Richard Nixon Presidential Library
White House Special Files Collection
Folder List

| Box Number | Folder Number | Document Date | Document Type | Document Description |
|---|---|---|---|---|
| 19 | 8 | 01/31/1969 | Memo | Memo from Charles E. Stuart to Lucy Winchester RE: Wedding thank you notes for William H. Lewis, Jr. and Vern Barry. 1 pg. |
| 19 | 8 | N.D. | Other Document | Handwritten note by unknown author RE: arrangements for cars and buses. 2 pgs. |
| 19 | 8 | 12/05/1968 | Letter | Letter from William H. Lewis, Jr. of Hudson Transit Lines, Inc. to Charles Stuart RE: Photos of coaches for the Nixon wedding. 1 pg. |
| 19 | 8 | 01/10/1969 | Letter | Copy of letter from John Ehrlichman to Frank Shakespeare RE: Request to locate a short film made by one of the television networks covering Julie Nixon's wedding. 1 pg. |
| 19 | 8 | 01/07/1969 | Memo | Memo from RN to John Ehrlichman RE: Request for copy of film, possibly made by CBS, of Julie Nixon's wedding. 1 pg. |
| 19 | 8 | N.D. | Other Document | Handwritten notes from the desk of John Ehrlichman RE: Seating at unspecified event involving LBJ and the outgoing cabinet, Agnew, and RN. 3 pgs. |

| Box Number | Folder Number | Document Date | Document Type | Document Description |
|---|---|---|---|---|
| 19 | 8 | 07/11/1968 | Other Document | Receipt for John Ehrlichman from the Royal Coach Inns, Ltd. 1 pg. |
| 19 | 8 | 08/17/1968 | Other Document | Handwritten note from Lou Nichols to John Ehrlichman RE: John Reagan. 1 pg. |
| 19 | 8 | 08/17/1968 | Other Document | Handwritten note from Lou Nichols to John Ehrlichman RE: The rate for the Machenhut people in L.A. 1 pg. |
| 19 | 8 | 01/15/1969 | Memo | Copy of memo from Bob Haldeman to Dwight Chapin, cc John Ehrlichman, RE: RN not attending any cocktail parties after the end of formal affairs. 1 pg. |
| 19 | 8 | 01/15/1969 | Memo | Memo from Bob Haldeman to John Ehrlichman, cc Dwight Chapin, RE: Bill Rogers informing Haldeman that it is customary for the new President to hold a reception for the entire corps of ambassadors and their wives and suggested dates. 1 pg. |
| 19 | 8 | 01/16/1969 | Memo | Memo from Charles E. Stuart to John D. Ehrlichman RE: The Presidential Medal of Freedom. 2 pgs. |
| 19 | 8 | N.D. | Other Document | Handwritten notes by unknown author RE: Governmental departments in New York and Williamsburg. 1 pg. |

| Box Number | Folder Number | Document Date | Document Type | Document Description |
|---|---|---|---|---|
| 19 | 8 | N.D. | Other Document | Phone message from Mildred Lane of Williamsburg. 1 pg. |
| 19 | 8 | 12/04/1968 | Memo | Copy of memo from Herb Klein to Bob Haldeman RE: Discussion of a television presentation of RN's Cabinet. 2 pgs. |
| 19 | 8 | N.D. | Other Document | Handwritten note by unknown author RE: the Cabinet. 1 pg. |
| 19 | 8 | N.D. | Other Document | Handwritten notes by unknown author RE: Cabinet announcements, a conference, Miss Mildred Lane, television coverage. 3 pgs. |
| 19 | 8 | N.D. | Other Document | Handwritten notes by unknown author RE: Don Gonzales, VP of the Colonial Willamsburg Corp, and a dinner for 50 to 60. 1 pg. |
| 19 | 8 | N.D. | Other Document | Handwritten notes by unknown author RE: Seminars regarding RN, personnel, legislative, and conflict of interest. 1 pg. |
| 19 | 8 | 11/30/1968 | Memo | Copy of memo from bud Krogh to John Ehrlichman RE: RN Trust Arrangement. 2 pgs. |

| Box Number | Folder Number | Document Date | Document Type | Document Description |
|---|---|---|---|---|
| 19 | 8 | 12/03/1968 | Memo | Memo from Bud Krogh to John Ehrlichman RE: RN termination compensation from Nixon, Mudge law firm. 2 pgs. |
| 19 | 8 | 12/03/1968 | Newspaper | Copy of newspaper article from the New York Post titled "LBJ Expected to Urge A Pay Hike for Nixon" Not scanned. 2 pgs. |
| 19 | 8 | N.D. | Other Document | Handwritten notes by unknown author RE: RN compensation from law firm and RN Trust. 3 pgs. |
| 19 | 8 | 12/03/1968 | Memo | Handwritten memo from Bud Krogh to John Ehrlichman RE: RN termination compensation from Nixon, Mudge law firm. 4 pgs. |
| 19 | 8 | 03/09/1970 | Letter | Letter from G. A. Horkan, Jr. to Dwight David Eisenhower, II RE: Enclosed W-4 form for payment for appearance on the Merv Griffin Show. 1 pg. |
| 19 | 8 | 03/11/1970 | Financial Records | Copy of W-4 IRS form signed by Dwight David Eisenhower II. 2 pgs. |
| 19 | 8 | 12/14/1968 | Memo | Memo from Harry Flemming to John Ehrlichman RE: White House Personnel Office functions. 3 pgs. |

| Box Number | Folder Number | Document Date | Document Type | Document Description |
|---|---|---|---|---|
| 19 | 8 | 11/25/1968 | Letter | Copy of letter from Bryce N. Harlow to Peter N. Chumbris in the Office of Santor Everett Dirksen RE: Information provided by Chumbris. 1 pg. |
| 19 | 8 | N.D. | Memo | Copy of memo from Peter N. Chumbris to Senators Dirksen, Hruska and Fong RE: Antitrust issues. Handwritten note at bottom of first page from Chumbris to Bryce. 10 pgs. |

R. Ross 1/23/79

MUSEUM OBJECT WITHDRAWAL SHEET

The original museum object was removed from this file ~~on~~ in Nov. or Dec. 1978

by M.E. Ruwell and transferred to the Richard M. Nixon Museum

Collection.

File Group/Collection: WH Special Files - Staff Members and Office Files - John Ehrlichman

Series Title:

Folder Title: "Long Range Development Plan, 1969 University of California - Irvine"

Box No.: formerly 15, now renumbered as new box 49

Description of Object:

aerial photograph, approx 30"x30"

Origin (if known): [redacted] Engineers Architects Planners
2301 Campus Drive
Irvine, California

Approx. Date Given: 1969

Julie Nixon wedding

January 31, 1969

TO LUCY WINCHESTER

FROM CHARLES E. STUART

RE WEDDING THANK YOU NOTES

It is embarassingly late, but it occurred to me that there are at least two people who requiee thank you notes for their work on the Nixon wedding.

Mr. William H. Lewis, Jr., vice president of the ShortLine Bus Company, 17 Franklin Turnpike, Mahwah, New Jersey, 07450, (the company from which we rented the buses) kindly volunteered two free buses if we rented three. This saved us approximately $250.

