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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. Letter	Donald Regan to President Re: Apple Computer Bill, 2p (1-p letter + 1-p summary)	9/20/82	P5 NLS 10/18/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]
- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

Freedom of Information Act - [5 U.S.C. 552(b)]
- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statue [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

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L Fuller memo

THE WHITE HOUSE

WASHINGTON

May 6, 1983

MEMORANDUM FOR EDWIN MEESE III
DAVID A. STOCKMAN
JAMES A. BAKER, III
RICHARD G. DARMAN
EDWIN I. HARPER
RICH WILLIAMSON
EDWARD C. SCHMULTS
JOHN KNAPP
SHERMAN UNGER
JOSEPH WRIGHT
WENDELL GUNN
MIKE UHLMANN
WILLIAM NISKANEN

FROM: CRAIG L. FULLER CLF

SUBJECT: RESALE PRICE MAINTENANCE MEETING

Attached is background material for the meeting to review the Administration policy concerning resale price maintenance. The meeting will be held Monday, May 9 at 3:00 p.m. in the Roosevelt Room.

JUN 18 1982

Honorable Robert McClory
Ranking Minority Member
Subcommittee on Monopolies
and Commercial Law
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Congressman McClory:

This is in response to your request of June 10, 1982, for a further elaboration of the views of the Antitrust Division on resale price maintenance. The problems posed by the practice of resale price maintenance are exceedingly complex ones. While this may involve repetition of some of the points I have previously made in testimony before the Subcommittee, I fear that I must burden you with a rather lengthy response in order to do justice to those complexities.

The phenomenon of resale price maintenance ("RPM") must be considered both from an economic standpoint and from a legal one. I turn, first, to the economic considerations. It is the view of the Division that the central purpose to be served by the antitrust laws is the preservation of free markets, markets characterized by intense competition, to the end that our national resources may be deployed efficiently so as to yield the largest possible quantity and the richest possible variety of goods and services to our population. In general, this end is best attained by minimizing government interference with business behavior. Business units should be permitted to conduct their affairs in accordance with their own perceptions of their own best interests in rivalry with other businesses in the same industries. Businesses should be permitted, with as few exceptions as possible, to enter and to enforce contracts on terms that are mutually satisfactory to the parties to those contracts.

The antitrust laws do, of course, represent a kind of government interference into that process of free market rivalry and constitute a limited exception to the principle

of freedom of contract. But those laws should be interpreted so that they constitute a limited intrusion: private agreements should be struck down and punished only where there is a sound economic basis for supposing that the private agreements will hinder rather than advance the central objective of efficient resource allocation.

It is well established as a matter of economics--indeed it is virtually a matter of unanimous agreement--that certain types of horizontal agreements have those unwanted effects. Agreements between competitors setting minimum prices for the products they sell, agreements between competitors not to compete with one another in specific markets and other analogous agreements which lessen the intensity of competition between rivals are and should remain the central target of the Division's antitrust policy.

In contrast to agreements of those types, agreements between parties who perform sequential steps in the process of producing and distributing goods and services, agreements that are usually characterized as "vertical" rather than "horizontal," are typically conducive to competition and economic efficiency. The negotiation, execution and enforcement of contracts is an indispensable part of the process of competition. Such contracts, for example a contract between a manufacturer and a distributor, obviously circumscribe the freedom of the parties to the contract to do as they wish from moment to moment. Indeed, the very purpose of contracts is to circumscribe the freedom of the parties to them in accordance with the terms of their own agreements. They cannot be regarded as anticompetitive because they perform their intended function. The policy of the Antitrust Division is to interfere with such vertical contractual arrangements only where there is some persuasive basis for supposing that contracts of particular types reduce output, retard innovation, or otherwise interfere with economic efficiency. It is common ground among substantially all economists that vertical agreements, with only rare exceptions, do not have such consequences. The question then is whether resale price maintenance constitutes an exception to that general proposition and, if so, under what circumstances.

To facilitate our discussion, I will assume that only agreements between manufacturers and distributors are at issue, although what I say, in fact, applies to any two sequential participants in a production-distribution chain.

I start with the obvious proposition that if, in a given industry, there were dozens of manufacturers of a particular product and scores of potential distributors of that product, the freedom of any one manufacturer to enter into a resale price maintenance agreement with his subset of distributors could not possibly be harmful or anticompetitive in any way. If Manufacturer A and Distributor A entered into such an arrangement, and if its only consequence was to maintain an artificially high price for the product of Manufacturer A, then that product would soon be driven from the market by the rivalry of lower price products of other manufacturers distributed by other distributors, and perhaps by Distributor A as well.

In the context of a competitive market then, if resale price maintenance does no more than achieve artificially high prices at the distribution level, it would never be in the interest of either the manufacturer or the distributor to employ the practice. Their endeavor to do so would be a commercial mistake, only one of the many commercial mistakes that firms in a free market are free to make; and they would suffer the penalties imposed on mistakes by the process of competition. No government interference would be necessary to bring about the disappearance of the practice.

If mere elevation of resale price were the purpose of RPM, a manufacturer could achieve that result by raising his own price to the distributor and capture revenues commensurate with that higher price. Under resale price maintenance, he does not do that: he insists on a high retail price but permits the retailer to keep the revenues that derive from that higher price; and at the same time he accepts the consequence that a smaller quantity of his product will be sold because it is to be sold at a higher price. One cannot suppose that manufacturers, to their own detriment in terms of their sales volume, insist on conduct that can only fatten their distributors' profit margins and lessen their own. Plainly, manufacturers who wish to employ resale price maintenance, and who seek out distributors who are willing to enter contracts in which they promise to comply, have some other end in view.

It should be obvious that when Manufacturer A employs RPM he is attempting to create, on the part of those distributors who agree to comply, an incentive to handle his product at the distributor's level differently from the way in which

it would be handled in the absence of such an agreement--in some way which the manufacturer expects will redound to his advantage in his rivalry with other manufacturers. By setting the distributor's price for each unit above his usual costs of distribution, the manufacturer may hope to induce the distributor to incur additional costs: to engage in more intensive local advertising, or to incur the expense of employing more knowledgeable and more highly trained sales personnel who will increase sales volume of the product by explaining more accurately to customers how the product should be used for best results, or to increase consumer satisfaction with the product by providing quicker and more expert post-sale repair and service facilities.

Of course, RPM will not always be effective to induce the distributor to behave in one or another of those ways. Sometimes it will be, and the manufacturer will have achieved his objective. Other times it will fail and it will serve only to elevate retail price; but in these latter cases, the manufacturer's mistake will be punished in the marketplace. Government interference is not needed. The freedom to try something different, to make mistakes and to suffer the failure in the market, is one of the most important aspects of a free market system.

Of course, no particular distributor is required to go along with the manufacturer who wishes to use RPM. A distributor may perceive at the outset, or if not at the outset then still sooner than the manufacturer, that the objective will not be achieved. The distributor is appropriately free to refuse to deal with such a manufacturer. A manufacturer cannot demand that a distributor handle his product in any particular way: he can employ RPM only if there are distributors who are willing to agree to such an arrangement. Conversely, a distributor should not be free, and in our view is not free, to demand that a manufacturer sell his product to the distributor and permit the distributor to resell that product in any way that suits the whim of the distributor from moment to moment. Distribution of a manufacturer's product by a distributor is a consensual matter, a cooperative undertaking, that should proceed on terms concurred in by each of them.

It is our judgment that manufacturers of certain types of products often have legitimate reasons for wishing to control the distribution environment in which those products

are resold. If, for example, a product is technologically complex, its success in the marketplace may well depend upon the availability, at the point of sale, of technically trained sales personnel who are able both to instruct the consumer and to assist him in selecting the model, or the combination of components, that will best suit his individual needs.

There is a variety of business procedures through which a manufacturer might exercise that control. He might open his own distribution outlets, staffed with his own employees, whom he would expect to behave as he instructed; but direct distribution is not feasible for most manufacturers. Alternatively the manufacturer might enter into long and detailed contracts with his distributors, contracts describing exactly how the sales personnel are to be trained and what they are to say to customers; but day-to-day enforcement of such contracts with a large number of distributors would be prohibitively expensive. Or alternatively, the manufacturer might simply attempt to persuade his distributors that such a selling approach promised the best chance of success and profit, both to his distributors and himself, and to encourage them to behave in that way without a contractual commitment on their part.

But a manufacturer with any sense who takes this last course will be aware that the selling practice he desires is more expensive than alternative selling practices, and he will know that the retail price will have to be high enough to cover the costs a distributor incurs in following that practice. A problem will arise if some of his distributors adhere to the expensive distribution mode and others save costs by refusing to do so. The uncooperative, since they will have lower costs, will be able to profit by reducing the retail price below the costs of the cooperative.

But if some distributors are incurring costs by following the agreed sales procedure and are selling at a higher price which cover those costs, while other distributors are not doing so and sell at lower retail prices, then the free rider phenomenon will appear. A substantial number of customers will go to the higher price outlet, will consume the time of sales personnel there to obtain the appropriate counseling, but will then leave without buying and purchase from a low cost outlet instead. It will prove to be impossible for some retailers to afford expensive point of sale services for which it is not practicable to impose a separate

charge if other distributors are not doing so and are selling at prices which reflect the cost savings of not doing so. If the manufacturer is to be successful in controlling the manner in which his product is sold and the quality of point of sale services afforded in conjunction with sale of his product, he must be able to shelter the gross margins of those distributors who are complying with his wishes from the pricing pressure of distributors who are not.

I emphasize that in speaking of a manufacturer protecting his distributors' margins, I am not suggesting that he will enable those distributors to earn more than competitive profits. Protection of their margins is necessary and is afforded because their costs are higher as a consequence of their compliance with their undertaking to market the product as agreed. But it would be inconsistent with the profit-seeking objective of the manufacturer to let his distributors earn profits above the competitive level. Accordingly, he has every incentive to authorize a sufficient number of distributors who will sell the product as agreed so that rivalry between them will eliminate any but competitive profits.

It is true, of course, that RPM is not the only vehicle available to a manufacturer to shelter his distributors' margins to the degree necessary to facilitate provision of point of sale services. He may engage in direct distribution by his own employees, as I previously mentioned. He may create geographic breathing room for his distributors by authorizing each to sell only from a designated location and maintaining adequate spatial separation of those locations, the practice that was upheld in GTE-Sylvania. 1/ He may create exclusive territorial distributorships, a practice that is economically indistinguishable from the practice involved in GTE-Sylvania, or he may use resale price maintenance. One technique will be more successful in some circumstances, another more successful in another; but all the techniques have essentially the same economic consequences. Correct selection of the most cost effective technique will be in the interest of the manufacturer, his distributors and the ultimate consumer. The ability of the manufacturer and the distributor, by consensual agreement, to select the vehicle they expect to work best, including the right to make mistakes in that regard, which they will no doubt on occasions do, is also embraced by the concept of free markets and miminial government interference.

1/ Continental T.V., Inc. v. GTE-Sylvania Inc., 433 U.S. 36 (1977).

I do not mean to suggest by what I have said that the various business techniques for controlling distribution are all precise economic equivalents. They are not. The use of territorial restrictions of the several kinds I have mentioned is capable of having anticompetitive effects by facilitating horizontal collusion only under extremely rare circumstances. I will not elaborate on what those circumstances are, since they are not germane to the question you raised or to my answer. RPM can have anticompetitive consequences in a substantially more common set of circumstances. If it were difficult to distinguish those circumstances in which RPM may be harmful from those in which it cannot, one might justify a sweeping prophylactic rule banning it in all circumstances. In fact, however, the circumstances in which RPM may be harmful are relatively easy to identify. Hence, although there is economic justification for antitrust intervention when these circumstances are present, it cannot plausibly be argued that the practice should be attacked whenever it appears.

RPM can have adverse economic effects, at which the antitrust laws might properly be aimed, in two different sets of circumstances. One, which does occur with some frequency, would be presented by a situation in which the market at the manufacturing level was highly concentrated and all or substantially all of the manufacturers employed RPM. Under these circumstances, the set of manufacturers might be employing RPM as a device to facilitate and to police horizontal price fixing among themselves. No one such manufacturer could obtain an advantage by cheating on the cartel arrangement by reducing his price to retailers because his retailers would be unable to sell more of his product unless, in addition to changing his own price to them, he authorized them to change their retail prices. However, to change their authorized resale price would be a highly visible act that would be immediately detected by the other members of the cartel. Accordingly, persuasive economic grounds would exist for challenging RPM in that context.

