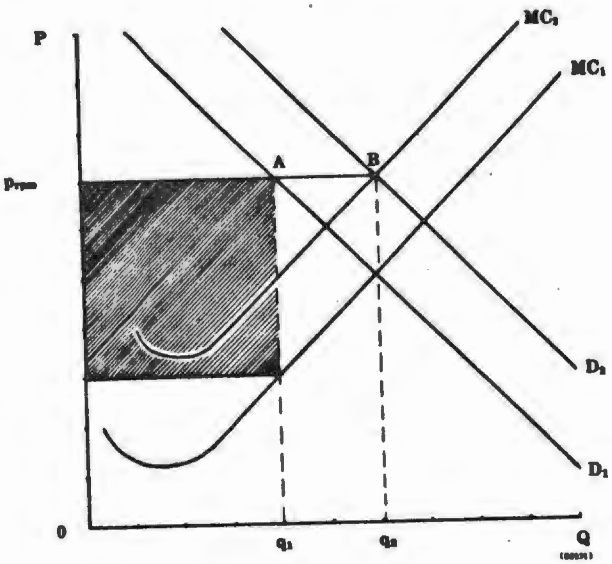
Resale price maintenance agreements between a manufacturer and his dealers may serve several functions. Most antitrust decisions have focused on their likely harm. For example, retailers may have formed a cartel fixing the prices at which they would sell the product and (because of the legal difficulty of enforcing that agreement) have pressured the manufacturer to enforce it for them. Or RPM may have been imposed by the manufacturer on his dealers in order to assure adherence to a price-fixing conspiracy (or tacit oligopolistic collusion) among the manufacturers; with industry-wide RPM, a manufacturer seeking to cheat on the cartel would gain no advantage through shading prices to his dealers since increased sales would not result.

If these represented the only reasons for a manufacturer to participate in an RPM agreement, the result (although not the reasoning) in *Dr. Miles* would be unassailable. On the face of it, in fact, it seems questionable that RPM agree-

ments could benefit the manufacturer since the effect of setting a *minimum* resale price above the competitive level is to place a floor on retail prices, while setting the resale price below the competitive price would render the RPM agreement superfluous. Recalling our earlier analysis that when price goes up demand is necessarily reduced (see pp. 59–60 and Figure 1, p. 54, supra), the impact of RPM seemingly is to reduce a manufacturer's sales and correspondingly his profits, for without the RPM price retailers would sell more at a lower retail price—but pay the same wholesale price.

There are, however, other possible reasons for a manufacturer to seek an RPM arrangement with his dealers. It may be to a manufacturer's advantage that the retailers provide effective service to their customers (e. g., color television) or that the product be better promoted throughout a sales area in order to attract impulse buyers (e. g., cosmetics and other drug store items). Through creation of an effective minimum retail price, dealers are induced to compete on a nonprice basis—that is, competition among retailers will bring additional rivalry in service (repairs, returns, credit) and promotion (advertising). Such nonprice competition would increase each seller's costs until, in a competitive retail market, the dealers' marginal cost equalled the RPM price. Figure 19 illustrates this effect:

FIGURE 19: RIVALRY AMONG DEALERS UNDER RPM



To explain. Initially, the RPM price (P_{rpm}) will intersect with the demand curve (D_1) and clear the market at a level (Point A) substantially above the retailer's marginal cost (MC_1); resulting in consumers demanding the limited quantity (q_1) with the retailer's supracompetitive return equalling the diagonally shaded area. But such supranormal returns would quickly dissipate under the pressure of nonprice competition. A new and larger demand (D_2) would occur because increased service and promotion would make the product more valuable to an expanded group. Marginal cost would increase (MC_2) as dealers competed with each other by service and promotion, and the new equilibrium (Point B) would eliminate the "excess" profits as output increased (to q_2).

Whether RPM agreements are desirable even from an efficiency viewpoint is debatable, of course. Lack of competition among retailers may protect supranormal returns for the dealers until "corrected" by new entrants. In any case, customers are denied the option of buying the product at a lower price through foregoing service or advertising. Still, manufacturers are usually permitted to select the price and service levels at which their products are sold. Presumably, if consumers really desired the options of lower-priced non-serviced goods, there would be new entrants to satisfy this demand. And since a manufacturer is free to integrate vertically forward and to impose similar conditions on sales in his own outlets, it seems futile to prevent the same result through a less restrictive means of contract. Allowing manufacturers the choice of establishing RPM systems may (but not necessarily will) enhance the efficiency of their operations, with lower total costs and increased output. That is to say, efficiencies of service may result and problems from free riders (e. g., from appliance sales by discount stores with the product returned for warranty service to established department stores) may be avoided by adoption of RPM pricing. One final distinction worth noting is that vertical restraints such as RPM at most limit *intra*brand competition. In general, *inter*brand competition—the focus of horizontal price-fixing—is unaffected.