Mr. Vern Barry, President, Fugazy Continental, Inc., 660 Madison Avenue, New York City, provided all of the limousines used for the wedding party at no charge.

Both of these gentlemen deserve some kind of a thank you note from Mrs. Nixon.

:sw

Sat — 5 Cars — Saturday Marca Co
300 St 5a-6a — @ 5:30 — 10:
Agent — Agent Mc

Sunday — 8 Cars — 4 usher - minis
5-CM @ 300 St — 3:00

~~Bu Windsor Pick up Mag~~
5a Cm SS Driver -
810 5a Avenue — 2:00 PM
Report to Agent Rommer

Busses Sun 300 Decorator
@ 3:PM

Verne Barry
Pres. Fugazy Continental Inc
660 Madison Ave
N.Y.C.


SHORTLINE
17 FRANKLIN TURNPIKE • MAHWAH, N. J. 07430 • TELEPHONE 201-LA 9-3666

December 5, 1968

Mr. Charles Stuart
Office of President-Elect
450 Park Ave.
New York, New York 10022

Dear Mr. Stuart:

Enclosed are photos of coaches we anticipate using for Nixon Wedding on December 22, 1968.

If we can be of further assistance, please feel free to call upon us.

Very truly yours,

HUDSON TRANSIT LINES, INC.

William H. Lewis Jr.

William H. Lewis, Jr.
Vice President

WHL: cl
encl

January 10, 1969

Mr. Frank Shakespeare
Vice President, CBS
CBS Building
51 West 52nd Street
New York, New York

Dear Frank:

The President-elect has requested that we locate a 15- or 20-minute film that was made by one of the television networks covering Julie's wedding.

Would it be convenient for you to determine whether it was your network or some other and make a print of that film available to the Presidential family for showing at the White House?

Many thanks.

Best personal regards.

Yours sincerely,

John D. Ehrlichman
Counselt to the President-elect

JDE:sw

January 7, 1969

MEMORANDUM

TO: John Ehrlichman

FROM: RN

I understand that CBS had a 15 or 20 minute film on the wedding, (I think it was CBS, it might have been NBC), which was carried broadly.

I wonder if you could check and see whether it would be possible for us to get a tape of this film for our library. We would like to see it at the White House if possible.

122

John Ehrlichman

Staff of Richard M. Nixon
450 Park Avenue
New York, N.Y. 10022
(212) 661-6400

Tour Manager

Seating -

HH no fam on platform RM/Mrs -
Johnson girls - (4)
LBJ, Mrs J.

Outgoing Cabinet - Row K
6 members -

Walk-Thru w/ SS
3:00 - 3:30

John Ehrlichman

Staff of Richard M. Nixon
450 Park Avenue
New York, N.Y. 10022
(212) 661-6400

Tour Manager

Begin 11^45
Better start late than early -

Ar Cap 11^30
Procession
Dep Wh Hse - 11^15 (:10 drive time)
10^45 Ar WH for Coffee
HHH there
Agnews there
Sen Comm

girls in 2 sep cars -
marks w/ (in recep rm -)
JE w/ our girls ?

John Ehrlichman

Staff of Richard M. Nixon
450 Park Avenue
New York, N.Y. 10022
(212) 661-6400

Tour Manager

Agnew schedule

Sheraton PK -
To WH by 10 40
Marks will meet
when RN arrives
all go up -

580 EHRLICHMAN JOHN D. 7/11 1 14.00 SPL
450 PARK AVE. 7/10 HC/HB
N.Y.C. N.Y.

# Royal Coach Inns, Ltd.

TELEVISION - TELEPHONES
PICKWICK COFFEE SHOP
BRIGHTON COACH ROOM
COACH AND HORSES CLUB
MEETING AND BANQUET ROOMS
SWIMMING POOLS

357-9561

| DATE | REFERENCE | CHARGES | CREDITS | BALANCE | PREVIOUS BALANCE PICK-UP |
|---|---|---|---|---|---|
| JUL 10 | ROOM 580 | C* 14.00 | | | |
| JUL 10 | TAX 580 | C* .42 | | * 14.42 * | A* 14.42 |
| JUL 11 | RESTR 580 | A* 1.55 | | * 15.97 | |

GUEST SIGNATURE

CHARGE TO

STREET

CITY STATE

CREDIT CARD NO. APPROVED BY

Royal Coach Inns, Ltd.
3800 W. NORTHWEST HIGHWAY
DALLAS, TEXAS
357-9561

TDM
8/17

John

A Decision Needs to be made on John Reagan. John Mitchell Never Did get around to seeing he yesterday and officially turned it in.

I think you need Reagan + Congfield Both in my Mind + elsewhere.

Tell Reagan Something Today. He Should be Paid for this week.

I'll Take Care of Miami. Will be at Leesburg over Weekend + Back in N.Y.C. Monday or Tuesday

Regards
Don Nichols

8/17

John

I spoke to the Mackenhut People in L.A. Their Rate is 3.60 Per hour + Expenses. I told him to call Miami and tell them to shove as much as they can Then Bill N.Y. as they did in Miami. Call me if There is any question

L. B. IV

MEMORANDUM

January 15, 1969

TO: DWIGHT CHAPIN

FROM: BOB HALDEMAN

It should be clearly understood that at affairs like the Gridiron dinner and Alfalfa Club, etc. the President will not attend any cocktail parties to be held after the formal affair ends. He will always leave at the end of the program.

HRH

cc:
John Ehrlichman

MEMORANDUM

January 15, 1969

TO: JOHN EHRLICHMAN

FROM: BOB HALDEMAN

Bill Rogers informs me that it is customary that a reception be held by the new President in the first week or two of his term honoring the entire corps of ambassadors and their wives.

Bill suggests that this reception for the Nixon administration be held either the week of the 27th or the week of the 3rd. He would prefer the latter.

The customary hours are from 6:00 p.m. to 8:00 p.m. The receiving line includes the President and his wife, the Vice President and his wife, and the Secretary of State and his wife. All other Cabinet officers are invited to attend. The uniform is the same as that for the inaugural ceremonies.

Rogers also points out that there will be some ambassadors who will have to present their credentials and suggests that this could be done the same day just prior to the reception in order to avoid doubling up on visits.

Rogers urges that we schedule this date as soon as possible and get the invitations out.

HRH

cc:
Dwight Chapin

To: John D. Ehrlichman Date: January 16, 1969

From: Charles E. Stuart

Subject: Presidential Medal of Freedom

The Medal of Freedom was established by Executive Order 9586 of July 6, 1945, as an award for meritorious war-connected acts or services. Executive Order 10336 of April 3, 1952, provided that it could be awarded also for meritorious acts for service in the interests of the security of the United States.

Executive Order 11085 (February 21, 1963) re-named the award the Presidential Medal of Freedom. It broadens its scope to include persons who had made especially meritorious contributions to "1) the security or national interests of the United States or 2) world peace or 3) cultural or other significant public or private endeavors".

This Order further provided that the nominations to the President for this award be made by the Distinguished Civilians Service Awards Board. At that time, the Board was expanded to include five additional members appointed from other than the Executive branch. The Order also provided that announcements of the awards would be made annually, normally on July 4. The actual presentations, of course, can take place at any time.