RPM might also have adverse economic consequences in a second type of situation which is probably more theoretical than real; certainly it would rarely be encountered in the United States. If the number of potential distributors was very few and if, in addition, there were substantial difficulties which prevented manufacturers from creating additional distribution outlets, then distributors might employ

RPM as a facilitating device for collusion at the distribution level. It would be necessary for the distributors to persuade all, or substantially all, the manufacturers to adopt RPM and to establish price levels in accordance with the distributors' wishes. As I previously suggested, this course would be contrary to the interests of the manufacturers, and they could be expected to resist. Nevertheless, it is conceivable, though most unlikely, that one might encounter a situation of that type. Here, too, an economic basis for antitrust attack would exist. But where neither of these two sets of circumstances exist, no persuasive reason for bringing the antitrust laws to bear on RPM can be identified.

It is true, of course, that RPM eliminates a kind of activity that might naively be described as competition: underselling by free riders will, of course, drive down prices in the short run, but it is economically erroneous to regard all behavior that achieves short run price reductions as being competitive. From that standpoint, the activity of a patent infringer, or a pirate of copyrighted phonograph records, or indeed, sales of stolen goods in a flea market, will achieve short run price reductions. But if one takes a slightly longer point of view, it should be obvious that investments in innovation, or in the recording of phonograph records, or types of property vulnerable to theft, will be significantly reduced if the values which are created by the investment are subject to misappropriation in these ways.

Real competition results in an increase in the quantity of product which reaches the hands of consumers. The parasitic forms of competition discussed above result in a reduction in the quantity of product which reaches consumers. The same must be said of free riders who drive from the marketplace retail services that are well suited to the successful marketing of a complex product: the economic incentives for manufacturers to develop and market such products will be reduced and the quantity of such products that reaches ultimate consumers will be lessened rather than increased. These economic considerations, in combination with the peculiar and somewhat confused legal status of RPM to which I will next turn, underlie the position of this Administration with respect to RPM: namely, that it should be judged under a rule of reason approach that would result in its invalidation whenever it appeared in contexts such that the practice might be conducive to horizontal collaboration but would allow the practice in contexts where it could not plausibly be serving to facilitate collusive behavior.

So far as the legal status of RPM is concerned, it is undeniable that the Supreme Court of the United States has, in a wide variety of contexts over three quarters of a century, struck the practice down. Hence, it is not the position of the Antitrust Division that RPM "is" not illegal per se; it is our position that RPM "should" not be illegal per se in view of the competitive principles outlined above.

The Supreme Court first invalidated RPM in the Dr. Miles 2/ case in 1911. Justice Hughes began with the historical proposition that "a general restraint upon alienation (of chattels) is ordinarily invalid" at common law, a proposition recognized to have little relevance to antitrust analysis in more recent cases. 3/ But Justice Hughes then went on to a more pragmatic analysis: he noted that Dr. Miles had advanced by way of justification only that "confusion and damage have resulted from sales at less than the prices filed." He rejected this defense, saying,

> [T]he advantage of established retail prices primarily concerns the dealers. . . . If there be an advantage to a manufacturer . . ., the question remains whether it is one which he is entitled to secure by agreements. . . . As to this, the complainant can fare no better . . . than could the dealers themselves if they formed a combination . . . to achieve the same result. . . .
>
> But agreements . . . between dealers . . . are injurious to the public interest and void. 220 U.S. at 407-08.

Thus, on the first, and one of the few, occasions on which the Supreme Court has attempted to explain why RPM is harmful, it offered an explanation in economic terms that is wrong in the light of sound economic analysis. A price fixing combination at the retail level would generally be

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2/ Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U.S. 373 (1911).

3/ Compare GTE-Sylvania with United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).

damaging to a manufacturer's objective, and its economic consequences would bear no similarity at all to the consequences of RPM in contexts where a manufacturer would choose to negotiate with his retailers to impose it.

Even in the original case, Justice Holmes, in dissent, demonstrated characteristic insight: "I cannot believe that in the long run the public will profit by . . . permitting (retailers) to cut reasonable prices for some ulterior purpose of their own and thus to impair, if not to destroy, the production and sale of articles which . . . the public should be able to get." 220 U.S. at 412.

The use of the phrase "per se" did not develop until much later, but the court continued to treat RPM as invalid without any examination of the commercial context in which it appeared or any further examination of the economic question why it should be regarded as harmful.

The legal context became far more complicated with the Supreme Court's decision in United States v. Colgate & Co. 4/ which, although it did not permit agreements fixing retail prices, was long interpreted to authorize the manufacturer to recommend prices and cut off retailers who did not comply. Tending in the same permissive direction, the Supreme Court, in the 1926 General Electric 5/ decision, upheld the right of a manufacturer to designate retailers as his "agents," to deliver goods to them on "consignment" and to effectuate RPM in that way. These two decisions opened paths for manufacturers to achieve their legitimate purposes and thus reduced the level of conflict about RPM to some extent. Indeed, from our standpoint, the decisions were too permissive in that paths were opened in contexts where RPM might serve to facilitate horizontal collusion as well as in contexts where it could not.

The next development, too, was a permissive one: Congress enacted the Miller-Tydings Amendment and, subsequently, the McGuire Act. Thus, RPM was legalized, again in potentially harmful contexts as well in manifestly harmless ones, wherever a manufacturer was willing and able to follow the tortuous procedural requirements state law developed

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4/ 250 U.S. 300 (1919).

5/ United States v. General Electric Co., 272 U.S. 476 (1926).

pursuant to the federal Fair Trade laws and wherever he could fit his situation within the consignment device sheltered by General Electric. Controversy during this period was limited to situations in which neither of these shelters were availed of and in which the complaining party asserted that a pattern of "refusal to deal" conduct, attempted in an effort to work within the shelter of the Colgate doctrine, had nevertheless resulted in the formation of implied contracts to engage in resale price maintenance. The Supreme Court's decision in Parke Davis 6/ is the preeminent example. The decisions during this period devoted much attention to the endless legal refinements that surrounded Colgate, the General Electric doctrine and the Fair Trade laws, but none addressed the still unanswered question why RPM, in all its manifestations, should be regarded as unlawful.

The closest the Supreme Court came to offering any explanation responsive to this fundamental underlying question came in Keifer-Stewart, 7/ a case which involved maximum prices rather than minimum prices. There the Supreme Court said, "[S]uch agreements, no less than those to fix minimum prices, cripple the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment." 340 U.S. at 213.

This explanation, of course, does not suffice, for it suggests the invalidity of every commercial contract since each restrains the ability of contracting parties to violate the terms of the contract. More clearly still, it does not even allude to the economic considerations on which antitrust law should be based.

In the mid-60's, the Supreme Court began to narrow the restrictions on the practical range of freedom of manufacturers, still without adequate consideration of economic consequences. In Simpson v. Union Oil Co., 8/ the Court struck down a "consignment" arrangement that was identical in every detail to the arrangement upheld in General Electric,

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6/ United States v. Parke, Davis & Co., 362 U.S. 29 (1960).

7/ Kiefer-Stewart Co. v. Joseph E. Seagram & Sons, Inc., 340 U.S. 211 (1951).

8/ 377 U.S. 13 (1964).

while steadfastly denying that it was departing from the holding in General Electric. When, if ever, consignment arrangements may be used by parties in the distribution chain remains to this day shrouded in confusion. The explanation which the Court did give in Simpson is inconsistent with the explanation the Court had offered in the leading precedent of Dr. Miles. In Simpson, the Court suggested that RPM was a device used by manufacturers to coerce and to injure retailers. It said, "We disagree . . . that there is no actionable wrong or damage [to the retailer] . . . . [T]he 'consignment' agreement . . . [is] being used to injure interstate commerce by depriving independent dealers of the exercise of free judgment." 377 U.S. at 16. This a device, first condemned because it was thought to be none of a manufacturer's business and indistinguishable from a cartel among retailers, was characterized in Simpson as a manufacturer's device for exploiting retailers. The one description is as much without factual foundation as is the other. Thus, it remains true today that courts have failed to devote sufficient attention to the economic impacts, in different contexts, of RPM.

In our judgment, the Court's careful and thoughtful analysis in GTE-Sylvania indicates a willingness to look beyond the verbal similarities between RPM and horizontal price fixing. The treatment is curiously inconsistent with the attitude the Supreme Court has taken toward other vertical arrangements. In White Motor, 9/ for example, the Court refused to classify vertical territorial arrangements as per se illegal, saying, very wisely, "[W]e do not know enough of the economic and business stuff out of which these arrangements emerge" to justify such a classification. Accordingly, the Court held that summary judgment had been improperly granted.

Similarly, in GTE-Sylvania, a case involving location clauses, the Supreme Court overruled the per se rule it had previously laid down in Schwinn 10/ stating, [t]he rule of reason is "the prevailing standard of analysis." 433 U.S. at 49. The Court examined in detail the economic consequences of a distribution practice that is closely analogous

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9/ White Motor Co. v. United States, 372 U.S. 253 (1963).

10/ United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967).

to RPM, and whose economic consequences are also closely analogous to RPM, and held that the legalities of the practices must be judged under the rule of reason. "[D]eparture from the rule-of-reason standard," the Court said, "must be based upon demonstrable economic effect rather than . . . upon formalistic line drawing." 433 U.S. at 58-59.

If that declaration is taken to mean what it says, then RPM also should be judged under a rule of reason. Nevertheless, the Court did say in a footnote, inconsistently with that declaration, "[W]e are concerned here only with nonprice vertical restrictions. The per se illegality of price restrictions has been established firmly for many years and involves significantly different questions of analysis and policy . . . Furthermore, Congress recently has expressed its approval of a per se analysis . . . by repealing . . . the Miller-Tydings and McGuire Acts." 11/

There is, however, no necessary incongruity between the action of Congress in repealing the Fair Trade laws and a rule of reason treatment of that practice under the Sherman Act. The Fair Trade laws were far too sweeping a determination of per se legality, and we agree that they ought to have been repealed. In our judgment, the action of Congress in 1976 does not preclude the Supreme Court from reaching a conclusion that, although RPM continues to be per se illegal in those contexts in which it might facilitate horizontal collusion, it should be treated under the rule of reason in other contexts. Although both the House and Senate reports indicate awareness that the Supreme Court had previously declared RPM illegal per se and no doubt expected that they were remitting RPM to that status by repealing the Fair Trade laws, it is also true that there is nothing in the legislative history which indicates a congressional disposition to limit the power of the courts to continue, through

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11/ 433 U.S. at 51, n.18. The Court repeated these views subsequently in California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 102-03 (1980).

interpretation, the evolution and adaptation of the Sherman Act in light of the continuing development of microeconomic analysis. 12/

In our judgment, the most damaging consequences of continuation of a sweeping per se rule against RPM flow not from the fact that manufacturers cannot enter formal price arrangements with their distributors, although that would be damaging enough, but from the implications of such a sweeping rule for other forms of vertical distribution controls. Any time a manufacturer attempts to control the distribution of his goods so that they receive a more costly type of treatment at the point of sale, he must cope with the free rider problem posed by noncooperating retailers who, by refusing to incur those costs, place themselves in a position to undersell. That is true whether the manufacturer uses restricted sales territories, location clauses, exclusive dealing arrangements, or some other approach. All are nominally judged under the rule of reason notwithstanding that all involve the necessary suppression of a destructive form of price cutting which has only very short run advantages but suppresses investment incentives for new, complex products. The Supreme Court fully recognized, in GTE-Sylvania, that suppression of this type of intrabrand competition was involved and that such suppression was essential to the attainment of important, long-range goals.

Under the current state of the law, however, it is open to any retailer who refuses to market in accordance with the manufacturer's preferences, and without regard to the intensity of existing interbrand competition, to compel a manufacturer to deal with him on his terms through treble damage litigation in which it is asserted, quite accurately in a

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12/ As Robert Bork has observed: "Congress has not legislated per se illegality, either through this repeal [of the Fair Trade Laws] or in the original Sherman Act . . . . The Court, presumably, still has its original obligation to develop the law of the Sherman Act according to its best economic understanding." Vertical Restraints: Schwinn Overruled, 1977 Sup. Ct. Rev. 171, 191-92. The Court must, of course, "give shape to the statute's broad mandate" [National Society of Professional Engineers v. United States, 435 U.S. 679, 688 (1978)], through the exercise of "lawmaking powers" [Texas Industries, Inc. v. Radcliff Materials, Inc., 101 S.Ct. 2061, 2069 (1981)].

sense, that a purpose and an effect of the territorial arrangement selected is to suppress intrabrand price competition. In short, the per se rule against RPM goes far to subvert, in practice, the rule of reason treatment which is, in theory, accorded to all other vertical distribution controls. So long as manufacturers must abide the outcome of trial before juries--juries most often composed largely of persons with no business experience--on the question whether "price fixing" in that sense was a purpose or effect of the selected distribution arrangement, manufacturers will be strongly deterred not just from entering formal price arrangements, but from resorting to a wide variety of distribution controls.

