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THE WHITE HOUSE

WASHINGTON

March 10, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

EDWARD SCHMULTS

THRU:

PHILIP BUCHEN

FROM:

JAMES E. CONNOR *JEC*

SUBJECT:

Questionable Foreign Payments  
by U.S. Companies

The President reviewed your memorandum of March 2 on the above subject and made the following decisions:

- #1. What would be the appropriate level of membership in the task force?

"Establish Cabinet-level task Force"

- #2 Which agency representative should chair the task force?

"Appoint Commerce representative as  
Chairman"

- #3. Meet with your immediate staff on this subject as soon as practicable.

"Approved"

Please prepare the appropriate documents to establish the above committee, i.e. Presidential Memorandum to interested Departments and Agencies. It is recommended that you discuss the preparation of this memorandum with Robert Linder, Chief Executive Clerk.

cc: Dick Cheney

Jerry Jones

THE WHITE HOUSE  
WASHINGTON

March 6, 1976

MR PRESIDENT:

Questionable Foreign Payments  
by U.S. Companies

Staffing of the attached memorandum from Ed Schmultz resulted in the following recommendations:

- #1 What would be the appropriate level of membership in the task force?

Establish Cabinet-level task force supported by:  
Messrs. Lynn, Morton, Cannon, Scowcroft  
(with additional comments see TAB A.)

Establish Under-Secretary Task Force supported by:  
Messrs. Seidman, Marsh,

- #2 Which agency representative should chair the task force?

Appoint Commerce representative as Chairman supported by: Messrs. Lynn, Cannon, Morton, Seidman, Marsh, and Scowcroft.

- #3 Meeting with immediate staff on this subject recommended by Scowcroft, Marsh and Cannon.


Jim Connor

THE WHITE HOUSE

WASHINGTON

March 2, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: EDWARD SCHMULTS   
SUBJECT: Questionable Foreign Payments  
by U. S. Companies

This is to present background information and a series of options which are available to you as part of the effort to construct a framework for dealing with the problem of payments made by U. S. companies to foreign officials and political organizations in connection with their sales activities.

THE PROBLEM

The United States Government is having difficulty in deciding how to handle the concerns raised by the practice of certain U. S. corporations in making questionable payments to foreign officials and political organizations. Domestic law may not address the problem adequately and businessmen and others have said that the government should provide greater guidance as to what standards should be applied to foreign sales activities. Many believe that the practice of making questionable payments is doing great damage domestically to our free enterprise system and thus merits immediate attention by the Executive branch.

While the full dimensions of the problem are not known, disclosures have been made that Lockheed Aircraft Corporation paid \$2 million to Japanese officials and another \$1.1 million to a high Dutch official to promote the sale of its airplanes abroad. In addition to Lockheed, other multinational corporations such as Northrop, Gulf and United Brands have been alleged to be participants in schemes to bribe foreign officials. Such revelations have led to pressures for strong new actions against bribery and political contributions abroad.

EXISTING INITIATIVES

A variety of multilateral and unilateral programs are underway to meet the problem of bribes and other illegal or unethical conduct by U. S. corporations abroad.

1. International Initiatives. Although proposals for an international code of conduct for multinational corporations have been under consideration for a number of years, until recently none of these efforts has sought to deal with the specific question of bribery payments. In international discussions, the U.S. has always expressed strong objections to payoffs but only in the past year have events led to the development of a series of multilateral anti-bribery initiatives:

- o Senate Resolution 265, passed on November 12, 1975, commits the U.S. government to seeking an international code of conduct covering ". . . bribery, indirect payments, kickbacks, unethical political contributions and other such similar disreputable activities," as part of the current GATT multilateral trade negotiations under the Trade Act of 1974;
- o OECD Standard of Conduct, initiated by the U.S., and tentatively approved in October 1975, calls for enterprises of member countries of the Organization for Economic Cooperation and Development to observe the "highest standards of behavior";
- o UN Resolution, adopted December 15, 1975, condemns corrupt corporate practices and calls on member governments to cooperate in eliminating them;
- o OAS Resolution, adopted July, 1975, by the Permanent Council of the Organization of American States, to condemn bribery and to urge member states, insofar as necessary, to clarify their national laws with regard to such activities.

2. National Initiatives. Three aspects of U.S. unilateral efforts should be noted:

- o Policy Review. The Departments of State, Defense and Commerce, the FTC, the Emergency Loan Guarantee Board, the Justice Department's Antitrust Division, the SEC and the IRS have been conducting a continuing review of existing authorities to stem illegal payments by U.S. companies to foreign agents or officials.
- o Enforcement. Investigations by federal agencies already may involve as many as 50 corporations. Several law enforcement agencies, e.g., IRS and SEC, have recently announced that they will further intensify their investigative efforts.
- o Legislation. Two legislative proposals to require public disclosure of fees paid to agents or officials abroad are currently pending in the Senate.

## NATURE OF U. S. INTERESTS

Beyond moral concerns, there appear to be five areas in which the subject of payments by U. S. companies to foreign agents or officials is of immediate interest.

1. Antitrust. Overseas payments by U. S. companies could become an antitrust issue if questions of anticompetitive behavior arise. The Department of Justice is the lead agency in this area.