The original Awards Board was composed of the following: Henry Cabot Lodge, Dr. Lee A. DuBridge, Samuel Newhouse, Mary Mcgrory, and Justice Arthur J. Goldberg from outside the Executive branch. The "internal" members of the board were: Robert F. Kennedy, W. Willard Wirtz, Anthony J. Celebrezze, George W. Ball, and Roswell L. Gilpatric. Mr. Ball served as chairman.

Although President Johnson has never activated the Appointments Board to propose recipients for the medal, he did preside at the presentation ceremony on December 6, 1963. At that time thirty-one outstanding people, selected by Kennedy, were awarded the Presidential Medal of Honor by President Johnson. The recipients were: Miss Marion Anderson, Mr. Pablo Casals, Miss Genevieve Caufield, Dr. John F. Enders, Mr. Carl Holton, Mr. Robert J. Kiphuth, Mr. Edwin H. Land, Governor Herbert H. Lehman, Mr. J. Clifford Mac Donald, Mr. George Meany, Professor Alexander Meiklejohn, Mr. Ludwign Mies van der Rohe, Mr. Clarance B. Randall, Mr. Rudolph Serkin, Mr. Edward Steichen, Mr. George W. Taylor, Dr. A. T. Waterman, Mr. Mark S. Watson, Mrs. Annie D. Wauneka, Mr. E. Lee White,

Mr. Edmund Wilson, Mr. Norton Wilder, Mr. Andrew Wyeth, Mr. Ellsworth Bunker, Dr. Ralph J. Bunche, Dr. James B. Conant, Governor Luis Munoz Marin, Mr. Robert A. Lovett, Mr. Jean Monnet, Justice Felix Frankfurter, Mr. John J. McCloy, and His Holiness, Pope John XXIII.

I agree with John Lodge. Certainly the Presidential Medal of Honor will provide an opportunity to recognize, and be identified with, a great many very desirable people. To this end it should be utilized as fully as possible.

Charles E. Stuart

CES:sw

| NY | Williamsburg |
| --- | --- |
| Agric | State |
| Interior | Defense |
| HUD | AG |
| HEW | Treasury |
| DOT | |
| Commerce | UN |
| Labor | |
| P.G. | |

11AM Thurs

To

Date Time 11 42 A.M. ~~P.M.~~

# WHILE YOU WERE OUT

M Mildred Lane

of Williamsburg

Area Code & Exchange (703) 229-4000

| | | | |
|---|---|---|---|
| TELEPHONED | | PLEASE CALL | ✓ |
| CALLED TO SEE YOU | | WILL CALL AGAIN | |
| WANTS TO SEE YOU | | URGENT | |
| | RETURNED YOUR CALL | | |

Message

Operator

Emulcha

December 4, 1968

MEMORANDUM:

TO: BOB HALDEMAN

FR: HERB KLEIN

I am aware of the strong arguments for a dramatic presentation of all the Cabinet at one time on television and the meanings which would follow. I would like to suggest with RN that he consider these arguments which I believe in strongly and finally to consider my compromise alternative.

1) Mass presentation will mean overlooking most of the lesser Cabinet offices, thus taking away from their strength. Inevitably, in later stories about their assistants they will get better play and undue attention say compared to Secretary of Agriculture. This point is particularly important in areas where agriculture and interior and others have importance nearly as great as Secretary of Defense or State.

2) The very element of surprise at late hours of the evening will mean less newspaper coverage because of the lack of time to produce adequate biographical material.

3) When the immediacy of this is past, there will be greater pressure on issues at a time when this will not be appropriate.

4) The sudden mass production of people will make it less likely that people will retain the names of secondary cabinet officials and therefore their balancing factor in the Cabinet will be lost.

ALTERNATIVES:

Begin parceling out in small groups if desired, the names of lesser cabinet officers and then build up to the presentation of the final three or four, perhaps Secretary of Defense, State, HEW, HUD or Treasury, followed by major family information meeting you proposed with all officers. I believe this gives us the best of two worlds and my informal television checks indicate that we would get wide television coverage from all networks and you'd have the opportunity to present all the Cabinet to the American public in this way.

# # #

cc: John Ehrlichman
Bob Finch
Ron Ziegler

Monday

CABINET

Tuesday 12/10

* Wednesday 12/11 Press Conf.

Arlie House – So of Wash DC

Announce –
Day of Conferences –

Wbburg –

Tues Thu 10th

Hammelsine – 229 – 1000

Miss Mildred Lane
Exec, Dir.

Cabinet announcements -

Diversity - as a whole -

Going to the people - TV
Set the climate in ea home

Make comment secondary -

Garment - Doug Parker - 34 atty

3 nets live -

Live Press Conference - ?

10pm EST ideal time = TUESDAY ? Dec. 10 -
Use 28" Not - NYC

Heavy planning

12 Secys

---

Inaugural - AL SCOTT - full time
TV Coordinator

Not Morrison (Rep Nat Com) & his aide

Ailes too immature

McCune

Scott is willing
Treleaven knows where he is -
Manhattan book

12-17 CBS 1 hr prime time exploited

Transition
Key men interviews
Filming 39th St
RN film in mfg NO COMMITMENT
Cabinet members
Mike Wallace interviews

Dont commit to these:
Show #2 - Inaugural time
#3 - 125 100 days

- Deliver next to ABC around inaugural time

Xmas eve 10-11 pm "60 minutes" CBS
RN live -
A Xmas comment

pls Klein

Don Gonzales V.P. Colonial Williamsburg Corp'n

U.P. at White Hse.

→ New Auditorium 9 pm - 9:30

Dinner 50 to 60

Rooms 285

Press Adv

Seminars:

RN $\phi$

Personnel

Legislative

Conflict of Interest

MEMORANDUM

TO: John Ehrlichman

FR: Bud Krogh

RE: RN - Trust Arrangement

November 30, 1968

A trust arrangement whereby increments of the $250,000 could be paid into the trust over a period of years with minimum tax disadvantages would probably be the best arrangement for RN. Certain events, such as retirement or death, would terminate the trust. This type of trust is used commonly to protect a woman who, upon divorce or death of her husband, would receive the principal of the trust.

An arrangement like this is discussed in Scott on Trusts, section 334, p. 2640. He says:

> "By the terms of the trust it may be provided that the trust shall continue until the happening of various other events, in which case the trust will be terminated only upon the happening of the designated event. It may be provided that the trust shall continue as long as the beneficiary is in a certain employment.

For example, the trust in Seamans v. Gibbs, 132 Mass. 239 (1882) was terminable after duties of management and sale had been performed. Also, in Matter of Fishberg, 158 Misc. 3, 285 N.Y. Supp. 303 (1936) the trust was terminable when beneficiary reaches the age of thirty or marries. What specific event will trigger the termination of the trust appears to be up to the settlor. The only restriction would be a general attitude of the courts to disapprove conditions of divorce before a person can enjoy a trust. Inducing divorce by a settlor is considered to be against public policy and is not acceptable as a valid event to terminate a trust.

Thus, there appears to be no problem re: establishment of a trust which will terminate upon those events which may befall RN - retirement after 4 or 8 years; death; incapacity.

The next question involves the degree of control which RN, as settlor and presumably as beneficary along with other members of his family, will retain over the trust. I have not had a chance to research this question in depth yet, but setting up a blind trust, or a trust with no control over the management of the trust funds, would appear to be the best device. Because of the close relation between FCC rate and licensing regulations, LBJ divorced himself completely from the operation of his TV holdings in Texas. As I understand it,

the administrator who is operating the TV stations does not look at all to LBJ (either of them) for direction in the management of the stations.