We regard that state of the law as unsatisfactory, and are reviewing the possibility of asking the Supreme Court to change it. We recognize the importance to the general public of the principle of stare decisis and the desirability of promoting certainty in legal rules. However, the Supreme Court itself has emphasized the superior importance of refining legal analysis in the field of vertical restraints. In Sylvania, the Court did not hesitate to reverse its own recent decision in Schwinn based on improved economic analysis. In view of the Court's action in Sylvania, it is not inappropriate to seek reconsideration of a legal doctrine which, we believe, has the unintended effect of injuring American consumers. If, however, the Court is disinclined to modify its traditional approach in this area, or if the Court reads the 1976 legislation as foreclosing its ability to reconsider the issue, we will then consider the appropriateness of seeking legislative change.

Thank you very much for your continuing interest in our antitrust enforcement policies. I hope this information will help further articulate our position on this matter.

Sincerely yours,

William F. Baxter
Assistant Attorney General
Antitrust Division

Fuller memo

To J C

THE WHITE HOUSE

WASHINGTON

DECEMBER 30, 1983

MEMORANDUM FOR JAMES A. BAKER

FROM: CRAIG L. FULLER

SUBJECT: THE FOURTH QUARTERLY REPORT OF THE ATTORNEY GENERAL ON LEGAL EQUITY FOR WOMEN

On December 21, The Fourth Quarterly Report of the Attorney General on legal equity for women was transmitted by Wm. Bradford Reynolds to the Office of Cabinet Affairs. The report has since been referred to the Cabinet Council on Legal Policy and staffed to appropriate White House offices for comment.

The President will receive a summary report on the substance of the Attorney General's report, and recommendations for its disposition on January 19, 1984, at a meeting of your Cabinet Council on Legal Policy.

The Fourth Quarterly Report is a collection of reports by 26 departments and agencies on their efforts to review and amend federal laws, regulations, policies, practices, field instruments and publications that might unfairly preclude women from receiving equal treatment from Federal programs. This report is a component of the comprehensive review of legal equity for women that the President requested in Executive Order 12336.

A previous installment of reports from 17 departments and agencies was received last summer in the Third Quarterly report of the Attorney General. However, as you recall, the primary thrust of the Third Quarterly report concerned the identification of all elements in the Federal Code that adversely discriminated against women. At the President's direction, appropriate changes in the Code were subsequently submitted to Congress.

In the Fourth Quarterly report several departments and agencies state that their task is completed - that potentially harmful gender-based distinctions have been identified and corrected. Others describe progress that has been made toward identifying such distinctions, but omit plans for corrective action.

Timetable

The Department of Justice has established a self-imposed deadline of April 30 for its sixth and final report. A fifth report is expected in February. These two installments are to contain all reports currently outstanding from departments and agencies, and represent completion of the Attorney General's review of all Federal laws, regulations, policies, and practices that the President requested in Sec. 2 of his Executive Order.

THE WHITE HOUSE

WASHINGTON

December 23, 1982

TO CICCONI 1/4 MDT

MEMORANDUM FOR GEORGE P. SHULTZ
DONALD T. REGAN
MALCOLM BALDRIGE
EDWIN MEESE III
JAMES A. BAKER III
DAVID STOCKMAN
WILLIAM E. BROCK
MARTIN FELDSTEIN
RICHARD G. DARMAN
KENNETH M. DUBERSTEIN
DAVID R. GERGEN
EDWIN L. HARPER
EDWARD ROLLINS
RICHARD S. WILLIAMSON
JOSEPH R. WRIGHT
RICHARD B. PORTER
WENDELL W. GUNN
HENRY NAU

FROM: CRAIG L. FULLER

SUBJECT: HUDSON INSTITUTE BRIEFING -- January 4, 1982

On Tuesday, January 4, the Hudson Institute will conduct a briefing session for a select group of senior Administration officials on economic structure in the domestic and global environments. Herman Kahn, founder of the Hudson Institute and well-known futurist, will lead the discussions. Other participants accompanying Kahn, and listed on the attached, will be present to represent their respective areas of expertise.

The intent and timing of the briefing is to provide an opportunity for thoughtful, creative exchange in provoking perspectives through which to consider the preparation of the President's State of the Union message, scheduled for delivery in late January.

The briefing will cover a broad spectrum of issues and will be tightly packed into 3 hours. An outline of the questions, issues and strategies likely to be addressed is attached. Currently, the briefing is scheduled for Tuesday afternoon from 4:30-7:30 PM at Tayloe House on Jackson Place. I will confirm all details next week.

I hope each of you will consider joining us that Tuesday afternoon.

HUDSON INSTITUTE BRIEFING

January 4, 1982

AGENDA OUTLINE

I. Main Issues

A. What are the key factors affecting the world economic environment?

B. What factors could lead to strong economic growth in the U.S.?

C. What are economic prospects for Western Europe and Japan, and how might interactions among Western Europe, Japan and the U.S. affect conditions in the U.S.?

D. What jobs and industries will dominate the 1980's?

1. What is the outlook for traditional manufacturing industries?

2. Where do service industries fit in the U.S. industrial and policy mix?

3. What will be the impact of new industries?

E. Can the success to date on inflation be maintained and extended, even while dealing with other problems?

II. Strategy and Tactics

A. Given stimulative measures already under way, would further such efforts undermine steady long-term prospects?

B. What institutional changes would facilitate better performance in both inflation and employment?

C. How are cyclical factors likely to play themselves out?

D. Given the growing importance of higher technology manufacturing and services, how can U.S. policy further improve employment growth and competitiveness?

III. Special Issues

A. How serious is the possibility of an international financial collapse, and how can such risks be reduced?

B. What is the role for international cooperation?

C. How do state and local policies interact with national economic policy?

Participating from Hudson Institute:

Herman Kahn, Founder
Thomas D. Bell, Jr., President and CEO
Irving Leveson
Thomas Pepper

Additional Participants:

Marina von Neumann Whitman
Vice President and Chief Economist
General Motors Corporation

Rimmer de Vries
Chief International Economist
Morgan Guaranty Trust Company

1 Fuller memo

THE WHITE HOUSE

WASHINGTON

June 28, 1982

MEMORANDUM FOR JAMES BAKER

FROM: CRAIG L. FULLER

SUBJECT: SBA Loans

You asked for background on a recent Wall Street Journal article that identified problems with the SBA loan program.

Attached is a copy of the article, a fact sheet from SBA and a copy of the letter to the Journal that Jim Sanders sent and had printed.

While there are clearly problems with the loan program, the issues were actually identified by the current SBA administration and steps are being taken to correct the situation. I do not believe further action is warranted; however, we will monitor the situation and ask for a report in 60 days.

If you wish any additional information, please let me know.

cc: Becky Dunlop

JAB

This relates to the news article the President asked you to check on, (and that you gave to me to handle).

I visited w/ Craig about it and he agreed to make the inquiries.

Jim 7-1

ID # 077335 CA

OFFICE OF CABINET AFFAIRS
ACTION TRACKING WORKSHEET

Action resulting from:
- ☑ document (attached)
- ☐ telephone call
- ☐ meeting (attach conference report if available)

Document Date: 82/06/1

From: C L Fuller

Date Received: 82/06/23

Subject: Small Business Loans

ACTION CODES:

A — Appropriate Action	D — Draft Response	R — Direct Reply w/Copy
B — Briefing Paper	F — Furnish Fact Sheet	S — For Signature
C — Comment/Recommendation	I — Info Copy Only/No Action Necessary	X — Interim Reply

ROUTE TO:

Date Sent	Name	Action Codes	Date Due	Action Taken
82/06/23	Dunlop	F	82/06/23	
82/06/23	(1) Hodapp	F	/ /	attchd
82/06/25	Dunlop		/ /	
82/06/25	Fuller		/ /	
82/06/28	Baker	I	/ /	
/ /			/ /	

COMMENTS: (1) call SBA/ get a fact sheet by close of business today - if possible - 10 AM at latest

Originator: ☐ Dunlop ☐ Faoro ☐ Fuller ☐ Gonzalez ☐ Hart ☐ Hodapp

KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING MATERIAL AND WHEN THE ASSIGNED ACTION IS COMPLETE, RETURN TO:

Office of Cabinet Affairs
Attention: Karen Hart (x-2823)
West Wing/Ground Floor

THE WALL STREET JOURNAL, Tuesday, June 8, 1982

Unlikely Borrowers

Small-Business Loans Aid 'Minority' Whites, The Rich, a Porn Firm

Among Those SBICs Helped Is Nixon's Nephew, Who Purchased a Gold Mine

A Winner: Apple Computer

By Brooks Jackson
Staff Reporter of The Wall Street Journal

WASHINGTON — Think federal aid is drying up? Congress may expand a Small Business Administration program that provided a $65,000 loan to the owner of a Times Square pornography palace.

The same program also furnished $14 million in low-interest, taxpayer-backed loans to a group of well-heeled investors and Hollywood stars, including Burt Reynolds and Paul Newman.

And it provided a "minority enterprise" loan to Richard M. Nixon's nephew, who, of course, is white. He used it to buy a gold mine.

The program was once described as "an evergreen money tree" by a grateful industry lobbyist. Currently, it has nearly $1 billion, mostly in government-backed loans in 488 privately owned "small business investment companies." Many of them are owned by wealthy investors, banks or major corporations. And Congress is considering increasing the flow of federal aid to such companies from less than $200 million this fiscal year to $265 million or $290 million next year.

Few Rules

The investment companies are supposed to reinvest the money in promising small businesses. But there are few rules to govern the kind of businesses being financed, and lately SBA auditors have been appalled at ways in which some of this taxpayer money has been used.

Their eyes popped when they saw what was going on at Show World Center Inc., a small business that got a $65,000 loan from two New York investment companies. They listed the borrower as a "movie theater." But as the SBA auditors reported after a visit: "The concern is engaged in the retail sale of X-rated books, magazines, sex aids and stimulants, and the showcasing of X-rated films, live sex acts, nude dancers, etc."

A Show World lawyer acknowledges that the loan was secured by Richard Basciano, owner of both Show World and a multistory building housing it. But the lawyer says the money was used to renovate commercial offices in the building, not for "the adult-entertainment facilities."

SBA auditors nonetheless objected to federally aided financing of a company involved in pornography. But SBA lawyers insisted that the loan was legally permissible. "This was a legitimate business, licensed by the city and state of New York," an SBA official says.

Two Associates

Actually, persons associated with Show World's owner have been convicted numerous times on obscenity and related charges. Two of Mr. Basciano's partners (in other businesses) were recently convicted in federal court in Miami on federal charges of interstate transportation of obscene material and conspiracy; they are free on appeal of five-year prison sentences. One of those convicted, Robert DiBernardo, was described by Federal Bureau of Investigation officials in court testimony as an alleged member of the Mafia "family" founded by the late Carlo Gambino. (Mr. DiBernardo's attorney denied any Mafia connection, and Federal Judge Eugene P. Spellman said later he would have meted out a longer prison term if he had been satisfied with the FBI's assertions.)

SBA regulations still permit such loans. An industry spokesman says a ban would amount to government "censorship." The SBA did quietly persuade the companies to sell off the Show World loan, but only because auditors griped about it repeatedly.

The investment-company industry argues that it aids many legitimate, expanding small companies that create jobs and spur economic growth. And indeed, SBA-backed investment companies have helped finance such glamour companies as Federal Express Corp., Apple Computer Inc. and NBI Inc., a maker of word processors.

But under current law, almost any sort of business qualifies for financing if it meets the SBA's definition of "small," and more than 98½% do. The investment companies have financed such questionable small enterprises as a rock-concert promoter in Alabama, a string of X-rated movie houses in Florida and a chain of homosexually oriented Turkish baths in Southern California.

Special Rules

Special rules apply to "minority enterprise" investment companies. Regular companies can borrow through the SBA at favorable rates, only a fraction above the federal government's own cost of borrowing. But minority-enterprise companies get direct federal funds at 3% annual interest. These companies are supposed to reinvest these subsidized funds in businesses owned by persons deemed "disadvantaged," either socially or economically. But even here Congress has made the law so loose that "minority" companies can finance businesses owned by whites or by millionaires.