All this does not mean that the result in *Dr. Miles*, and later cases condemning resale price maintenance, is always or generally erroneous. It does suggest, however, that unless substantial evidence demonstrates that RPM is likely to result in restricted output, higher prices, or oligopoly coordination, the antitrust legality of RPM should be measured by the rule of reason, on a case-by-case basis. And few convincing studies showing the effect of RPM exist. Despite the per se condemnation of RPM by the Supreme Court in *Dr. Miles*, such pricing was permitted in several states which adopted "fair trade" laws under an exception authorized by Congress (but which Congress has recently repealed).

This generally rigid rule against vertical price-fixing was extended from minimum to maximum prices in Albrecht v. Herald Co., 390 U.S. 145 (1968).[3] Again, analysis suggests that such vertical price-fixing may enhance distributional efficiency and increase interbrand competition. But the Court's reluctance to approve any form of price-fixing and its concern over the possibility of larger manufacturers using maximum price agreements to coerce smaller dealers led it to condemn the arrangement. However, it is unclear from the various opinions whether a per se or a narrowly construed rule of reason approach is being followed.

3. The defendant newspaper violated Section 1 of the Sherman Act by refusing to sell to the plaintiff-distributor when the latter resold the papers to customers at more than the suggested retail price.

2. CONSIGNMENTS AND DISTRIBUTION THROUGH AGENTS

Dr. Miles applied the rule against price-fixing to sales by a manufacturer to a dealer on the grounds that the resale price restraint denied the retailer-purchaser his common law "right" to resell (i. e., alienate) his property. Under this analysis, the critical points were apparently that the purchaser was a separate legal and economic entity and that he had purchased and taken title to the product.

The question then arose as to whether this vertical rule against price-fixing applied where the retailer was the manufacturer's agent and, instead of taking title to the products received them on consignment. Could the manufacturer then set the resale price? In United States v.

DOCUMENT NO. 085039 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 7/6/82 ACTION/CONCURRENCE/COMMENT DUE BY: 7/8/82

SUBJECT: Resale Price Maintenance

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
BARR	☐	☐	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:

Please get back to me with back and suggested cause of actions by C.O.B. 7/8/82

Please return this tracking sheet with your response.

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

THE WHITE HOUSE
WASHINGTON

Date/# 7/5

TO: R. Porter
D. Boggs
R. Carleson
~~D. Kass~~
M. Uhlmann

FROM: Edwin L. Harper

ACTION: X FYI: ☐

Comment: ______

Background: ______

Draft response for: ______

For your handling: ______

File: ______

Set up meeting: ______

With: ______

REMARKS: Pls get back to me w back + suggested course of action by c.o.b. 7/8

Due Date: ______

Action Completed: ______

Agmc ASSOCIATION OF GENERAL MERCHANDISE CHAINS, INC.
1625 EYE STREET, N.W., WASHINGTON, D.C. 20006 (202) 785-2060

July 2, 1982

Edwin L. Harper
Assistant to the President
for Policy Development
The White House Office
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Harper:

On behalf of the nation's price-competitive retail companies, let me urgently request a meeting to discuss the alarm in our industry over attacks being made by some antitrust officials on legal safeguards for retail price competition.

The Association of General Merchandise Chains represents 125 retail companies operating more than 20,000 discount, variety, dollar and family center stores. Our members range in size and include not only many of the nation's largest retail chains, but also companies active in one or more regions of the country or in a few localities. AGMC member company stores are found in every state of the nation and last year accounted for over $34 billion in sales.

AGMC and other trade associations and companies making up the price-competitive retail industry, such as catalog showroom and general merchandise and specialty discount retailers, are alarmed by the attacks that officials in the Antitrust Division and Federal Trade Commission have launched on the long-established legal principle which treats resale price maintenance as a per se violation of Federal antitrust laws.