2. Corporate Disclosure. The Securities and Exchange Commission monitors and regulates the disclosure practices of U. S. companies. A major concern of the SEC is to assure that corporate information which is important to the potential investor, including costs of doing business abroad, be disclosed in a corporation's financial reports.

3. Military Sales and Assistance. The Department of Defense is specifically responsible for implementing the Military Assistance Program and the Foreign Military Sales Program, both of which involve justification for the inclusion of substantial agent's fees.

4. Tax Reporting. The Internal Revenue Service is responsible for investigating the propriety of all business deductions. Our Federal tax law provides that illegal payments are not deductible as business expenses.

5. International Implications. Foreign payments by U. S. companies have international implications which raise foreign policy issues of concern to the State Department. Additionally, this problem impacts substantially on efforts toward drafting an international code of conduct for multinational corporations as suggested by S. Res. 265.

## RESERVATIONS

There is a need to distinguish between actions which the U. S. might take unilaterally and actions which require multilateral action. The former approach has certain inherent limitations.

1. The prohibition of illegal payments by U. S. firms without commensurate restraints on such payments by foreign

competitors places the U. S. firms in a potentially disadvantageous position.

2. An important dimension of any policy analysis must be the consideration of the possible effect of any actions on trade, on the location of private corporations and on the international flow of capital.

3. Proposals which would make it a criminal act of U. S. companies to engage abroad in what are regarded as improper activities at home pose serious difficulties. The State Department has opposed extraterritorial penal legislation because enforcement of such laws could involve the U. S. in the investigation of the conduct of foreign government officials.

4. Even general disclosure legislation raises difficulties at the State Department since such legislation presumably would require making the names of the payee as well as the payor public.

#### OPTIONS

The basic proposal put forward here is the desirability of establishing a task force under the umbrella of the Economic Policy Board and National Security Council to examine the policy (as opposed to enforcement) aspects of this problem and to recommend such steps as may be warranted to combat payments made by U. S. companies to foreign officials and political organizations in connection with their sales activities. Assuming your desire to establish a review mechanism, issues arise regarding the appropriate structure of the task force.

1. What would be the appropriate level of membership in the task force? Two options are available:

o Cabinet-level. The appointment of specified Cabinet-level representatives from the Economic Policy Board and the National Security Council (Commerce, Defense, Treasury, State, CIEP and STR) in addition to Seidman, Scowcroft and the Attorney General, would forcefully demonstrate your commitment to developing solutions to the problem and would be in accordance with unofficial Administration statements and press expectations.

o Under Secretary level. The appointment of specified representatives from the EPB and NSC at the Under Secretary level (Baker of Commerce, Ellsworth of Defense, Dixon of Treasury, Robinson of State, Dunn of CIEP and Yeutter of STR) in addition to Seidman, Scowcroft, Deputy Attorney General Tyler and myself, would demonstrate your serious concern but would also permit further review at a higher level. However, a sub-Cabinet group will be seen by some critics as a retreat from reports of your initial reaction and lack of Executive branch desire to confront the problem.

Establish Cabinet level  
task force MEY

Establish Under Secretary  
task force \_\_\_\_\_

2. Which agency representative should chair the task force?  
Two options are available:

o Commerce. The appointment of Secretary Richardson or Under Secretary Baker would recognize the strong institutional interest of Commerce.

o Treasury. The appointment of Secretary Simon or Under Secretary Dixon would recognize that Treasury has assumed a position of leadership on this subject to date.

Appoint Commerce representative as Chairman MEY

Appoint Treasury representative as Chairman \_\_\_\_\_

3. In view of the complexity of this subject, the availability of a number of variations on the options posed above and the need to consider further development of this recommendation, I suggest that you meet with your immediate staff on this subject as soon as practicable.

Approve MEY


Disapprove \_\_\_\_\_



THE WHITE HOUSE  
WASHINGTON

March 5, 1976

MEMORANDUM FOR: JIM CONNOR

FROM: BRENT SCOWCROFT 

SUBJECT: Questionable Foreign Payments by  
US Companies

I have two concerns -- one procedural and one substantive -- on the issue of questionable foreign payments by US companies:

- Any measures we take should not hinder our pursuit of multilateral solutions. Multilateral solutions are essential to ease the legal complexities which would accompany attempts to enforce laws governing the activities of US firms in other countries.
- Setting up a Cabinet level group would create the expectation of strong action at a time when this may be difficult or unwise for a number of significant domestic and international reasons. A lower level group would give the unacceptable appearance of lower priority, and would create similar expectations.

Consequently, I believe that the meeting of Presidential staff suggested in your Issue 3 should be held before any actions are taken on your Issues 1 and 2. If a group is to be established, however, I believe it should definitely be at Cabinet level and should be chaired by the Secretary of Commerce.

March 6, 1976

MR PRESIDENT:

**Questionable Foreign Payments  
by U.S. Companies**

---

Staffing of the attached memorandum from Ed Schmulse resulted in the following recommendations:

- #1 What would be the appropriate level of membership in the task force?

Establish Cabinet-level task force supported by:  
Messrs. Lynn, Morton, Cannon, Scowcroft  
(with additional comments see TAB A.)

Establish Under-Secretary Task Force supported by:  
Messrs. Seddman, Marsh,

- #2 Which agency representative should chair the task force?