Unlikely Borrowers: Small-Business Loans Help Out 'Minority' Whites, Millionaires and a Porn Company

For example, one such company lent $45,000 to Donald A. Nixon and a partner. Mr. Nixon, the son of the former U.S. President's brother, says, "I'm socially disadvantaged"—and he does legitimately qualify as officially "disadvantaged" because he is a Vietnam veteran. Mr. Nixon used the money to buy gold claims north of Lake Tahoe. He says he is doing all right in the gold-mining business, but what he really wants to do is to set up a minority-enterprise investment company. "They're a money-maker if you know what you're doing," he says.

Another "disadvantaged" borrower is Avelino Gutierrez, an Albuquerque lawyer who qualified because he is of Mexican heritage. He listed the net worth of himself and his wife at nearly $2 million. The lender said Mr. Gutierrez had trouble borrowing money elsewhere, although he owns 30% interest in a national bank and 26% interest in a savings and loan association. The loan helped finance an office building he owns. Mr. Gutierrez didn't return telephone calls.

A minority-enterprise company in San Francisco lends to "disadvantaged" doctors and dentists, one worth nearly $500,000 and another who makes $200,000 a year. The borrowers qualify because they are of Asian extraction, but the loans are "super-safe," John F. Louie, the company manager, says. Getting government money at 3% to reinvest at 15% or so is "the enticing part of the program," he adds.

Sometimes companies don't invest the money in small businesses at all, but simply lend it to banks or back to the government, at higher interest rates. Currently 25% of the industry's funds are idle, even as it lobbies for increased federal aid. Rules regarding idle funds are quite loose. SBA officials contend that the industry needs liquidity.

Regulations also are permissive about who may set up an investment company. Until recently, practically anyone was eligible who could scrape up $500,000 and who wasn't a known felon. In December, the SBA added a requirement that licensees have some business background, too. Once in business, an investment company may borrow up to four times its original capital.

The low-interest deals have attracted many wealthy investors. Recently actors Paul Newman and Burt Reynolds, producer Norman Lear and about 50 other show-business personalities put up more than $6 million to form Atalanta Investment Co., with offices on New York's Park Avenue and in Beverly Hills. The company then borrowed $14 million through SBA for terms up to 10 years. Rates were quite favorable—as much as 8.4 percentage points below the prime rate, the banks' basic lending rate.

Atalanta has prospered, but the company's chairman, L. Mark Newman (no relation to Paul), contends that profit isn't all that motivates his investors. He says they genuinely want to help small businesses, too. "If wealthy people didn't put money in, the program wouldn't be funded," he adds.

Record Investment Gains

The entire industry, in fact, has been chalking up record investment gains of 22%, 25% and 50% in 1978-80, the most recent three years for which figures are available. Industry spokesmen say last year wasn't bad, either. The trade association held its most recent annual meeting in Palm Springs. This year, it's in Bermuda.

But while the industry generally is flourishing, many investment companies are having problems. Of all those ever licensed, 23% have so far ended in SBA liquidation proceedings because of difficulties ranging from theft or bankruptcy to financial weakness or repeated regulatory violations. The SBA says taxpayers probably will lose $50 million owed by the more than 100 companies currently in liquidation. That sum would exceed the $31 million in losses charged off during the entire previous history of the program, which began in 1958.

Some losses are due to outright stealing. The SBA says it probably has lost almost all the $3.4 million lent to an investment company set up by Sandra Brown, who is scheduled to begin today to serve concurrent prison terms on a Colorado state court conviction for check kiting and on a New York state court conviction for grand larceny, forgery and conspiracy; she should be eligible for parole in 2½ years. Officials say two FBI accountants searched for nearly two years trying to find where the money went.

Another Big Loss

In another but quite different case, the SBA *knew* where the money was going but still lost the taxpayer's shirt. Commerce Capital Corp. of Milwaukee, then the sixth-largest SBA-backed investment company, went bankrupt owing the SBA $15 million. Among its assets were a part interest in a gold mine in El Salvador and 100% ownership of Glen's for Men Ltd., described in a trustee's report filed in federal court in Milwaukee as a "gay-oriented" Turkish bath chain.

Owners of Commerce Capital bled it of cash through a variety of questionable transactions, according to the report by the trustee, Pierce H. Bitker. He said that in one case the parent company forced Commerce Capital's affiliates to buy obsolete computer equipment for $466,500. All the trustee was able to get for the stuff later was $900.

SBA investigators asked a federal prosecutor to bring charges against Commerce Capital's chairman, Edward Machulak, citing possible fraudulent transfer of property and misapplication of funds. But the prosecutor refused on the ground that the SBA had known what was going on at the time and didn't act. "He stated that it sounds like SBA was duped by sharp business practices. . . . SBA's failure to look into and act on Machulak's dealings precluded SBA from now calling these dealings criminal." Mr. Machulak declines to comment, but a lawyer for his company says the government's failure to prosecute him constituted "a clean bill of health."

The problems continue. The SBA's top watchdog, Inspector General Paul Boucher, says the agency recently handed $1 million to a company that then spent $180,000 on a 42-foot Hatteras yacht that it named after the company's owner and moored near his condominium. Mr. Boucher won't give further details pending a criminal investigation, but he says, "The incident shows how easily the program can be victimized."

Few Options

Mr. Boucher says his auditors are vigorous—the industry says zealous—but he complains that SBA program administrators too often dismiss findings without action. When they do act, it is generally only to refuse to lend more money. The threat of revoking a company's license is practically the only other sanction; fines are seldom levied. "You either slap their wrist or execute them," Mr. Boucher gripes.

Top program administrators have been reluctant to punish errant companies. Two years ago, an SBA official urged the agency to suspend the license of Warde Capital Corp. of Beverly Hills on the grounds that for years it had been late in paying interest on its loan and had repeatedly refused requests to comply with regulations. But suspension was blocked by the program boss, Peter McNeish. "Seems (a) rather harsh action in this case," he scribbled to his subordinate.

Last December, Mr. McNeish quit regulating the industry and began promoting it, as second-in-command of its trade association. He says he is much happier now. "I like breathing fresh air," he adds. He also says that SBA auditors too often try to make piddling problems into major regulatory violations and that too much regulation would kill the industry's entrepreneurial spirit.

Tougher Attitude

The McNeish departure has brought a somewhat tougher attitude at the SBA. Although Mr. McNeish says only about 5% to 10% of the companies in the industry are "problem" cases, his successor, Robert Lineberry, puts the figure at 25%. Mr. Lineberry says he is cracking down on repeat violators and forcing some problem companies that the SBA has been nursing along for years to repay their debt.

And indeed, Mr. Lineberry began liquidation proceedings against Warde Capital barely two months after Mr. McNeish departed. The owner, Thomas R. Warde, says the action is unfair and blames tardy SBA billings for the late interest payments. He says Mr. Lineberry won't return his telephone calls.

But it is still too early to say how far changes will go. Some new and tighter regulations are being discussed within the administration, but whether they will ever take effect, or even be proposed officially, remains to be seen.

In any case, it would take an act of Congress to tighten such rules as those permitting "minority enterprise" financing of whites and millionaires. Congress so far hasn't shown much interest in such changes.

One of those pressing for increased funding is Sen. Lowell Weicker, chairman of the Senate Small Business Committee. The Connecticut Republican was asked to comment on some of the findings in this story, which are based on court records, interviews and documents obtained under the Freedom of Information Act. Sen. Weicker declined, but soon afterward announced a crash plan to conduct public hearings on the SBA program.

U.S. GOVERNMENT
SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

Date: June 24, 1982

To: Missy Hodapp
Office of Cabinet Affairs

From: Robert A. Turnbull
Associate Deputy Administrator

Subject: SBIC/MESBIC Fact Sheet

The attached is a fact sheet that explains the Wall Street Journal article of June 8, 1982, as well as some pertinent facts about the overall program administration of the SBIC and MESBIC programs as requested.

Please call if you have any questions or require any further data.

Status Report on SBIC Issues Contained in Wall Street Journal
Article of June 8, 1982

Small Business Investment Companies (SBICs) are SBA-assisted investment companies that are privately operated and capitalized for the purpose of providing venture capital financing to eligible small business concerns. While the Small Business Administration can provide up to $4. of Federal funding for each $1. of private capital, the program presently has an approximately equal mix of government and private dollars.

The Wall Street Journal, in its article of June 8, 1982 cited a number of valid criticisms of the way the SBIC program has been administered. It is important to note that the problems cited are the product of previous program managers and which, for the most part, have been addressed in corrective action during the present Administration. It should also be remembered that all of these findings were made by SBA personnel and remedied through administrative action and/or civil, rather than criminal, justice procedures. The following is a point-by-point discussion of the Wall Street Journal's major criticisms and corresponding corrective actions by the Small Business Administration which were initiated and in some cases finalized prior to their discovery and disclosure by that newspaper.

1. The financing to the New York City pornographic theater was made in 1977, cited in subsequent examinations by SBA's Inspector General, and repaid as a result of pressure by SBA in May, 1981. It should be noted that SBA's attorneys held that the agency had no legal remedy available because the business was licensed and operating

legitimately under New York laws. In January 1982, SBA transmitted proposed regulations to the Office of Management and Budget which, among other things, tightens the prohibition on financing activities that are illegal or contrary to the public interest. However, a more specific ban would, in all likelihood, be unenforceable in the courts.

2. The $45,100 financing provided by a Minority Enterprise Small Business Investment Company (MESBIC) to Donald Nixon (a nephew of the former (President) violated SBA conflict of interest regulations which define him as an associate of the SBIC. The matter was disclosed in an examination report dated May 8, 1981 from SBA's Inspector General and the SBIC was directed to divest of the financing. As of March 11, 1982, the SBIC was advised by SBA that no further assistance would be provided until the matter is resolved.

3. The financings of wealthy minority group businesses and professions by MESBICs are permissible because the existing statutory language bases eligibility on either social or economic disadvantage. Although SBA's attorneys have been working since early this year on a better interpretation of the enabling statute, the best solution may ultimately be a legislative change to a social and economic disadvantage standard as used with other minority assistance programs.

4. There was no "loan" to Paul Newman, Bert Reynolds, Norman Lear and the other investors in a New York-based SBIC which also has a California office. The 58 stockholders of this SBIC each own less than 5% of its stock and together paid in $6,700,0000 in

private capital. They subsequently received $15,000,000 of SBA funding at the prevailing Federal Financing Bank rate, which together with their private capital, is being used to finance small businesses. It should be noted that SBA regulations presently require SBICs to have minimum private capital of at least $500,000. The investors thererfore are often wealthy and sometimes well known individuals, companies, or financial institutions who view the program as an effective conduit for investing their funds in small businesses.

5. Commerce Capital Corporation, a Milwaukee-based SBIC, was in fact a case of very poor management. The licensee owed SBA nearly $15 million and has been in liquidation since 1978. The gay Turkish bath and El Salvador gold mine were assets it acquired in liquidation and not direct financings. SBA's losses will probably finalize at 50 cents on the dollar.

In summary, SBA is aware of some serious regulatory problems involving perhaps 25% of its SBIC licensees. The enclosed "SBIC Program Priorities" summarizes the corrective steps we have taken. We are also aware that the remaining 75% properly utilize their own management abilities and capital in combination with SBA's funding and administration to provide venture capital assistance to small businesses as stipulated in the Small Business Investment Act. Since inception of the program in 1958, actual direct loss of government funds has amounted to only 6.7%, which has been offset many times over by the economic results, tax

revenues, and jobs creation of the small business concerns successfully assisted by this program. Enclosed also is a copy of SBA Administrator James C. Sanders letter to the Editor of the Wall Street Journal, published June 21, 1982 which states this Agency's resolve to strengthen the SBIC Program and purge from it those whose actions tarnish its image.

