

A BUSINESSMAN'S RISK
THE CONSTRUCTION OF VENTURE CAPITAL AT THE CENTER OF U.S. HIGH
TECHNOLOGY

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MCGILL UNIVERSITY, MONTREAL

MAY 2020

A THESIS SUBMITTED TO MCGILL UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
OF THE DEGREE OF DOCTOR OF PHILOSOPHY

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ABSTRACT

A Businessman's Risk: The Construction of Venture Capital at the Center of U.S. High Technology is a micro-history of a key, but forgotten, moment in the development of the high technology/finance nexus in the United States. In this dissertation I argue that the Small Business Administration's Task Force on Venture and Equity Capital for Small Business, established in 1976 and headed by experienced financial attorney and future CIA director William J. Casey, had an outsized impact on the development of modern venture capital and its close associations with the high technology sector.

This project examines several sets of policy recommendations made by the Task Force in 1977. These reforms were central in the establishment of the venture capital industry as we know it today. They include reforms to the prudent man rule as applied to pension funds by the 1974 ERISA statute, and SEC Rules 144 and 146 which governed how equity investments could be made. This project also examines the role of the Task Force's published report in establishing the figure of the venture capitalist as a central player in high technology and normalizing his financial activities in the minds of policymakers, businessmen, and the general public. I argue that the Task Force was a prime mover in establishing this figure and his attendant business narrative as the dominant understanding of how high technology firms developed over time and how the venture capitalist fit into the history of American business. This was achieved through widespread citation of the Report and its conclusion in newspapers, professional publications, and in government hearings on various topics, and through the development of a novel business model that included the venture capitalist and his practices as essential to a firm's success.

The aim of this project is to contribute an empirical, historical account to scholarly attempts to de-naturalize or de-center the venture capital funding model and its attendant ideologies of explosive growth, "disruptive" market dominance and financialized success from the high technology sector. Through this historical account, I argue that there were identifiable events, actions, and individuals responsible for valorizing venture capital, that they were primarily financiers and experienced government bureaucrats located on the East Coast, and that they were invested in the mechanisms and promotion of deregulation and financialization as policy projects with identifiably neoliberal aims, rather than the development of the high technology sector itself.

RÉSUMÉ

A Businessman's Risk: The Construction of Venture Capital at the Center of U.S. High Technology (« Le risque de l'homme d'affaires: La construction du capital de risque au centre du secteur de la haute technologie aux États-Unis ») étudie un moment clé qui a été négligé dans l'historiographie du développement des liens entre le secteur de la haute technologie et celui de la finance aux États-Unis. En 1976, la *Small Business Administration* (l'administration des petites entreprises) a mis en place un groupe de travail chargé de se pencher sur le capital de risque et les capitaux propres pour les petites entreprises (le *Task Force on Venture and Equity Capital for Small Business*). Dirigé par William J. Casey – avocat en droit des affaires expérimenté et futur directeur de la CIA – ce comité a exercé une influence énorme sur l'évolution du capital de risque moderne et son association avec le secteur de la haute technologie. Cette thèse constitue une micro-histoire de cette influence.

Il s'agit d'une étude des orientations recommandées par le groupe de travail dans son rapport, publié en 1977. Ces réformes ont été au centre de l'établissement du secteur du capital de risque contemporain. Parmi elles, on trouve des modifications du principe de gestion prudente tel que l'appliquait aux caisses de retraite l'acte ERISA (*Employee Retirement Income Security Act*, 1974). En plus, le groupe a suggéré des changements aux règles 144 et 146 de la *Securities and Exchange Commission*, qui régissaient l'investissement dans le capital-actions. La thèse examine également le rôle que le rapport du groupe de travail a joué dans l'élaboration de la figure du capital-risqueur. Ce rapport en faisait un acteur clé dans le secteur de la haute technologie, ainsi normalisant ses activités financières aux yeux des décideurs politiques, des hommes d'affaires et du grand public. Le groupe de travail a donc été un élément moteur dans la promotion du discours d'affaires associé au capital-risqueur. Ce discours s'est imposé comme le récit dominant de l'évolution des firmes de haute technologie et du rôle du capital-risqueur dans l'histoire des affaires aux États-Unis. La prédominance de ce discours s'est consolidée par deux voies: la citation généralisée – dans les journaux et les publications professionnelles ainsi que lors d'audiences gouvernementales relatives à divers enjeux – des conclusions du rapport du groupe de travail; et le développement d'un modèle d'affaires qui plaçait le capital-risqueur et ses pratiques au centre de la réussite d'une firme.

Cette thèse offre une explication empirique et historique du développement du modèle de financement par capital de risque afin de dénaturaliser celui-ci et l'idéologie qui y est associée et qui prône la croissance explosive, la domination du marché par « disruption » et la réussite financiarisée. Une telle explication historique nous permet de formuler trois conclusions. Premièrement, la valorisation du capital de risque s'est faite au moyen d'événements, d'actions et d'individus repérables. Deuxièmement, la plupart de ces acteurs était des financiers ou des bureaucrates expérimentés qui se trouvaient sur la côte est des États-Unis. Troisièmement, plutôt qu'au développement du secteur de la haute technologie en lui-même, ceux-ci s'intéressaient d'abord à la mécanique et à la promotion de la déréglementation et de la financiarisation comme des projets de politique ayant des fins néolibérales reconnaissables.

PREFACE

This dissertation is a work of original research solely by the author. No parts have been published previously.

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ACKNOWLEDGEMENTS

The path to this dissertation had many unexpected twists and turns, and I am grateful to my advisors, Gabriella Coleman and Darin Barney, for their patience, faith, guidance, and support as this project took shape. The mentorship of Biella, Darin, and my other professors at McGill AHCS has sharpened and deepened my thinking over the last seven years, and fundamentally changed the way I approach the study of technology and society. Jonathan Sterne, Carrie Rentschler, Becky Lentz, and Marc Raboy have all provided kind guidance and support throughout my career at McGill, and I am grateful to have had the chance to work with them throughout my doctoral work.

I was supported during this dissertation writing process by a Vanier Canada Graduate Scholarship and a Wolfe Chair Graduate Fellowship. During my graduate studies at McGill I was supported by a Richard H. Thomlinson Doctoral Fellowship, and a McCall McBain Fellowship. I am grateful for this generous support during my studies and my writing.

Researching this moment in history required substantial on-site archival work, and I am grateful to the archivists at the Hoover Institution at Stanford University for making the personal papers of William J. Casey available to me, along with several other collections. I am further grateful to the residents of Octagon and CuteLab, who provided shelter and friendship while I conducted my archival work and field work in the Bay Area. Particular thanks and headpats go to Squid and Pickle, my roommates at Octagon.

Since the fall of 2019, I have called the University of Maryland College of Information Studies home. The iSchool has been as welcoming and supportive a place as I could have ever hoped to land at the start of my career. I'm grateful for the guidance, mentorship, and trust of Wayne Lutters, Susan Winter, Keith Marzullo, Doug Oard, and Brian Butler. I'm further grateful for the camaraderie and friendship of my fellow junior faculty members Dan Greene, Katrina Fenlon, Joel Chan, Amanda Lazar, and Caro Williams-Pierce. I write this from my socially-isolated home office, looking forward to the day when we can all take impromptu walks for afternoon coffee and bubble tea together again!

During the four years I lived in Toronto, I made many dear friends who welcomed me into a new city with open arms. Though I cannot mention you all by name here, you are all close to my heart even though we are far away from each other again. I would like to particularly recognize Scott Young, the northern bloc of the HC, the Adventure Box Collective's extended universe, Mallo, First & Last, and the members of our irregular Thursday Write Club, Madeline Ashby, Kelly Robson, Alyx Dellamonica, Gemma Files, and Natalie Walschots.

Over the course of my doctoral studies, I met and married my partner Alex. Their support throughout this project and my entire doctoral career has been invaluable. I have no earthly idea how I would have managed without them, and there's no one who I would rather be quarantined with. <3 I am also endlessly grateful for the continued support of my family, without which my graduate studies would have been simply impossible.

INTRODUCTION AND VENTURE CAPITAL! REMEMBER VENTURE CAPITAL?



1

By the early 1970s in the United States, venture capitalists were gaining name recognition as a distinct category of investors, separate from other types, but the profession itself was haphazard and struggling. Its practices, strategies, and organizational structures varied widely from firm to firm, and investment to investment. Venture capitalists were dogged by regulations that nipped away at their most profitable activities and everyday operations. The limited partnership model, a relatively novel and

lucrative organizational structure which allowed the venture capitalist to invest collective funds assembled from a variety of sources including institutions and trusts, earn a management fee and collect a share of the capital gains besides, all while shielding his own funds from risk, became functionally impossible after ERISA² drove pension and insurance funds out of high risk investment markets in 1974. Multiple SEC regulations, intended to curb insider trading and

¹ Figure 1: Hamilton, William. "And venture capital! Remember venture capital?" *The Now Society*. Distributed by Chronicle Publishing, syndicated in *Lincoln Star Journal*, etc. Lincoln, NB. 3 December 1974.

² The 1974 Employee Retirement Income Security Act. This is discussed in detail in Chapter Five.

aggressive or fraudulent sales tactics, made it difficult for venture capitalists to make equity investments without the cost or hassle of registering those securities, and made it nearly impossible for those unregistered securities to be sold on the secondary market. Many practicing venture capitalists felt their ways of doing business—and making a profit—were unfairly and in some cases fatally hamstrung by regulations intended to curb the historical abuses of other investors. The cartoon shown here, published in the winter of 1974 and syndicated in daily papers across North America, indicates the extent to which venture capital as a collection of investment practices was broadly considered a flash in the pan by the mid 1970s—an interesting but ultimately unsuccessful blip on the financial and business landscape. Reid Dennis, an early venture capitalist backed by American Express in the 1970s, recalled seeing this cartoon pinned to the back of a Treasury Department undersecretary’s door in 1977:

I can remember clearly in one of our visits to Washington, DC and visiting with an undersecretary of the treasury, on the back of his door as we walked out of the office I saw a New Yorker cartoon, and this was in—probably in 1977, in the spring of ’77. I’d moved the door so I could read the cartoon, and it was two people at a typical New Yorker cocktail party,³ two gentlemen talking, and one of them said, “Venture capital. Remember venture capital?” That is about as far gone as you can get!⁴

How did venture capital go from being an object of ridicule in the daily paper to a revered and highly sought after mode of funding, inextricably linked with innovative technology, massive economic growth, and equally massive investor dividends? In this project, I

³ Though this strip, “The Now Society,” was not published in *The New Yorker*, the cartoonist, William Hamilton, was a regular and prolific contributor to the magazine.

⁴ Reid Dennis, “Early Bay Area Venture Capitalists: Shaping the Economic and Business Landscape” conducted by Sally Smith Hughes in 2009, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 2009.

attempt to answer this core question through a close historical examination of a mostly overlooked Small Business Administration (SBA) Task Force, the Task Force on Venture and Equity Capital for Small Business. I argue that this 1976 Task Force, commonly called the Casey Task Force after its leader, the future CIA-head William J. Casey, and its 1977 Report had an outsized impact on the development of modern venture capital and its close associations with the high technology sector. The aim of this project is to contribute an empirical, historical account to scholarly attempts to de-naturalize or de-center the venture capital funding model and its attendant ideologies of explosive growth, “disruptive” market dominance and financialized success from the high technology sector. Through this historical account, I argue that there *were* identifiable events, actions, and individuals responsible for reviving and valorizing venture capital, that they were primarily financiers and experienced government bureaucrats located on the East Coast, and that they were invested in the mechanisms and promotion of deregulation and financialization as policy projects with identifiably neoliberal aims, rather than the development of the high technology sector itself.

Assembled in the direct aftermath of the 1973-1975 recession, the Casey Task Force juxtaposed the recession’s severe financial market downturn with the Space Race technology boom. Task Force members portrayed the growth in small business financing and investment which had occurred during the Space Race as the normal and natural state of financial affairs, and argued that measures intended to protect pensions, tax capital gains, and discourage speculation were responsible for the recession’s downturn in investments. The Task Force targeted numerous regulations for reform, some passed as recently as 1974, others dating to the New Deal. These regulations were intended to curb destabilizing financial speculation, fraud,

over-reliance on capital gains in place of ordinary income, and other types of financial misconduct, but the Task Force argued that they were holding the venture capitalist, and thus American small business, back. The Casey Task Force centered the venture capitalist in the United States high technology sector, valorizing his role as a central and irreplaceable risk taker and patriotic driver of innovation and growth. They argued that as uniquely skilled financial actors, venture capitalists should be allowed to act as stewards of pensions and other trusts, and should be subject to fewer regulations and obligations than other types of investors. They portrayed relatively novel firm structures and investment strategies, which were extremely lucrative for the venture capitalist, as preferable and commonplace while disregarding or downplaying other existing modes or strategies regardless of popularity amongst entrepreneurs or track record of success, such as debt-based investment or government and community investment. Strategically recommending seemingly minor reinterpretations of existing laws and regulations, the Task Force helped to effect what would ultimately amount to a massive transfer of risk, equity, and capital between venture capitalists, pension funds, workers, entrepreneurs, and the government, and would fix the focus of the US commercial high technology sector on performance in the financial markets over other measures of success.

This case fills in a crucial gap in the historical process of financialization. Through this history, we can see how the so-called innovation economy was constructed as financialized and neoliberal from its earliest days, with William J. Casey and the Casey Task Force playing a key role in that development. By tracing the influence of the Casey Report and the Task Force members, I provide a micro history of one moment in policy construction, showing how nudges,

restatements, and subtle shifts in interpretation played key roles in the entrenchment of neoliberal values of financialization in economic policy.

The evidence for the Casey Report's influence lie in its circulation and uptake, traceable through its citations. From its publication in 1977 through till the early 2000s, the Casey Report or identifiable sections of it have been cited in over 100 different Congressional hearings, commissioned reports, academic and professional articles, and media reports. These citations occur over several distinct intellectual areas, including minority business policy, theories of corporate growth, pension reform, financial regulation, tax policy, the promotion of American innovation, and foreign investment, to name a few. The bulk of this project follows, unpacks, and contextualizes these citations and trails of intellectual influence. I use three digital corpora to identify the majority of these citations: the HeinOnline corpus, which contains Congressional records, government documents and publications, and an extensive range of professional legal materials including law review journals; the Google Books and Google Scholar corpora, which includes more general interest book length publications and scholarly publications outside the legal field; and the historical newspaper corpus, newspapers.com, which collects local, regional, and national newspaper archives from the US and Canada. Primarily sources are discussed in greater detail later in this Introduction.

In order to discover if the number of citations of the Casey Report was significantly higher than other similar reports or publications, I conducted the same citation searches in the same databases for two contemporaneous reports that either cited the Casey Report or were authored in part by Casey Task Force members. The 1978 report, "Small Business and Innovation," produced by the Senate Select Committee on Small Business, was cited three times

following its publication, in government-commissioned reports and legislative histories of specific innovation-related bills.⁵ The National Venture Capital Association's (NVCA) report, "Emerging Innovative Companies: An Endangered Species," was written and published as the Task Force was meeting. Its authors were in correspondence with the Task Force. It was cited five times after its publication in 1977.⁶ From these comparisons, it is apparent that the Casey Report had an unusually lengthy and wide sphere of influence when compared to similar reports from the same period.

Literature Review

Venture Capital

The general policy history and sector development of venture capital has not been substantially covered in the academic literature. Existing historical accounts, such as those by Paul Gompers,⁷

⁵ US House. Committee on Small Business. Subcommittee on Energy, Environment, Safety and Research. US Senate. Select Committee on Small Business. Subcommittee on Antitrust, Consumers, and Employment. Small Business and Innovation. Hearing. 9 August 1978. pp 2, 8, 165; US Senate. Committee on the Judiciary. University and Small Business Patent Procedures Act. Report No. 96-480. 12 December 1979. pp 2, 22; Legislative History of the Small Business Innovation Development Act of 1982. P.L. 97-219 1 (1982). pp 1, 12.

⁶ US Senate. Select Committee on Small Business. *Committee Print: Small Business Issues and Priorities*. US Government Printing Office, Washington DC. 7 February 1977. pp 87-96; US House. Committee on Small Business. Subcommittee on Capital Investment and Business Opportunities. Small Business Access to Equity and Venture Capital. Hearing. 16 July 1977. pp 119, 123-132. *Note: In this hearing, which was convened specifically to discuss the Casey Report and which is addressed in Chapter 4, "Endangered Species" was entered into the record by a witness and invoked in the same breath as the Casey Report.*; US Senate. Joint Economic Committee. Select Committee on Small Business. Subcommittee on Government Regulation and Small Business Advocacy. Subcommittee on Economic Growth and Stabilization. S. 1726. Small Business Economic Policy and Advocacy Reorganization Act of 1977. Hearing. 29 July 1977. pp 56, 365-574.; US Senate. Committee on Finance. Select Committee on Small Business. Subcommittee on Private Pension Plans and Employee Fringe Benefits. Pension Simplification and Investment Rules. Joint Hearings. 10 May 1977. pp 95-104.; Stoll, Hans R. "Small Firms' Access to Public Equity Financing." *Studies of Small Business Financing*. The Interagency Task Force on Small Business Finance. 1981. *Note: This study cites the Casey Report by name and credits it with originating the ERISA "prudent man rule" rearticulation, see page 27. ERISA is discussed in detail in Chapter Five.*

⁷ Gompers, Paul. "The Rise and Fall of Venture Capital," *Business and Economic History History*, Vol 23 No 2, Winter 1994.