We view such a policy shift as a direct threat to the continued existence of our industry, which annually accounts for in excess of $70 billion in sales and is a key element in the nation's distribution system. It would not only severely damage our industry, but also inflict grave harm on the national economy by exacerbating inflation and placing small business at a particular disadvantage.

Representatives of our industry have met with Assistant Attorney General Baxter and with officials in the Bureaus of Competition and Economics at the Federal Trade Commission. Far from allaying our concerns, those meetings have served only to increase our strong conviction that Federal antitrust officials are pursuing a misguided course that would gravely harm our industry.

It is for that reason that we urgently request a meeting with you and other top Administration policymakers in this area.

For background, I am enclosing a copy of an earlier letter and a position paper outlining the serious nature of this problem. I look forward to hearing from you. Please let me know if we can furnish you with any additional information on this problem of paramount importance to our industry.

Sincerely,

Edward T. Borda

Edward T. Borda
President

Enclosures

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 8, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Resale Price Maintenance
(Reference #085039)

Background

The Sherman Act prohibits agreements that unreasonably restrain trade.

To determine whether an agreement constitutes an unreasonable restraint, the courts have divided agreements into two classes:

1. Agreements that are illegal per se. Certain types of agreements -- those which the courts believe almost always result in substantial restraint, without any redeeming pro-competitive benefits -- are treated as "illegal per se". If an agreement is found to be one of these types (e.g., horizontal price-fixing agreement among competitors), it is automatically condemned. The court will not permit any inquiry into purpose or effect of such a restraint in a given case.

2. Agreements subject to the Rule of Reason. The legality of other types of agreements is determined on a case-by-case basis by application of a Rule of Reason under which the court assesses whether the restraint will promote or suppress competition. The extent to which the parties' objectives can be achieved by a less anti-competitive arrangement may be considered.

Most "horizontal" agreements among competing firms are treated as per se illegal. (E.g. price fixing, division of markets, group boycotts.)

No single rule governs "vertical" agreements between firms at different levels of production and distribution. Some are condemned as per se illegal (e.g. tying arrangements). Others are subjected to full-scale Rule of Reason analysis. (E.g. exclusive dealing or requirements contracts).

Resale Price Maintenance (RPM) is a vertical restraint by which a seller (e.g., a manufacturer) sets either a maximum or minimum price at which his buyer (e.g., a wholesaler) can resell the product. In 1911 the Supreme Court held RPM agreements *per se* illegal, and this is still the law.

Recent Trends

Over the past 30 years or so, there has been intense debate among antitrust experts as to whether it is appropriate to apply the draconian *per se* rule to vertical restraints. A school of "consumer-welfare economics" has arisen, which seeks to bring greater economic rationality to antitrust laws. Proponents of this school have argued that vertical restraints generally enhance efficiency, are rarely anti-competitive, and indeed may foster interbrand competition. They have urged the Supreme Court to abandon the inflexible *per se* approach with regard to vertical restraints and to assess the legality of such restraints on a case-by-case basis under the Rule of Reason.

In the last few years, proponents of this viewpoint have become ascendant in the antitrust community. There are signs that the Supreme Court may be responding. Recently, it applied a Rule of Reason approach in assessing the legality of a territorial restriction on a dealer -- a vertical restraint that had previously been subject to the *per se* rule.

Leading spokesmen for "consumer welfare economics" include Bill Baxter, Jim Miller, Bob Bork (recently appointed by the President to the D.C. Circuit), and Richard Posner (recently appointed by the President to the 7th Circuit), all of whom have helped to shape the Administration's antitrust policy.

The Statements that Precipitated the Correspondence to You

Over the past year, Baxter and Jim Miller have made statements and given speeches attacking application of the *per se* rule to vertical restraints. In the past few months, Baxter has stated that under many circumstances RPM agreements are justified and that the Antitrust Division is looking for an appropriate case in which to intervene as an *amicus* to urge the Supreme Court to reverse the longstanding presumption against RPM agreements.

Enforcement of Existing Law

Until the Supreme Court revisits the issue, the current law clearly is that RPM agreements are illegal *per se*.

The fact that Baxter has recently made remarks in defense of RPM agreements will probably not lead businessmen to adopt such practices to any significant extent. The Department of Justice has historically not been active in challenging vertical restraints. Enforcement has been done mainly by the FTC and private enforcement actions. These checks will continue.