Appoint Commerce representative as Chairman supported by: Messrs. Lynn, Cannon, Morton, Seidman, Marsh, and Scowcroft.


- #3 Meeting with immediate staff on this subject recommended by Scowcroft, Marsh and Cannon.

Jim Connor

THE WHITE HOUSE  
WASHINGTON

March 5, 1976

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## THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 2, 1976

Time:

## FOR ACTION:

cc (for information):

☒ Jim Cannon  
☒ Jack Marsh  
☒ Rogers Morton  
☒ Bill Seidman  
☒ Brent Scowcroft  
☒ Jim Lynn  
 Dave Gergen  
 FROM THE STAFF SECRETARY

DUE: Date: Quick Turnaround Please

Time:

SUBJECT:

Revised Memo from Edward Schmults dated  
 3/2/76 re: Questionable Foreign Payments  
 by U.S. Companies

## ACTION REQUESTED:

☐ For Necessary Action☐ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ X☐ For Your Comments☐ Draft Remarks

## REMARKS:

You will note that the options on this paper have  
 been revised -- we would appreciate your comments  
 on the revised options.

Morton - Cabinet Level Task Force - Commerce Chairman  
 Marsh - Name sub-Cabinet Group but  
 Chairman be a Cabinet Secretary  
 Goring = see comments  
 Scowcroft - see comments  
 Lynn (O'Neill) Cabinet Level (Richardson) -

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a  
 delay in submitting the required material, please  
 telephone the Staff Secretary immediately.

James E. Connor  
 For the President

THE WHITE HOUSE

WASHINGTON

March 5, 1976

MEMORANDUM FOR:

JIM CONNOR

FROM:

JIM CANNON

SUBJECT:

Schmults Memorandum

I recommend:

1. A Cabinet-level task force to emphasize depth of U.S. concern.
2. Secretary Richardson should chair the task force.
3. A staff meeting on the subject should be held.

Date: March 2, 1976

Time:

## FOR ACTION:

cc (for information):

Jim Cannon  
Jack Marsh  
Rogers Morton  
Bill Seidman  
FROM THE STAFF SECRETARY

Brent Scowcroft  
Jim Lynn  
Dave Gergen

DUE: Date: Quick Turnaround PleaseTime: ASAP

## SUBJECT:

Revised Memo from Edward Schmults dated  
3/2/76 re: Questionable Foreign Payments  
by U.S. Companies

## ACTION REQUESTED:

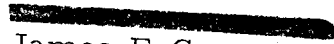
☐ For Necessary Action☐ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

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telephone the Staff Secretary immediately.

  
James E. Connor  
For the President

MEMORANDUM  
OF CALL

TO:

☐ YOU WERE CALLED BY—

☐ YOU WERE VISITED BY—

OF (Organization) *Jana*

☐ PLEASE CALL →

PHONE NO.  
CODE/EXT. \_\_\_\_\_

☐ WILL CALL AGAIN

☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE

*re Foreign Payments  
US Company  
Cabinet Level Task  
Force - Commerce  
Chairman*

RECEIVED BY

DATE

TIME

STANDARD FORM 63

REVISED AUGUST 1967

GSA FPMR (41 CFR) 101-11.6

GPO : 1969-o48-16-80341-1 332-389

63-108

THE WHITE HOUSE  
WASHINGTON

March 2, 1976

FOR: JIM CONNOR

FROM: ED SCHMULTS

Here is a re-do of the questionable corporate payments memo. Upon further reflection, I feel strongly that the committee should be at the Cabinet level. For the President to do anything else would be viewed by many as a lack of serious concern. And, if the problem gets worse, we will be in trouble with a Sub-Cabinet group.

3/4/

Trudy,

Bill Gorog confirmed the attached recommendations w/LWSeidman today in the Mid-East. If we can be helpful, pls. give us a call.

Thanks

Terri Ochal

Date: March 2, 1976

Time:

## FOR ACTION:

cc (for information):

Jim Cannon                      Brent Scowcroft  
Jack Marsh                     Jim Lynn  
Rogers Morton                 Dave Gergen

Bill Seidman

~~FROM THE STAFF SECRETARY~~

DUE: Date:            Quick Turnaround Please

Time:

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Revised Memo from Edward Schmults dated  
3/2/76 re: Questionable Foreign Payments  
by U.S. Companies

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telephone the Staff Secretary immediately.

~~James E. Connor~~  
James E. Connor  
For the President

March 2, 1976

MEMORANDUM FOR THE PRESIDENT

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EXISTING INITIATIVES

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1. International Initiatives. Although proposals for an international code of conduct for multinational corporations have been under consideration for a number of years, until recently none of these efforts has sought to deal with the specific question of bribery payments. In international discussions, the U. S. has always expressed strong objections to payoffs but only in the past year have events led to the development of a series of multilateral anti-bribery initiatives:

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2. National Initiatives. Three aspects of U. S. unilateral efforts should be noted:

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- o Enforcement. Investigations by federal agencies already may involve as many as 50 corporations. Several law enforcement agencies, e. g., IRS and SEC, have recently announced that they will further intensify their investigative efforts.
- o Legislation. Two legislative proposals to require public disclosure of fees paid to agents or officials abroad are currently pending in the Senate.

## NATURE OF U. S. INTERESTS

Beyond moral concerns, there appear to be five areas in which the subject of payments by U. S. companies to foreign agents or officials is of immediate interest.