Josh Lerner,⁸ and Martin Kenney,⁹ take a high level, business studies approach to the development of the industry. Their work is valuable in tracing broad regulatory moves, the perceived impact of major policy changes like the Employee Retirement Income Security Act of 1974 (ERISA)¹⁰ and Securities and Exchange Commission (SEC) regulations¹¹ among the investing community, organizational developments such as the rise of the limited partner firm,¹² and precursor business models like the federal SBIC program.¹³ However, these studies fail to interrogate the political and ideological motivations of early venture capitalists or those responsible for regulating the developing industry. Further, they tend to present fairly narrow historical, cultural, social, and geographic perspectives, lacking wider political and social contextualization or critique. Universally, these studies are “pro” venture capital, approaching the histories under consideration as chapters in a teleological economic success story. While the most apparently thorough analyses of the development and operating logics of venture capital

⁸ Lerner, Josh. “When Bureaucrats Meet Entrepreneurs: The Design of Effective ‘Public Venture Capital’ Programs.” *The Economic Journal*. Vol. 112 Issue 477. February 2002. pp F73-F84; Gompers, Paul and Josh Lerner. “Equity Financing.” *Handbook of Entrepreneurship Research*. Kluwer Academic Publishing. 2003. pp 267-298

⁹ Kenney, Martin. “How Venture Capital Became a Component of the US National System of Innovation.” *Industrial and Corporate Change*. Vol 20 No 6. 2011. pp 1677-1723.

¹⁰ Gompers, Paul and Josh Lerner. *Venture Capital Cycle*. MIT Press. Cambridge, MA. 2004. pp 8-9; Gompers, Paul and Josh Lerner. *The Money of Invention: How Venture Capital Creates New Wealth*. Harvard Business Review Press. Cambridge, MA. 2001. pp 90-94; Gompers, Paul and Josh Lerner. “What Drives Venture Capital Fundraising.” NBER Working Paper No. 6906. January 1999; Schanzenbach, Max. “Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?” UC Berkeley Law and Economics Workshop. 2006.; Kenney. “How Venture Capital of the US National System of Innovation.”; Gompers, Paul. “The Rise and Fall of Venture Capital.”

¹¹ Gompers, Paul. “The Rise and Fall of Venture Capital.”; Poterba, James M. “Venture Capital and Capital Gains Taxation.” *Proceedings of NBER Conference Tax Policy and the Economy*. November 1988. pp 47-67.

¹² Kenney. “How Venture Capital of the US National System of Innovation.”; Gompers and Lerner. “Equity Financing.”; Schilit, W. Keith. “The Globalization of Venture Capital.” *Business Horizons*. January 1992.

¹³ Gompers, Paul. “The Rise and Fall of Venture Capital.”; Gompers and Lerner. *The Money of Invention*. pp 90-94; Gompers, Paul and Josh Lerner. “The Venture Capital Revolution.” *Journal of Economic Perspectives*. Vol 15 No 2. Spring 2001. pp 145-168; Kenney, “How Venture Capital Became A Component of the US National System of Innovation.”; Poterba, James M. “Venture Capital and Capital Gains Taxation.”

have come from business scholars, these studies are almost entirely uncritical. Gompers and Lerner, in particular, are invested in promoting the current venture capital model, as evidenced by their publishing and professional consulting records.¹⁴ Both see venture capital as an inextricable part of any successful high technology or innovation economy.

A recent contribution to history of venture capital, *VC: An American History*¹⁵ by business historian Tom Nicholas, similarly replicates the findings and biases of previous authors. Nicholas's work pays welcome attention to the activities of the National Venture Capital Association (NVCA), an early professional organization that shared several key members and research staff with the Task Force and served as an early stage for Casey's views on venture capital regulation¹⁶. Like Gompers, Lerner, and Kenney, Nicholas identifies ERISA and the limited partnership firm structure as key moments in the development of modern venture capital. However, like the others, he does not touch on the roles of William J. Casey or the Task Force. He instead ascribes an outsized impact to NVCA's lobbying report, "Emerging Innovative Companies: An Endangered Species," which, as previously mentioned, was released as the Task Force was at work on the Casey Report. The two reports clearly influenced each other: they share several key authors and research staff, and the Task Force archives contain a copy of and commentary on "Endangered Species." There is little evidence for NVCA's report's influence, however. I was able to locate citations of "Endangered Species" in fewer than half a dozen Congressional hearings, one government-commissioned report, and no citations in the

¹⁴ Professional consulting biography of Paul Gompers, <https://www.cornerstone.com/Experts/Paul-Gompers>. Last accessed 10 January 2020.; Professional consulting biography of Josh Lerner, <http://www.privatecapitalresearchinstitute.org/people.php>. Last accessed 10 January 2020.

¹⁵ Nicholas, Tom. *VC: An American History*. Harvard University Press. 2019.

¹⁶ Casey's interactions with NVCA are addressed more detail in Chapter 2.

popular or professional presses.¹⁷ While Nicholas is certainly correct that NVCA members were influential in the development of the venture capital industry, and that the establishment of NVCA was an important step in the professionalization of venture capital, there is no evidence that the “Endangered Species” report itself had any particular influence on the ERISA restatement or other key policy shifts.

These studies are valuable guides in establishing historical timelines and following the self-reported successes and failures (mostly successes) of the venture capital industry. However, to critically account for the history of venture capital—in a way that does not take the industry at its word regarding its value, its capacity to promote innovation, and its centrality to high technology—we must read the business literature both against itself and beyond its limits. In this project, I draw significantly upon the work of historians, economists, and theorists who do not make venture capital their central focus. These scholars focus on other contemporaneous phenomena: the establishment of the “economy” as the measure of a nation, the rise of “sick building syndrome” amongst office workers, the role of the Fordist family unit in neoliberal politics, and the development of theories and models of innovation in mid-century US policy, to name a few.

There are two major exceptions to the broader intellectual trends in work explicitly focused on the history of venture capital. The first and most well-known is the work of economist Mariana Mazzucato¹⁸ on the entrepreneurial state. Mazzucato’s incisive economic history traces the role of direct government spending in the development, success, and growth of

¹⁷ See citation review at footnote 5.

¹⁸ Mazzucato, Mariana. *The Entrepreneurial State*. Public Affairs. 2015.

the high tech industry and innovation economy, and in particular the use of the Small Business Innovation Research program by Silicon Valley firms. Mazzucato's work expertly punctures the various myths that have become attached to the venture-funded innovation economy model. However, she does not examine the intentional role played by narrative-building, model construction, and fiscal and financial policy and regulation creation in the establishment of those myths. Mazzucato points to the gap between the modern model and reality, but is less concerned with how the model was built.

The second exception, business sociologist Martha L. Reiner, has extensively chronicled the professionalization of the venture capital industry in a 1989 dissertation written at Berkeley.¹⁹ Unfortunately, Reiner only published one peer reviewed article²⁰ based on her doctoral work, a historical overview of professional organizations formed by venture capitalists from the 1930s through the 1980s. Reiner's work has been vital in mapping the multiple professional organizations and paths of influence the venture capital community explored in its quest for professionalization. Her unpublished dissertation highlights the interactions between early venture capitalists and regulators, including William J. Casey during his time at the SEC, with particular attention paid to the "hot issue hearings."²¹ However, Reiner does not mention Casey's own venture capital activities or the Casey Task Force. Thus her regulatory history misses several steps. Nor does she contextualize the regulatory shifts of the late 1970s within

¹⁹ Reiner, Martha L. *The Transformation of Venture Capital: A History of Venture Capital Organizations in the United States*. Doctoral dissertation. University of California, Berkeley. December 1989.

²⁰ Reiner, Martha L. "Innovation and the Creation of Venture Capital Organizations." *Business and Economic History*. Vol. 20. 1991. pp 200-209

²¹ The "hot issue hearings," which Casey referred to as the "hot issue trauma" in Task Force materials, were a set of hearings and subsequent regulatory measures related to financial scandals involving the use of high-pressure and possibly fraudulent sales tactics to sell new stock issues (so-called 'hot issues') to unsophisticated buyers. The resulting regulatory measures are discussed in Chapter Six.

the broader shifts in neoliberal thinking and politics, in which Casey was a key if overshadowed figure.

Other historians of technology and innovation economies have focused on the careers of well known early venture capitalists, like American Research and Development founder Georges Doriot²² or examined the influence specific firms, universities, and family offices.²³ Regional industry histories such as Annalee Saxenian's landmark works, *Regional Advantage*²⁴ and *The New Argonauts*, or those by Martin Kenney and Richard Florida²⁵ have considered the development of specific geographic areas, mostly the Bay Area and Route 128, with an eye to how local culture influences the creation of networks of knowledge and innovation. Again, however, they have not concerned themselves with the particulars of regulatory development or the political narratives of business model creation. They are useful contextual resources, but do not address the impact or development of the types of financial practices we examine here, only the impact of them after their development and normalization.

Saxenian's work has been influential regarding the growth of the West Coast high technology sector in the post Space Race era, and for good reason. Her arguments regarding the local business cultures of the Bay Area and the Route 128 corridor and their influence on the success of the regions as wholes provided critical insight into how regional business cultures

²² Ante, Spencer. *Creative Capital: Georges Doriot and the Birth of Venture Capital*. Harvard Business Review Press. Cambridge, MA. 2008.

²³ Etzkowitz, Henry. *MIT and the Rise of Entrepreneurial Science*. Routledge. 2002; Kenney, "How Venture Capital Became A Component of the US National System of Innovation."

²⁴ Saxenian, Annalee. *Regional Advantage*. Harvard University Press. Cambridge, MA. 1996.; Saxenian, Annalee. *The New Argonauts*. Harvard University Press. Cambridge, MA. 2007.

²⁵ Kenney, Martin and Richard Florida. "Venture Capital in Silicon Valley: Fueling New Firm Formation." *Understanding Silicon Valley: The Anatomy of an Entrepreneurial Region*. Stanford University Press. 2000.; Florida, Richard and Martin Kenney. "Venture Capital, High Technology, and Regional Development." *Regional Studies*. Vol 22 No 1. Fall 1986. pp 33-48

develop over time. However, *Regional Advantage* disregards the fact that the West Coast venture capitalists who she credits with fueling the dynamic high technology wellspring of Silicon Valley benefitted directly from policy changes being proposed and advocated for primarily by East Coast financiers, and in particular the Casey Task Force. In her comparisons of the business culture and climate of Silicon Valley and Route 128, Saxenian at times incorrectly ascribes to regional culture actions that, in fact, have their roots in policy and regulation. In particular, Saxenian's analysis of the actions of East Coast financiers, whom she casts as overly conservative, reflects an apparent oversight regarding the legal and professional obligations of trustees and how those obligations impacted the investment activities of major institutions like MIT in the mid-century. Saxenian notes MIT's 1955 withdrawal from Georges Doriot's storied venture capital firm, ARD, describing it as characteristic of the "conservatism of New England Universities and financial institutions of this era."²⁶ However, MIT's decision that "investing in start-up companies was too risky and not consistent with how 'men of prudence, discretion, and intelligence manage their own affairs'"²⁷ reflects not a *regional* cultural conservatism, but an adherence by MIT's trustees to the *prudent man rule*, an aspect of national trust law in force at the time.²⁸ The prudent man rule specifically classified "untried companies" as unfit investments for trusts.²⁹ As I explore in this project, many private individuals, investment professionals, and corporate offices on the East Coast and in the Midwest engaged in venture capital-type investing in the period Saxenian discusses. It would be a mistake to

²⁶ *Regional Advantage*. p 15.

²⁷ *ibid*

²⁸ An extended explanation of the prudent man rule may be found in Chapter Five.

²⁹ See Chapter Five

generalize to the broader financial community or the business culture of the region at large from the legal obligations of trusts.

Reform of the prudent man rule as it was implemented with regard to pension fund investment in 1974 was a major concern of the East Coast financiers who made up the Casey Task Force, in particular Charles Lea, a financier working for the Rothschild's New Court Equity firm. In this project I present evidence that many successful West Coast venture capitalists were simply uninterested in policy advocacy, though they were impacted by regulatory decisions. As documented through oral history testimony and their comparatively rare appearances and contributions to government hearings, West Coast venture capitalists were out of the loop regarding regulatory moves like the successful re-articulation of the ERISA prudence standard, which fundamentally altered the venture capital landscape in 1979 in terms of sources of capital, firm structure, and deal structure.³⁰

Further, I provide evidence, particularly in Chapter Four, that the venture capital *profession* and its investment standards and activities were not as established, coordinated, or publicly recognized in the 1970s as one might assume from Saxenian's narrative. In the late 1970s, understandings of what venture capital was and how it functioned in business varied widely. Classified ads, newspaper coverage, and the internal discussions and Congressional testimony of self-identified venture capitalists identified multiple different types of financing as "venture capital" activities. These included loans, expansion capital for established firms, or real estate investment, not just the early stage equity investment we would recognize today. These activities were practiced by a range of firms. Few had the limited partnerships firm structure that

³⁰ See Chapters Five and Six

is currently dominant, and fewer still tapped institutional sources of capital. Some were attached to corporate research and development arms or the family offices of established dynasties, like Charles Lea. Others, like Casey, were individuals investing their own fortunes made outside the high technology sector, or, like Arthur Rock, began in established New York financial firms and then split off to form independent corporations. Some firms were publicly traded, some stayed private. Some of these early venture capitalists engaged in the active, hands-on mentorship that we would recognize as a central aspect modern venture capital, but others were more traditionally distant investors.³¹

“Venture capital” as early stage equity investment by a limited partnership firm whose general partners take an active mentorship role in the company’s development, where these investors are rewarded with substantial capital gains when a company enters the public financial markets was not the default conception of the practice in the 1970s, even among high technology entrepreneurs or self-identified venture capitalists . Nor was there consensus that this type of investment was the best and most natural type of investment for the high technology sector. Rather, I argue, East Coast financiers, the Casey Task Force in particular, developed this idea and business narrative to promote, protect, and enshrine in regulation and bureaucratic infrastructure a certain set of investment practices. Some of these practices, like the limited partnership firm structure which depended on pension funds and other trusts as “limited partner” funders, were relatively novel at the time the Task Force convened. However, after the Task Force’s policy recommendations were adopted in the final years of the 1970s, the limited

³¹ The variety in levels of involvement was evident in the make up of the Task Force itself. Some members considered themselves active investors, demanding input on hiring and every day management decisions. Others, like Casey himself, were described as having “bought himself an inventor the way another man might buy a yacht” (Persico, p 101) and often preferred to simply write checks and wait to see what resulted.

partnership firm structure became dominant and, as funds from previously walled-off ERISA-regulated pension funds rolled in, incredibly lucrative.

Fred Turner's powerhouse critique, *From Counter Culture to Cyberculture*, discusses, in part, the ways in which the early tech industry in the Bay Area developed affinities and resonances with specific political ideologies. Turner's narrative emphasizes the role of Stewart Brand, the *Whole Earth Catalogue*, and other closely associated people and businesses in promoting a counter-culture derived, libertarian view of business, technology, and social politics. This view encompasses deregulation, a highly valorized entrepreneurial independence unconstrained by traditional employer-employee relationships, and a belief that radical personal, intellectual, and economic independence was possible and desirable. Turner pins Brand and his cohort's being "welcomed into the halls of Congress" to the 1990s, when their "self evident financial and social success had become evidence for the transformative power of what many had begun to call the 'New Economy.'" ³²

Turner describes the vision of the New Economy in the 1990s as the intellectual product of "an entire circuit of stock analysts, journalists, publicists, and pundits...[spinning] out a series of self-reinforcing prognostications."³³ These predictions, acted on by investors and other analysts, involved

[n]ew, more entrepreneurial forms of corporate organization, rapid investment in high technology, and the ability to corral the intangible knowledge and skills of employees—all seemingly made possible by the suddenly ubiquitous computer and communications networks...³⁴

³² Turner, Fred. *From Counter Culture to Cyber Culture*. University of Chicago Press. 2006.