As noted in the first paragraph, a schedule of payments from the $250,000.00 should be set up so that RN will not suffer a tremendous income tax in 1969. The number of years over which the bonus would be spread should probably be 4. Annual payments of $60,000 + per year for four years would probably be better from a tax standpoint then setting up the trust for payments over 8 years with a possible termination after 4 years which might result in 1/2 of the $250,000 being taxed in one year. Of course, it would be feasible to set up a flexible schedule of payments so that there would be minimum tax disadvantage over 8 years.

18 U.S.C. Subsection 209(b) does not prevent a Government employee "from continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer." The bonus to be paid to RN does not, in my judgment, fall within this permissble category. It seems to me to be more in the nature of an ad hoc payment, not a regular plan maintained for numerous employees.

Receipt of the entire $250,000.00 in early 1969 would be prohibitive from a tax standpoint. Deferring payment of the $250,000.00 by dividing it into increments over the next few years, would risk violation of 18 U.S.C. 209(a) which states: "Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States... from any source other than the United States... Shall be fined not more than $5,000.00 or imprisoned not more than one (1) year, or both."While it could be clearly shown that the payments made from Nixon, Mudge over a period of years were for services rendered during the time RN was employed with the firm, the fact that the $250,000.00 was a special bonus to him would suggest that the payments were made <u>because</u> of his election to the Presidency. Some might claim that it was additional compensation <u>for</u> his upcoming employment as President of the United States.

<u>Recommendations</u>:

(1) That a trust specialist be retained to work out the details of establishing a trust for this bonus payment which would eliminate the greatest tax disadvantages, insulate the management of the trust from any control by RN, stipulate those events which would terminate the trust.If you feel I should work with Len Garment on this matter, I'll try to set it up with him this week.

BK.

MEMORANDUM

December 3, 1968

TO: John Ehrlichman

FROM: Bud Krogh

RE: Mr. Nixon's termination compensation from Nixon,Mudge.

Today I discussed the matter of Mr. Nixon's termination compensation from his law firm with Mr. Ritzel, the partner Mr. Nixon indicated has been working with this type of question. Mr. Ritzel does a substantial amount of estate and tax work, and he has handled several problems for Mr. Nixon in the past.

The amount payable to Mr. Nixon upon his retirement from the firm has not, according to Mr. Ritzel, been calculated to the dollar. It may well be the $250,000 amount you told me about, but Mr. Ritzel did not verify that this was the exact amount. The amount payable is a combination of capital and income, the latter being money already earned. As of December 3, 1967, capital amounted to approximately $47,600.00. How much of a capital interest has accrued in 1968 was not determined. The firm agreement calls for payment of capital to a retiring member in two equal annual payments. Under this agreement, Mr. Nixon would receive about $23,800 per year in 1969 and 1970. There is no income tax exposure on these payments of capital.

I informed Mr. Ritzel of Mr. Nixon's decision to receive his termination compensation in 20% annual payments.

Mr. Ritzel will go ahead with this and determine the best way for this 20% to be paid over, but, if agreeable to Mr. Nixon, he suggested that he investigate another payment program which may be able to save Mr. Nixon a substantial amount of money.

In brief, this alternative program would involve an assignment of Mr. Nixon's termination payment into a trust for the benefit of his family. By using Mr. Nixon's gift deductions (which Mr. Ritzel stated had not been used), we may be able to substantially reduce the tax base and save tax dollars. This program would not provide for payments to Mr. Nixon during his term of office.

Attached to this memo is a clipping from the New York Post, December 3, 1968, regarding a probable pay raise for Mr. Nixon from $100,000 to $150,000 per year. Mr. Nixon probably already has knowledge ot Mr. Johnson's intentions on this matter.

QUAERE: Would it be possible for you to get a reading from Mr. Nixon on whether he would like Mr. Ritzel to explore this alternative proposal or to stick with the annual 20% payment? I told Mr. Ritzel I'd be in touch with him shortly.

Also, Mr. Ritzel advises that, to his knowledge, Mr. Nixon has never executed his will prepared over a year and a half ago. Perhaps this should be taken care of, too?

Interview with Mr. Ritzel at Nixon, Mudge,

RN - Deferred Compensation - Trust arrangement.

20% / year.

① Possible assignment of $ ~~to~~ into trust for the benefit of Pat Nixon. Putting him in another tax category. Gift tax rather than income tax. Would not be payable until after the term has expired.

② The payment from the firm is in fact money already earned. Except for capital.

③ Firm arrangement.

- Expenses on a yearly basis
- As fees collected, upon receipt they are collected & then paid over to the attorney.

④ Earnings & Capital.

- Capital: payable in 2 equal annual installments. End of 1967 - Dec. 31, 1967. ($47,600 ~~how~~ how much after 1968?)

operation) No tax problems on this. Not income.

* 20.

Note: My recommendation: That RN request Mr. Ritzel to set up the specific financial arrangement.

Cash

⑤ Get one reaction from RN.

- Could we work out something to avoid piling this on top
- No use going in to this if he wants to draw it down himself.

State Sales Tax Section

488 - 5930

Wasn't ordered by a gov't agency.
- b/c ~~not~~ Transition Committee -

State Sales Tax Law -
Sales & Use Tax As. Art 28 & 29. — N.Y. State

Check the Transition Act. (Session Law for 1964 to determine if the ~~agency~~ transition ~~com~~ committee constitutes an agency. Probably Not. & if Not, then it will have to pay N.Y. Sales Tax.

---

Mr. Ritzel:

(1) Need to Know RN's base pay. $150,000. (Get Harmon memo or check in the library) (Also, from Harmon, find out best address to send forms to.) 450 Park or Nixon, ~~mudge~~. —

(2) What would be tax arrangement upon paying 20% of $250,000 per year.

(3) might check w/ Ritzel re: moving expenses for RN. ~~to~~ Assume he must deduct (under § 217) those expenses from his 1969 income if he moves in 1969.

140 A.L.R. 621

Use his gift deductions - $15 X

Need to get a reading from RN.

Mr. Ritzel says: We can set up the 20% per year deferred compensation as he wishes. However, we could explore a possible assignment into trust for the benefit of his family. By using his gift deductions, we may be able to substantially reduce his base & save considerable tax dollars.

Also, RN has never executed his will - (to Ritzel's knowledge) of a year and a half ago.

Recommendation: That if RN concurs, we explore a possible assignment into trust as a means to save considerable money.

Or, if he wishes, we can go ahead w/ a straight 20% payment.

Include in my memo the info about the

MEMORANDUM

DECEMBER 3, 1968

TO: John Ehrlichman

FROM: BUD KROGH

RE: RN termination compensation from Nixon, Mudge.

Today I discussed the matter of Mr. Nixon's termination compensation from his law firm with Mr. Ritzel, the partner Mr. Nixon indicated ~~was involved~~ has been working with this type of question. Mr. Ritzel does a substantial amount of estate and tax work and has handled several problems for Mr. Nixon in the past.