1. Antitrust. Overseas payments by U. S. companies could become an antitrust issue if questions of anticompetitive behavior arise. The Department of Justice is the lead agency in this area.

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## RESERVATIONS

There is a need to distinguish between actions which the U. S. might take unilaterally and actions which require multilateral action. The former approach has certain inherent limitations.

1. The prohibition of illegal payments by U. S. firms without commensurate restraints on such payments by foreign

competitors places the U. S. firms in a potentially disadvantageous position.

2. An important dimension of any policy analysis must be the consideration of the possible effect of any actions on trade, on the location of private corporations and on the international flow of capital.

3. Proposals which would make it a criminal act of U. S. companies to engage abroad in what are regarded as improper activities at home pose serious difficulties. The State Department has opposed extraterritorial penal legislation because enforcement of such laws could involve the U. S. in the investigation of the conduct of foreign government officials.

4. Even general disclosure legislation raises difficulties at the State Department since such legislation presumably would require making the names of the payee as well as the payor public.

#### OPTIONS

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1. What would be the appropriate level of membership in the task force? Two options are available:

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Establish Cabinet-level  
task force \_\_\_\_\_

Establish Under Secretary  
task force ~~\_\_\_\_\_~~

2. Which agency representative should chair the task force?  
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o Commerce. The appointment of Secretary Richardson or Under Secretary Baker would recognize the strong institutional interest of Commerce.

o Treasury. The appointment of Secretary Simon or Under Secretary Dixon would recognize that Treasury has assumed a position of leadership on this subject to date.

Appoint Commerce representative as Chairman ~~\_\_\_\_\_~~

Appoint Treasury representative as Chairman \_\_\_\_\_

3. In view of the complexity of this subject, the availability of a number of variations on the options posed above and the need to consider further development of this recommendation, I suggest that you meet with your immediate staff on this subject as soon as practicable.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

Date: March 2, 1976

Time:

## FOR ACTION:

cc (for information):

Jim Cannon

Brent Scowcroft

Jack Marsh

Jim Lynn

Rogers Morton

Dave Gergen

Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Quick Turnaround Please Time:

SUBJECT:

Revised Memo from Edward Schmults dated  
3/2/76 re: Questionable Foreign Payments  
by U.S. Companies

## ACTION REQUESTED:

☐ For Necessary Action☐ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ X☐ For Your Comments☐ Draft Remarks


## REMARKS:

You will note that the options on this paper have  
been revised -- we would appreciate your comments  
on the revised options.

*Name a Sub-cabinet  
group, but chairman be  
a cabinet secretary -*  
*JM*

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James E. Connor  
For the President

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competitors places the U. S. firms in a potentially disadvantageous position.

2. An important dimension of any policy analysis must be the consideration of the possible effect of any actions on trade, on the location of private corporations and on the international flow of capital.

3. Proposals which would make it a criminal act of U. S. companies to engage abroad in what are regarded as improper activities at home pose serious difficulties. The State Department has opposed extraterritorial penal legislation because enforcement of such laws could involve the U. S. in the investigation of the conduct of foreign government officials.

4. Even general disclosure legislation raises difficulties at the State Department since such legislation presumably would require making the names of the payee as well as the payor public.

#### OPTIONS

The basic proposal put forward here is the desirability of establishing a task force under the umbrella of the Economic Policy Board and National Security Council to examine the policy (as opposed to enforcement) aspects of this problem and to recommend such steps as may be warranted to combat payments made by U. S. companies to foreign officials and political organizations in connection with their sales activities. Assuming your desire to establish a review mechanism, issues arise regarding the appropriate structure of the task force.

1. What would be the appropriate level of membership in the task force? Two options are available:

o Cabinet-level. The appointment of specified Cabinet-level representatives from the Economic Policy Board and the National Security Council (Commerce, Defense, Treasury, State, CIEP and STR) in addition to Seidman, Scowcroft and the Attorney General, would forcefully demonstrate your commitment to developing solutions to the problem and would be in accordance with unofficial Administration statements and press expectations.

o Under Secretary level. The appointment of specified representatives from the EPB and NSC at the Under Secretary level (Baker of Commerce, Ellsworth of Defense, Dixon of Treasury, Robinson of State, Dunn of CIEP and Yeutter of STR) in addition to Seidman, Scowcroft, Deputy Attorney General Tyler and myself, would demonstrate your serious concern but would also permit further review at a higher level. However, a sub-Cabinet group will be seen by some critics as a retreat from reports of your initial reaction and lack of Executive branch desire to confront the problem.

Establish Cabinet-level  
task force \_\_\_\_\_

Establish Under Secretary  
task force \_\_\_\_\_

2. Which agency representative should chair the task force?  
Two options are available:

o Commerce. The appointment of Secretary Richardson or Under Secretary Baker would recognize the strong institutional interest of Commerce.

o Treasury. The appointment of Secretary Simon or Under Secretary Dixon would recognize that Treasury has assumed a position of leadership on this subject to date.

Appoint Commerce representative as Chairman W

Appoint Treasury representative as Chairman \_\_\_\_\_

3. In view of the complexity of this subject, the availability of a number of variations on the options posed above and the need to consider further development of this recommendation, I suggest that you meet with your immediate staff on this subject as soon as practicable.