³³ Turner, p 214

³⁴ Turner, pp 214-215

Turner links this view of the bubbling technology economy to “an ongoing swing to the right in American corporate and political life.”³⁵ He draws particular attention how the Republican Speaker of the House, Newt Gingrich, used the perceived technological boom times to push an aggressive deregulatory agenda:

The elections of 1994 usher in the first Republican majority in both house of Congress for forty years. Led by Newt Gingrich, the House of Representatives in the mid 1990s pushed for the downsizing of government and widespread deregulation—especially in the telecommunications sector. Together with Alvin Toffler, George Gilder,³⁶ and technology journalist and entrepreneur Esther Dyson, Gingrich argues that America was about to enter a new era, one in which technology would do away with the need for bureaucratic oversight of both markets and politics. As Gingrich and others saw it, deregulation would free markets to become the engines of political and social change that they were meant to be.³⁷

My history contributes to an earlier chapter than those founds in Turner’s narrative. I argue that the ganging of high technology to distinct policy agendas promoting the deregulation of financial markets, the shrinking of regulatory “bureaucracies,” and the political agendas of the Republican right can be seen in Washington at least twenty years before Turner’s 1990s narrative. In the 1970s, Casey and the Task Force took advantage of a “circuit,” similar to the one identified by Turner, of business journalists, columnists, pundits, along with legal professional, businessmen, and academics to promote their political and cultural agenda. I argue in the second half of this project that the Casey Task Force developed and deployed specific

³⁵ Turner, p 215

³⁶ In an interesting resonance, George Gilder, the author of the neo-conservative blockbuster text *Wealth and Poverty*, received significant financial support from the Manhattan Institute, a think tank co-founded by Casey in the late 1970s. (Stahl, Jason. *Right Moves*. University of North Carolina Press. 2016. p 112)

³⁷ Turner, p 215

narratives, both regarding how corporations grow and the role of the venture capitalist as the irreplaceable prime mover of innovation in US history, as part of their attempt to influence financial policy. These narratives traffic in recognizable neo-conservative tropes, exploiting imagery of Western empire building and patriotic warfighting, and romantic figurations of risk and finance-as-labor to shape a view of the venture capitalist as intrinsic to American business and international political and economic dominance.

These narratives ran counter to contemporaneous understandings of corporate development and the ways in which other financial professionals, like the New York Stock Exchange, viewed and promoted their own deregulatory, pro-fiancialization policy agendas. What would become the common, modern understanding of the role venture capital investment in high technology and its role in the “New Economy” was presented in the “halls of Congress” well before the moment Turner identifies in the 1990s. It was initially and intentionally crafted and introduced by East Coast financiers, the Casey Task Force in particular, in order to promote a specific set of policy objectives which benefitted the financiers directly, without the involvement of West Coast entrepreneurs and technologists.

William J. Casey

Due to his roles in US intelligence and Republican party politics through the 1980s, parts of William J. Casey’s career in public service have been well-covered in academic and popular accounts. However, perhaps understandably, his activities with the OSS³⁸ and later the CIA have overshadowed his career as a venture capitalist, fiscal and financial regulator, and government

³⁸ The Office of Strategic Services, the wartime intelligence agency founded during World War II, which was later replaced by the CIA.

bureaucrat. Casey's role as a major financial supporter of neoliberal and neoconservative intellectual projects, his financial bailout of *The National Review* in the 1950s, and his role in the founding of the Manhattan Institute, the conservative think tank, in 1978, are noted briefly in several histories³⁹ of the neoconservative and neoliberal movements, but these actions are not connected to his work in policy or his activities as a venture capitalist. Casey was not a prominent *public* intellectual force justifying the neoliberal worldview, like William F. Buckley and others who received his patronage through the Manhattan Institute, but he was a significant financial supporter and, more importantly for this project, an influential political figure who used his position as a politician, regulator, and bureaucrat to build neoliberal and neoconservative values directly into the financial infrastructure of high technology industry and the innovation economy.

The SBA Task Force on Venture and Equity Capital has remained unexamined in the scholarly literature on Casey's life and career, and Casey's papers pertaining to the Task Force are thus far uncited in any studies of venture capital, regulatory policy, or Casey's career, including his authorized biography.⁴⁰ Though the Task Force and their published report are mentioned frequently in the Congressional Record, in government research documents, and in contemporaneous commentary and journalistic sources, these references vanish in the mid 1980s. Regulatory histories of venture capital recognize the policy shifts resulting from the Task Force's work as pivotal moments in the development of the venture capital industry, they do not

³⁹ Hopkin, Nicole and Ron Robinson. *Funding Fathers: The Unsung Heroes of the Conservative Movement*. Regnery Publishing. 2008.; Medvetz, Thomas. *Think Tanks in America*. University of Chicago Press. 2012.

⁴⁰ Persico, Joseph E. *Casey: The Lives and Secrets of William J. Casey from the OSS to the CIA*. Viking. New York, NY. 1990.

examine the sources of those shifts beyond a vague attribution to “lobbying efforts.” Studying the role of the Task Force in these policy shifts can help us better understand how the high technology sector was constructed as central to the US economy, and how venture capitalists were positioned as naturally intrinsic to that sector. It also provides insight into the political and ideological motivations of these shifts, models, and narratives. Through this examination we can potentially destabilize prevalent views that the current form of venture capital is the most natural or appropriate funding structure for a high technology-driven economy, and that the support, maintenance, and growth of such an economy is the interests of a given nation or the high technology corridors of Silicon Valley and other regions.

As a work of historical analysis, this research aims to expose a link in a key moment of financialization that hinges the Space Race era and the modern, venture-backed innovation economy at the level of policy change and business model development. As a work of political and ideology analysis, this research aims to shine a light upon an important but unexamined moment of policy formation and economic agenda setting that was formative in the development of high technology just before the election of Ronald Reagan. Reagan’s election is often seen as *the* moment of neoliberal consolidation and acceleration. My work examines some of the essential work prior to that pivotal period to help explain how neoliberalism and financialization took such strong hold at that time.

Theorizing the Neoliberal

A central argument of this project is that the policy recommendations and cultural narratives presented by the Casey Task Force set the conditions of possibility for the high technology sector

from the late 1970s onward. Those policy recommendations and cultural narratives represented the successful implementation of key neoliberal economic values, specifically in the area of financial policy. As a result, high technology became intertwined with financialization, the deregulation of financial markets, and neoliberal perspectives regarding the role of the state with regard to corporations and markets.

In discussing the role of neoliberal ideology in the development of the Task Force's policy recommendations and rhetorical maneuvers, I turn to contemporary theorists including Wendy Brown, Jamie Peck, Melinda Cooper, and David Harvey. As I do so, it should be noted that I deploy critical retrospective theorizations of what, in this project, I analyze using primary sources and contemporaneous accounts. Contemporary theorists like Brown, Harvey, Cooper, and others open the aperture wide to provide sweeping historical views of the major neoliberal shifts of the last 40 years since the original publication of the Casey Report. In that time, the term "neoliberalism" has grown to refer to an ideology, a superstructure, a global mode of operation, and a critical descriptive theory of that ideology, superstructure, and mode. It is now understood to be hegemonic, ubiquitous, and relatively coherent, even if marked by some central contradictions as the work of Harvey and others has shown. But the (relative) coherence of the current critique should not be read backwards fully onto the historical moment under examination. It should not be assumed that what subsequent theorization has assembled as a set of principles and techniques was present, fully formed, at its origins.

Indeed, as critical geographer Jamie Peck has noted, neoliberalism has no "beeline trajectory to a foundational eureka moment."⁴¹ Rather, "neoliberalism has many authors, many

⁴¹ Peck, Jamie. "Remaking Laissez-faire." *Progress in Human Geography*. Volume 32, Issue 1. 2008. p 4

birthplaces.”⁴² Those authors, birthplaces, and trajectories are in their own ways divergent, specific, and in some ways cloaked and unreliable. Regarding this, Peck writes:

*Neoliberalism was a mix of prejudice, practice and principle from the get-go. It did not rest on a set of immutable laws, but a matrix of overlapping convictions, orientations and aversions, draped in the unifying rhetoric of market liberalism. The project was regularly self-styled as neoliberal from the late 1930s through the early 1950s, after which it was prosecuted through a more euphemistic lexicon – of freedom, competition, liberty and markets. The misrepresentation and misreading of neoliberalism therefore each have long and tangled histories, reaching back more than half a century.*⁴³

This dissertation examines a piece of a particular history that is both complicating and clarifying. In particular, this project examines a set of policy events that were guided and developed under the influence of specific personalities with personal, idiosyncratic motivations and philosophies. The goal here is to examine the convergences and divergences of thought, policy, and practice within these materials, determine the conditions of possibility they set, and to listen for the echoes of their logic in the present day.

As we seek to define neoliberalism so as to illuminate our analysis in the present, we must also keep in mind that personal politics and beliefs of the actors in the past were mixed and muddled, pulling from multiple sources, traditions, and influences. To the contemporary analytical eye, they may strike as simply contradictory. In other cases, strenuous political or cultural conflicts that once blazed between contemporaries have burnt out, sometimes leaving contemporary observers with the impression that two ideological factions are functionally identical when they might have bristled at the thought. Casey’s personal and public adherence to

⁴² Peck, p 4

⁴³ Peck, p 6.

both neoliberal and neoconservative political programs is one such instance. The tensions within Casey's own beliefs in many ways aligns with Harvey's description of the uneasy alliance between neoliberal economic values and neoconservative intellectuals who "[s]upport[ed] the neoliberal turn economically but not culturally."⁴⁴ As I review the definitions and theories of neoliberalism in use in this project, I will also touch on the significant intellectual and political tensions between self-identified neoliberals and neoconservatives of Casey era, in order to illuminate the ways in which Casey's personal politics manifested in unexpected and influential ways through his public policy agenda-setting.

The 1970s is the central decade to any analysis of neoliberal shifts. A historian Judith Stein puts it, the 1970s was the "pivotal decade," reflecting a general consensus among historians of the era. In her book of the same name, Stein traces the decline of domestic manufacturing, organized labor, and pervasive wage stagnation that dominated the decade, which was mirrored by a rising emphasis on financial markets and theories of economic growth that prioritized financialization. This shifting balance led to what Stein terms "an Age of Inequality," which is still present today.⁴⁵ Economic geographer David Harvey describes the 1970s as the moment when the political interests of the business community in the United States began to effectively coalesce around actionable policy agendas. Harvey quotes the journalist Thomas Edsall writing in 1985 regarding this moment:

During the 1970s, business refined its ability to act as a class, submerging competitive instincts in favor of joint, cooperative action in the legislative area. Rather than individual companies

⁴⁴ Harvey, David. *A Brief History of Neoliberalism*. Oxford University Press. Oxford: UK. 2005. p 50.

⁴⁵ Stein, Judith. *Pivotal Decade: How the United States Trades Factories for Finance in the Seventies*. Yale University Press. 2010. P xii

seeking only special favors...the dominant theme in the political strategy of business became a shared interest in the defeat of bills such as consumer protection and labor law reform, and in the enactment of favorable tax, regulatory and antitrust legislation.⁴⁶

This coalescence “as a class” represents the emergence of neoliberalism as an actionable political agenda, publicly accessible and often morally conveyed patriotic overtones. This was different from the the original, self-identified neoliberals of the Mount Pelerin Society whose work tended toward intellectual and theoretical activities—including the production of significant books of theory and holding conferences—instead of advocating for policy changes directly.⁴⁷

Many of those early neoliberals, historian Angus Burgin notes, would hardly recognize or approve of the unequivocal support of free markets and aggressive deregulation promoted by latter-day neoliberals like Milton Friedman, a contemporary of Casey.⁴⁸ Friedman’s understanding of free market capitalism—as an explicitly moral and moralizing system that produced virtuous behavior through the mechanism of the free market—was less qualified and restrained than the views originally proffered by Mount Pelerin members Friedrich Hayek, who “did not believe that markets necessarily rewarded merit,”⁴⁹ or Frank Knight, who “saw little or no connection between morality and production for the marketplace.”⁵⁰ Friedman, on the other hand, argued that markets were or could be ideal systems that “elegantly and reliably promoted virtuous behavior.”⁵¹ Friedman characterized free markets as moral systems and productive of

⁴⁶ Harvey, David. *A Brief History of Neoliberalism*. Oxford University Press. Oxford: UK. 2005. p 48

⁴⁷ Burgin, Angus. *The Great Persuasion: Reinventing Free Markets Since the Depression*. Harvard University Press. 2012.

⁴⁸ Burgin, p 11

⁴⁹ Burgin, p 118

⁵⁰ *ibid*

⁵¹ *ibid*

virtuous, moral behavior, to advocate for deregulation, free financial markets, the dissolution of public welfare programs, rollbacks of worker protections, and other similar measures. Unlike earlier neoliberals, who were primarily academics and stuck to academic venues for their debates, Friedman promoted his ideas through popular media. Starting in 1966, he published a regular column in *Newsweek*,⁵² and in 1970, he published a major paper, “The Social Responsibility of Business Is To Increase Its Profits,” in the *New York Times Magazine*.⁵³ In 1980, he hosted a 10-part PBS miniseries entitled *Free to Choose*, dedicated to the promotion of free market principles.⁵⁴

Like Friedman, Casey and the Task Force employed concepts of morality, virtue, and American patriotism in a masculine mode that they then heavily tied to free market principles and policies. Also like Friedman, they expended significant effort promoting the Report and their ideas regarding the value of financialization in the high technology sector in the popular media, among academics in engineering, law, and business, and in the professional presses of law and business. The neoliberalism espoused by the Task Force, which was assembled in the same year that Friedman was awarded the Nobel Memorial Prize in Economic Sciences, and its methods resonated strongly with those of Friedman. Their neoliberalism as a *contemporaneous ideological practice* was heavily moralized, strongly tied to an idea of American global hegemony, and was fundamentally practical, generating political programs and policy agendas for business and finance as class.

⁵² Burgin, p 198

⁵³ Burgin, p 190

⁵⁴ Jack, Caroline. “Producing Milton Friedman’s *Free to Choose*: How Libertarian Ideology Became Broadcasting Balance.” *Journal of Broadcasting and Electronic Media*. Vol. 63, No. 3. Pp 514-530.

In contrast with these historic figures, political theorist Wendy Brown casts neoliberalism as a mode of thought and being that encompasses and far exceeds the development of pro-business policy agendas. Brown classifies neoliberalism as a “distinct mode of reason of the production of subjects, a ‘code of conduct,’ and a scheme of valuation”⁵⁵ where all activities and projects of individuals and states become “projects of management,” and the process of political rulership becomes subservient to an economic framing and economic ends.⁵⁶ Brown further notes that within operating neoliberal structures, the operations of the state and the operations of corporations and finance become intimately intertwined, with corporate interests dominating political choices and policy decisions.⁵⁷ Brown describes neoliberalism as a whole as “an order of normative reason that, when it become ascendent, takes shape as a governing rationality extending a specific formulation of economic values, practices, and metrics to every dimension of human life.”⁵⁸ This definition of neoliberalism combines a style of reasoning that centers productive, managerial tactics with a value system that prizes economic outcomes and definitions of success. The corporation, and in particular the financialized corporation, becomes enmeshed with the state and the processes of governance. The expected role of the state dwindles to promoting and caretaking corporate welfare, and protecting the growth and expansion of financial markets.

The neoliberal state is expected to provide this protection to finance and corporate capital even at the expense of the environment, individual or community rights, or other democratic

⁵⁵ Brown, *Undoing the Demos*. p 21

⁵⁶ Brown, p 22

⁵⁷ Brown, p 29

⁵⁸ Brown, p 30

projects and values. The health and wealth of corporations and financialized entities have become fused with appraisals of the health of the state itself through measures like GDP or “economic growth.” Brown describes neoliberalism as “an order of normative reason,” which impacts and warps standards of evidence and argumentation. Certain genres of fact or evidence or virtue, like market growth, become legible while others, like environmental stewardship or care for workers, are obscured. Growth and expansion of the type that is *legible* or *perceptible*⁵⁹ in the financial marketplace becomes politically salient.