~~Mr. Ritzel~~ The ~~sum~~ amt payable to Mr. Nixon upon his ~~termination from~~ leaving the firm has not, according to Mr. Ritzel, been calculated to the dollar. The amt is a combination of ~~Mr. Nixon~~ capital and

an amount already earned.
income, As of Dec. 31, 1967, ~~the amt of~~ capital ~~interest~~ amounted to ~~capital~~ approx. $47,600. How much of a capital interest has accrued in 1968 was not determined. The firm agreement calls for payment of capital to a retiring member in two equal annual payments. Under this agreement Mr. Nixon would receive $23,800 per year in 1969 and 1970, not including the 1968 capital amount.

NO tax on

I informed Mr. Ritzel of Mr. Nixon's decision to ~~take 20% of his term~~ receive his termination compensation per year in 20% per year increments. Mr. Ritzel will go ahead with this and determine the best way for the 20% to be paid over, but he suggested that he investigate another payment program which may be able to save Mr. Nixon a substantial amount of money.

In brief, this alternative program would call for an ~~possible~~ assignment of his termination compensation into a trust for the benefit of his family. By using Mr. Nixon's gift deductions (which Mr. Ritzel stated had not been used), we ~~could~~ may be able to substantially reduce the tax base and save tax dollars. This program would not ~~require~~ provide outlays for payments to Mr. Nixon during his term of office.

Attached to this memo is a clipping from the New York Post, Dec. 3, 1968 regarding a probable pay raise for Mr. Nixon from $100,000 to $150,000. Mr. Nixon probably

already has knowledge of the intentions of ~~the~~ President Johnson on this matter.

<u>Quaere</u>: would it be possible for you to get a reading from Mr. Nixon as to ~~his~~ whether he would like Mr. Ritzel to investigate this alternative proposal or to stick with the 20% annual payment. I told Mr. Ritzel I'd be back in touch w/ him shortly.

Also, Mr. Ritzel advise that, to ~~Mr. Nixon~~ his knowledge, Mr. Nixon has never executed his will prepared over a year and a half ago.

LAW OFFICES
POWELL, HORKAN & POWELL
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815 CONNECTICUT AVENUE, N. W
WASHINGTON, D. C. 20006
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TELEPHONE 592-3252

ARLINGTON, VIRGINIA 22200
TELEPHONE 525-3474

Upperville, Virginia
March 9, 1970

Mr. Dwight David Eisenhower, II
36 Bedford Terrace
Northampton, Massachusetts 01060

Dear David:

Please sign and date the enclosed form W-4 Employee's Withholding Exemption Certificate and mail it directly to Anthony Productions, Inc. This certificate must be filed in order for you to receive payment for appearing on the Merv Griffin Show, taped on November 21, 1969.

We had a grand time in Europe and spent a week with your mother and father. Looking forward to telling you and Julie all about it.

With warmest regards.

Sincerely yours,

Bo

G. A. Horkan, Jr.

GAH:ld
Enclosure
cc: John Ehrlichman, Esq.

Run 170
EOB

FORM W-4 (Rev. July 1969)
Department of the Treasury
Internal Revenue Service

# Employee's Withholding Exemption Certificate

Type or print full name Dwight David Eisenhower, II Social Security Number 111-36-5300

Home address 36 Bedford Terrace City Northampton State Mass. ZIP code 01060

**EMPLOYEE:** File this form with your employer. Otherwise, he must withhold U.S. income tax from your wages without exemption.

**EMPLOYER:** Keep this certificate with your records. If the employee is believed to have claimed too many exemptions, the District Director should be so advised.

## HOW TO CLAIM YOUR WITHHOLDING EXEMPTIONS

1. If SINGLE (or if married and wish withholding as single person), write "1." If you claim no exemptions, write "0" . . .
2. If MARRIED, one exemption each is allowable for husband and wife if not claimed on another certificate.
   (a) If you claim both of these exemptions, write "2"; (b) If you claim one of these exemptions, write "1"; (c) If you claim neither of these exemptions, write "0" . . . . . 2
3. Exemptions for age and blindness (applicable only to you and your wife but not to dependents):
   (a) If you or your wife will be 65 years of age or older at the end of the year, and you claim this exemption, write "1"; if both will be 65 or older, and you claim both of these exemptions, write "2" . . . . . .
   (b) If you or your wife are blind, and you claim this exemption, write "1"; if both are blind, and you claim both of these exemptions, write "2" . . . . . .
4. If you claim exemptions for one or more dependents, write the number of such exemptions. (Do not claim exemption for a dependent unless you are qualified under Instruction 4 on other side.). . . . . .
5. If you claim additional withholding allowances for itemized deductions fill out and attach Schedule A (Form W-4), and enter the number of allowances claimed (if claimed file new Form W-4 each year) . . . . . .
6. Add the exemptions and allowances (if any) which you have claimed above and enter total . . . . . 2
7. Additional withholding per pay period under agreement with employer. (See Instruction 1.) . . . . . $

I CERTIFY that the number of withholding exemptions and allowances claimed on this certificate does not exceed the number to which I am entitled. 648—16—80513—1

(Date) March 11, 1970, 19 70 (Signed) Dwight David Eisenhower II

Sent:

Anthony Production, Inc.
430 Park Avenue
New York, New York 10022

Attention: Mrs. Bertha Sahy

1. **Number of Exemptions.**—Do not claim more than the correct number of exemptions. However, if you expect to owe more income tax than will be withheld, a smaller number of exemptions may be claimed or you may enter into an agreement with your employer to have additional amounts withheld. This is important if you have more than one employer. If both husband and wife are employed, each may ask to have taxes withheld as a "single" person to avoid owing large additional amounts of taxes.

Only one personal exemption may be claimed by nonresident aliens other than residents of Canada, Mexico, or Puerto Rico.

2. **Itemized Deductions.**—See Schedule A (Form W–4) for instructions on claiming additional allowances based on large itemized deductions.

3. **Changes in Exemptions.**—You may file a new certificate at any time if the number of your exemptions INCREASES.

You must file a new certificate within 10 days if the number of exemptions previously claimed by you DECREASES, for example, because:

(a) Your wife (or husband) for whom you have been claiming exemption is divorced or legally separated, or claims her (or his) own exemption on a separate certificate.

(b) The support of a dependent for whom you claimed exemption is taken over by someone else, so that you no longer expect to furnish more than half the support for the year.

(c) You find that a dependent for whom you claimed exemption will receive $600 or more of income of his own during the year (except your child who is a student or who is under 19 years of age).

The death of a spouse or a dependent, does not affect your withholding until the next year, but requires the filing of a new certificate. If possible, file a new certificate by December 1 of the year in which the death occurs. If you qualify as a surviving spouse with dependent child (children), you may claim your personal exemption on line 2 as a married individual for the two years following the year of the death of your spouse.

4. **Dependents.**—To qualify as your dependent (line 4 on other side), a person (a) must receive more than one-half of his or her support from you for the year, and (b) must have less than $600 gross income during the year (except your child who is a student or who is under 19 years of age), and (c) must not be claimed as an exemption by such person's husband or wife, and (d) must be a citizen or resident of the United States or a resident of Canada, Mexico, the Republic of Panama or the Canal Zone (this does not apply to an alien child legally adopted by and living with a United States citizen abroad), and (e) must (1) have your home as his principal residence and be a member of your household for the entire year, or (2) be related to you as follows:

Your son or daughter (including legally adopted children), grandchild, stepson, stepdaughter, son-in-law, or daughter-in-law;

Your father, mother, grandparent, stepfather, stepmother, father-in-law or mother-in-law;

Your brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, or sister-in-law;

Your uncle, aunt, nephew, or niece (but only if related by blood).