Approve M

Disapprove \_\_\_\_\_

THE WHITE HOUSE  
WASHINGTON

FEBRUARY 10, 1976

MR. PRESIDENT

SECRETARY SIMON HAS JUST  
ANNOUNCED THIS.

BILL SEIDMAN

*Simon, HAK, Richardson, DR]*  
*Jeri - cab. committee -*  
*get it coordinated. + look*  
*into it -*

2/10/76

Secretary of the Treasury, William E. Simon, today called for the broadening and intensification of an Internal Revenue Service drive to uncover tax evasion and avoidance through the improper deduction of bribes and similar wrongful payments both abroad and in the United States. He said he intends to see to it that all those who have made improper payments and bribes do not profit through reducing their Federal tax liabilities. Secretary Simon considers this action essential for the protection of the integrity of the tax system and of the U.S. business community.

The Internal Revenue Service has been working closely with the Department of Justice and the SEC to deal with tax evasion and avoidance through the improper deduction of bribes and other wrongful payments to or for government officials both abroad and in the United States. Commissioner Alexander assured the Secretary that the IRS will give this investigation increased and vigorous emphasis.

February 24, 1976

MR PRESIDENT:

**Questionable Foreign Payments  
by U.S. Companies**

Staffing of the attached memorandum prepared by Ed Schmults resulted in the following:

Messrs. Marsh, Morton, Seidman, Scowcroft and Lynn approve all options .

Mr. Lynn recommends that OMB be included on the Task Force and that SEC be included by invitation.

Jim Cannon had some problems with the original draft of this memorandum but these have been resolved.


Jim Connor

THE WHITE HOUSE

WASHINGTON

February 24, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: EDWARD SCHMULTS   
SUBJECT: Questionable Foreign Payments  
by U. S. Companies

This is to present background information and a series of options which are available to you as part of the effort to construct a framework for dealing with the problem of payments made by U.S. companies to foreign officials and political organizations in connection with their sales activities.

THE PROBLEM

The United States Government is having difficulty in deciding how to handle the concerns raised by the practice of certain U.S. corporations in making questionable payments to foreign officials and political organizations. Domestic law may not address the problem adequately and businessmen and others have said that the government should provide greater guidance as to what standards should be applied to foreign sales activities. Many believe that the practice of making questionable payments is doing great damage domestically to our free enterprise system and thus merits immediate attention by the Executive branch.

While the full dimensions of the problem are not known, disclosures have been made that Lockheed Aircraft Corporation paid \$2 million to Japanese officials and another \$1.1 million to a high Dutch official to promote the sale of its airplanes abroad. In addition to Lockheed, other multinational corporations such as Northrop, Gulf and United Brands have been alleged to be participants in schemes to bribe foreign officials. Such revelations have led to pressures for strong new actions against bribery and political contributions abroad.

EXISTING INITIATIVES

A variety of multilateral and unilateral programs are underway to meet the problem of bribes and other illegal or unethical conduct by U.S. corporations abroad.

1. International Initiatives. Although proposals for an international code of conduct for multinational corporations have been under consideration for a number of years, until recently none of these efforts has sought to deal with the specific question of bribery payments. In international discussions, the U.S. has always expressed strong objections to payoffs but only in the past year have events led to the development of a series of multilateral anti-bribery initiatives:

- o Senate Resolution 265, passed on November 12, 1975, commits the U.S. government to seeking an international code of conduct covering ". . . bribery, indirect payments, kickbacks, unethical political contributions and other such similar disreputable activities," as part of the current GATT multilateral trade negotiations under the Trade Act of 1974;
- o OECD Standard of Conduct, initiated by the U.S., and tentatively approved in October 1975, calls for enterprises of member countries of the Organization for Economic Cooperation and Development to observe the "highest standards of behavior";
- o UN Resolution, adopted December 15, 1975, condemns corrupt corporate practices and calls on member governments to cooperate in eliminating them;
- o OAS Resolution, adopted July, 1975, by the Permanent Council of the Organization of American States, to condemn bribery and to urge member states, insofar as necessary, to clarify their national laws with regard to such activities.

2. National Initiatives. Three aspects of U.S. unilateral efforts should be noted:

- o Policy Review. The Departments of State, Defense and Commerce, the FTC, the Emergency Loan Guarantee Board, the Justice Department's Antitrust Division, the SEC and the IRS have been conducting a continuing review of existing authorities to stem illegal payments by U.S. companies to foreign agents or officials.
- o Enforcement. Investigations by federal agencies already may involve as many as 50 corporations. Several law enforcement agencies, e.g., IRS and SEC, have recently announced that they will further intensify their investigative efforts.
- o Legislation. Two legislative proposals to require public disclosure of fees paid to agents or officials abroad are currently pending in the Senate.

## NATURE OF U. S. INTERESTS

Beyond moral concerns, there appear to be five areas in which the subject of payments by U. S. companies to foreign agents or officials is of immediate interest.

1. Antitrust. Overseas payments by U. S. companies could become an antitrust issue if questions of anticompetitive behavior arise. The Department of Justice is the lead agency in this area.

2. Corporate Disclosure. The Securities and Exchange Commission monitors and regulates the disclosure practices of U. S. companies. A major concern of the SEC is to assure that corporate information which is important to the potential investor, including costs of doing business abroad, be disclosed in a corporation's financial reports.