Brown’s conception of neoliberalism, as she writes in 2015, is a totalizing regime, shaping “every dimension of human life.” Harvey would seem to concur, arguing that neoliberalism, despite any initial motivations, has “in practice dominated” as a “political project to re-establish the conditions for capital accumulation and to restore the power of economic elites.”⁶⁰ This type of totalizing or domination, however, does not necessarily imply orchestrated coherence or top-down organization. In my account of neoliberalism, I follow Brown and Harvey’s definitions of neoliberalism as a normative mode of reasoning, entailing the strong re-assertion of the interests of an economic elite whose fortunes had become entangled with financialized markets. I follow financial sociologist Greta Krippner’s definition of *financialization*, “the growing importance [in the 1970s] of financial activities as a source of

⁵⁹ Murphy, Michelle. *Sick Building Syndrome: Environmental Politics, Technoscience, and Women Workers*. Duke University Press. 2006. P 9

⁶⁰ Harvey, David. *A Brief History of Neoliberalism*. Oxford University Press. Oxford: UK. 2005. p 19

profits in the economy,”⁶¹ with *financial* meaning “the provision (or transfer) of capital in expectation of future interest, dividends, or capital gains.”⁶²

However, in describing the Casey Report’s policy recommendations as the successful implementation of neoliberal economic policy, I do not mean to imply the existence of a grand, coordinated and cohesive neoliberal policy agenda active at the time. While the policy recommendations of the Task Force were in harmony with neoliberal economic ideals, this project shows that the recommendations of the Casey Task Force were, on the whole, *reactive* to recent legislative and regulatory measures, like ERISA or SEC Rules 144 and 146. Each of these has been passed into law less than half a decade before the Task Force was convened. I argue that the Task Force exploited the social, fiscal, and employment crises⁶³ presented by the 1973-75 recession to advocate for an immediate rollback of financial regulations they viewed as immediately detrimental to their personal and professional investments. This is in fitting with Krippner’s argument that

...policymakers did not pursue this policy regime with the intention of producing financialization; rather the turn to finance was an unintended consequence of policymakers’ attempts to extricate themselves from the problems they confronted in the guise of social crisis, fiscal crisis, and the legitimation crisis of the state [in the 1960s and 1970s].⁶⁴

Krippner argues that policymakers in this era turned to the public financial markets as a way of moving issues of resource allocation and equity ‘off their plates,’ as it were. The Task Force,

⁶¹ Krippner, Greta. *Capitalizing On Crisis: The Political Origins of the Rise of Finance*. Harvard University Press. 2011. p 27

⁶² Krippner, p 4

⁶³ Krippner, pp 15-19

⁶⁴ Krippner, p 22

convened by the Small Business Administration to address a perceived crisis in funding for small businesses made manifest in high levels of unemployment and cratering financial markets, presented a set of solutions for those apparent problems that not only reduced the role of the Federal government as small business funder and as regulator, but also solved a set of immediate problems for their own investment practices. The logics, narratives, and rationales used by the Casey Task Force in support of this policy agenda were essentially neoliberal in the manner described by Wendy Brown. They offered financialization as both practical and consistent with core American values, and presented evidence that accorded with those values. After the successful implementation of their policy agenda, the supporting rhetorics remained active and influential. Part of this project is an attempt to explain the stickiness of that logic, how those ideas and narratives and rhetorics remained active in the spheres of business and high technology after they had served their purposed in the political sphere.

The effects of the Casey Report extended far beyond the immediate short term regulatory crises they were intended to solve. Once the Report was released, intellectual rhetorical constructions intended to support the policy recommendations, like the Life Cycle Model discussed in Chapter Three, took on lives of their own. The Life Cycle Model became a significant template for the development of a corporation, in the high technology sector and beyond, and was reproduced by regulators and the business press until the early 2000s.

I argue that the Life Cycle Model and other aspects of the Casey Report became a part of what science and technology scholar Michelle Murphy has called the “epistemic infrastructure”⁶⁵ of the high technology sector. By epistemic infrastructure, I refer to the perceived socio-technical

⁶⁵ Murphy, Michelle. *The Economization of Life*. Duke University Press. (2017) p 6

mesh of practices, bureaucracies, cultural practices, technical constructs, and physical infrastructures that straddles and connects governmental agencies like the SBA with the public or civilian ‘business discourse’⁶⁶ that occurs within business communities at conferences, in professional publications, and through associations and correspondence. Murphy’s “epistemic infrastructure” allows us to examine the ways in which the Life Cycle Model became a tenacious reference within the business discourse of the technology sector and, additionally, among small and minority owned businesses in the United States. As the Report contributed to the epistemic infrastructure of the high technology sector in America, as it was referenced in the popular and professional presses, and as it was frequently repeated in the halls of the academy and government, the Report’s narratives and logics similarly became a type of generic background knowledge. Aspects of the Report, the Life Cycle Model in particular, became genericized—morphing into economic commonsense—as they were repeated and recited as fact without reference to the original purpose or authorship of the Report itself. In this way, it became part of the “common sense of capital” described by economic historians Foucade and Khurana,⁶⁷ a shared intellectual background or set of ideas assumed to be in common circulation amongst businessmen and other economic actors, something media historian Caroline Jack has similarly identified as the “economic imaginary.”⁶⁸ As the policy agenda the Report advocated for became enacted, some aspects of the Report that were intended to support that policy agenda melded into that economic imaginary, become part of the “ground truth” of high technology economics.

⁶⁶ Fourcade and Khurana, p 349

⁶⁷ p 348. Fourcade, Marion and Rakesh Khurana. “The Social Trajectory of a Finance Professor and the Common Sense of Capital.” *History of Political Economy*. Vol 49 Issue 2. 2017. pp 349-382

⁶⁸ p 518. Jack, Caroline. “Producing Milton Friedman’s *Free To Choose*: How Libertarian Ideology Became Broadcasting Balance.” *Journal of Broadcasting and Electronic Media*. September 2018. pp 514-530

Rather than being seen as aspects of a specific argument and agenda, rhetorical artifacts like the Life Cycle Model were perceived and repeated as expected and unquestioned. They eventually became common vernacular knowledge.

The Casey Report shaped financial policy, the epistemic infrastructure surrounding the high technology sector, and core cultural understandings of how the economics and processes of high technology firms functioned. The Report purported to *describe* the common practices and realities of venture capital investment in the high technology sector. I argue that this was not so. Rather, their logics and narratives, say, regarding the role of the venture capitalist in high technology, amongst many other topics to be explored here, were *performative* in the sense that Donald Mackenzie describes in his theory of the performativity of economics.⁶⁹ MacKenzie argues that certain mathematical models that purported to described how financial markets functioned in fact affected those financial markets, shaping their everyday operations to be more in accordance with the model itself.

He identifies three levels of performativity: generic, effective, and Barnesian. The weakest of these is generic performativity, requiring only that the model in question be “used... in the ‘real world’ by market participants,”⁷⁰ not just academic economists in their analysis. One step stonier is effective performativity, which must “make a difference” in economic processes or practices:

Perhaps it makes possible an economic process that would otherwise be impossible, or perhaps a process involving use of the aspect of economics in question differs in some significant way

⁶⁹ MacKenzie, Donald. *An Engine Not A Camera: How Financial Models Shape Markets*. MIT Press. (2006) p 15-25

⁷⁰ MacKenzie, p 18

(has different features, different outcomes, and so on) from what would take place if economics was not used.⁷¹

Barnesian performativity, named in reference to the work of sociologist Barry Barnes regarding self-validating feedback loops in the social life of individuals,⁷² is the most powerful. MacKenzie states that for a model to be strongly performative in the Barnesian sense, “economic processes or their outcomes are altered so that they better correspond to the model.”⁷³ As the model is used in economic processes or financial markets, it becomes “more true.”⁷⁴ I argue that work of the Task Force aligns with this last category of performativity. In advocating for a certain policy agenda using a set of narratives and economic models purporting to describe how financialized investment worked within the high technology sector, the Task Force meaningfully impacted and changed the economic operations of that sector to be more in accordance with its own narratives and models. Task Force members acknowledged publicly that rhetorical objects within the Report like the Life Cycle Model were not based in any studies conducted by the Task Force or others. Rather, they were illustrations of how the Task Force *thought* a corporation might develop if their policy recommendations were implemented.⁷⁵ As these illustrations and models went on to be routinely cited by professionals and policy makers, and as the funding and development of high technology firms went on to more closely resemble the models put forward by the Task Force, particularly in their reliance on financialized investment and participation in the public

⁷¹ MacKenzie, p 18

⁷² MacKenzie, p 19

⁷³ MacKenzie, p 19

⁷⁴ *ibid*

⁷⁵ See Chapter Three.

financial markets as a mode on investor exit, I argue that work of the Task Force fits the requirements for Mackenzie's strongest category, Barnesian performativity.

A Note on Primary Sources

This project relies primarily on the personal papers of William J. Casey, held at the Hoover Institution at Stanford University. I am grateful to the archivists at the Hoover Institution for making these papers available over the course of two too-short weeks in March of 2018. Casey's papers, which cover the whole of his extensive career in business publishing, investment, public service, and popular writing, contain several boxes devoted to the SBA Task Force. These include personal correspondence, commissioned reports, annotated and final drafts of the Task Force Report itself, newspaper clippings and other assembled research materials, copies of Casey's speeches and written testimonies, as well as full transcripts of Task Force meetings and hearings at which Task Force members appeared, as well as other ephemera. The archive is not a general archive of the Task Force, and as such primarily includes material that interested Casey or passed through his office. Casey was the head of the Task Force, and thus it might be assumed that a significant percentage of the material generated by the Task Force might have passed through his hands. However it is impossible to know this for certain. The McKeldin Library at the University of Maryland at College Park was further able to provide original publications from Casey's early career in business publishing, which gave a glimpse into his developing ideas regarding business, investment, taxation, and the roles and responsibilities of government in the years before he joined public service. Further materials related to the Task Force were found in

the personal papers of Task Force member Duane Pearsall, located in the digitized archival holdings of the Worcester Polytechnic Institute.

Historical newspaper material, including advertisements, articles, and the cartoon featured at the start of this introduction were located using newspapers.com, an extensive digital archive of historical local, regional, and national newspapers owned by ancestry.com. Historical *New York Times* articles were located using their archives available at nytimes.com. The *Forbes Magazine* article discussed in Chapter Four was found, after much searching, in microfilm archives held by the University of Maryland at College Park, and I am grateful to the librarians at the McKeldin Library for making this curiously inaccessible archive available. Copies of the two John Sutherland films discussed in Chapter Six were located in the Prelinger Archives, hosted by the Internet Archive and YouTube.

Historical law review articles, government publications, and Congressional transcripts were located using the extensive databases made available by HeinOnline. Oral history testimony from early actors in the venture capital industry was collected by the Venture Capital Oral History Project, sponsored by the National Venture Capital Association. Video recordings, audio recordings, and transcriptions of these oral histories are maintained by the Bancroft Library at the University of California at Berkeley. I would further like to acknowledge the SEC Historical Society and their Executive Director, Jane Cobb, for assembling an invaluable collection of digitized archival materials related to the SEC from a wide variety of university, institutional, and private holdings (and for answering my technical support questions at 7pm on a Friday!).

Chapter Outline

This project is organized into six chapters that explore the history of venture capital, the history of the Task Force and the Casey Report, the traceable appearances of the Report across various sectors of politics and society, and the neoliberal ideologies of venture capital embedded in the Report. The first chapter provides historical background necessary to understand the regulatory and financial contexts the Task Force was operating in and responding to. This includes brief accounts of financial regulations passed as part of the New Deal's response to the Great Crash of 1929; the Space Race boom in technology development and funding; government attempts to encourage business investment; an overview of the history of venture capital investment up to the mid-1970s; and a description of the immediate financial crisis presented by the 1973-1975 recession. The chapter concludes with an examination of Casey's personal biography, his early involvement with venture capital investing, and his extensive government service as a financial regulator and bureaucrat.

The second chapter concerns the development of the Casey Task Force's major deliverable, informally known as the Casey Report, published in January of 1977. The Report summarized the Task Force's policy recommendations, and also served to fix and provide a reference point for their ideas of how business and venture capital investment should and how they claimed it did work. The chapter covers Casey's initial introduction to several members of the SBA Task Force via an invited appearance at the newly formed National Venture Capital Association. This appearance, which Casey made in his capacity as then-head of the Securities and Exchange Commission, gives us a glimpse into Casey's perspectives on venture capital and the role of regulation *before* joining the Task Force in 1976. The chapter then traces the SBA's

formation of the Task Force. The chapter reviews early directions the Task Force pursued, including research into corporate venture investment and other types of “financial aid” provided to smaller businesses by larger corporations. Finally, we review other influences and studies present in the Task Force archives that illustrate the Task Force’s influences and illuminate their role in the contemporaneous discourse regarding small businesses and high technology.

The third and fourth chapters are devoted to examining the ways in which the Casey Report spread through various public, professional, and governmental channels and circuits. In Chapter Three, we focus on an illustrated model included in the Report, entitled “Life Cycle Model of a Growing and Successful Company,” hereafter referred to as the Life Cycle Model. Originated by the Task Force, the Life Cycle Model centered the role of venture capital equity investment and participation in the financial markets in the successful “life cycle” of a corporation. It was widely cited by businessmen and regulators, and was not always explicitly connected with the Casey Report. Two distinct streams of citation for the Life Cycle Model are examined: one involving an extended debate surrounding a minority business program administered by the SBA; and one involving policy issues more directly related to the high technology sector. Each of these citation streams provide examples of how the Task Force’s Life Cycle Model became a part of the epistemic infrastructure of both the high technology sector and broader conceptions of American business.

The fourth chapter examines how the Casey Report was taken up by the news media, by the professional business and legal press, as well as by academics and government actors. I argue that the Casey Report was enthusiastically received by the news media and business communities *before* it became influential in government. Further evidence is presented from

newspaper archives that indicates that even as late as 1977, the definition of venture capital was unstable, and included multiple types of investment and financial functions, including loans as well as early equity investment. I argue that as the news media promoted the Casey Report, the Casey Report's concept of venture capital and its function spread and became influential. Finally, we review citations of the Casey Report in law reviews, government documents, Congressional hearings, and other types of professional policy documents as evidence of the Report's influence on policy and professional practice.

In the fifth and sixth chapters, we turn our focus to specific policy recommendations made in the Casey Report that had a strong impact on the developing venture capital industry. Chapter Five focuses on ERISA, or the Employee Retirement Income Security Act. Passed in 1974, ERISA curtailed the investment activities of pension funds by establishing a federal prudence standard that, among other things, discouraged speculation and investment in early stage companies. The Casey Report recommended that the ERISA prudence standard be restated to allow pension fund investment in venture capital through an implicit adoption of *modern portfolio theory* (MPL). MPL is a Chicago-school financial theory that re-conceptualized risk as an investment tool or financial characteristic rather than a negative to be avoided. The Task Force's recommendations regarding ERISA were adopted in 1979. In the decade that followed, pension fund participation in venture capital funds skyrocketed. Pension funds went from providing 15% of venture fund investment in 1978 to providing 46% in 1988. The limited partnership firm structure similarly exploded, with limited partnership firms going from managing 35% of the venture capital pool in 1977 to 75% in 1987%. Chapter Five provides an overview of ERISA, the financial and labor conditions that prompted its passage, and the

reactions of the investing community. I review the history of the *prudent man rule* in trust law and pension fund regulation, and the intense debates surrounding the adaptation of prudence standards to include MPL. I argue that the restatement of the ERISA prudence standard to fall into line with MPL constitutes a risk shift of the type articulated by Jacob Hacker. Finally, I review the evidence that the Casey Report and Task Force were particularly influential in the adoption of the ERISA restatement of prudence, focusing on citations of the Casey Report in government documents and Congressional testimony, and the special role of Task Force member Charles Lea, as evidenced by Congressional records, media appearances, and oral history testimony by contemporaneous members of the venture capital community.

The sixth chapter turns to SEC Rules 144 and 146, two regulations developed while Casey was the head of the SEC and which he initially supported. These two rules govern the private placement of securities, or the acquisition of a company's stock by investors before the company attempts to sell stock on the public market. Initially passed to prevent fraudulent or coercive sales, the Task Force recommended that Rules 144 and 146 be substantially weakened, lightening the disclosure requirements of a private placement and lifting certain restrictions on how privately placed securities could be subsequently resold on the public markets. The conditions which led to the initial passage of Rule 144 and 146 are reviewed, as well as the evidence of the Task Force's influence in the passage of the subsequent reforms. The reforms to Rules 144 and 146 hinge on a characterization of the venture capitalist as particularly adept at managing risk and as especially concerned with and connected to the future. The chapter turns in its second half to an examination of how that characterization was constructed within the Task Force archival materials, the Report itself, and simultaneous publications and testimonies

by Task Force members. I argue that the Task Force, and William J. Casey in particular, presented a narrative of American business that anachronistically centered the Task Force's conception of the venture capital as a patriotic prime mover. Further, the Task Force presented the venture capitalist as uniquely competent with risk and endowed with a special affinity for the future, which they portrayed as making him an indispensable figure in the US technology sector. I compare this narrative and figuring with contemporaneous narratives presented by other major financial actors, like the New York Stock Exchange, to highlight the differences and similarities in these overlapping projects of financial promotion.

Major Acronyms and Financial Concepts

SEC: The Securities and Exchange Commission. The Federal agency primarily responsible for regulating the financial markets. Established in 1934 as part of a suite of regulatory responses to the Great Crash of 1929.

ERISA: The Employee Retirement Income Security Act. A large piece of legislation intended to protect the pensions and insurance contributions of workers. Passed in 1974.

Limited partnership firm: A type of investment firm structure wherein collective funds raised from *limited partners* are invested by *general partners*. Funds of this type are time-limited, running for five to seven to ten years. The limited partners, which may be institutional trusts or endowments, individuals, pension funds, corporations, or other types of financial actors, have very little say or control over how the collective funds are invested. In venture capital firms, the fund makes early equity investments in new businesses. The firm's general partners, in addition to drawing a regular salary for managing the investment fund, receive a percentage of the the fund's capital gains at the end of the fund's life. This is often calculated as a 80-20 split, where the limited partners receive 80% of the capital gains, and the general partners receive 20%.