Enclosures

SBIC Program Priorities (Initiatives)

1. Closer scrutiny of licensing and transfer applications:
   a. Field evaluations - reputation, necessity
   b. Management experience
   c. Plan of operation
   d. Diversified investments philosophy
2. Tighter credit controls re leveraging
   a. Idle funds
   b. Investment plan
   c. Financial condition
   d. Regulatory compliance
   e. No automatic 1st tier
3. Proposed regulations
   a. Minimum capital for licensing
   b. Strengthen inactivity regulations
   c. Lengthen minimum term of financing to portfolio concerns
   d. Encourage equity as opposed to debt investments
   e. Eliminate minor technical violations
4. Regulatory oversight
   a. Developing better system for tracking and pinpointing violations.
   b. Reduce examination frequency for non-violators; increase frequency for chronic violators.
   c. Firmer stance on repeated and serious regulatory violations, capital impairment, and defaults on indebtedness to government
5. More SBA involvement in promoting and improving program delivery to to small businesses
   a. Better SBA field personnel awareness and knowledge of SBICs
   b. Encourage more cooperation between SBA field offices and SBICs in local small business financing
   c. Improve business community knowledge and perception of SBICs

THE WALL STREET JOURNAL, Monday, June 21, 1982

Big Successes With Small Firms

While there admittedly have been abuses and questionable administrative practices in the Small Business Investment Company (SBIC) program, as your page one article pointed out on June 8, I contend there has been no broad or pervasive violation of the Small Business Act, its regulations or Small Business Administration policies. Nor have the losses been disproportionate to the risks contemplated by the legislation creating the program.

Since the SBIC program began 24 years ago, 1,294 SBICs have provided equity capital (consisting of both private and public funds) to 50,000 small businesses, the majority of which would have found it impossible or extremely difficult to acquire the financing needed to start up, expand or remain in business. These small firms, in turn, have provided employment for thousands of workers; their tax payments total many times the amount of funds, public and private, lost through failure and mismanagement.

Overall, the benefits of the SBIC program are impressive. They extend to workers, stockholders, customers, suppliers and to society at large. As your article related, there have been many notable SBIC success stories, including Cray Research, Intel Inc., Federal Express, Apple Computer and Four-Phase Systems.

I concede that in the past we have had some bad SBIC participants who have blemished an otherwise needed and valuable industry and program. It also is pertinent to note that the cases cited in your article were made years ago. It is my objective to purge those bad cases from the program as quickly as due process will permit. The article briefly mentioned some steps we already have taken.

Our licensing process has been changed to upgrade the financial experience criteria for prospective SBIC management. SBA's field offices are helping to screen new SBIC principals. The agency's General Counsel has begun the use of administrative proceedings against SBICs in violation of law and regulations; heretofore, operations personnel in SBA's Investment Division did not have that tool. We are proposing to revise SBIC regulations to clarify parts of present regulations to make them less ambiguous; one part of these revisions will, in effect, place more stringent rules on SBICs with regard to their idle funds.

JAMES C. SANDERS
Administrator
Small Business Administration
Washington

* * *

An independent study found that SBIC-backed firms had growth rates 10 times as great as other small firms in key areas such as sales, profits and employment, and five times as great in Federal tax payments. Another analysis showed that the actual cost to the Federal Government of creating a permanent job through the SBIC program is only $312, compared to an annual cost of over $20,000 in other Government programs.

All SBICs are subjected to annual regulatory compliance examinations, comparable in scope to those of commercial banks by Federal banking authorities. SBA's own studies show that 95% of all SBICs have excellent compliance records; however, the agency is well equipped to take remedial enforcement action against those few that fail to operate within the rules.

All investors, regardless of personal wealth, put their own money at risk when they enter the SBIC program. The SBIC owner must lose his entire investment before the government is subjected to a penny of loss. Furthermore, the SBIC owner can profit only if the small concerns in which his company invests are profitable, since the law mandates that the SBIC remain a minority shareholder.

The program is a profitable investment for the Federal Government and the taxpayer. A study found that Uncle Sam spends only $4 million annually to run the program (administrative costs and losses) and in return receives $440 million in increased tax payments from SBICs, their portfolio companies and their employees—a benefit/cost ratio of 110 to 1.

BRENT T. RIDER
Chairman, National Association of
Small Business Investment Companies
Washington

8

THE WHITE HOUSE
WASHINGTON

Date: 9/21/82

NOTE FOR: SECRETARY REGAN
via Craig Fuller

The President has

seen	☒
acted upon	☒
commented upon	☐

the attached; and it is forwarded to you for your:

information	☒
action	☒

Richard G. Darman
Assistant to the President
(x-2702)

cc: Stockman
Duberstein
Central Files - Original

The President has seen____

THE WHITE HOUSE

WASHINGTON

September 21, 1982

MEMORANDUM FOR THE PRESIDENT

FROM: CRAIG L. FULLER

SUBJECT: The Apple Computer Bill/H.R. 5573

As you requested, talking points for a phone conversation with Secretary Regan are attached. I have also attached his letter which arrived yesterday on this subject as well as a list of the sponsors of this measure in the Senate (S.2281) and House.

There are really three options:

___ remain opposed to H.R. 5573

✓ RL support H.R. 5573

___ indicate the administration is neutral to H.R. 5573

cc: Ed Meese
James Baker
Mike Deaver

TALKING POINTS FOR THE PHONE CALL TO SECRETARY REGAN
9/21/82

-- H.R. 5573 would allow Apple Computer and other firms to donate computers to high schools in much the same way other manufacturers are allowed to donate scientific equipment to colleges and universities. The provisions of the bill would end after one year.

-- The "Apple Computer Bill" first came to the attention of the White House from the Private Sector Initiatives group headed by Bill Verity. They have actively encouraged administration support of the legislation believing it shows our willingness to respond to an organization that wants to make a valuable contribution.

-- The proposal has been reviewed by several members of the White House staff. The Office of Policy Development has registered no objection, Ed Rollins office strongly favors the measure.

-- The principle question is whether or not we wish to support a tax measure that would benefit companies donating computers and scientific equipment to high schools in much the same way we are allowing such companies to make contributions to colleges and universities.

-- The advantage of supporting the legislation is that we advance our objective of encourage private sector participation in an important community activity...high school education. Additionally, we send the clear message that we believe in the importance of utilizing computers and higher technology in high schools.

-- Treasury will argue that the tax benefit is so great that this really is not charity. Well, without Apple Computer giving high schools across the country a free computer, many schools would be unable to buy one, thus putting the computer out of the reach of many high school students. And, without the tax advantage, Apple and others would be unable (or unwilling) to make the contribution.

-- Treasury will argue that this costs the government money. The estimate we received in July, 1982 was $20 million.

-- Treasury will argue that this provision will benefit mostly one company. The legislation in no way prohibits others from participating. Apple Computer's founder and president, Steven Jobs, has been in the lead on this measure...but that should not work against him.

-- Treasury argues that this is not a simple extention of the provision available to firms making similar donations to colleges and universities. The formula for calculating the tax benefit is quite similar. What is different is that the college and university deduction is justified on the basis that it furthers basic research (a principle that Treasury also opposes); however, Treasury makes the point that the deduction for a donation to a high school cannot be justified on the grounds of furthering basic research because such research is not done at high schools.

I suppose one could argue that if high school students graduate and know how to work a computer they will be better able to do basic research... but the argument misses the point of those supporting the measure. In their view, making a charitable contribution (and even Apple could make more by selling the computers) that places a computer in every high school in America, Apple, other computer companies and this administration will have undoubtedly given America's high school students an advantage that many just will not otherwise have without the contribution. Such a contribution on a nationwide level requires the tax change proposed in H.R. 5573.

The President has seen

THE SECRETARY OF THE TREASURY
WASHINGTON 20220

September 20, 1982

Dear Mr. President:

It is my understanding that you have indicated a desire to support the Apple Computer Bill (H.R. 5573). I am concerned that you may not have been provided an adequate opportunity to consider both the tax policy questions and political implications involved in this bill.

On its face, the bill simply appears to provide special tax benefits for contributions of computers to elementary and secondary schools. In fact, it is a narrow special-interest bill introduced as a part of the Apple Computer Company's marketing plan, and would provide extraordinary tax benefits to this company for the purchase of computers that would be largely paid for by federal and state funds.

I am concerned that this bill is very bad tax policy, and the Department has so testified on two occasions. This bill does not have the same policy basis as the existing tax policy for scientific equipment that is donated to colleges and universities. Since no basic scientific research will develop from this provision, and only one or two companies might benefit, it would seem that the Administration could be politically criticized by other companies or industries seeking special legislation.

If you would like, I am available to discuss this issue with you. It appears that the House of Representatives intends to vote on the bill today.

Respectfully,

Donald T. Regan

The President
The White House
Washington, D. C.

Enclosure

SUMMARY OF THE TREASURY DEPARTMENT'S
OPPOSITION TO THE APPLE COMPUTER BILL

The Apple Computer Bill, which provides special tax benefits for contributions of computer equipment to elementary and secondary schools, is bad tax policy for the following reasons:

- The tax benefits are so generous as to virtually eliminate any charity on the part of the donor. The cost of the donated computers will generally be fully reimbursed by the federal government. Nevertheless, the donor corporation decides which schools are to receive the equipment.

- It is our understanding that the bill will mostly benefit one corporation (Apple Computer), and that it was initiated by this company as a part of its marketing program. The fact that the provisions will stay in the law for only one year demonstrates its special interest character.

- The Administration could be criticized as favoring one strong healthy California company with special legislation when many other companies with more jobs at stake are suffering.

- Many other companies and industries would like the same opportunity to place their equipment in America's schools at government expense. If the Apple Computer Bill becomes law, many other companies will press for similar treatment, opening the possibility for a costly expansion of the program.

- Although the treatment sought by the Apple Computer Bill is patterned after that now available for gifts of scientific equipment to colleges and universities for basic research purposes, the Apple Computer Bill represents a major extension of the current narrowly constrained (and equally flawed) provision. It is not simply an extension of the existing policy for scientific equipment from colleges and universities to elementary and secondary schools.

APPLE BILL SPONSORS

S.2281:

Danforth, Cranston, Pell, Hart, Glenn, Inouye

H.R. 5573:

Stark, Edwards (CA), Miller (CA), Shannon, Heckler, Richmond, Weber (MN), Forsythe, Bafalis, Gejdenson, Wyden, Shamansky, Murphy, McCurdy, Mitchell (MD), Lehman, Biaggi, Ford (MI), Lantos, Pepper, Hiler, Mineta, Hyde, de la Garza, Fazio, Dixon, Hughes, Wilson, Frank, Vento, Gore, Gingrich, Gephardt, Brown (CA), Mikulski, Oberstar, Pritchard, Dwyer, Rodino, Markey, Hatcher, Frost, Bevill, Minish, Dymally, Coats, Edgar, Holland, Roemer, Weiss, Bonker, McKinney, Sunia, Rangel, Roybal, Tauke, Akaka, Sawyer, Lundine, Mavroules, McCloskey, Archer, Rose, Schroeder, Foglietta, Kildee, James Coyne, McGrath, Blanchard, de Lugo, Dicks, Albosta, Long (LA), Santini, Traxler, Roukema, Mitchell (NY), Davis, Hertel, Parris, Scheuer, Weaver, Schneider, Gregg, Denardis, Conte, and Moakley.

f CF memos

THE WHITE HOUSE

WASHINGTON

Pushed by new Gov. - DOT would support reallocation.

September 27, 1982

MEMORANDUM FOR JIM BAKER

FROM: CRAIG L. FULLER

SUBJECT: Westway Funds

The attached memo indicates that the Westway funds could be reallocated based on a request from the Governor of New York.

The President's support for Westway would be the "biggest obstacle" to achieving such a change.

DoT favors this more but it will be somewhat controversial.

THE WHITE HOUSE

WASHINGTON

M E M O R A N D U M

FOR: BECKY NORTON DUNLOP

FROM: GARY C. BYLER G.C.B

SUBJECT: Westway Highway Funds

September 27, 1982

Federal funds allocated for the Westway highway project (est. $1.4 billion) could be diverted to meet other transportation needs in and around New York City. A request from the Governor of New York would be 'accepted sympathetically' at the Department of Transportation.

If the new Governor of New York were so inclined, he would request DOT to withdraw from the Westway project. The Governor would then submit a list of alternate projects to be funded. Mass transit expenditures could be included in this list. The reallocation of funds could be achieved administratively at DOT barring direct Congressional intervention.

THE WHITE HOUSE

WASHINGTON

June 11, 1982

NOTE: matter handled verbally. Please file under Fuller Memos.
8-2-82

MEMORANDUM FOR: JAMES BAKER
ED MEESE
MICHAEL DEAVER

FROM: CRAIG L. FULLER CLF

SUBJECT: Council on Environmental Quality/Outreach Effort

Following meetings in early January with environmental groups and White House, Alan Hill, Ernie Minor and I met and discussed the difficulties we were having with environmental groups. Actions at Interior and EPA that were occurring without any contact or consultation with some powerful and important groups were creating a climate that was damaging to the President.