Although Chairman Miller agrees with Baxter, the FTC is still challenging vertical restraints. Indeed, just yesterday the FTC struck down an RPM agreement adopted by Russell Stover Candies, Inc. The vote was 3-1 (with Miller dissenting).

Further Background on RPM

Attached is an excellent and brief discussion by Professor Ernest Gellhorn of RPM agreements and the antitrust issues they raise.

Possible Courses of Action

1. Do nothing; permit Baxter to proceed as planned. (I do not know of anyone within the Administration who disagrees with Baxter's view that the Supreme Court should reexamine the applicability of the per se rule to RPM agreements.)

2. Ask Baxter to prepare a report for CCLP explaining his position.

3. Set up CCLP working group. This should only be done after #2.

In any event, we can certainly meet with the AGMC people.

THE WHITE HOUSE
WASHINGTON

July 9, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Women's Issue Initiative -- Federal law requiring equal pay for equal work (Reference No. 072699)

As you requested, I have amended the July 1 memorandum on equal pay for equal work to include comments on the TIME magazine article.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 1, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Women's Issue Initiative -- Federal law requiring equal pay for equal work (Reference No. 072699)

Existing Federal statutes already ensure equal pay for equal work. We need further guidance on what kind of additional statute the senior staff has in mind. (Attached is a copy of the directions we have received so far.)

I. Equal Pay For Equal Work

Wage discrimination occurs when one class of people is paid less than another class for doing substantially the same job; for example, male and female machine assemblers (or truck drivers, secretaries, elementary school teachers, etc.) working side by side, doing jobs that are essentially indistinguishable from one another, producing similar results.

There are already two Federal statutes that prohibit such discrimination and require "equal pay for equal work":

1. Equal Pay Act of 1963: This statute provides in pertinent part:

> No employer . . . shall discriminate . . . on the basis of sex by paying wages to employees . . . for equal work on jobs the performance of which requires equal skill, effort and responsibility, and are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system, (ii) a merit system, (iii) a system which measures earnings by quantity or quality of production, or (iv) a differential based on any factor other than sex . . . .

While requiring equal pay for "equal" work, court decisions have established that the word "equal" does not mean "identical". The test is rather one of substantial equality. Jobs are deemed equal if the job duties are "closely related" or "very much alike" and are substantially equal in terms of skill, effort and responsibility, and are performed under similar working conditions.

In a comparison of jobs that are substantially equal, job titles, job classifications, and job evaluations are not controlling. Application of the equal-pay mandate depends on the job requirements and actual duties performed. Thus, courts have found, for example, the work of male janitors and female maids "substantially equal".

Individual employees who believe they have been discriminated against are authorized to bring suit for underpaid wages and overtime compensation plus additional "liquidated damages". The Secretary of Labor can also sue.

2. Title VII of the Civil Rights Act of 1964: This statute states in pertinent part:

> . . . it shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The act thus prohibits sex discrimination in all employment practices, including hiring, firing, promotion, compensation, and other terms, privileges, and conditions of employment. The act covers all private employers of 15 or more persons; labor unions with 15 or more members; all educational institutions; federal, state, and local governments; employment agencies; and joint labor-management committees that provide apprenticeship or training. Complaints can be filed by individuals who believe they have been discriminated against or can be initiated by the EEOC.

II. The "Comparable Worth" Debate

The principle of "equal pay for equal work" is adequately secured by existing federal statutes. This is really not the major issue.

The real controversy in the wage discrimination area arises from a new concept being pushed by some feminist groups, the ACLU and other liberal organizations -- the "comparable worth" doctrine. This doctrine would go far beyond requiring equal pay for functionally equal work; it would mandate equal pay for work which is determined by the government to be of "comparable value".

Proponents of this concept argue that the reason women earn 57% of the wages earned by men is that much of the female work force is concentrated in the lower pay levels of a few occupational groups, such as clerical workers, and that the wages for these entire job categories have been artificially depressed because the jobs were held by women. It is argued that the government should require that the wages of these occupational groups be increased to the level of groups which perform work of "comparable value to the employer". Under this doctrine, there would be no requirement that jobs be similar. Equal pay would be mandated where the jobs had "comparable value". "Value" would not be determined by the market.

Thus, for example, under the doctrine of comparable worth, secretaries would seek the same wages as accountants, nurses the same wages as interns, etc.