U.S. GOVERNMENT PRINTING OFFICE 648—10—80515-1

File: PERSONNEL - CONTINUING

December 14, 1968

MEMORANDUM

TO: John Ehrlichman

FROM: Harry Flemming

RE: White House Personnel Office

The function of this office should be to screen and recruit candidates for positions in the government which are exempt from Civil Service. In the past Administration this office was combined with and given to the Chairman of the Civil Service Commission. During the Eisenhower and Kennedy Administrations the office was held by a Special Assistant to the President.

Although there are benefits to be gained by combining the authority to hire all government personnel in one office through the Civil Service recruitment process such a practice will not uncover men who are responsive to the President. It is much more likely to produce people responsive to the commission that appointed them, which commission is not equipped to recruit people with that "extra dimension" of excellence demanded by the President-Elect. The people who run and staff the Civil Service Commission have historically looked upon Presidential appoint-

ments as a last vestige of the spoils system and are antagonistic to it. I do not think this can be overcome by the appointment of three Commissioners.

If we are to provide personnel compatible with the heads of the individual departments but responsive to the President, the White House should play a major role in the selection and appointment process. I therefore propose that the office be returned to the White House to function pursuant to the following guidelines.

RECRUITMENT

We should continue the present transition program of actively soliciting people for Presidential appointments, which process should include private interviews and reference checks which are conducted under the direction of a White House staff member.

SCHEDULE OF AVAILABLE POSITIONS

The office should maintain a roster of available political appointments, which roster should include positions available for the appointment in the reasonable future by reason of anticipated resignations, termination of tenure or lack of suitability of the incumbent appointee.

CONGRESSIONAL AND PARTY LIAISON

The office should collaborate with the Assistant to the President for Congressional Liaison as well as State Party Officials and Nixon State Chairmen in the

various states in order to insure the most effective political use of appointments.

## CENTRAL DATA BANK

The use of EDP should be upgraded on a continuing basis in order to provide the best possible reservoir of information and should be used in conjunction with the data bank maintained by the Civil Service Commission in order to search and find competent career people in government whose talents have not adequately been used in the last two Administrations.

It is my opinion that the very existence of a separate office responsible solely for political appointments will in and of itself be a big step forward in deterring the entrenchment process which inevitably leads to a strong bureaucracy in which the employees become sensitive only to the needs of their own department instead of the overall needs of the Executive Branch of government.

POLICIES
ANTI-TRUST

November 25, 1968

Eh-kickmann

Mr. Peter N. Chumbris
Office of Senator Everett Dirksen
United States Senate
Washington, D. C. 20510

DearPPete:

When you provide information, you really provide information. Yes, it will be helpful. My gosh, to understand what you are talking about requires a doctorate in the subject!

You are a nice guy to think of me and I hope you'll continue your massively effective efforts.

With warm regard,

Sincerely,

Bryce N. Harlow
Assistant to the
President-Elect

BNH:ph

MEMORANDUM TO: SENATORS EVERETT MCKINLEY DIRKSEN, ROMAN L. HRUSKA AND HIRAM L. FONG

FROM: PETER N. CHUMBRIS

WITH A REPUBLICAN ADMINISTRATION COMES THE USUAL CHANGE IN THE MEMBERSHIP OF THE VARIOUS COMMISSIONS, AGENCIES, AND DIVISIONS OF THE VARIOUS DEPARTMENTS. THOSE OF THE ABOVE THAT WILL DEAL WITH ANTITRUST LAWS AND REGULATIONS AND POLICES MAY NEED SOME GUIDANCE FROM CONGRESSIONAL LEADERS AS TO CHANGES, IF ANY.

I AM ENCLOSING BRIEF EXCEPTS AND SUMMARIES FROM SOME LEARNED ANTITRUST EXPERTS ON SPECIFIC ISSUES THAT MAY NEED ATTENTION COME NEXT JANUARY:

1. Robinson-Patman Act--30 years thereafter by Fred Rowe--He discusses the pros and cons and concludes with a re-evaluation in a Congressional context.
2. Presumptions and percipience about Competitive Effect- by Tom Austern-- He notes 5 expertFTC COMMISSIONERS HAD INDIVIDUAL VIEWS ON GIVEN ISSUE. HE NOTES CRITICISM OR REPEAL OF ROBINSON-PATMAN ACT
3. Compulsory Universal Reciprocity by Ira M. Millstein--He discusses sec 2(d) and 2(e) of R-R Act showing no flexibility as in sec 2(a) with prima facia violation-- cost justification--and injury to competition.....
4. Recent Developements in the Antitrust Field--These 11 pages merely cite the leading cases in 1967 primarily on various aspects of antitrust law. The memo is useful as an index to cases with some notes. The text of the above subject matter covers 205 pages.

NOT INCLUDED

Note: all of the above 4 ~~summxex~~ summaries of articles appeared in the American Bar Association's Antitrust Journal of recent issues.

5. POST ACQUISITION EVIDENCE AND CONGLOMERATE MERGERS--No. Caro. Law J. Feb 1968

The brief note indicates the fate of mergers and how the Courts reasoned its conclusions on predictive judgment as to probability that a merger may substantially lessen competition.

THESE ARE A FEW OF THE MEMORANDUMS THAT WILL BE PREPARED. THESE ARE SUBMITTED NOW SO THAT YOU MAY TAKE THEM WITH YOU TO READ AT YOUR CONVENIENCE.

Dear Bryce: Congratulations on your new Post. This memo may be helpful.

PNC

(1)

ROBINSON-PATMAN ACT -- 30 YEARS THEREAFTER, by Frederick M. Rowe, 30 ABA, Antitrust Section

The Robinson-Patman Act, the most controversial of our antitrust laws, emerged as an anti-chain store law in 1936 at the death of the NRA. The legislative annals reverberate with the colorful clashes between Congressman Wright Patman and Congressman Emanuel Celler, 80 Cong. Rec. 3447 (1936) H.R. Rep. 2287, 74th Congress, 2nd Sess.

To some, the Robinson-Patman Act still remains the magna carta of small business, but to others it is a price fixing statute hiding in the clothes of anti-monopoly and pro-competition symbols.

Today, criticism of the Robinson-Patman Act enforcement is mounting. New Republic outraged at FTC's attack on small businessmen who form coops.

On the positive side, Robinson-Patman enforcement has probably stimulated greater care by firms in their pricing decisions. The Act may have prevented some predatory pricing tactics and may have averted some coercive actions on the part of big buyers towards sellers.

On the negative side, demerits are plain. Robinson-Patman Act's aim to protect small business has conspicuously victimized the smaller firm. The predominance of proceedings against smaller firms is striking. Rowe, "Price Discrimination under Robinson-Patman Act," p. 542, 75 L.J. 487 (1966)

The courts and Department of Justice refute FTC interpretations.

Prominent are recurrent collisions by the Robinson-Patman Act enforcement and antitrust policies. See: Quibbling, "FTC Interpretations."