3. Military Sales and Assistance. The Department of Defense is specifically responsible for implementing the Military Assistance Program and the Foreign Military Sales Program, both of which involve justification for the inclusion of substantial agent's fees.

4. Tax Reporting. The Internal Revenue Service is responsible for investigating the propriety of all business deductions. Our Federal tax law provides that illegal payments are not deductible as business expenses.

5. International Implications. Foreign payments by U. S. companies have international implications which raise foreign policy issues of concern to the State Department. Additionally, this problem impacts substantially on efforts toward drafting an international code of conduct for multinational corporations as suggested by S. Res. 265.

## RESERVATIONS

There is a need to distinguish between actions which the U. S. might take unilaterally and actions which require multilateral action. The former approach has certain inherent limitations.

1. The prohibition of illegal payments by U. S. firms without commensurate restraints on such payments by foreign

competitors places the U. S. firms in a potentially disadvantageous position.

2. An important dimension of any policy analysis must be the consideration of the possible effect of any actions on trade, on the location of private corporations and on the international flow of capital.

3. Proposals which would make it a criminal act for U. S. companies to engage abroad in what are regarded as improper activities at home pose serious difficulties. The State Department has opposed extraterritorial penal legislation because enforcement of such laws could involve the U. S. in the investigation of the conduct of foreign government officials.

4. Even general disclosure legislation raises difficulties at the State Department since such legislation presumably would require making the names of the payee as well as the payor public.

#### OPTIONS

The basic issue put forward here is the desirability of establishing a review group to recommend such steps as may be warranted to combat payments made by U. S. companies to foreign officials and political organizations in connection with their sales activities. Assuming your desire to establish such a group, additional issues arise regarding the appropriate structure and operations of the organization.

1. Should there be established under the umbrella of the Economic Policy Board and National Security Council a Cabinet-level Task Force to deal with the problem at hand? (The alternatives would be to assign the problem to one of several existing entities or to a sub-Cabinet level Task Force.)

PRO: Would forcefully demonstrate your commitment to developing solutions to the problem.

CON: Could be perceived as a political ploy to temporarily avoid the problem.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_

Disapprove \_\_\_\_\_

2. Should the Task Force include only specified representatives of the Economic Policy Board and the National Security Council (Seidman, Scowcroft, Commerce, Defense, Treasury, State, CIEP and STR)? (The alternative would be to include all members.)

PRO: A representative group would cover essential areas of expertise and would be far more manageable.

CON: Inclusion of all members of the EPB and NSC would ensure the most comprehensive review of the problem..

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

3. Should the Attorney General be included as a member of the Task Force?

PRO: The Department of Justice would lend general legal and antitrust expertise to the group.

CON: The addition of Justice might be perceived as lending an enforcement or punitive dimension to the group.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

4. Should Secretary Richardson chair the Task Force? (The only alternative candidate who has been suggested is Secretary Simon.)

PRO: The Department of Commerce has an important institutional interest and Secretary Richardson has the necessary background and great public credibility.


CON: Secretary Simon has established a position of leadership within the Administration on this subject.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

THE WHITE HOUSE  
WASHINGTON

February 24, 1976

For: Jim Connor

From: Ed Schmults 

We have elaborated on the statement of the problem and thus have met the comments of Cannon and Parsons.

Jane told  
Ken they  
can redo  
based on  
Cannon's  
comments //

Jane is finalizing  
first page &

then it is going  
forward

THE WHITE HOUSE  
WASHINGTON

Jim -

Schmults memo undated -  
Foreign Bribes by U.S. Companies

Staffing now completed --- finally ---

*Seidman & Lynn*

Marsh, Morton, Scowcroft ✓ --- approve  
all four options

Lynn --- Said OMB should be include on  
Task Force --- SEC should be included  
by invitation.

----

Cannon --- Recommends that the  
memo needs further work.

*done*

Seidman

Also perhaps you want to refresh your  
memory with Jack Marsh's earlier memo on  
what the President wants.

Next step???


Trudy

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 19, 1976

MEMORANDUM FOR: Jim Cannon  
FROM: Dick Parsons   
SUBJECT: Ed Schmults' Memorandum on  
Foreign Bribes by U.S. Companies

You requested my comments and recommendations concerning Ed Schmults' memorandum on foreign bribes by U.S. companies.

Without meaning to sound over-critical, I am not sure that the memorandum is sufficiently descriptive of the problem to enable the President to make an informed decision regarding the several recommendations set forth.

The section of the memorandum entitled "THE PROBLEM" addresses itself only to the political problem created by recent disclosures of large expenditures by U.S. companies to bribe foreign public officials. The remainder of the memorandum does not add much to this description of the problem. Thus, it is almost as though we are saying: "The fact that U.S. companies have been bribing foreign officials has created a political problem (or opportunity); therefore, we should set up a task force to look into it." There must be more to this than that.

I assume that there is some problem with our current laws or with the laws of other countries that permits this activity to be carried on. I also assume that there are steps we can take to deal with the underlying problem. Absent some explanation as to what the underlying problem is, however, and some indication as to what the solutions are, it is difficult to know whether a Cabinet-level task force is or is not appropriate.