IPO: Initial Public Offering. The first offering of a company's stock on the public financial markets. The process is expensive, requiring extensive financial filings and public disclosures, and is often not undertaken until a firm has a significant track record of profitability.

Private Placement: Prior to an IPO, a firm can sell stock, also know as "equity" or "securities," privately without making an offering to the public. Such private placements are still

regulated by the SEC, but have different disclosure and filing requirements, as defined by SEC Rules 144 and 146.

CHAPTER ONE

A PRE-HISTORY OF VENTURE CAPITAL

This chapter lays out the contexts and precursors that set the ground for the Task Force's work in 1976. In the first section, I provide a brief biographical history of William J. Casey himself, detailing his career in law and finance, his venture capital activities, and his political ambitions and influences. Casey was a forgotten "funding father" of the neoconservative movement, providing financial and legal support to major publications and think tanks.

In the second section I address several aspects of the financial history of the twentieth century relevant for this project. First, I review the major regulatory responses and cultural aftershocks following the Great Crash of 1929 and the ensuing economic depression to examine their impact on the financial community and the popular view of taken of investment and financial speculation in the early to mid-20th century. Next, I address the boom in government spending in the high technology sector occasioned by the Second World War and the Space Race. This created a glut of new companies formed to bring novel technologies to market, and triggered an accompanying uptick in equity investment opportunities. There was a rise in activity in the financial markets, as these new companies became profitable and eventually made initial public offerings of stock. This rise in financial activity was portrayed by the Casey Task Force as the normal state of affairs which could and should be returned to through financial deregulation and tax cuts. Next, I review the rise and decline of the Small Business Investment Company (SBIC) program, an investment program managed by the SBA in the decade prior to the formation of the Task Force. This program was intended to funnel government guaranteed

loans to small businesses through private, purpose-created investment companies. However, the program was plagued by scandal and ideologically-driven investment restrictions, and was ultimately unsuccessful in its goals. I argue that the specter of the failed SBIC program provided the Task Force with a strong ideological foil upon which to hang their arguments against direct government investment in small businesses and for the regulatory empowerment of private equity.

In the third section, I provide a general history of venture capital in the United States pre-1976. This history covers the early role of private family offices, major early firms like Georges Doriot's ARD, and the rise of the institutionally supported limited partner firm.

In the final section of this chapter, I describe two major events that set the immediate stage for the activities and recommendations of the Casey Task Force: the 1973-1975 stock market crash and recession; and the 1974 passage of the Employee Retirement Income Security Act (ERISA). Both these events had outsized impacts of the activities of financial markets, institutional investors, and the activities of early venture capitalists. I argue that the Task Force used the crisis of the recession to advocate for aggressive financial deregulation, specifically blaming ERISA for grinding financial markets to a halt.

William J. Casey: A Forgotten Funding Father?

In 1976, William J. Casey was appointed to be the head of the Small Business Administration's Special Task Force on Venture and Equity Capital. By that point of his career, Casey had served as the Chairman of the Securities and Exchange Commission, as president of the Export-Import

Bank, and had made a significant personal fortune through venture capital investing, business publishing, and private law practice.

Casey's personal ambitions lay in national intelligence, and he would eventually rise to be the head of the CIA. However, I argue that his most lasting influence was to be in financial regulations and practice. Casey was a lifelong believer in the patriotic and imperial potential of business and investment, and frequently spoke on the power of American business to influence politics and culture domestically and overseas.

Born in 1913 to a middle class Catholic family of civil servants in Queens, New York, Casey was largely insulated from the devastation of the Great Depression. Attending Jesuit and Catholic institutions, Casey graduated from Fordham University in 1934, and briefly attended the Catholic University of America with the idea of becoming a social worker. There, he worked with Father Joseph O'Grady, and lived on the grounds of the National Training School, a juvenile detention facility. While there, Casey developed a personal philosophy regarding the "deserving and undeserving poor," differentiating between those "who were poor as a result of circumstances beyond their control—true victims of the Depression—and those who were poor out of failings of character."⁷⁶ Following this logic, he became disillusioned with the New Deal model of social assistance, giving up his social work studies. He transferred to law school and ultimately received an LLB from the St. John's University School of Law in 1937.

After graduation, Casey joined the Research Institute of America (RIA), a business publishing house, where he began compiling desk reference texts on tax law for businessmen.

⁷⁶ Persico, pp 36-37

Casey's texts specialized in the ways in which businessmen could comply with the letter of the law while ducking the spirit: after his death a *New York Magazine* journalist would describe his work at RIA as "explain[ing] to businessmen how little they need to do to stay on the right side of New Deal regulatory legislation."⁷⁷ He also began writing books and newsletters on how businesses could sell materials and services to the United States military. The first of these books, *The Business and Defense Coordinator*, was published in the fall of 1939, just as the Second World War was beginning. Casey biographer Joseph Persico notes that the chapters in the book included "How to Sell to the Army," "Government Construction Opportunities," "Selling the Military Horses and Mules," and "What the Medical Corps Buys."⁷⁸ When it came to matters of war, Casey's style was as dry and to the point as his style in matters of tax law:

The cost of killing one enemy soldier was 75 cents for Julius Caesar; during the 17th century the cost of killing a man in the Thirty Years War has risen to \$50; the mortality expense of the American Civil War was \$5,000 a man; the vast change effected by the World War can be realized from the fact that it cost roughly \$25,000 to kill one man then; and in the current era it is already roughly estimated at over \$50,000. All this is a result of the fact that war has become a conflict of economies in which financial and material resources are the chief weapons.⁷⁹

Casey's research into wartime logistics and purchasing led to his joining the Office of Naval Procurement in 1943 as a commissioned lieutenant junior grade. However, he was unhappy "goosing ship builders into turning out more LCIs."⁸⁰ With his heart set on a career in

⁷⁷ Koenig, Rhoda. "Basket Casey," *New York Magazine*. 15 October 1990

⁷⁸ p 46, Persico, Joseph E. *Casey: From the OSS to the CIA*. New York, NY: Viking. 1990.

⁷⁹ quoted in Persico

⁸⁰ quoted in Persico, p 51

military intelligence, he wrangled a transfer to the fledgling OSS,⁸¹ serving as Chief of the OSS Secretariat in the European Theater of Operations. Casey operated as a close advisor to the OSS commander, General “Wild Bill” Donovan, developing a professional style that might be anachronistically compared to the contemporary Silicon Valley slogan, “Move Fast and Break Things.” Casey frequently finessed laws and regulations to achieve mission goals, including one incident wherein he recruited German prisoners of war to serve as covert OSS agents, in contravention of the Geneva Convention. Casey described his operating philosophy in this way:

“The first thing I remember,” Casey later recalled, “was an expression the General was always using. ‘The perfect is the enemy of the good.’ At first the meaning wasn’t so clear to me. But I watched the way he operated, and after a while, I understood. You didn’t wait six months for a feasibility study to prove that an idea could work. You gambled that it might work. You didn’t tie up the organization with red tape designed mostly to cover somebody’s ass. You took the initiative and the responsibility. You went around the end, you went over somebody’s head if you had to. But you acted. That’s what drove the regular military and the State Department chair-warmers crazy about the OSS.”⁸²

Derived from the operational exigencies of a fledgling intelligence agency of the front lines of a shooting war, Casey melded this approach with his theories of business and of high technology investing. Moreover, Casey returned from the war enamored with the romance and thrill of intelligence work. Throughout his life, Casey would continually compare the theater of war to the theater of business. But it was not entrepreneurs or inventors he saw on the front lines, it was venture capitalists.

⁸¹ The Office of Strategic Services, the precursor to the modern CIA.

⁸² Persico, p 57

After the end of the war, Casey, like other noted venture capital pioneer George Doriot, was convinced that military technology could be profitably turned to civilian uses. Harvard Law professor Milton Katz, a lieutenant commander in the Navy and colleague of Casey's at the OSS, recalled his manic entrepreneurial energy surfacing in conversations as the men prepared to return home from the European theater:

Bill was too keyed up to get to sleep. He'd start talking about what we'd all do when it was over. He'd say, 'Milt, you're a helluva bright guy. So am I. We could team up after the war. We could get into new enterprises. That's what we could call our business—New Enterprises, Inc. They're going to be hungry for new products and new services back home. Think of all the civilian spin-offs from radar, from Joan-Eleanor. I've got an idea for a product that would burn off weeds without harming the garden. Or we could buy a piece of a ball player or a prizefighter. We'd raise capital through our talent. We'd sell a piece of ourselves to the investors. We'd give them a quarter or a tenth interest for putting up so much. These things are only fun at the beginning when you're building and creating. Once they're on their feet, the fun is gone, and then we move on to another enterprise.'⁸³

Where Georges Doriot returned to Harvard Business School in 1947 to found American Research and Development, widely considered to be the first venture capital firm, Casey returned to RIA and his private law practice. Casey's venture activities, as opposed to Doriot's or those of the major family offices, were independent, esoteric affairs, apparently guided by personal whim, opportunity, and luck. Rather than starting a firm and attracting investors, Casey invested his own money, buying his way into, among other things, orange juice concentrate, a handgun that converted into a rifle, multiple microfilm operations, college textbook publishing, broadcasting corporations, and a dry film developing system.⁸⁴ Some of these investments were

⁸³ quoted in Persico, p 84

⁸⁴ Persico, p 101

failures, some successes; Persico writes that the dry film developer investment eventually netted Casey “at least \$50,000 on the sale of the company’s stock.”⁸⁵ However, Persico also describes Casey’s investment strategies as intuitive and haphazard, ungoverned by contracts, accounting, or much more than a handshake (sometimes not even that). He describes Casey’s investment in George Doundoulakis’s mortar-tracing radar technology as “Casey essentially had bought himself an inventor the way another man might buy a yacht.”⁸⁶ Doundoulakis described Casey’s deal-making approach as “Nothing to sign. No collateral. No interest. Not even a handshake. He gave me the check and left. I gradually paid him back, but he never seemed to have any idea how much I owed him.... He never asked what I was doing—never even asked me for a piece of the patents.”⁸⁷ In other deals, Casey was a more active investor: after acquiring a stake in the Capital Cities Broadcasting Corporation, he served on the board, provided valuable tax advice, and negotiated for the acquisition of television stations on Capital Cities’ behalf. Casey’s \$10,000 investment in the corporation would eventually be worth nearly \$2 million on paper when the company went public.⁸⁸

Casey continued to write books describing how private business could profit in wartime in the style of *The Business and Defense Coordinator*. In 1951, Casey left the Research Institute of America to form a competing publishing outfit, the Institute for Business Planning, or IBP, taking several key RIA staffers with him. His plan was to continue to exploit the ‘war planning’ publishing niche he had broken into at RIA. An RIA colleague described his recruitment pitch in

⁸⁵ Persico, p 101

⁸⁶ Persico, p 101

⁸⁷ Persico, p 101. Again, this quote describes a process identified by Casey and others as “venture capita; investing,” but what is described is clearly a loan, if a disorganized one.

⁸⁸ Persico, p 104

this way: “The Korean War had just broken out. We were going to tell businessmen how to deal with the new wartime controls. Bill told me, ‘the prospects are unlimited. You’ll move a lot faster with me than with Leo [Cherne at RIA].’”⁸⁹ In addition to his how-to texts on war profiteering, Casey would, in his time at IBP, coin the term “tax shelter,” and publish almost a dozen books on the design and use of tax shelters to shield personal wealth from government taxation.⁹⁰ Casey also compiled other desk reference titles on tax law, estate planning, corporate planning, and other topics for American businessmen. Casey’s “Selective Bibliography” as prepared and distributed by the CIA, lists over 120 business texts Casey either wrote, contributed to, or claimed authorship for in some way, with titles like *How to Build and Preserve Executive Wealth*, *How to Raise Cash and Influence Bankers*, *How Federal Tax Angles Multiple Real Estate Profits*, *The Tax Shelter in Real Estate*, and *The Mutual Funds Desk Book*. After his death, the *New York Times* cited Casey as boasting his forays into business publishing earned him “more royalties than Hemingway.”⁹¹

Casey’s personal fortune came from a combination of his investments and his extensive activities in business writing and publishing. Casey’s business philosophy was, as Leo Cherne, Casey’s former partner at RIA, described it:

“[B]usiness was about business. It was not about going to church on Sunday. That’s why he had no problem stealing my people. He never saw an ethical dimension in business. Is it illegal? If not, then you can do it. You don’t defraud investors. You don’t break the law. But bare-knuckled competition? That’s the American way.

⁸⁹ quoted in Persico, p 89

⁹⁰ Persico, p 90

⁹¹ Beschloss, Michael. “The Man Who Kept The Secret,” *New York Times*. 7 October 1990.

That was what *made* America. Besides, nothing had ever been handed to him—why should he hand anything to anyone else?”⁹²

One of Casey’s employees at IBP similarly described the motivations behind Casey’s most profitable book series, on tax shelters:

“He saw a gap and he was going to fill it. We were going to recommend to businessmen and investors how they could legally beat the system, how they could push the law to its outer edges, how they could profit from the law’s ambiguities.”⁹³

This philosophy informed his writing and his later government service at the SEC, the State Department, the Export-Import Bank, and on the SBA Task Force that is the focus of this project. Casey was a strong believer in the patriotic power of the American free enterprise, a system he believed was powered and driven by investment. Persico recounts an anecdote told by Casey’s personal secretary regarding Casey’s strongly-held feelings regarding the patriotic role of investment:

Connie Kirk had come to Washington to continue as his secretary. One night, before the resumed [SEC confirmation] hearings, he took her and his family to the Rive Gauche in Georgetown for dinner. He began grumbling about the criticism he was taking. ‘I said, innocent as you please,’ Kirk recalled, “‘Well, you know, your investments are just another form of gambling,’ Bill blew his stack. He started hollering: ‘How dare you call risking capital to start new industries and creating more jobs gambling! How dare you put building this country in the same class with betting on the horses!’ I was cringing,’ Kirk recalled. ‘Every head in the restaurant turned around to look at him.’⁹⁴

⁹² quoted in Persico, p 109

⁹³ quoted in Persico, p 90

⁹⁴ Persico, p 143

Casey was an active behind-the-scenes supporter of the growing neoliberal and neoconservative movements throughout his life, in addition to his significant work in Republican party politics. His conservative politics, passion for free markets, and lifelong Catholicism brought him into the orbit of William F. Buckley, founder of the *National Review*. Historian Angus Burgin credits the *National Review* with popularizing neoliberal economic philosophy mixed with a reactionary neoconservatism that would prove successful with the American public.⁹⁵ Casey sympathized with Buckley's political project. In the early days of the *National Review*, when the struggling magazine was in danger of financial collapse, Casey advised Buckley on a scheme to raise investment through a tax-advantaged bond offering and made a significant financial contribution himself.⁹⁶

Casey's material support for the neoliberal intellectual project continued through his time in the Task Force. In 1978, Casey co-founded The Manhattan Institute for Policy Research, a think tank dedicated to free market and laissez faire economic policy and neoconservative social policy.

By the 1960s, Casey's venture capital practice had matured. In 1962, Casey invested in a computerized tax return program invented by a lawyer named Carl Paffendorf, a deal that began as a loan and transformed into a \$100,000 equity investment in exchange for 25% of a company called Computer Oriented Analysis and Planning. Three months after COAP went public in 1968, Casey sold his shares for a million dollars.⁹⁷ The success of this deal led Paffendorf and

⁹⁵ Burgin, Angus. *The Great Persuasion*. Harvard University Press. Cambridge, MA. pp 138-140.

⁹⁶ Persico, p 93

⁹⁷ Persico, p 102

Casey to form Vanguard Ventures, a venture capital firm that also operated as a tax shelter for investors:

‘The scheme offered investors attractive tax savings on essentially paper losses, plus the potential for capital appreciation....’We raised an awful lot of money. We did maybe thirty deals over the next few years,’ Paffendorf recalled. ‘We were copied all over the lot. Eventually these tax-shelter investments nationwide became a 10 billion dollar industry.’⁹⁸

By the time Casey was tapped by Mitchell Kobelinski to head the SBA Task Force on Venture and Equity Capital in 1976, he had been an active and successful venture capitalist, corporate attorney, and political machinator for nearly thirty years. He had worked on several Republican campaigns, and had himself run unsuccessfully for Congress in 1966. Casey worked on Richard Nixon’s 1968 presidential campaign, serving as an advisor and major fundraiser. He had hoped to receive an appointment to a major national security, intelligence, or foreign service post, even going to far as to put this preference in writing in a letter to a Nixon administration headhunter. However, he would spend close to a decade button-holed in financial regulatory and policy roles, serving as Chairman of the SEC (1971-1973); Under Secretary of State for Economic Affairs (1973-1974); and becoming Chairman of the Export-Import Bank (1974-1976) under President Gerald Ford.