Cost justification has been a bonanza for accountants, but fools' gold for the affluent respondent. Rowe's book, p. 296.

FTC majority interpretations still find injury to competition from vigorous price rivalry which stimulates competition in every meaningful sense.

So-called industry-wide approaches in field of pricing is desirable.

30-year Robinson-Patman record devoid of rational policy. Today it appears FTC is quietly chloroforming Robinson-Patman Act.

Is Robinson-Patman controversy liquidating itself or will statute just fade away?

(a) Prosperity retards pressures for price concessions and affluent competitors are not griping to FTC. However, business turndown may make a difference.

(b) Private plaintiffs have increased in tempo, however.

Now is the time for a profound re-evaluation of the Robinson-Patman Act, past, present and future, Because there is deep concern from broad spectrum of responsible and respectable opinion.

Matters to be considered are:

1. Closer partnership between economics and the law. In the field of Transportation, the President's Council advocated comprehensive policy planning and coordination of Federal agencies with divergent aims.

2. Re-appraisal in area of marketing and distribution. What public policy is served by protecting wholesalers or brokers?

3. Rowe suggests re-evaluation in a Congressional context, at the highest level of competence in leadership.

(2)

PRESUMPTION AND PERCIPIENCE ABOUT
COMPETITIVE EFFECT

By H. Thomas Austern - Vol.37

Penetrating economic analysis that Commissioner Jones first suggested in Dean Milk, developed in National Dairy, and illuminated today in an amplified analogy to the merger suit.

No price discrimination is unlawful unless the Commission or a jury can determine a probable adverse effect upon competition. Key question--is how that determination will be made--naked presumption, by wide open guessing, or by some backhanded fashion by linguistic mumbo-jumbo oriented to a result viscerally first reached.

Fred Rowe stated, in measuring probable competitive effects among consumers--in secondary line competition--it was and still is enough to show merely a substantial price difference. One can presume competitive injury and find a prima facie violation. That is what Mr. Justice Black approved in Morton Salt. We shall have to await Supreme Court enlightenment as to whether that presumption short-cut in those so-called secondary level cases can be mechanically applied in measuring competitive effect in the giving of functional discounts or in the application of this act to cooperative buying agencies. See: Antitrust Division, amicus brief in Puralator case. See: Memorandum on functional discounts with Commission's theory of direct purchaser or imputed buyer.

Illegality turns on percipience in measuring or guessing what may happen to the seller's competitors. Distinction between primary and secondary levels for the competitive effect is enforceable in the statute, but analytical distinction is of key importance in territorial price discriminations.

Different price in each local market is not prima facie illegal; however, FTC harbors suspicion when seller cuts price in a single market. Note: Commissioner Jones' dissent in Dean Milk case with complete study of previous price history. Easiest approach for Commission was to find a predatory purpose. See: Basic problem posed in Utah Pie Case--also Pet Milk.

See: Economic guessing game in National Dairy, and its full set of Commission opinions.

THE FTC IS ENDOWED WITH EXPERTISE BY STATUTE, YET THE 5 EXPERT COMMISSIONERS COULD NOT AGREE ON WHEN A TERRITORIAL PROMOTION OR A LOCAL PRICE CUT MIGHT INJURE COMPETITION AND DIVIDED 4 WAYS ON THAT QUESTION.

2 page discussion that follows should be noted, since it analizes the varying opinions of the Commissioners. Austern concludes, "On both promotions and price cutting, whatever their form, restrictive action is usually given exponential meaning by the Commission and by the Court." Inevitably, the key fulcrum for challenging legality is selling in the local market at below-cost prices. There are vagaries about cost accounting, but selling

below cost will lead to charges of subsidization, usually equated with predatory intent. Predatory intent, as Mr. Rowe so dramatically suggested, will always be found in unrelated, usually unauthorized, and colored characterizations of purpose.

Most difficult to cope with is the bearing of the actual rather than the intended consequences of a price cut or of a promotion in the local market. Noting the Utah Pie case and the National Dairy case. It should be noted that in the Utah Pie case, the Court was dealing with a prima facie case; and it returned for further consideration all other elements of violation, defense, justification, and damage to the treble damage plaintiff.

With reluctance most lawyers accept the Robinson-Patman Act as politically unrealistic the reading of successive Supreme Court decisions renders for long any hope of integrated classification or meaningful accommodation between this bastard grandchild of the NRA Blue Eagle and the basic predicates of the Sherman Act.

The Commission finding and opinions lead lawyers to believe that theFTC performs in Patman cases somewhat like a jury. However, the client wants to do business without having counsel always at his elbow, and in wondering if his pricing conduct remains a lottery in which a big company has a much better chance of winning a complaint. Mr. Austern states that FTC develops very few complaints out of many investigations, noting that administrative hearings remain complicated, prolonged, costly, cease and desist orders operate only prospectively even though in perpetuity, and for those who can afford them, petitions for court review seldom, and in the Supreme Court never, conclude the litigation inthe first round. Treble damage actions are a different kettle of fish, with jury resolution of the issues.

Hard core critics and many of the law professors often end by joining those who would prefer outright repeal. They would leave predatory pricing to Section 2 of the Sherman Act, and execution to Section 5 of the FTC act. That provision would also effectively embrace all instances of buyer coercion or over-reaching.

IRA M. MILLSTEIN -- COMPULSORY UNIVERSAL RECIPROCITY? Sec. 2d-e R-P-Act

Professor Corwin Edwards likened what has occurred under Sec. 2(d) and (e) to requiring "a steel manufacturer to buy railway transportation service from every railroad in proportion, not to his needs for service from each, but to the amount of his steel products purchased by each."

1. Services are related to customer's efforts to resell goods-benefitting customer and supplier.

2. Manufacturing offers contributions to mass media advertising run by customer, --catalogues and handbills, window and floor displays, etc.

3. If manufacturer pays for services provided--it is Sec. 2(e) case--such as mentioning customer's store in manufacturer's advertising. Accepting return of unsold merchandise - must be connected with resale of item and not original sale such as credit terms, freight allowance etc. which is 2(a) case.

4. Case may be 2(a) as well as 2(d)-(e) such as Fred Meyer case, 359 Fed. 2nd. 351-- Coupon book of $350 donation by Manufacturer is 2(d) promotional while cash for redeeming coupon is price discrimination 2(a).

5. Payments grossly above services probably is a 2(a) case.

6. Macy case, 326 F. 2d. 445 - No products mention in promotional payments but 2(d) case as institutional promotion for all goods of vendors.

7. Corn Products case, 324 U.S. 726 (45)--Curtis Candy got promotion money from Corn Products to advertise Dextrose used by Curtis in their candy-- held 2(d) case. Same with Clairol--(1966) when promotional money to salons was to resell Clairol products.

8. Lorillard Co. v. FTC, 267 F. 2d. 435, and State Wholesale vs. A. P. Stores, 258 F. 2d 831, payment thru a 3rd party to resell products--see also FTC advertising opinions in store music with advertising messages etc.-- displays, etc.--individualized catalogues - 2(d)- case - Control of publication also.