RECOMMENDATION

That you suggest that the memorandum needs further work to develop more clearly the nature and scope of the problem the recommended task force will be charged with resolving.

## THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 18, 1976

Time:

FOR ACTION:

cc (for information):

Jim Cannon

Jack Marsh

Brent Scowcroft

Jim Lynn

FROM THE STAFF SECRETARY

DUE: Date: Thursday, Feb. 19

Time: Noon

SUBJECT:

Ed Schmultz memo undated  
Foreign Bribes by U.S. Companies

ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor  
For the President

THE WHITE HOUSE

WASHINGTON

DRAFT

MEMORANDUM FOR THE PRESIDENT

THROUGH:

FROM: ED SCHMULTS

SUBJECT: Foreign Bribes by U. S. Companies

This is to present background information and a series of options which are available to you as part of the effort to construct a framework for dealing with the problem of payments made by U. S. companies to foreign officials and political organizations in connection with their sales activities.

THE PROBLEM

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Most recently, disclosures have been made that Lockheed Aircraft Corporation paid \$2 million to Japanese officials and another \$1.1 million to a high Dutch official to promote the sale of its airplanes abroad. In addition to Lockheed, other multinational corporations such as Northrop, Gulf and United Brands have been alleged to be participants in schemes to bribe foreign officials.

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1. International Initiatives. Although proposals for an international code of conduct for multinational corporations have been under consideration for a number of years, until recently none of these efforts has sought to deal with the specific question of bribery payments. In international discussions, the U. S. has always expressed strong objections to payoffs but only in the past year have events led to the development of a series of multilateral anti-bribery initiatives:

- o Senate Resolution 265, passed on November 12, 1975, commits the U. S. government to seeking an international code of conduct covering ". . . bribery, indirect payments, kickbacks, unethical political contributions and other such similar disreputable activities," as part of the current GATT multilateral trade negotiations under the Trade Act of 1974;
- o OECD Standard of Conduct, initiated by the U. S., and tentatively approved in October 1975, calls for enterprises of member countries of the Organization for Economic Cooperation and Development to observe the "highest standards of behavior";
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2. National Initiatives. Three aspects of U. S. unilateral efforts should be noted:

- o Policy Review. The Commerce Department, the Federal Trade Commission, the Emergency Loan Guarantee Board, the Justice Department's Antitrust Division, the Securities and Exchange Commission, the Department of State, the Department of Defense and the Internal Revenue Service have been conducting a continuing review of existing authorities to stem illegal payments by U. S. companies to foreign agents or officials.
- o Enforcement. Investigations by Federal agencies already may involve as many as 50 corporations. Several law enforcement agencies, e.g. IRS and SEC, have recently announced that they will further intensify their investigative efforts.
- o Legislation. Two legislative proposals to require public disclosure of fees paid to agents or officials abroad are currently pending in the Senate.

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3. Military Sales and Assistance. The Department of Defense is specifically responsible for implementing the Military Assistance Program and the Foreign Military Sales Program, both of which involve justification for the inclusion of substantial agent's fees.

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## RESERVATIONS

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competitors places the U. S. firms in a potentially disadvantageous position.

2. An important dimension of any policy analysis must be the consideration of the possible effect of any actions on trade, on the location of private corporations and on the international flow of capital.

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4. Even general disclosure legislation raises difficulties at the State Department since such legislation presumably would require making the names of the payee as well as the payor public.

#### OPTIONS

The basic issue put forward here is the desirability of establishing a review group to recommend such steps as may be warranted to combat payments made by U. S. companies to foreign officials and political organizations in connection with their sales activities. Assuming your desire to establish such a group, additional issues arise regarding the appropriate structure and operations of the organization.

1. Should there be established under the umbrella of the Economic Policy Board and National Security Council a Cabinet-level Task Force to deal with the problem at hand? (The alternatives would be to assign the problem to one of several existing entities or to a sub-Cabinet level Task Force.)

PRO: Would forcefully demonstrate your commitment to developing solutions to the problem.

CON: Could be perceived as a political ploy to temporarily avoid the problem.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_

Disapprove \_\_\_\_\_

2. Should the Task Force include only specified representatives of the Economic Policy Board and the National Security Council (Seidman, Scowcroft, Commerce, Defense, Treasury, State, CIEP and STR)? (The alternative would be to include all members.)

PRO: A representative group would cover essential areas of expertise and would be far more manageable.

CON: Inclusion of all members of the EPB and NSC would ensure the most comprehensive review of the problem..

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

3. Should the Attorney General be included as a member of the Task Force?

PRO: The Department of Justice would lend general legal and antitrust expertise to the group.

CON: The addition of Justice might be perceived as lending an enforcement or punitive dimension to the group.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

4. Should Secretary Richardson chair the Task Force? (The only alternative candidate who has been suggested is Secretary Simon.)

PRO: The Department of Commerce has an important institutional interest and Secretary Richardson has the necessary background and great public credibility.

CON: Secretary Simon has established a position of leadership within the Administration on this subject.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

THE WHITE HOUSE

WASHINGTON

February 10, 1976

MEMORANDUM FOR: DICK CHENEY

FROM:

JACK MAHER

In a discussion in the public affairs meeting this morning, the matter involving the corporate bribes of foreign contractors came up.

The President indicated his desire to have a Cabinet-level Committee set up to address this matter, both from the standpoint of the current situation as well as future policy.