The Equal Pay Act is clearly limited to jobs which are substantially equal and therefore activists are focusing their efforts on Title VII to gain judicial acceptance of the "comparable worth" doctrine. Recently, in a Title VII case, the Supreme Court left open the possibility that the statute could be construed as embodying the "comparable worth" doctrine. Activists are now engaged in a carefully planned litigation strategy to lead the courts step-by-step down that road.

III. Need for Further Guidance

Given the state of existing law, what kind of Federal statute does the senior staff have in mind?

It seems clear to me (1) that existing Federal law adequately secures the concept of equal pay for equal work; and (2) that the doctrine of comparable worth is totally antithetical to our market system and to our political philosophy. At bottom, it is predicated on the Marxist "labor theory of value". Its implementation would involve the government dictating the wage levels for all categories of workers based on a non-market (and essentially political) determination of their "value" and would upset all bargained-for labor agreements.

IV. Comments on TIME July 12 Article

The July 12 issue of TIME magazine features a cover story entitled "How Long Till Equality?". Citing pay disparities between men and women, the article implies that existing federal equal pay law is either ineffective or is not enforced.

I asked Mike Connolly, EEOC general counsel, to comment on the article. With a one-day turnaround time, he provided me with the attached response. Parts III-V are the most pertinent.

It is clear, in my view, that the article's implication is false. Current pay disparities do not mean the existing equal pay law is ineffective. The essential points are these:

1. Over the past decade there has been, as the result of a number of socio-economic factors, a massive influx of women into the work force. The average educational, skill, and experience levels of these new women workers is significantly lower than those of average male workers. Consequently, a disproportionate number of women workers have concentrated in lower paying job categories.

2. It is true that even within job categories there are pay disparities between men and women. Page 23 of the article, for example, indicates that the median for women "computer specialists" is $355/week, whereas for men "computer specialists" it is $488/week; and that the median for women elementary school teachers is $311/week, whereas for men it is $379/week.

These figures, however, are quite misleading and do not reflect any substantial sex-based pay discrimination. First, many of the job classifications listed at page 12 are over-inclusive and are not limited to jobs which are functionally similar. For example, "computer specialists" would include jobs ranging from "operators", to "programmers", to "software system designers", etc. These jobs are quite different in nature and require different skill, education, and experience levels. Much of the pay disparity within the broad "computer specialist" category merely reflects the fact that, at present, there are proportionately more women in the lower-skilled occupations within this industry.

Moreover, even within job categories that are appropriately defined to include jobs which are substantially the same -- e.g., elementary school teachers, lawyers, etc. -- pay disparities do not necessarily reflect sex discrimination. These disparities are due largely to such factors as seniority, unionization, absenteeism, availability for overtime, etc. (Within the past few years, roughly two-thirds of new workers entering the work force have been women. One would expect, therefore, that the median for women would be significantly skewed downward based on the seniority factor alone.)

Other more subtle factors contribute to pay disparities. For example, a small percentage of elementary school teachers are male. These male teachers, however, because they are more likely to be deemed within their families as the principal "breadwinner", are more willing and able to migrate to school districts that pay more. Thus, male elementary school teachers may be overrepresented in higher paying school districts, like Montgomery County, Maryland, and this would mean that the median for male teachers would be somewhat higher than females.

3. Nonetheless, even after all these non-discriminatory factors are accounted for, some of the pay disparity within job categories (probably a very small part) is attributable to a

residuum of sex discrimination. The fact is, however, that the Equal Pay Act and Title VII provide effective remedies to any such discrimination. These statutes are being vigorously enforced by this Administration. More importantly, these statutes provide private rights of action. Anyone discriminated against can enforce these laws themselves. One would be hardpressed to think of anything that could be added to these statutes that would make them any more effective in ensuring equal pay for equal work.

DOCUMENT NO. 072699 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 7/6/82 ACTION/CONCURRENCE/COMMENT DUE BY: 7/8/82

SUBJECT: Equal Pay/Equal Work for Women

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

Remarks:

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

Please return this tracking sheet with your response.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 6, 1982

MEMORANDUM FOR MICHAEL UHLMANN

FROM: for EDWIN L. HARPER by E. Ruh

RE: Women's Issues
Equal Pay for Equal Work

Please ammend your July 1 paper to include comments on the attached article from TIME.

The gist seems to be that the law is on the books but not enforced in the market place.