Casey’s significant investments, tucked into a blind trust during his government service, suffered under the stock market losses of the recession. He departed public service with his paper fortune significantly eroded. His investment in Capital Cities Broadcasting, notably, lost more than 70% of its paper value. Casey’s broker had attempted to sell his stake to staunch the capital drain, but was prevented from doing so because of SEC regulations intended to regulate

⁹⁸ Persico, p 102

the secondary sale of securities acquired in private placements. Casey took paper losses of nearly \$3 million on the Capital Cities Broadcasting stock alone.⁹⁹ In 1976, he returned to the practice of law with the New York firm Rogers and Wells, and reengaged with venture capital. He invested in Yugoslavian rug exporters, computerized fitness spas, a more efficient gasoline engine, a micro-submarine, and a treasure-hunting expedition for a sunken 17th century Spanish galleon, in an attempt to rebuild his fortune to the levels it had reached before government service and what he considered to be the inept, regulation-bound management of the blind trust had decimated it. This was Casey's position at the time he was approached by Mitchell Kobelinski to head the Task Force.

Preparing the Ground for Venture Capital

Three major events set the financial stage for the rise of venture capital: the Great Depression and the subsequent passage of significant financial reform and regulation as part of the New Deal, against which Casey and others on the Task Force were ideologically opposed; the sharp spike of government spending in high technology research and development as part of the Space Race, leading to a bumper crop of investments and IPOs through the 1960s, against which the IPO and investment dips of the recession years were read; and the rise and fall of the Small Business Administration's Small Business Investment Corporation (SBIC) program, which provided the fledgling venture capital industry with a recent, high profile example of the supposed impracticality of debt-based, government-derived financing. This history is for the most part drawn from the existing scholarly literature, but I also reference some narratives which

⁹⁹ Persico, p 164

made their way into Congressional testimonies from industry actors and materials from the Casey archive. These narratives are perspectival rather than authoritative. However, they do provide insight into the contemporaneous perception of the role played by venture capital in American business by those advocating for it.

The Great Crash of 1929 and Summoning America's Venture Spirit

The financial and social catastrophe that stemmed from the Great Crash of 1929 led to a number of regulatory and political shifts regarding investing and the role of business in American society. The government passed legislation in the hopes of curbing the excesses and financial speculation that had led to the crash. The 1933 Glass-Steagall Act separated commercial and investment banking, preventing investment banks and securities firms from taking individual deposits, and introduced limitations and restrictions on the underwriting and sale of securities to the public. The Securities Act of 1933 was written to ensure, among other regulations, that the buyers of securities received accurate and complete information about their investment beforehand. It was followed by the Securities Act of 1934, which was intended to regulate the market for the secondary sale of securities. It also established the Securities and Exchange Commission as the primary enforcement agency for federal securities law. The Investment Act of 1940 was intended to regulate fraudulent, manipulative, or misleading behavior on the part of investment companies, establishing that investment advisors owe a fiduciary duty to their clients. These Acts, part of Franklin Delano Roosevelt's New Deal, were intended to protect investors, regulate financial markets, and discourage the stockpiling of personal fortunes. By the late 1970s, they

were also the body of law that venture capitalists would find themselves subject to and chafing under.

The small businessman, as a political, economic, and social actor distinct from the monopolist or empire builder, became a mascot of sorts, representing Main Street and the everyday people who were hurt while bankers played fast and loose with the markets. As economic historian Martin Kenney has observed, contrasting the virtuous small businessman with ‘financial plutocrats’ was a popular political maneuver.¹⁰⁰ At the same time, New Deal legislation was quickly blamed by investors and business magnates in the 1930s and ‘40s for suppressing risky investment in early stage and developing companies, specifically due to the capital gains taxes Roosevelt’s reforms imposed.¹⁰¹

Kenney dates the first use of the term “venture capital” to describe a financial investment in young businesses to the 1938 Senate testimony of Lamont du Pont, then president of the chemical conglomerate, E.I. du Pont de Nemours and Company. In his testimony before a Senate committee on unemployment, du Pont indicated that what was needed was “venture capital,” as in, capital for *new ventures*. A *Wall Street Journal* editorial later that month picked up du Pont’s phrase, writing, “there is no ‘venture capital’ to speak of [in the US economy] because there is no *venture spirit* on the part of the capital owners or those who normally would be borrowers of that capital.”¹⁰²

¹⁰⁰ Kenney, Martin. “How venture capital became a component of the US National System of Innovation.” *Industrial and Corporate Change*. Vol. 20, No. 6. (2011) pp 1677-1723

¹⁰¹ Reiner, p 1

¹⁰² *Wall Street Journal*, ‘No Real Money Market,’ 24 January 1938, quoted in Kenney, 1686. Emphasis added. This 1938 article identifies recipients of “venture capital” as “borrowers of that capital.” Confusion regarding whether venture capital was a loan or an equity investment would persist up until the 1980s. This is discussed at length in Chapter 4.

What du Pont and others were referring to as “venture capital” at this point was not a novel mode or strategy of investment. Rather, as Reiner notes in her dissertation, financiers such as Investment Bankers Association of America president Jean Witter defined “venture capital” as “a traditional component of some wealthy individuals’ portfolios,”¹⁰³ though not yet a strategy practiced by dedicated, stand-alone firms. At the same time, however, the norms and standards of this investment practice were informal and diverged widely between investors. It could take the forms of loans, equity investment, grants, corporate support through the furnishing of a lab or other facilities, or other modes. Reiner notes that the rise of the “venture capital” nomenclature in the late 1930s was “not only a strategic response to shifts in the investment environment; it was also an ideological response to [a] broader crisis.”¹⁰⁴ That crisis, perceived by the wealthy investment class, was a concern that their ability to profit from investments was being curtailed through regulation. New Deal regulation directly reduced the profitability of capital gains, and the relationships between banks, investment firms, and corporations. It became strategically important to rebrand the financialized practices of elite investors as tied to the success of the small businessman and the American “venture spirit.” This characterization would be reintroduced and reemphasized some 40 years later by the Casey Task Force.

Reiner further notes that as the concept of “venture capital” was deployed defensively by the American investing class, it became an ideological object internal to the elite investment community as well, as a “symbol of private capital under attack in the United States.”¹⁰⁵ Private

¹⁰³ Reiner, p 1

¹⁰⁴ Reiner, p 2

¹⁰⁵ Reiner, p 31

capital and free market investment rhetorically merged with democracy itself. The “free capital system” was cast as a key tool in the global fight against fascism in the 1930s and 1940s, a rhetoric that would later evolve to include communism and socialism in the 1950s, 1960s, and 1970s.¹⁰⁶

The financial regulations deployed as part of the reform measures of the New Deal, specifically those that heavily taxed profits from capital gains, and restricted the acquisition and secondary sale of privately placed securities, would be specifically targeted by the Casey Task Force and others lobbying on behalf of the professionalizing venture capital industry in the 1970s. Casey, Charles Lea, and others on the Task Force were strong anti-New Dealers, having spent the majority of their careers advocating for regulatory rollbacks. The success of the Casey Task Force and the implementations of its recommendations in this way was a culmination of a lifetime of advocacy and lobbying on the part of Casey and his Task Force colleagues.

Financial Markets Go to War and the Moon

Despite the early coinage of the term “venture capital,” historians of venture capital note that prior to the late 1950s, venture capital investing remained extremely informal and uncoordinated. Kenney describes the pre-Space Race landscape as occupied by “four pioneering firms, joined intermittently by other investors” who were investing with “some success, but no other entrants were attracted to the market.”¹⁰⁷ Kenney marks the lack of active investors as unsurprising, given that three of his four “pioneers” were private family offices that did not disclose their returns.

¹⁰⁶ Reiner, p 38; p 336

¹⁰⁷ Kenney, p 1689

The one public pioneer, Georges Doriot's American Research and Development, or ARD, had only had a handful of modest successful returns at that point. "In 1956," Kenney writes, "... [venture capital] was not even a footnote, though there were numerous very small technology driven firms sprouting around the country."¹⁰⁸

The Soviet Union launched the satellite Sputnik in 1957, and the US government launched its response in 1958: the Advanced Research Projects Agency or ARPA, later DARPA, would become a massive source of funding for early high technology companies as well as university research departments. The Space Race created, almost overnight, a huge government demand for American-made technology and research, and provided the funding to develop it. The massive increase in Defense-sourced dollars for electrical engineering and computer science led to a boom in technological advances and a bumper crop of university-trained engineers and computer scientists, many of whom joined private industry upon graduation. It was through the spending of the Federal government that the high technology sector in the United States got its initial substantial momentum in the late 1950s and early 1960s.¹⁰⁹

Space Race spending, coupled with the wave of new technologies and new technologists, attracted private investment to the suddenly burgeoning high technology sector as well. This resulted in significant upticks in investments from those businessmen who would later count themselves as venture capitalists, and in the number of high technology firms staging IPOs or Initial Public Offerings of stock on the public financial markets, as the companies matured. Equity investments were staged over multiple years, and the IPO process occurred

¹⁰⁸ *ibid*

¹⁰⁹ Mazzucato, p 84

only after a business has been successful or profitable for several years. Because of this, the effects of Space Race funding echoed in the financial markets, investment tallies, and IPO counts for several years *after* government Space Race funding and private capital investment had begun to wind down.

By the mid 1960s, government research and development spending in these areas waned, both absolute terms and as a percentage of the market. Spending continued to dry up through the 1970s. In the 1950s, the US military accounted for somewhere between 20% and 30% of the total market for semiconductors. By the mid 1970s, the spending of the entire US government in the semiconductor space accounted for only 13% of the market.¹¹⁰ The role of military spending in the high technology sphere decreased in importance during the 1960s for another reason: the ending of cost-plus contracting¹¹¹ by Secretary of Defense Robert McNamara. Without the promise of lucrative defense contracts, in the 1960s early stage high technology firms that would have focused on defense contracting became less attractive investments for early venture capitalists and for entrepreneurs themselves.¹¹² This shift in investment trends would only become apparent in the 1970s, however, when a dip in IPOs as compared to the heady years just previous manifested. The small business “crisis” the Casey Task Force was assembled to address was measured and defined by this very IPO and investment (self-reported by self-identified venture capitalists) dip.

¹¹⁰ p 1691-1692. Kenney, Martin. “How venture capital became a component of the US National System of Innovation.” *Industrial and Corporate Change*. Vol. 20, No. 6. (2011) pp 1677-1723

¹¹¹ A cost-plus contract is a type of contract wherein a contractor is paid for their expenses and paid an addition amount as profit. This is a particularly lucrative arrangement for the contractor, as it guarantees profit.

¹¹² Kenney, p 1691-1692

Small Business Investment Corporations: “Longtime Passing”

The Small Business Administration’s Small Business Investment Company program was a small business funding initiative that ran at the same time as the Space Race funding boom occurred. The SBIC program began in 1958, before the public success of equity-based venture capital, and faltered and faded under its shadow. From the mid 1960s onward it was plagued by scandal, mismanagement, fraud, and the effects of a volatile stock market. As a loan-based program operating with capital provided by the federal government, its public failure was a bright backdrop to conversations on the best funding strategies for American small and high technology businesses, including those of the Casey Task Force and its correspondents.

The challenge before Congress in the late 1950s was to enable support of small business while avoiding any measures that could be interpreted as the federal government taking an ownership stake in private business, which smelled too strongly of Communism to be tolerated. The Small Business Investment Companies (SBIC) Program, launched in 1958 by the Small Business Administration, relied instead on independent investment corporations leveraging cheap, government guaranteed loans. SBICs acted like a screen or a hedge between the government source of the business capital and the private businesses themselves. The loan mechanism insulated the government from claims that it was interfering with free enterprise. Registered SBICs could use government-guaranteed loans to invest in small businesses at the local level. Then-Senate Majority leader Lyndon Johnson called SBICs a “must” for the preservation and growth of American small business, saying the program did “no violence to

free enterprise [as it] does not raise the specter of Federal control of, and compete with private business.”¹¹³

Initially, the program was extremely successful. The highly visible wave of successful and profitable IPOs in the early 1960s prompted the creation of hundreds of SBICs hoping to capitalize on the apparent strength of the young companies in the financial markets. By 1963, according to studies run by the SBA, 700 SBICs provided more than 75% of the venture capital in the United States.¹¹⁴ With significant growth in the program as well as large number of successful IPOs stemming from SBIC investment, SBICs appeared to be positioned to serve as a significant channel for early capital investment in growing businesses.

However, lurking within the SBIC program were problems which would prove fatal. These fall into two major categories: structural issues and implementation issues. The SBIC program conceived of small business funding as debt-based. In addition to being ideologically palatable, this strategy was in accordance with business norms of the day. In fact, the strong preference on the part of entrepreneurs for short to medium term loans over equity investment was noted by several members of the Casey Task Force in the course of their work.

The primary incentive for the formation of SBICs was access to government-guaranteed long-term loans at an extremely low interest rate. As will become clear, the loan structure resulted in SBICs favoring investment in known, stable industries over risky, emergent ones. To enter into the program, a potential SBIC had to raise a capital stake of at least \$150,000. With that acquired, SBICs could then receive government-guaranteed loans equal to 200% of the

¹¹³ quoted in Kenney, p 1692

¹¹⁴ 8, Gompers, Paul A. “The Rise and Fall of Venture Capital,” *Business and Economic History*. Vol. 23, No. 2. Winter (1994); Kenney, p 1694

raised stake for terms of 15 or 20 year with a favorable 5% interest rate, in addition to various tax incentives. This money was then invested in small business in the form of interest-bearing loans. Gompers notes, in his history of the program, that SBICs chose debt-financing investment strategies primarily because the government loans that provided the liquid capital for investment was itself a loan which required servicing. As such, SBICs needed to maintain income in the form of periodic debt and interest payments from their investees in order to service their own debt obligations. Further, this existing obligation on the part of the SBICs meant that high-risk equity investments, of the sort ARD was engaging with at the time, were impractical, as their potential payout was far in the future and uncertain. Gompers notes that this led SBICs to focus primarily on existing, stable industries rather than growing industries where both the risk of default and potential payouts were higher.

While extension of loans to small businesses might have been in accordance with contemporaneous business norms, the debt-based financing of the SBICs themselves and the regulations prohibiting them from engaging in equity-based investment at all were also ideologically motivated, as noted by historian Martha Reiner.¹¹⁵ Equity investment, even mediated by the SBIC, could create the impression of government interference or ownership of business in ways that loans did not. The prohibition on equity investment, coupled with the obligations the SBICs bore to their own debt portfolios, according to Reiner, “persisted to the point that it impaired financiers’ interests in using the SBICs and their incentives to finance investments.”¹¹⁶

¹¹⁵ Reiner, p 284-285

¹¹⁶ *ibid*

Finally, the SBA had set the buy-in equity for SBIC qualification low in order to encourage their widespread formation. This was an effective strategy, but had several secondary effects. First, SBICs with low initial capitalization could not invest widely, using the “shotgun” approach of making many small investments that equity-based venture capital investors were beginning to practice.¹¹⁷ This raised the stakes of each individual investment an SBIC made, and further encouraged conservative, low-risk investments, and magnified the impact of failed investments and loan defaults. Second, low initial capitalization meant that most SBICs were small and understaffed. A full-time staff of analysts and management consultants was beyond the means of most SBICs, and as a result SBICs tended to be arms-length investors, not engaging in the active business development, mentorship, and guidance that would become a hallmark of the modern venture capitalist. Finally, limited capitalization meant that SBICs quickly became over-leveraged and found themselves unable to make follow-up investments in successful firms, limiting their ability to capitalize on the success of their investees as they matured.¹¹⁸

The second set of issues for the SBIC program followed from the program’s implementation. Designed to support to the American manufacturing and high technology sectors, a 1962 Harvard Business School study found that the most common investment for SBICs was real estate, followed by retail outlets, then electronics, and consulting and personal services.¹¹⁹ Deal flow was also a significant issue, as many smaller SBICs simply did not have

¹¹⁷ A practice memorably characterized by a member of the Casey Task Force during internal meetings for the Casey Report as “I shoot ducks with shotguns.”

¹¹⁸ Kenney, p 1693

¹¹⁹ Cited in Kenney, p 1695

the expertise or experience to identify good investment opportunities. SBICs affiliated with banks (a special form of SBIC created as a loophole to Glass-Steagall prohibition on investing for depositor banks) were frustrated at the bureaucratic requirements of the program and were further disappointed at the lack of leadership and connections provided by their bank-backers. Kenney cites a second contemporaneous Harvard Business School study which found that “27% of the bank-backed SBIC respondents (as opposed to 15% of all SBICs) said they would not have formed an SBIC had they known the difficulties” they would face.¹²⁰

The SBIC program was also visibly and publicly beset by fraud. Kenney describes these issues as an inevitable moral hazard, writing, “As with any government program with guaranteed monies, a vague mandate, and intense pressure to disburse funds quickly, problems appeared as both the serious and the craven flocked to benefit from government-guaranteed capital.”¹²¹ Regardless of the inevitability of these problems, it is true that the SBIC program encountered significant problems with self-dealing, kick-backs, and fund diversions as early as 1963, when the SBA filed a fraud suit against an SBIC in Illinois. This lawsuit and other issues led to negative coverage of the SBIC program in prominent national venues such as the *Wall Street Journal*. As reported by the *SBIC Evaluation Service* in 1964, the SBA instituted a 90-day licensing hiatus in an attempt to reorient the program toward “venture capital investing as opposed to real estate and secured lending.”¹²² There was significant Congressional pressure for the SBA to take more active measures to root out “unscrupulous, self-serving, or inept” actors in

¹²⁰ Kenney, p 1965

¹²¹ Kenney, p 1695

¹²² SBIC Evaluation Service 1964: 1

the program.¹²³ By 1965 the SBA was actively encouraging real estate investors to leave.