He suggested the Committee be chaired by the Attorney General and the membership should include State, Defense, Commerce and possibly Treasury.

I believe you will want to follow-up on this and define more precisely the purpose and the full membership in order that you can bring about the necessary staff action.

## THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 18, 1976

Time:

## FOR ACTION:

cc (for information):

Jim Cannon  
✓ Jack Marsh ✓ Brent Scowcroft  
✓ Jim Lynn

*Rogers Morton*

FROM THE STAFF SECRETARY

DUE: Date: Thursday, Feb. 19

Time: Noon

SUBJECT:

Ed Schmults memo undated  
Foreign Bribes by U.S. Companies

## ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

## REMARKS:

*Lynn - OMB should be included on  
Task Force - SEC should be  
included by amendment*

*Scowcroft - see notes*

*Marsh - approved all 4 options*

*Morton - approved all 4 options*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor  
For the President

February 19, 1976

MEMORANDUM FOR:

ROGERS C. B. MORTON

FROM:

JAMES E. CONNOR

SUBJECT:

Cabinet Committee on  
Big Business Ethics

Your memorandum of February 19 on the above subject is returned to you without going forward to the President. Ed Schmults has submitted an action paper on this subject (TAB A) and we are presently staffing his paper for comments. Perhaps you would like to comment on Ed Schmults paper and it can go forward as a complete package to the President when he returns.

Attachment -

Ed Schmults memo re: Foreign Bribes by  
U.S. Companies

THE WHITE HOUSE  
WASHINGTON

February 19, 1976

ACTION

MEMORANDUM FOR:

THE PRESIDENT

FROM:

ROGERS C. B. MORTON *Rog*

SUBJECT:

Cabinet Committee on Big  
Business Ethics

One issue which keeps recurring in the minds of people I have talked to, both in New Hampshire and other places around the country, is big business ethics. Because of stories concerning Gulf Oil, Lockheed and other alleged unethical practices by big corporations, the American public's opinion is at a low ebb with respect to the American big business community.

I think it is imperative that the President disassociate himself from this negative side of big business as quickly and cleanly as possible. To this end I again suggest that you create a Cabinet committee whose charter it would be to investigate the charges of payola, graft, bribes, and other unethical practices which we are reading about daily. I recommend Elliot Richardson as Secretary of Commerce chair this committee and be asked to come up with a short turn around plan for showing decisive leadership by the President to respond to this concern of the American public.

THE WHITE HOUSE

WASHINGTON

DRAFT

MEMORANDUM FOR THE PRESIDENT

THROUGH:

FROM: ED SCHMULTS

SUBJECT: Foreign Bribes by U. S. Companies

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#### OPTIONS

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1. Should there be established under the umbrella of the Economic Policy Board and National Security Council a Cabinet-level Task Force to deal with the problem at hand? (The alternatives would be to assign the problem to one of several existing entities or to a sub-Cabinet level Task Force.)

PRO: Would forcefully demonstrate your commitment to developing solutions to the problem.

CON: Could be perceived as a political ploy to temporarily avoid the problem.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_

Disapprove \_\_\_\_\_

2. Should the Task Force include only specified representatives of the Economic Policy Board and the National Security Council (Seidman, Scowcroft, Commerce, Defense, Treasury, State, CIEP and STR)? (The alternative would be to include all members.)

PRO: A representative group would cover essential areas of expertise and would be far more manageable.

CON: Inclusion of all members of the EPB and NSC would ensure the most comprehensive review of the problem..

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

3. Should the Attorney General be included as a member of the Task Force?

PRO: The Department of Justice would lend general legal and antitrust expertise to the group.

CON: The addition of Justice might be perceived as lending an enforcement or punitive dimension to the group.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

4. Should Secretary Richardson chair the Task Force? (The only alternative candidate who has been suggested is Secretary Simon.)

PRO: The Department of Commerce has an important institutional interest and Secretary Richardson has the necessary background and great public credibility.

CON: Secretary Simon has established a position of leadership within the Administration on this subject.

Approve [State, DOD, Treasury,  
Justice and Commerce] \_\_\_\_\_ Disapprove \_\_\_\_\_

THE WHITE HOUSE  
WASHINGTON

Jack Marsh approves all 4 options  
on the Ed Schmults memo re  
bribes.

per call

2/21

10:50

THE WHITE HOUSE  
WASHINGTON

February 13, 1976

Jim -

Here is a suggested memorandum to the President on the foreign corporate payments question which I understand you will be staffing. As you know, we have included the agency views which appear to be unanimous on the options presented.

Should the memo be through Cheney, Seidman, or someone else?

Ed Schmultz


A large, stylized handwritten signature in black ink, appearing to be 'Ed Schmultz', is written over the typed name.

cc: William Seidman

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

February 21, 1976

MEMORANDUM FOR: JAMES CONNOR  
FROM: BRENT SCOWCROFT   
SUBJECT: Ed Schmultz Memo on Foreign Bribes  
by US Companies

With respect to Ed Schmultz' memo on foreign bribes by US companies I recommend approval of a Cabinet-level task force under the EPB/NSC, approval of limiting the task force to the agencies mentioned in the memo, approval of membership of the Attorney General, and approval of Secretary Richardson's chairing the group.