CEQ presented a plan for reaching out to some of the more reasonable environmental groups. It involved simply listening to the concerns being expressed and then searching for some steps that might be taken to demonstrate that the administration, while committed to its course on regulatory and legislative changes in the environmental area, could also address some of the genuine and legitimate concerns that many of these groups have identified.

Having completed the series of meetings, CEQ has produced a memorandum outlining several recommendations. The memorandum is attached. I would be pleased to review it with you. Al Hill and Ernie Minor met with me and discussed it. I am prepared to tell them to go ahead with the second phase of their plan which calls for the development of scheduling requests, policy statements, communication/public affairs plans, etc. Please let me know how you wish to proceed. Thanks.

___ direct CEQ to proceed (plans, statements to be reviewed in the regular channels)

___ schedule briefing session with CEQ for WH staff

___ other:

cc: Richard Darman
Ed Harper

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

June 9, 1982

MEMORANDUM TO: Craig Fuller

FROM: A. Alan Hill, Chairman
W. Ernst Minor, Member

SUBJECT: Environmental Outreach Program

Since the January 29, 1982 meeting held in Ed Meese's office with Jay Hair of the National Wildlife Federation, Governor Russell Peterson of the National Audubon Society, and Mike McCloskey of the Sierra Club, we have met with many environmental leaders and groups as part of an outreach program.

Our relations with the environmental community are colored by the following factors:

1. The environmental community lost in its first effort at Presidential politics. The 21 groups whose representatives endorsed Carter in the fall of 1980 have been the most active in opposition. They represent some six million members.

2. Environmental groups have lost their special access to the decision-making process. During the Carter years, many activitists from the environmental community served in the government. White House meetings were held on a periodic basis. Other than the meeting with Ed Meese, I know of no meetings which have been held at the White House.

3. We have changed the basic direction of policy in the Executive Branch and have made reversals of policies supported by the environmental community. The environmental organizations feel threatened not only by the rhetoric of some of our environmental appointees, but also the perception that we are using the budetary process to eliminate the environmental progress that has been accomplished since the early 1970s.

4. It is clear that the environmental groups have propagandized Administration actions as opportunities to increase membership and financial wealth, but more importantly they perceive themselves as an effective entity. According to pollster Louis Harris, the environmental vote, if organized, could have significant impact on the 1982 Congressional elections.

Recommendations:

- Continue CEQ Outreach Program using CEQ to bring Administration appointees and environmentalists together.

- When traveling, environmental appointees should make every effort to address women's groups and appear on television programs aimed at women. We should target on traditional Republican oriented audiences (both our base support and swing groups).

- Approve contract with World Wildlife Fund which would bring Russell Train, William Ruckelshaus and Herman Kahn together to defuse the Global 2000 Report, and improve the government's tools and techniques for forecasting.

- Utilize Presidential appearance in Oregon during the month of August to make an environmental statement. Presidential role -- basic question: Should the President maintain some "distance" from his appointees?

- Prepare an Environmental Message for release in the Fall.

- Hold descussions (or hearings) on specific environmental concerns in major population centers in the country.

MEETINGS BETWEEN ALAN HILL, ERNIE MINOR AND ENVIRONMENTAL GROUPS - Jan.-May, 1982

January 14, 1982 -- Al Hill met with Mike McCloskey and Doug Scott of the Sierra Club in San Francisco, CA.

January 25, 1982 -- John Flicker, Nature Conservancy
Re: O'Neill Nordon Dam in Nebraska.

January 29, 1982 -- Meeting with Ed Meese and Jay Hair, Russ Peterson, and Mike McCloskey -- Al Hill and Ernie Minor in attendance -- also Martin Anderson and Craig Fuller.

February 9, 1982 -- Al, Ernie & Chap met with Elvis Stahr, former President of Audubon Society.

February 24, 1982 -- Al flew to Burlington, Vermont to address the Vermont Chamber of Commerce and to address students at St. Michael's College and the University of Vermont graduate students on Environmental Science.

February 26, 1982 -- Al, speech in St. Louis, MO before the St. Louis Chapter of the UN Assn. on Global 2000.

March 10, 1982 -- Al to Capitol Hill Club to meet with winners of the Environment Industry Council Award winners.

March 11, 1982 -- Environment Industry Council Award luncheon, L'Enfant Plaza Hotel -- Al & Ernie.

March 12, 1982 -- Meeting with Put Livermore, Elvis Stahr, William Winthrop (Board of Directors, Audubon), and John Livermore (geologist) -- Al & Ernie in attendance.

March 17, 1982 -- Al on panel of American University Conference -- Environment for Humanity. UN co-sponsor, Noel Brown and Julia Shane Block, Assistant Administrator of AID.

March 20, 1982 -- Al and Ernie at National Wildlife Federation's Annual Convention in Milwaukee. Al's speech: "Facing the Real Problems of Acid Rain".

April 2, 1982 -- Al met with Sierra Club people (14-16) in Conference Room, with Larry Williams.

April 19, 1982 -- Al, speech before the National Association of Environmental Professionals -- "Reagan Environmental Policy: Evolution or Revolution".

April 20, 1982 -- Al met with students from Upper Canadian College on acid rain.

April 22, 1982 -- Ernie to New York City to meet with Russell Peterson, and Audubon Board of Directors.

April 27, 1982 -- Al to address Legal Environment Group at UVA, Charlottesville.

April 28, 1982 -- Al & Ernie, meeting with Bill Butler of Audubon Society.

April 29, 1982 -- Al & Ernie, meeting with Allen Smith (Defenders of Wildlife).

April 30, 1982 -- Ernie, meeting with Senator Gaylord Nelson.

May 21, 1982 -- Ernie, meeting with Rita Lavelle - EPA, Bill Reilly & reps from environmental groups re: RCRA (hazardous waste).

THE YEAR 2000 COMMITTEE
1601 CONNECTICUT AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20009
(202) 328-8425

May 26, 1982

Mr. A. Alan Hill
Chairman
Council on Environmental Quality
722 Jackson Place, N.W.
Washington, D.C. 20006

Dear Chairman Hill:

I appreciate having had an opportunity to talk with you and Mr. Ernest Minor about the work of the Council on Environmental Quality regarding The Global 2000 Report. I believe that the most important finding of the report is that the U.S. government lacks the tools and techniques needed to produce a useful document of this kind. The report has left us in a quagmire of confused public debate from which we must free ourselves and move beyond. As Executive Director of The Year 2000 Committee, I have reviewed countless recommendations regarding responses to The Global 2000 Report. I am pained by the thought of a rewritten report or a new report being prepared before we improve our inadequate analytical system.

President Reagan has a golden opportunity to bury this flawed report. By improving the tools and techniques needed to prepare a far superior analysis, the President can render the Global 2000 Report obsolete.

From all that I can see, now is the time to climb out of the quagmire. We must focus our efforts on improving the nation's ability to understand and manage population, environment and natural resource issues. I would like to assist the Administration in this important task.

I see my role in this project as organizing and managing a select group of prominent individuals including Russell E. Train, William D. Ruckelshaus and possibly one or two others who would be acceptable to the Administration. We would prepare a list of actions for improving the tools and techniques necessary to better understand and respond to population, environment and natural resource issues.

Having spent the last 12 months studying these exact issues, I am prepared to begin immediately. This project will last no shorter than four months and no longer than eight months. If this proposal is agreeable to you, I would like to work out the specific details as soon as possible.

I am fully aware of the Administration's political predicament with regard to The Global 2000 Report. I look forward to spelling out a course of action which will greatly enhance the President's public image while helping solve what I perceive to be one of the most critical problems facing our nation--the lack of adequate methods, institutional structures and information systems needed to effectively deal with population, environment, and natural resource issues.

Sincerely,

Joel Horn

Joel Horn
Executive Director

L. A. Times
4/3/82
p. 1

Environmental Politics

Call of the Wild: Vast Effort Starts

By ROBERT A. JONES,
Times Staff Writer

SAN FRANCISCO—With little public fanfare, a major experiment in environmental politics has begun in California. For the first time, conservation groups will attempt to seek out and mobilize every sympathetic voter in the state over the next year for the 1982 elections and beyond.

Emboldened by their success last year in collecting 1.1 million signatures supporting the ouster of Interior Secretary James G. Watt, the Sierra Club and other groups say they will soon have assembled in this state the largest door-to-door canvassing operation in the nation. Efforts have already begun here and in Los Angeles, and eventually the campaign will include the entire state, conservation officials say.

The purpose of the canvass will not be to win converts, the officials say, but to identify those voters already in sympathy with environmental causes and get them to the polls on Election Day.

One Sierra Club leader said he believes the campaign, when fully operational, could make the difference of several hundred thousand votes for an environmental-minded candidate in a statewide race.

Reaction to Reagan

The campaign has elevated California to the forefront of a nationwide movement by conservation groups toward greater involvement in electoral politics. Such involvement has existed to a limited degree for the last five years or so but recently has accelerated enormously in reaction to the policies of the Reagan Administration.

Michael McCloskey, executive director of the Sierra Club, described as "devastating" the 1980 election that took the Reagan Administration to Washington and removed from Congress a number of strong supporters of environmental concerns.

"Those elections were a terrible lesson," he said in the club's headquarters here. "We learned that we could not sit back and assume sympathetic candidates would be elected to office."

opinion polls have consistently shown strong support for environmental causes in the midst of such setbacks, indicating that conservation groups have not capitalized on their potential strength. The new canvassing operations, they said, will change that.

Minuscule Amount

The Sierra Club has $200,000 earmarked for its election effort this year, but such amounts are miniscule compared to contributions by many industrial opponents of the club who will be favoring less environmentally inclined candidates. Thus, said McCloskey, conservation groups have decided to exploit their most valuable resource, the thousands of their volunteer members willing to commit time and energy to electioneering.

Like other special interest groups, the Sierra Club will funnel its money and administer its campaigns through a separate political action committee, a requirement of the 1974 federal election law. Other national environmental groups with their own political committees include Friends of the Earth, the So-

Please see CANVASS, Page 33

Continued from First Page

lar Lobby and Environmental Action.

Although candidates will be supported throughtout the nation by such committees, the major effort will be made in California. Here, the largest and most unusual campaign will be administered by the League of Conservation Voters.

Founded in 1970 and best known for publishing the environmental voting records of office holders, the league has moved its activities in recent years into more aggressive election campaigning. The California plan will involve the establishment of a permanent door-to-door canvass operated by a paid staff.

Idea Born in 1980

In the past, league officials said, canvasses were almost temporary volunteer affairs that disappeared after Election Day; rebuilding those operations for another campaign was time-consuming and inefficient. The idea for a permanent canvass was born in 1980 when league officials discovered canvassers working in Philadelphia could successfully campaign for environmental candidates and solicit contributions at the same time.

"The fact is that only about 8% of the people who support environmental protection are members of any conservation group," Marion Edey, executive director of the league, said in a telephone interview from the organization's Washington headquarters. "We needed a vehicle that would find those people for us and one that would be self-sustaining. This was it."

As a political tool, Edey said, the canvass can be "very powerful," and the league's experience so far appears to support her belief.

In the 1980 election, the league supported Rep. Robert W. Edgar, a Democrat and a strong environmental supporter who was in trouble in his suburban Philadelphia district. The league called on 60,000 voters in Edgar's district over a period of months and mobilized 200 volunteers on election day in a get-out-the-vote effort. Voters who had been identified as supporters of Edgar were called on up to four times—twice by telephone and twice in person—on election day until they showed up at the polls.

The result was a come-from-behind victory for Edgar in a district in which Republicans outnumbered Democrats 3 to 1. Reagan carried the district in the presidential race by 45,000 votes.

Another test of the environmental canvass took place last year in New Jersey, where a coalition of groups used the same techniques with eight candidates running for state office. All faced formidable opponents and six of the eight were elected.

The disadvantage of the door-to-door operation stems from the enormous manpower it requires and the high degree of skill demanded of canvassers. Probably because of this, the canvass has been largely abandoned by many traditional groups that formerly used it, principally labor unions and political parties.

"Everyone else seems to have decided that TV (advertising) can do it for them. That and direct mail," said Edey. "In most cases we have found we have the neighborhoods pretty much to ourselves."

That is especially true in California, where political traditions have grown up devoid of door-to-door precinct work. This absence of competition, along with the high level of environmental awareness of many voters, will make the canvass in California especially effective, conservation leaders believe.