9. Congressional History (p. 84) - Congress inteded to stop favoritism coercively obtained by large buyers (chain stores). This evolved into Sec. 2(a) - pricing provision - to supplement the effort, Congress was convinced it had to cover potential evasions thru organized price favoritism -- brokerage rebates, etc. 2 (d)(e) secret discriminations.
Why should manufacturer assist 1 customer without helping his competitors-- concept in the law. However, protections not c, d, e. Thus no flexibility as in Sec. 2(a) -- with prima facie violation -- cost justification -- injury to competition -- etc. not in (d) (e).

FTC vs. Simplicity Co., 360 U.S. 55 (59) -- 80 Cong. Rec. 8126 -- FTC views rigid compliance in 2(d)(e), thus compulsory universal reciprocity as almost inevitable -- as follows:

a. Interstate Commerce rule on 2a differs with 2d - Commerce is tied to advertising not sale.

b. Like grade & quality -- Earlier cases in 2d - not even item sold is covered. But problem becomes fuzzy when manufacturer sells a trademark, known line of items such as small and medium size promotion but not giant size, 258 F(2)365. FTC may claim all 3 are a line of products and discriminatory to some. In Tri-Valley, 329 F(2) 694, FTC held it could prove violation without showing same item in line had been purchased by both favored and unfavored customers. For example: No. 1 got item A with promotion--Nos. 2 got item C had to get promotion also.

c. Contemporaneous sales--line of items can compel offers of longer periods rather than temporal for promotion - hence greater manufacturing expense.

d. Competing customers--Promotions to limited area okey, but what of promotions to national chain, or expanding territories, fringe areas, rack jobbers within territories of many traditional warehouse wholesalers, etc. May have to give promotions to all rack jobbers - also duty of manufacturers if customers compete.

e. Functional competition is another concept as to which recent decisions have increased the burden of compliance--drug stores vs. grocery stores and wholesalers vs. retailers--Frey Meyer case now before Supreme Court. 4 Commissioners say allowance must be given to wholesaler but fail to indicate how manufacturer can make certain allowance goes to retailer. 1 Commissioner says manufacturer should give directly to retailer buying from wholesaler. 9th Circuit says all Commissioners are wrong - that wholesalers are not in functional competition with retailers, and retailers thru wholesalers are not customers of manufacturer.

f. Indirect customers--If manufacturer controls price or terms, retailer may be indirectly his. See FTC advisory opinion on this -- 143 -- However - Fabric Manufacturer advertising cooperatively with 1 or 2 retailers in an area was an economic & useful promotion tool - may find it economically impossible to advertise with all of retailers in this area.

g. Availability -- 1. Notice
2. Suitability for use

1. Notice - Manufacturer has that responsibility to let his customers know of promotions . Written plan to communicate is preferable Surprise Brassiere Co. Also in Rabiner-Jantzen-FTC formal plan needed for use of meeting competitive defense.

2. Suitability - promotion must be suitable to customer - for example: bad if only to new store openings - small stores who can't advertise or in catalogue stores only or display racks - since all customers can't qualify.

h. Proportionality -- promotion by law - must be offered to competitors proportionally equal amounts.

(1) The more you buy the more you get .

(2) Proportional to value to seller - legislative history not clear - FTC guides - no single way to proportionalize - prescribed by law -- See: Lever Bros. - Proctor & Gamble - Colgate-Palmolive Peet Millstein, Cooperative Advertising - 7 Antitrust Bulletin (1962) 1966-Advertising Opinion 88 - FTC Plan noted exposure (value received) though noting it would correspond to amount of purchases. 1967 Advertising Opinion 106 - disapproved plan of floor space - because no relation to volume. Noting that proportionalization can best be done by basing payments on volume--it may have meant that otherwise payments would be unlawful.

Buyer may be culpable under Sec. 5 of FTC Act for knowingly inducing and receiving unlawful promotional allowance.

(5)

NORTH CAROLINA LAW REVIEW
Feb. 1968 - Vol. 46-P.366

POST ACQUISITION EVIDENCE AND CONGLOMERATE MERGERS

In merger cases under Section 7, Clayton Act, trial does not often take place until several years after the merger. Since Section 7 requires a predictive judgment as to the probability that a merger may substantially lessen competition, there is a temptation to test probabilities against the particular post-merger history. A recent decision of the Supreme Court may be interpreted as indicating that the post-merger evidence is not admissible.

In FTC vs. Proctor and Gamble Company, 58 FTC 1203 (1961); 358 F.2nd 74 (1966); and 386 U.S. 568 (1967) the court held that Proctor and Gamble's 1957 acquisition of the Chlorox Company violated Section 7. P&G was the leading firm in the detergent field. Chlorox, with 49% of total liquid bleach sales, was the dominant firm in that industry, and together with its principal rival, Purex, accounted for almost 65% of the national sales. Six firms sold over 80% of the nation's liquid bleach. The Court found that all liquid bleach is chemically identical and attributed Chlorox dominance to heavy advertising and promotional expenditures. P&G's acquisition of Chlorox would probably injure competition because it eliminated P&G as a potential entrant and "the substitution of the powerful acquiring firm for the smaller, but already dominant firm, may substantially reduce the competitive structure of the industry by raising entry barriers and by dissuading smaller firms from aggressively competing . . ."

Three probable anti-competitive effects of the merger:

1. Merger increased opportunities for anti-competitive behavior such as predatory pricing.

2. Merger produced certain undesirable economies, chiefly advertising

3. Merger caused structural alterations by elimination of potential entrant into the concentrated industry.

Main source of difference between FTC and the 6th Circuit was the question of the proper weight to accord post-acquisition evidence.

See: Discussion on considering post-acquisition developments by hearing examiner, by the Commission, and by the 6th Circuit.

P&G argued that post-acquisition developments should be considered to test the probabilities of anti-competitive effects (386 U.S. 591). Since the merger was conglomerate, it did not have the effect of automatically foreclosing to competitors any market outlet or source of supply as in a vertical merger. Nor would it have the effect of automatically eliminating a competitor as in a horizontal merger. Commission argued that Section 7 clearly does not require the existence of actual anti-competitive effects, but

rather a conclusion as to the probability of various possible economic consequences of the merger; also post-acquisition evidence would serve no useful purpose and it was difficult to know the extent post-merger developments were caused by the merger and not by other factors.

Commissioner Elman noted 5 factors present in Proctor case:

NOTE: 1. Increased opportunity for anti-competitive behavior

2. Undesirable potential economies

3. Structural alterations--See:

FTC vs. Consolidated Food, 380 U.S. 592 (1965)
U.S. vs. Penn-Olin, 378 U.S. 158 (1964)
U. S. vs. ElPaso Natural Gas, 376 U.S. 651 (1964)
U.S. vs. Vons, 384 U.S. 270 (1966)

NOTE: Commission considered it likely that Proctor's merger into the market might trigger defensive mergers among smaller firms in the liquid bleach market. Concluded that second ranked Purex with 4th ranked Fleecy White was such a triggered merger.

Commissioner Elman stated that certain post-acquisition developments may require the consideration of their effects upon potential competition within a given product market. This situation was presented in Commission's later decision against the acquisition of S.O.S. by General Foods. Attitudes of FTC are shared by antitrust division.

See: Discussion on the reasoning of the Supreme Court in the DuPont case, 353 U.S. 586 (1957). Also post-acquisition will be decisive in the treble damage action filed by Purex against P&G.