However, these efforts at reform failed, and the next year, Congress held hostile hearings into what was by that point considered to be the failure of the SBIC program. Kenney discusses these hearings in this way:

Initial estimates were that the government would lose about \$18 million of the total \$275 million invested. Upon further investigation, it was found that the losses were far greater and loss reserves were increased to \$54 million in March 1967. In 1967, the SBA Administrator was quoted in the *Wall Street Journal* as saying, “We’re going to get down to a hard core of good companies...I’d be happy if we wind up with 250 survivors” of the total 680 SBICs in existence.¹²⁴

The Small Business and Venture Capital Associates (SBVCA), a research and strategy initiative funded by the Ford Administration to investigate ways to expand venture capital activities in the United States, published a scathing report in 1967, arguing that the SBIC program was “marred by incompetence,” and concluded that “excessive federal regulation was primarily responsible, and recommend[ed] [its] termination.”¹²⁵

The primary chronicler of the SBIC program was Stanley Rubel, who ran the *SBIC Evaluation Service* trade journal. He would later take an executive role at the National Venture Capital Association, and would correspond extensively with the Casey Task Force. In 1968, he changed the name of his trade journal from the *SBIC Evaluation Service* to the *SBIC-Venture Capital Service*. Kenney quotes Rubel describing the rationale for this name and focus change:

Has the SBIC industry become a viable institution at this point? I think we pretty clearly answered the question that it hasn’t. It is

¹²³ SBIC Evaluation Service 1965: 3

¹²⁴ Kenney, p 1696

¹²⁵ Kenney, p 1969

just too small. The amount of money that it has is declining if anything, and it certainly isn't keeping up with the rest of the venture capital industry. The SBICs [sic] is a drop in the bucket compared to the portfolios of insurance companies like Prudential and a few others maintained for small companies. [Georges Doriot's] American Research and Development has about \$250 million in assets¹²⁶ compared to \$700 million in total assets of the SBIC industry...I don't think there is any way I can conclude that the SBIC industry is an established institution at the present time. It is just too small and too insignificant and isn't growing adequately.¹²⁷

When the SBA commissioned the Casey Task Force in 1977, a decade had passed since the Congressional interrogation of its SBIC program and its slow public decline. The total number of active SBICs, which had reached a height of 713 in 1965, with 5638 active financings and \$220 million invested, declined steadily in the following years, reaching a low of 379 with 1516 active financings and \$125.4 million invested in 1975, after which point the SBA stopped tracking the program.¹²⁸

Critics, including Kenney, ascribed the failure of the SBIC program primarily to the bureaucratic requirements put in place to curb fraud, while at the same time blaming the program for the fraud itself, arguing that the prospect of government-guaranteed loans had created a type of moral hazard. Contemporary critics argued that the very accessibility of the program had attracted the unscrupulous as well as the inexperienced and underrepresented. Self-dealing,¹²⁹ particularly in the private real-estate focused SBICs, was certainly a significant issue

¹²⁶ Kenney notes that this figure is based on the inclusion of Digital Equipment Corporation stock, which was ARD's most successful investment, and does not represent liquid or raised capital. The role of Doriot, and the public success of ARD, in the popularization of equity-based venture capital is covered in the next section.

¹²⁷ Rubel, S.M. "Where Have All the SBICs Gone: Longtime Passing," in *Conference Proceedings of the NASBIC Tenth Annual Meeting*, San Francisco, CA. (1968 November); quoted in Kenney, pp 1696-1697

¹²⁸ Kenney, p 1694

¹²⁹ "Self Dealing" is an unethical or criminal action in finance when a fiduciary or financial advisor acts in their own personal best interests rather than the best interests of their client or fund.

that dogged the program. But the SBIC program also suffered from bad market timing. The stellar success of its early years, counted in the IPOs of investees and SBICs themselves issuing stock to the public, was primarily due to a bullish stock market driven upwards by committed Space Race spending and government investment. However, following a stock market correction in 1962, those publicly traded SBICs crashed, some losing as much as 50% of their paper value. By 1972, more than half of the 50 publicly held SBICs had left the program, liquidated, merged or otherwise dissolved.¹³⁰

Critics like the SBVCA and Stanley Rubel set up a comparison between SBICs and the early stars of the nascent venture capital industry. But their expectation that loan-based SBICs be as profitable as the emerging equity-backed venture capital industry was unreasonable. The strong aversion to the barest hint of government ownership in private industry, a persistent Cold War headache, meant that any small business investment program that relied on government funds would be hamstrung in terms of potential profitability, as it would never be able to invest in equity. Without equity investments, and because of the limited number of loans a given SBIC could make at a time, the impact of a bad deal on the health of an SBIC was outsized. It is worth emphasizing here that ARD's impressive asset total was based primarily on one wildly successful investment in the Digital Equipment Corporation (DEC). It was not that SBICs and their loan-based investment strategy were unsuccessful. Rather, a limited loan-based investment strategy would never have the same exponential profit potential as an equity-based strategy, a strategy that was ignored from the conception of the SBIC program because of ideological Cold

¹³⁰ Kenney, p 1695

War anxiety about appearing to endorse any degree of socialism or government ownership of industry.

The perceived failure and public scandal of the SBIC program significantly contributed to the view that equity-based venture capital operated by private individuals was the preferable mode of financing for new firms, particularly new technology firms with high growth potential. Bolstered initially by Cold War anti-Communist paranoia, an investor prejudice against loans and government financing would be a central theme of debates regarding small business support and funding during what would later prove to be a decisive period in the establishing of the modern venture capital industry.

Finding a History for Venture Capital

Venture capital investing is, broadly described, the practice of investing in early stage companies with high growth potential in exchange for equity, which is held for a period of years, with the venture capitalist taking an active role in the management, operations, and development of the company. The institutionally-backed limited partnership firm model, the dominant model currently, did not come into widespread prominence until the 1970s. This firm model was recognized by several early venture capitalists, including Casey Task Force member Charles Lea and Task Force correspondent Edward Heizer, as having the potential to be incredibly lucrative for both the venture capitalists themselves and their institutional backers. However, the passage of the Employee Retirement Income Security Act (ERISA) in 1974 made the model unattractive due to the severe restrictions it imposed on the investment activities of pension funds.

The early history of venture capital is difficult to trace, as it has often been practiced in informal or private business arrangements at a small scale. The end of World War II and the launch of the Space Race brought a boom of government funded technology development. However, the anti-Communist sentiments of the day strongly discouraged the active, public hand of government in private business and the profitable commercialization of such technological advancements. A handful of high profile successes in venture capital, most notably by Georges Doriot's American Research & Development, Davis & Rock, the Heizer Corporation, and New Court Private Equity, provided the organizational models and the narrative inspiration for a small wave of venture capital firms beginning in the 1970s. Several significant actors in the early history of venture capital, including Stanley Rubel, Charles Lea, Edward Heizer, and others, either served on the Casey Task Force or were in regular communication with its members. The recommendations made by the Task Force in the Casey Report can be traced back to practices established by these early venture capital actors, suggesting that the Casey Report was in many ways a tool to voice, justify, and protect the novel, highly lucrative practices of existing financial actors who had recently come under threat from new regulation or the new enforcement of existing regulations.

All in the Family

The history of venture capital begins with family offices, which are private investment offices intended to manage the private fortunes of wealthy families. The largest family offices were based in New York, or elsewhere on the East Coast. These offices were, for the most part, conservative in their investment practices, avoiding risky or untried endeavors. Those family

offices that did engage substantially with venture-type investing were, according to Kenney, as well as Reiner, motivated by “a sense of civic duty” running in parallel with a sense that venture investing would be profitable.¹³¹

The family offices of the Rockefellers, the Whitneys, and the Paysons are known to have been particularly active in venture-type investing at the start of the twentieth century.¹³² The extent of the success of their venture investments is unknown, however, because the offices were privately held. As a result these early forays into venture investing were not well known or particularly influential.

Family offices of this type were organized as managed partnerships, with the capital raised solely from family members. Fund managers were themselves employees or junior partners. They might have had the right to make their own investments parallel to the investments of the partnership, but the choice of investment was often made by the family, with managers receiving a salary but no ‘carried interest’ or capital gains percentage from the family’s investments.¹³³ This type of organizational structure did not reward risk taking on the part of the investment managers. Tasked with maximizing returns safely and predictably, many family offices pursued low-risk investments. If the assets of the family office were structured as a trust, this type of conservative investment strategy was required by law.

A new type of firm structure, the limited partnership, more closely aligned the priorities of investors and managers by cutting managers in on a percentage of the fund’s capital gains (a

¹³¹ Kenney, p 1688

¹³² Kenney, p 1688

¹³³ Walkowicz, T. F. and Harper Woodward (1959), ‘Memorandum to Laurance S. Rockefeller regarding West Coast (Gaither) Venture Capital Proposal,’ Rockefeller Family Collection, Rockefeller Brothers, Inc. Record Group, Box 11, Draper, Gaither & Anderson folder, March 4 1959, quoted in Kenney

more substantial history of this structure will be provided below). It also incentivized a shot-gun style, risk-friendly investment strategy by paying managers a salary and allowing them to invest funds raised from large institutional investors and other individuals. A small number of family offices explored the limited partner model, but it was its adoption by independent venture capital firms focused on the technology sector at the start of the 1970s that had the biggest impact on the venture capital industry as a whole, and would eventually prompt the Casey Task Force is most pointed interventions.

The Rise of the Institutionally Backed Limited Partnership

Returning to the United States in 1946 after serving in World War II, Harvard Business School professor Georges Doriot founded American Research and Development (ARD), with MIT President Karl Compton and Massachusetts Investors Trust chairman Merrill Griswold. Doriot sought to find civilian commercial uses for the technologies he had seen deployed by the Allied Forces during the war, a strategy William J. Casey would also pursue in his venture capital activities. Doriot's biographers cast ARD's investment strategy as oriented not toward profit but towards the public good. ARD's investments are described as "noble,"¹³⁴ as in the case of a 1947 investment in the High Voltage Engineering Company, an effort by several MIT professors to explore the therapeutic potential of X-rays. Karl Compton wrote to Doriot that the firm "probably won't ever make any money,¹³⁵ but the ethics of the thing and the human qualities of

¹³⁴ Gompers [1994] p 6

¹³⁵ Even this 'noble' investment proved profitable, though. Eight years later, the original \$200,000 stake was worth \$1.8 million when High Voltage went public.

treating cancer with X-rays are so outstanding that I'm sure it should be in your portfolio.”¹³⁶

Economists Donald L. Sexton and John D. Kasarda describe how ARD's investees were considered to be “members of the family,” with ARD staff providing mentoring and management consulting as part of the investment package.¹³⁷

In later years, the ARD model of equity investment bundled with close mentorship, guidance, and an active board seat would become the model for the modern venture capital industry, and Georges Doriot would be widely hailed as the father of venture capital. However, it took twenty years for ARD's public reputation to be established, due to the significant period of time it took for its major investments to mature. When they did, ARD modeled another core aspect of modern venture capital financing: the unicorn investment, or the equity investment that provides investors with an exponential return. In 1957, ARD bought a 77% stake in the Digital Equipment Corporation for \$70,000. In 1971, that stake was worth \$355 million. The DEC investment was the source of almost half of ARD's total earnings throughout its 26 year lifetime. The visible success of the DEC investment would inspire a wave of new, private venture capital firms in the early 1970s, who pursued a variety of investment strategies and were publicly cast as competitors to the faltering SBIC program.

ARD was an outlier in the latterly constructed history of venture capital in that it was publicly traded, a corporate structure which allowed it to raise funds from the general investing public and to allow that public to share in its successes. Initially, its key investors were institutions, such as university endowments, insurance companies, and mutual funds. These

¹³⁶ Gompers [1994] p 6

¹³⁷ Sexton, Donald and John Kasarda, *The State of the Art of Entrepreneurship*. Boston 1991

institutional investors were a powerful force in the financial markets: by 1969, mutual funds, bank trusts, insurance companies, and pension funds made up over half the trading activities on the US stock market.¹³⁸ The presence of these institutional investors in ARD's investor portfolio foreshadowed the major role these actors would play in modern venture capital in the aftermath of the Casey Report.

The story of Doriot, ARD, and the DEC investment would become a touchstone in the story of high technology business investing in America. In a lengthy written testimony delivered in 1980 that cited the Casey Report favorably, Senator Gaylord Nelson of Wisconsin indicted the role of interfering regulation in ARD's rise and ultimate fall. Doriot merged ARD with technology conglomerate Textron in 1972, "for the very reason that the Investment Act of 1940 would make it impossible for the company to continue to operate independently."¹³⁹ Nelson went on to argue that the 1940 Act, which imposed strict compliance and disclosure guidelines on publicly-traded investment firms to prevent abuses and manipulative investment practices, was unfairly applied to the venture capital firms that had sprung up in the ensuing forty years, making it difficult for them to effectively and profitably invest in American small business. Venture capital firms, Nelson wrote, "have been subject to all of the intricate frameworks devised to curb abuses not of their making. Most observers who have studied this matter,

¹³⁸ Reiner, pp 325-326

¹³⁹ Nelson, p 698

including a former chairman of the Securities and Exchange Commission,¹⁴⁰ believe this result was “unforeseen and surely unintended.”¹⁴¹

ARD and Georges Doriot wrote the inspirational story of the modern venture capital firm. Three other firms active in the 1950s through the 1970s modeled other aspects which would become thought of as central and defining, but the limited partnership organizational model is core to the structure of the modern venture capital industry. In this model, capital is raised through primarily institutional investors, as well as wealthy individuals and family offices, known collectively as the limited partners. The resulting fund is time-limited, initially authorized to operate for a period of, usually, five to seven years. For that period, the venture capitalist, or general partner, draws a salary for managing the fund. At the end of the fund’s lifetime, the limited partners would receive back their original investment along with a set percentage of the capital gains, with the venture capitalist collecting the remainder.

Kenney identifies Draper Gaither & Anderson (DGA) as originating the limited partnership model. Founded in 1959 in Palo Alto, Kenney believes it to be the first limited partnership formed for the purposes of venture capital investing which did not operate as a family office. Two years later, Davis & Rock was founded by two former Wall Street investment bankers, also using the limited partnership structure, also in Silicon Valley. Kenney cites Julian Stern, a California tax attorney who worked with Davis & Rock, as “remember[ing] that he took the model from the wildcat oil industry”¹⁴² but provides no further detail as to the firm

¹⁴⁰ I believe this refers to William J Casey and the Casey Report, however I was unable to find a copy of the memorandum quoted, “Venture Capital Companies and the Investment Act of 1940,” prepared for the House Subcommittee on Consumer Protection and Finance in 1978, to confirm this. However, the timelines and sentiment fit.

¹⁴¹ Nelson, p 698

¹⁴² Kenney [2011], p 1698

structure's origins. DGA stumbled soon after its founding, with one of its major partners becoming ill, causing several of the limited partners, including Rockefeller Brothers, Inc, Bay Area investor Edward Heller, and investment banker Lazard Freres, to withdraw, sell, or otherwise liquidate their stakes. DGA itself was fully liquidated in 1967.¹⁴³

Davis & Rock, however, flourished, raising initial capital from successful entrepreneurs and Silicon Valley technologists whom Arthur Rock had previously funded. Other investors included high technology companies like Teledyne, General Transistor, and Fairchild Semiconductor. David & Rock's focus on technology firms in the Bay Area would prove an astonishingly successful strategy, one that provided massive returns based primarily on the lucrative acquisition of firms like Scientific Data Systems by industry juggernauts like Xerox, rather than IPOs. In 1970, nine years after it was established, Davis & Rock dissolved, having disbursed \$94.5 million to its investors: a 60% compound annual rate of return.¹⁴⁴ As general partners, Davis and Rock would receive 20% of the capital gains reaped by their investments. Arthur Rock would be one of the most visible venture capitalists of his generation, appearing on the cover of *TIME Magazine* in 1984 under the headline "Cashing In Big: The Men Who Make the Killings."

Kenney notes that Davis & Rock legitimized the limited partnership model that DGA had pioneered. Further, their success flagged the high technology sector as one where massive returns could be had for relatively small investments in early stage businesses. The potential

¹⁴³ Kenney, pp 1698-1699

¹⁴⁴ Kenney, p 1699

profits to be had via a limited partner equity investment model were exponentially higher than those possible via loan and debt-based investing.