4 Counties Canvassed

Carl Pope, political action officer for the for the Sierra Club and director of the League of Conservation Voters in California, said the canvass has already covered Alameda, San Francisco, Contra Costa and Marin counties in Northern California. The Southland operation began last month and so far is concentrated in Santa Monica, but it is expected to expand rapidly.

Eventually, Pope said, the league's canvass in Southern California will operate out of two or three offices with 20 to 30 canvassers in each. Statewide, the league plans to use 200 canvassers, with the goal of reaching every available residence once a year. Voters in districts where the league is actively supporting candidates will be called on more often.

"We will be there five days a week, 12 months a year, year after year," said Pope, smiling. "In California, no one will have anything like this."

The effectiveness of the environmental canvass, Pope said, comes from its self-sustaining nature. By collecting contributions during the canvass, staff members in effect earn their own salaries, which range from $8,000 to $10,000 and do not add a financial burden to sponsoring organizations.

Because they are permanent, canvassers are better at their jobs and have the opportunity to develop acquaintances with sympathetic voters in their regions through repeated visits. This continuing relationship eventually can be very powerful in influencing voters, Pope said.

Volunteers Recruited

In addition, the permanent canvassers can recruit volunteers for candidates during their forays; on the average, one League official said, the league has produced about 200 to 225 volunteers for congressional candidates.

So far neither the league nor the Sierra Club has announced a list of candidates who will receive support this year. Both organizations say that decisions will be made soon and that three major criteria will be used.

"We're looking for close races where our work can make a difference," said Jeff Ward, director of the league in Southern California. "We're also looking for cases where there's a wide difference in the environmental positions of the candidates. And we're looking for races where our candidates have a good chance of winning."

Statewide, league officials say, their organization probably will endorse 50 or so candidates, but only 25 or 30 will receive the active support of the canvass operation this year. In future years that number almost cer-

Please see CANVASS, Page 34

Continued from 33rd Page

tainly will grow, they say. In addition, the Sierra Club plans to actively support 15 to 20 candidates, and other environmental groups will support others.

In carrying out their campaigns, the conservation groups hope to reverse a trend that has seen the erosion of a large part of environmental support in the nation's elected bodies over the last three years.

In that time environmentalists have lost senators Gaylord Nelson, John Culver, Frank Church and Birch Bayh. In the House of Representatives the losses have been larger in pure numbers and include environmental majorities in some key committees.

The diminished representation has been frustrating to conservationists because it has occurred even as public support for their cause has remained strong. Last October pollster Lou Harris told a Congressional committee, "Not a single major segment of the public wants the environmental laws made less strict."

Conservation leaders say they believe this paradox of strong public support and declining representation occurred because of waning interest by many conservation-minded voters in the electoral process at large.

"In 1980, for example, people found it hard to get excited by Jimmy Carter, and they didn't believe John Anderson had a chance, so they stayed home," said Barry Leopold, manager of the canvass operation for Southern California.

"The result was we lost not only the presidential election but a lot of others besides. Our job is to convince people that all of these races matter and make a difference."

A number of obstacles remain for environmentalists, however. Many of the largest groups—the Audubon Society, the Wilderness Society, the National Wildlife Federation—have tax-exempt status and are prohibited from establishing political action committees.

In addition, the endorsement of political candidates carries with it the danger of fractionalizing the environmental community. McCloskey of the Sierra Club said he worried about this possibility when the club began endorsements two years ago.

"We certainly wondered, but it turned out there was no dissention at all," he said. "I think the trick comes in spreading the endorsements among Republicans and Democrats, conservatives and liberals. Then the message comes across that what you're after is good environmental policy and nothing else."

Although a year or more probably will pass before the league and other environmental groups perfect their canvas operations, a good measure of their effectiveness will be taken this fall. If the supported candidates do well, the amount of environmental activity in elections almost certainly will pick up in future years.

How much success do the environmentalists expect? No one is even guessing, said Pope, because the political tolls being used are something of a mystery. "No one knows how far we can go because no one has ever pushed this thing and done it right over an extended period of time," he said. "We intend to do that and to find out how far it will take us."

fuller memo

4/15 → JC - NS / JAB memo R.F.

THE WHITE HOUSE

WASHINGTON

April 15, 1982

JAB:
The gist of this is that President is advised not to meet w/ the Weirton Steel group (as he indicated he would to Byrd). The matter is too tied up in legal and regulatory questions; it would not be appropriate for the President to appear like he's influencing it.
JC ✓

MEMORANDUM FOR THE PRESIDENT

FROM: CRAIG L. FULLER CLF

SUBJECT: Weirton Steel/Senator Robe

As you may recall, Senator Robert Byrd me about a month ago the plight of the Weirt Weirton Steel is a division of National Steel Corporation. The Corporation has announced that it plans no further investment in Weirton and the employees are working closely with the existing management group to buy the plant; thus saving many jobs. The proposed purchase involves the use of an employee stock ownership plan (ESOP).

When Senator Byrd mentioned the problem of Weirton Steel, you agreed to a meeting. In an effort to satisfy the request from Senator Byrd, I met with the group and was briefed on the extent of their problem and the areas where they sought federal assistance. All appropriate departments and agencies were asked to respond to a letter from Weirton summarizing the points raised at the meeting with me. And, each agency is taking and/or is ready to take appropriate action with regard to Weirton Steel's situation.

Now, Senator Byrd has requested that the Weirton Steel group meet with you. There is general agreement that such a meeting would not be appropriate at this time. Ken Duberstein's office has drafted a letter for your signature outlining the actions we have taken and indicating that a meeting with you now is not appropriate.

Our concern is that the nature of the problems facing Weirton Steel, which are outlined on an attached page, all concern legal and regulatory issues that are within the domain of the Environmental Protection Agency and the Department of Justice. Hence, your direct involvement would not be proper. The issues pertain to the determinations that EPA and Justice must make with regard to how provisions of the Clean Air Act and the Steel Stretch-out Act apply to Weirton Steel. Since we cannot treat one facility in a different manner than others with the same situation, the Administration must address the broader Clean Air Act issues posing great difficulty to the steel industry at the present

time. Our success with the entire industry will benefit Weirton, but the legislative debate will continue for the next few months.

This should provide a brief description of both the Weirton Steel issue and the situation with Senator Byrd. If you have additional questions or concerns, either Ken Duberstein or I would be pleased to discuss the matter further.

Attachment

cc: Ed Meese
Jim Baker
Ken Duberstein

EXHIBIT 1

EXISTING CONSENT DECREE REQUIREMENTS WHICH HINDER THE DEVELOPMENT
OF THE
NEW WEIRTON STEEL ESOP COMPANY

isting Consent Decree Program	Required Compliance Date	% Completion As Of 3/15/82	Action Required by ESOP Company	Action Required by Federal Government
. No. 1 Coke Battery Charging Emissions Controls	09/01/82	50	Negotiate new decree and submit stretch-out application.	Negotiate new decree and approve new stretch-out application.
. Nos. 1 & 8 Coke Batteries Door and Lid Leakage Controls	08/06/81	50	Negotiate new decree and submit stretch-out application.	Negotiate new decree and approve new stretch-out application.
. No. 1 Coke Battery Pushing Emission Controls	09/01/82	0	Negotiate new decree and submit stretch-out application.	Negotiate new decree and approve new stretch-out application.
. No. 8 Coke Battery Pushing Emission Controls (Alternate program required if existing facilities are unacceptable)	12/31/82	100	None required if Federal Government approves the existing facilities.	Approve the existing T.S.Q. and PECT as reasonably acceptable control technology (RACT).
. Sinter Plant Main Windbox and Discharge End Emission Controls				
A. Phase I - Multiclones	12/31/82	10	Complete the Phase I Program by 12/31/82.	None required.
B. Phase II - Pollution Control Facilities	12/31/82	0	Negotiate new decree and submit stretch-out application.	Negotiate new decree and approve new stretch-out application.
. Sinter Plant Cooler Exit Emission Control	12/31/82	0	None required if existing "Bubble Concept" Program is approved.	Eliminate the requirement for this instal ation via approval of existing Bubble Con
'. Blast Furnace Cast House Emission Controls (4 Furnaces)	12/31/82	0	None required if existing "Bubble Concept" Program is approved.	Eliminate the requirement for this installation via approval of existing "Bubble Concept" Program.
). B.O.F. Hot Metal Transfer Emission Controls	Not Specified	0	Negotiate new decree and submit stretch-out application.	Negotiate new decree and approve new stretch-out application.
). B.O.F. Secondary Emission Control for Charging, Tapping, etc.	12/31/82	0	None required if existing "Bubble Concept" Program is approved.	Eliminate the requirement for this installation via approval of existing "Bubble Concept" Program.

GPC:bw
03/16/82

THE WHITE HOUSE

WASHINGTON

February 25, 1982

MEMORANDUM FOR ED MEESE
JIM BAKER
MIKE DEAVER

FROM: CRAIG FULLER

SUBJECT: Presidential Private Sector Survey

I have attached a packet of material from Bud Nance that is being held for discussion prior to presenting it to the President. As I suggested to Ed this morning, I think we had better meet and discuss the next steps. I suggest the following items should be covered:

1. General Operation: The Private Sector Survey will be an independent body but will be coordinated by Bud Nance and Janet Colson. They will report to the President through the Office of Cabinet Affairs.

2. Structure: The proposed executive committee and operating committee will be merged with the Private Sector Survey guided by an executive committee, chaired by Peter Grace. The membership of the Executive Committee will be determined by the President following appropriate WH review of the candidates suggested by Peter Grace and administration officials. Two members from the Executive Committee will in turn chair each of the Survey Teams (16 in total) that will do the work in the departments and agencies.

3. Implementation: An implementation plan has been designed that currently involves the following elements. We should discuss and agree on how to best handle this plan over the next couple of weeks.

   a. Final agreement on Executive Committee -- this is needed this week, if the Executive Committee is going to meet on March 10th.

   b. Request for phone calls -- it has been recommended that the President call the individuals proposed for the Executive Committee (33 calls).

   c. Grace and the President meet -- now scheduled for

Wednesday, March 3rd in Los Angeles, the meeting will be used to finalize the membership and procedures for conducting the Private Sector Survey (press coverage is recommended)

d. Executive Committee luncheon -- a luncheon with the President on March 10th is recommended with the Executive Committee holding its first working meeting.

We will circulate the list of individuals being proposed for the Private Sector Survey Executive Committee to the appropriate WH staff. And, my office will attempt to schedule a meeting for us to discuss the items above with Nance and Colson today or tomorrow.

cc: Dick Darman

Attachment

THE WHITE HOUSE

WASHINGTON

February 23, 1982

MEMORANDUM FOR: THE PRESIDENT

FROM : JAMES W. NANCE Bud

SUBJECT : Private Sector Survey

At Tab (A) is a proposed organizational structure for the Private Sector Survey that you approved for our use on February 17, 1982. However, after numerous discussions with Mr. Peter Grace it has been determined that the primary functions of the Executive Committee and the Operating Committee could more effectively be combined.

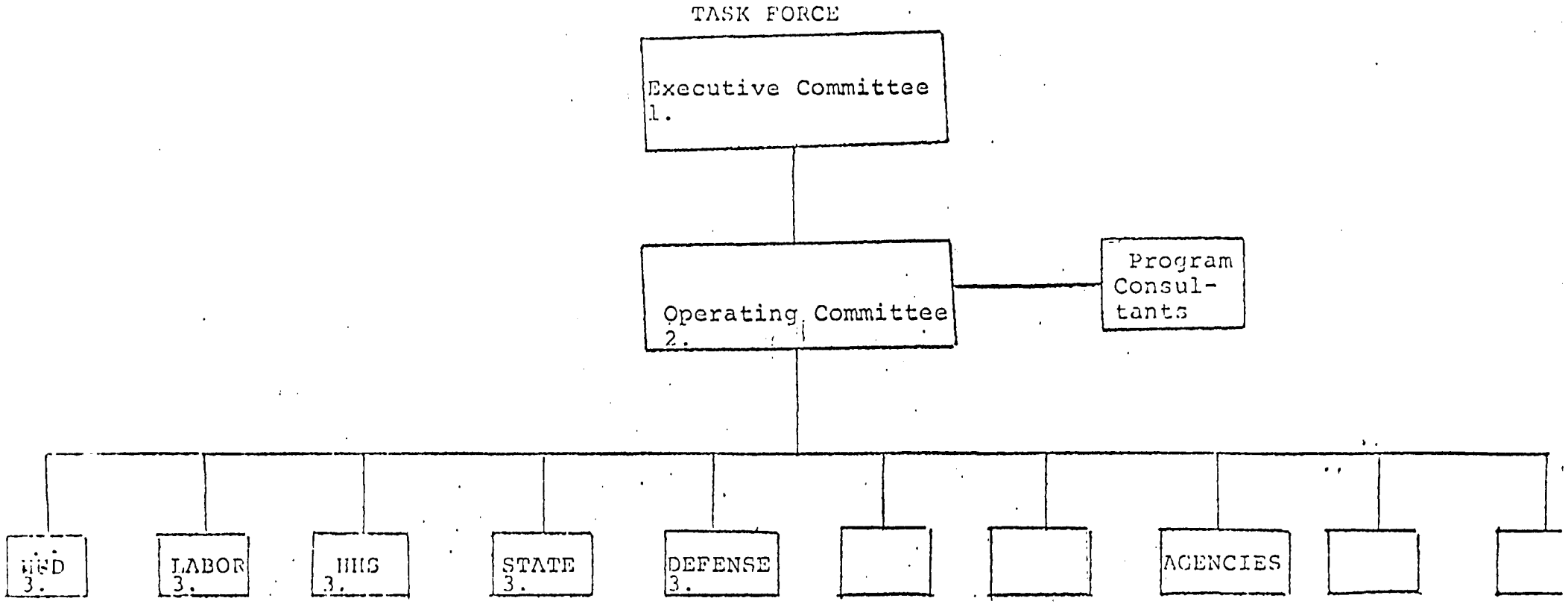
Mr. Grace desires we have an Executive Committee of the size that will allow us to assign two members for primary interest to each of the units we will have actually conducting the surveys in the departments and agencies. It is our estimate that we will require sixteen (16) teams, one team for each of the thirteen departments and three teams surveying some 25 to 30 of the larger agencies, independent establishments and government corporations. We do not propose to survey the small agencies where possible monetary savings are minimal nor do we plan to review the Central Intelligence Agency directly.

Attached at Tab (B) is a list of proposed members for the Executive Committee. This list has been approved personally by Mr. Peter Grace. Emphasis was placed on getting the "smart movers and shakers" in U.S. industry. Our emphasis was to propose those members from industry who are "changers" and can get the job done. In addition, we have a member from labor, a member of the academic community and a member associated with the N.A.A.C.P. These proposals are also those who we feel can best accomplish our mission.

To accomplish our task, it is proposed we have a total of thirty-four members on the combined Executive/Operating Committees. The first eight names on the list at Tab (B) are the heads of the major organizations. It will be from these organizations that we will get the preponderance of our manpower and support. The following twenty-five names, along with Mr. Grace, will fill our the Committee. Following our proposed list is a list of alternates in the event you desire to make substitutions or if someone is unable to serve.

If you approve our nominations, I request you call the proposed members starting with Mr. Garvin, Mr. Wriston and Mr. Levitt. Because of the large number and our desire to have a luncheon meeting here in Washington on March 10, it is important that the calls be made at your earliest convenience. Necessary back-up for the phone calls inviting individuals to serve on the Executive Committee and to attend the March 10 luncheon meeting in Washington is a Tab (C).

A



Notes (1) Senior Executives from the Private Sector

(2) Control Group - Nance and team

(3) Unit Leaders

Experienced professionals with proven management abilities and technical expertise in one or more of the following areas: General administration, accounting, finance, methods and procedures, data processing, construction and maintenance, purchasing, personnel, vehicle management and food service. During this study, team leaders and members will receive continued direction, advice and guidance from the operating committee and consultants.

PRIVATE SECTOR SURVEY ON COST CONTROL IN THE FEDERAL GOVERNMENT

EXECUTIVE COMMITTEE

CHAIRMAN

J. Peter Grace
Chairman and CEO
W. R. Grace and Company
Grace Plaza
1114 Avenue of the Americas
New York, NY 10036
(212) 764-5411

MEMBERS

1 Walter Wriston (Business Council)
Chairman
Citicorp
399 Park Avenue
Fifteenth Floor, Zone 1
New York, NY 10043
(212) 599-2700

2 Clifton Garvin (Business Roundtable)
CEO
Exxon Corporation
1251 Avenue of the Americas
New York, NY 10020
(212) 398-3000

3 Arthur Levitt (American Business Conference)
President
American Stock Exchange
86 Trinity Place
New York, NY 10006
(212) 938-6000

4 Paul Thayer (U.S. Chamber of Commerce)
Chairman
LTV Corporation
P.O. Box 225003
Dallas, TX 75265
(214) 746-7711

5 Luke Williams
CEO
American Sign and Indicator Co.
N. 2310 Fancher Way
Spokane, WA 99206
(509) 535-4101
(National Association of Manufacturers)

6 George Anderson
CEO
Anderson, ZurMuehlen and Co.
P.O. Box 1147
1 North Last Chance Gulch
Helena, Montana 59601
(406) 442-3540
(American Institute of Certified Public Accountants)

7 Terry Townsend
CEO
Texas Motor Transportation Assn
Box 1669
Austin, Texas 78767
(512) 478-2541
(American Society of Association Executives)

8 Wilson Johnson
No Company Affiliation
150 W. 20th Avenue
San Mateo, CA 94403
(415) 341-7441
(National Federation of Independent Businesses)

9 Richard R. Shinn
Chairman and CEO
Metropolitan Life Insurance Co.
1 Madison Avenue
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10 Peter G. Peterson
Chairman and President
Lehman Brothers
One William Street
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(212) 558-1500

11 Ben W. Heineman
President and CEO
Northwest Industries, Inc.
6300 Sears Tower
Chicago, IL 60606
(312) 876-7000

12 Stanley Hiller, Jr.
Chairman of the Executive Committee
Baker International Corp.
3000 Sand Hill Road
Menlo Park, CA 94025
(415) 854-2212

13 Willard C. Butcher
Chairman
Chase Manhatten Bank
Chase Plaza
New York, NY 10081
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14 David Packard
Chairman of the Board
Hewlett Packard
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(212) 857-1501

15 John A. Puelicher
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16 Edeard W. Duffy
Chairman and CEO
Marine Midlands Bank
One Marine Midland Center
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17 Edward L. Hennessy, Jr.
Chairman, President, and CEO
Allied Chemical Corporation
P.O. Box 3000
Columbia Road and Park Avenue
Morristown, NJ 07960
(201) 455-2000

18 Barry F. Sullivan
Chairman and CEO
First National Bank of Chicago
One First National Plaza
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19 Donald R. Keough
Senior Executive Vice President
The Coca-Cola Company
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(404) 898-2121

20 Robert S. Hatfield
Chairman and CEO
The Continental Group, Inc.
One Harbor Plaza
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21 John W. Hanley
Chairman and CEO
Monsanto
800 N. Lindbergh Boulevard
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(314) 694-1000

22 Joseph Alibrandi
President and CEO
Whittaker Corporation
10880 Wilshire Boulevard
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(213) 475-9441

23 Philip Hawley
President and CEO
Carter Hawley Hale Stores, Inc.
550 South Flower Street
Los Angeles, CA 90071
(213) 620-0150

24 Francis Rooney
CEO
Melville Corporation
3000 Westchester Avenue
Harrison, NY 10528
(914) 253-8000

25 Rita Ricardo Campbell
Senior Research Fellow
Hoover Institution on War, Revolution
and Peace
Stanford, CA 94305
(415) 497-0094

26 William S. Anderson
Chairman and CEO
NCR Corporation
1700 S. Patterson Boulevard
Dayton, Ohio 45429
(513) 449-2000

27 J.T. Ryan, Jr.
Chairman
Mine Safety Appliances Co.
600 Penn Center Boulevard
Pittsburg, PA 15235
(412) 273-5000

28 Russell G. Cleary
President and CEO
Heileman Brewing Co.
100 Harborview Plaza
La Crosse, WI 54601
(608) 785-1000

29 Charles J. Zwick
President and CEO
Southeast Banking Corporation
100 S. Biscayne Boulevard
Miami, FL 33131
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30 Forrest Shumway
CEO
The Signal Companies, Inc.
11255 North Torrey Pines
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31 Thomas M. Macioce
Chairman
Allied Stores of Texas, Inc.
Alamo Plaza and Commerce St.
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(512) 227-4343

32 William T. Coleman (NAACP Legal Defense Fund)
Attorney
O'Melveny and Myers
1800 M Street, N.W.
Washington, D.C.
(202) 457-5300

33 Roy Williams
President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20006
(202) 624-6800

ALTERNATE CANDIDATES FOR MEMBERSHIP

A-1 John M. Regan, Jr.
CEO
Marsh and McLennan
1221 Avenue of the Americas
New York, NY 10020
(212) 997-2000

A-2 Richard P. Cooley
Chairman and CEO
Wells Fargo and Company
770 Wilshire Boulevard
Los Angeles, CA 90017
(213) 683-7123

A-3 Richard Borda
Executive Vice President
Wells Fargo and Company
770 Wilshire Boulevard
Los Angeles, CA 90017
(213) 683-7123

A-4 Roger Milliken
President and CEO
Milliken and Co
P.O. Box 3167
Spartanburg, SC 29304
(803) 573-2020

A-5 Harry J. Gray
Chairman and CEO
United Technologies Corp.
United Technologies Building
Hartford, CT 06101

A-6 J. W. McSwiney
CEO
Mead Corporation
Courthouse Plaza, N.E.
Dayton, Ohio 45463
(513) 222-6323

A-7 Richard D. Hill
Chairman and CEO
First Boston Corporation
100 Federal Street
Boston, Mass. 02110
(617) 542-7200

A-8 Robert W. Galvin
Chairman and CEO
Motorola, Inc.
1303 E. Algonquin Road
Schaumberg, IL 60196
(312) 397-5000

A-9 James D. Robinson, III
Chairman and CEO
American Express
American Express Plaza
New York, NY 10004
(212) 323-2000

A-10 Armory Houghton, Jr.
Chairman
Corning Glass Works
Corning, NY 14830
(607) 974-9000

A-11 Henry E. Singleton
CEO
Teledyne, Inc.
1901 Avenue of the Stars
Los Angeles, CA 90067
(213) 277-3311

A-12 Barkley Morley
CEO
Stauffer Chemical Company
Westport, CT 06880
(203) 222-3000

A-13 L. L. Morgan
CEO
Caterpillar Tractor Company
100 N.E. Adams Street
Peoria, IL 61629
(309) 675-1000

A-14 Kenneth H. Olsen
President
Digital Equipment Corporation
146 Main Street
Maynard, Mass 01754
(617) 897-5111

A-15 Darwin E. Smith
CEO
Kimberly-Clark Corporation
N. Lake Street
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(414) 729-1212

A-16 John W. Hanley
Chairman
Monsanto Co.
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A-17 Rubin Mettler
Chairman and CEO
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(216) 383-3070

THE WHITE HOUSE

WASHINGTON

TO: See Tab (B)

DATE: February 25 - March 3, 1982

PURPOSE: To ask them to join the Executive Committee of the Private Sector Survey on Cost Control in the Federal Government and to invite them to a lunch meeting at the White House on March 10, 1982.

BACKGROUND: At your February 18, 1982 press conference you announced the establishment of a Private Sector Survey on Cost Control in the Federal Government and indicated that shortly you would be announcing the names of those prominent Americans who would serve as Chairman and members of the Executive Committee. The first meeting of the Executive Committee is tentatively scheduled for March 10, 1982, so as to move as expeditiously as possible.

TOPICS OF DISCUSSION On February 18, 1982 I announced the establishment of the Private Sector Survey on Cost Control in the Federal Government.

The lack of fiscal discipline in the government is having a disasterous impact on our country's financial structure and this process absolutely must be reversed. It is imperative we act now.

As I said when I decided to take this action, I want the very best people I can find in the United States to assist in this effort. I know this will be an additional burden on your time, but if you can, I would like you to serve as a member of the Executive Committee that will oversee the entire operation.

If you feel you can serve in this manner, I would like to invite you to the first meeting and lunch here at the White House on Wednesday, March 10. Members of my staff will be in touch with you concerning the details.

f Fuller memo

THE WHITE HOUSE

WASHINGTON

February 18, 1982

NOTE FOR JIM BAKER

FROM: CRAIG FULLER CF

Attached is your file on the Rosenthal request to declassify certain information. The letter drafted by Duberstein and Casey and given to you this morning has gone forward to the President for signature.