Two other early firms are significant to this history. The Heizer Corporation, founded by Edward F. Heizer in 1969 after his departure from the investment arm of Allstate Insurance, was the first “mega fund,” with nearly \$81 million under management. The Heizer Corporation is significant because of its reliance on institutional investors, including public pension funds:

[T]welve insurance firms (but not Allstate), six commercial banks, two investment banks, and the American Museum of Natural History, the Art Institute of Chicago, Stanford University, State of Wisconsin Investment Board, University of California, University of Chicago, and the University of Rochester endowments. A far greater number of endowments participated in the funding of the Heizer Corporation than had done so at ARD, and since, at the time, Heizer Corporation was not traded on the stock market, their investments were illiquid. The Wisconsin Investment Board was a public employee’s pension fund—presaging the investment of public pension fund monies that would become a mainstay source of capital for VC limited partnerships.¹⁴⁵

The participation of pension funds in the Heizer Corporation is significant because these funds would have fallen under the “prudent man rule” as described in the Employee Retirement Income Security Act (ERISA), passed in 1974. The perceived impact of this rule on investing will be described in detail in the next section and in greater detail in Chapter 5. The passage of ERISA in 1974 was thought by some investors to have a significant chilling effect on the willingness of pension funds to invest in venture capital funds.

The Heizer Corporation offices in Chicago also served as the official headquarters of the National Venture Capital Association, which identified itself as

¹⁴⁵ Kenney, pp 1701-1702

a means for venture capital organizations throughout the country to work together on mutual interests and problems. Membership is by invitation and open only to venture capitalists that are responsible for investing private capital in young companies on a professional basis.¹⁴⁶

NVCA would invite William J. Casey to serve as its keynote speaker for its inaugural meeting in 1976, one year before the commissioning of the Casey Task Force.

Finally, New Court Private Equity, which served as a subsidiary to New Court Securities, the US investment arm of the Rothschild family office, also counted several corporate pension funds as its limited partners, including those of IBM, AT&T, and RCA.¹⁴⁷ New Court Private Equity, which organized as a limited partnership in 1972, is significant primarily because it was led by general partner Charles Lea, who would later be an influential member of the Casey Task Force.

By the early 1970s, venture capital firms operating under the limited partnership equity investment model had enjoyed several highly visible successes. Georges Doriot's publicly traded firm had relied on investment through the public market, but ultimately Doriot decided that the regulatory burden imposed by anti-fraud measures such as the Investment Act of 1940 were too onerous for the firm to bear. Here the limited partnership model also proved to be a significant and beneficial organizational shift: because the firms remained privately held, they initially did not fall under the measures that had impacted ARD. The few firms that adopted this structure flourished, and became attractive investment vehicle for institutional investors, including pension funds.

¹⁴⁶ Rubel, *SBIC/Venture Capital*, 1973: 3

¹⁴⁷ Kenney, p 1702

The 1973-1975 Recession

The defining economic event in the lead up to the appointment of the Casey Task Force was the recession of 1973-1975, a domino-chain of events triggered by the dissolution of the Bretton Woods Accord, which abolished the global gold standard for national currencies. This led into the 1973 Oil Embargo, the stock market collapse of 1973-1974, and the ensuing economic recession which marked 1973-1975.

The Bretton Woods Accord, established in 1944 between 44 nations including the United States, established a system of commercial and financial relations between states by, in part, requiring all participating states to fix the value of their currency to the gold standard. In 1971, in an event known as the Nixon Shock, the Nixon administration unilaterally broke with Bretton Woods by suspending the direct convertibility of the US dollar to gold by foreign governments, except on open currency markets. This created instability in the international financial markets, with floating foreign currency values. The value of the US dollar subsequently declined by approximately a third over the next decade as other countries allowed their currencies to appreciate in value. This instability and the continuing decline of the dollar contributed to the stock market crash of 1973 through 1974, a 649 days period over which the Dow Jones Industrial Average benchmark lost over 45% of its previous value. The US entered into a multi-year period of stagflation, with GDP contracting 2.1% and inflation rising from 3.4% in 1972 to 12.3% in 1974. Approximately 2.3 million jobs were lost over the course of this recession,

bringing unemployment to a peak of 9% in May 1975. At the time this was the highest US unemployment rate since the Great Depression.¹⁴⁸

Since the formation of OPEC¹⁴⁹ in 1960, international oil exports had been priced in US dollars on the open market. As the US dollar declined following the dissolution of Bretton Woods, the price of oil also declined, until the price was readjusted under the Tehran Price Agreement of 1971, which included other anti-inflationary measures. This price hike was an attempt to re-peg the price of oil on the international market to a gold standard. In 1973, Middle Eastern oil producers unilaterally reduced production and instituted an oil embargo against the United States and several of its allies. This was partially in retaliation for Operation Nickel Grass, a strategic airlift to assist Israeli forces in the Yom Kippur War. The embargo would last from October 1973 to March 1974. During the course of the embargo, average retail gasoline prices in the US rose from 38.5 cents a gallon in May 1973 to 55.1 cents a gallon a year later. At the end of the embargo, the price of oil had nearly quadrupled, going from \$3 a barrel before the embargo to nearly \$12 afterwards on the international market.

This series of events in the early 1970s — a massive shift in the regulation of international currencies; a significant stock market crash and recession marked by economic contraction, currency stagnation, and high unemployment; and the oil embargo and ensuing fuel crisis, to say nothing of the impeachment and resignation of President Richard Nixon in 1974 — all occurred in the few years before the Casey Task Force was commissioned in 1976 to address the “equity crisis” in small business.

¹⁴⁸ It has since been surpassed by the late 2000s recession, which marked a peak unemployment rate of 10% in October 2009.

¹⁴⁹ Organization of the Petroleum Exporting Countries

ERISA: A Preview

The institutionally-backed limited partner firm structure was gaining prominence in the early 1970s, following the successes of Charles Lea and Edward Heizer. But just as it was poised to become the dominant firm model, the government passed a set of financial regulations that threatened to eliminate it.

In 1974, Congress passed ERISA. A broad set of regulations intended to encourage retirement savings and to safeguard pension funds, insurance plans, and medical reimbursement programs, the Act included a re-articulation of what is known as the “prudent man rule,” a rule deriving from English Common Law laying out fiduciary liability and obligations.

ERISA was the end result of a nearly twelve year legislative process, and combined many different bills and provisions in its final form.¹⁵⁰ It was intended to address several high profile incidents of previous years where pension funds had collapsed due to market volatility, had been abruptly canceled with little warning, or had not been paid out properly due to misleading or unreasonable qualification requirements. In 1973, Texas Senator Lloyd Bentsen introduced a bill that would become part of ERISA this way:

Over the past several decades, tens of millions of America working men and women have confidently approached their retirement age expecting to receive a sizable monthly pension. The expectation of many of these workers has been fulfilled. America’s private retirement system has performed very well for the millions of retired Americans presently receiving their expected retirement benefits. But unfortunately there are instances where workers have

¹⁵⁰ Despite this long gestational period, Charles Lea and others have recounted in their Oral Histories how ERISA “came out of no where,” indicating the lack of attention most early venture capitalist (even those active in NVCA) paid to developing regulation and lobbying at the time. See Lea, Charles. Venture Capital Oral History Project. Conducted by Carole Koker. National Venture Capital Association. October 2008. p 97.

not received pension benefits that they have earned through years of long, hard labor. Their dreams of financial security after retirement have been shattered. Promises have been broken. In these instances America's private retirement system has not only failed to perform adequately, it has performed very poorly.¹⁵¹

The pre-ERISA legal environment pertaining to pensions were described by a commentator this way:

Prior to ERISA, federal regulatory provisions in large measure left plan participants and beneficiaries to the traditional remedies of state statutory and common law. The inadequacy of this alternative was a major force in the passage of ERISA. Under state law, the terms of the trust instrument usually took precedence over any general standards of prudence; exculpatory clauses were generally valid; results were seldom uniform between the states; plan participants and beneficiaries were without ready access to detailed information about their plans or ready access to the courts; and potential plaintiffs often were faced with the prospect of high costs when litigating against large plans or sponsors. It was against this backdrop of ineffective regulation of private employee benefit plans that Congress turned to the fiduciary provisions which were ultimately included in ERISA.¹⁵²

ERISA was considered by many in pension management, private industry, and finance to be overcomplicated and to create excessive liability for fiduciaries. In 1975, a professor of law at Stanford University wrote, "Conceivably, an 'honesty in labeling' policy would require that [ERISA] be entitled 'The Lawyers' Relief Act of 1974.'"¹⁵³ Other commentators described the

¹⁵¹ Bensen, Lloyd. "Statements on Introduced Bills and Joint Resolutions: Comprehensive Private Pension Security Act," *Legislative History of the Employee Retirement Income Security Act of 1974*. Prepared by the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate. April 1976.

¹⁵² Hutchinson, Joseph. "The Federal Prudent Man Rule Under ERISA," *Villanova Law Review*. Vol. 22, Issue 1. 1976. p 14-15

¹⁵³ Williams, Howard R. "The Prudent Man Rule of the Pension Reform Act of 1974." *The Business Lawyer*. Vol 31, October 1975

Act as “startling,”¹⁵⁴ “perplex[ing],”¹⁵⁵ and described the reactions of the pension industry as those of “confusion and alarm.”¹⁵⁶

ERISA’s “prudent man rule” created a federal standard of prudence that could be applied to pension funds and be enforced at a federal level. The administration of pension funds had previously been governed by state articulations of prudence, which were inconsistent and lacked regulatory teeth. Furthermore, fiduciaries had frequently shielded themselves from liability for the losses suffered by funds and trusts under their care through the use of exculpatory contract clauses. ERISA ruled such clauses void as they were inconsistent with existing public policy¹⁵⁷.

ERISA’s articulation of the “prudent man rule” indicated that a fiduciary of a pension fund, insurance fund, or similar investment vehicle, will act “[w]ith care, skill, prudence, and diligence under the circumstances when prevailing that a prudent man in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aim”¹⁵⁸ in the management of the fund. A full history of the “prudent man rule” is provided in Chapter 5. For this preview, it will suffice to say that the “prudent man rule” was created as an alternative to the “legal list” rule of trust management, in the case of *Harvard College v. Amory* in 1830. The “legal list” rule dictated that the only investments a fiduciary of a trust might legally and appropriately make were those appearing on a literal “legal list.” These were typically extremely conservative investments in government bonds or other similar assets. The

¹⁵⁴ Little, H. Stennis and Larry T. Thraikill, “Fiduciaries Under ERISA: A Narrow Path to Tread.” *Vanderbilt Law Review*. Vol. 30, No. 1. January 1977. p 2

¹⁵⁵ Fleming, Austin. “Prudent Investments: The Varying Standards of Prudence.” *Real Property, Probate, and Trust Journal*. Vol. 12, No. 2. Summer, 1977. p 247.

¹⁵⁶ Hutchinson, p 15

¹⁵⁷ Hutchinson, p 37

¹⁵⁸ ERISA, 404 (a)(1)(B), 29 U.S.C. 1104(a)(1)(B) (Supp V. 1975)

Harvard College decision created the “prudent man” rule as an alternative standard based on *conduct*, requiring that a trustee or fiduciary conduct himself “faithfully and exercise sound discretion” in the manner of a “men of prudence” managing his own affairs.¹⁵⁹ In the United States, the “prudent man rule” has been subject to several restatements and re-articulations in the legal literature, with the ERISA standard constituting one such restatement.

ERISA’s prudence statement departed from the prevalent understanding of prudence in several way. Commentators noted that, according to the evidence in the legislative record and in the bill itself, it was apparent that “Congress has intended to establish a prudent man rule designed for the special needs of private pension plans, rather than one merely mirroring the common law prudent man rule developed by various states.”¹⁶⁰ This standard would also allow for the standards of prudence to vary depending on the size, scale, or type of fund. The “prudent man rule” as enacted in ERISA was intended to recognize the special social and economic purpose served by pension funds, and to create a standard of fiduciary responsibility that was appropriately keyed to that purpose. Part of this purpose was served by the articulation of a community derived standard, articulated as a “comparative standard under which fiduciaries would be judged by references to other fiduciaries acting in similar circumstances.”¹⁶¹ Another part of this purpose was served by the closing of liability loopholes creating by inappropriate

¹⁵⁹ Fleming, Austin. “Prudent Investments: The Varying Standards of Prudence.” *Real Property, Probate and Trust Journal*. Vol. 12, No. 2. Summer 1977. P 243, 245.

¹⁶⁰ Klesch, A. Gary. “Interpreting the Prudent Man Rule of ERISA.” *Financial Analysts Journal*. Vol. 33 No. 1. January-February 1977. p 27

¹⁶¹ Klesch, paraphrasing the 1970 Congressional testimony of then Secretary of Labor George Schultz, p 29

exculpatory clauses. Together, ERISA had the broad impact of creating a compulsory fiduciary standard for pension funds where none had functionally existed before.¹⁶²

Prior to the passage of ERISA, as noted in the previous section, the few venture capital firms operating on the lucrative limited partnership model had begun including private and public pension funds in their investor portfolios. Because of the large amount of capital these funds held under management, this allowed limited partnership venture capital firms to raise extremely large funds and diversify their investments. The more investments a firm could make, the more likely one would result in a sufficiently profitable payout to cover the losses suffered by the other investments in the portfolio. ERISA passed in 1974, at the end of the 1973-1974 financial markets collapse. At the time, there was a broad impression among investors that pension and insurance funds were pulling out of equity investing and risk capital, in what was referred to as the “flight to quality,”¹⁶³ turning to stable investments like bonds, other fixed income investments, and the common stock of established companies. Many commentators, including several members of the Task Force, blamed ERISA for this capital shift, arguing that “uncertainty” over the meaning ERISA’s prudent man rule and its new liability enforcement measures drove these institutional investors out of the risk capital market, as fiduciaries sought to avoid personal liability for potential losses.¹⁶⁴

Analysts, however, noted that ERISA’s formulation of the prudent man rule was not novel and did not create new fiduciary obligations, but was instead lifted almost verbatim from

¹⁶² Klesch, p 27

¹⁶³ Klesch, p 28

¹⁶⁴ A thorough examination of this debate appears in Chapter 5

existing articulations of the prudent man rule in the legal literature.¹⁶⁵ Again, the primary impact of ERISA's prudent man articulation was to close liability loopholes and to apply a coherent standard across all states.

Further, Gary Klesch, the Director of the Office of Securities Markets Policy at the US Department of the Treasury wrote that it was difficult to assess the impact of any ERISA-derived confusion, because of its arrival “on the heels of the 1973-1974 bear market, which in itself caused pension managers and investors in general to adopt more conservative investment strategies.”¹⁶⁶ Klesch noted several bits of anecdotal evidence indicating that ERISA *had* impacted investing, citing responses to a survey distributed among bank trust departments by the Senate Subcommittee on Financial Markets. He cites two responders (out of a total of 29) who, while noting that ERISA had not functionally changed fiduciary responsibilities or their own investment policies, stated that corporate clients had “directed [them] to reduce the level of pension investments in small and medium size companies and venture capital funds.”¹⁶⁷

As this brief sketch shows, the Casey Task Force was commissioned during a complicated economic, political, and social moment. In 1976, the financial markets were recovering from the tumble they took in 1973 and 1974, but the US was only a scant year out from the peak of unemployment caused by the recession. The equities markets were still weak, and the broader financial recovery was resting on a few established blue chip companies.¹⁶⁸

¹⁶⁵ Fleming, p 247

¹⁶⁶ Klesch, p 27

¹⁶⁷ Klesch, p 28

¹⁶⁸ Klesch, pp 27-28

IPOs and new stock issues for existing companies fell dramatically during the recession and, by 1976, had not yet recovered. As will be demonstrated in the following chapter, the Casey Task Force relied on IPO tallies and self-reported investment totals as proxies for the health of new and growing businesses. These numbers had dropped precipitously during the recession. The Casey Task Force identified equity-based venture capital in the limited partnership mode as the best way to allow small and early stage companies to grow until they could enter the public securities markets. They ultimately identified a number of policy factors they claimed were suppressing the ability of the venture capital industry to support these companies, specifically SEC Rules 144 and 146,¹⁶⁹ which complicated the acquisition and secondary sale of privately-placed securities; a high capital gains tax, which in the early 1970s had reached a peak of 49.5%; and ERISA, which Task Force members claimed fatally discouraged pension and insurance funds from investing in venture capital funds as limited partners. Each of these programs and measures, enacted over a period of decades following the catastrophe of the Great Crash, was initially designed to curb fraud, mismanagement, speculation in financial markets, and the over reliance on financial investments as primary income streams. The recommendations made by the Casey Task Force and the policy changes they ultimately led to, as we will see demonstrated in the archival materials and the Congressional Record, served to roll back these protections and to re-open regulatory weak spots that prioritized and rewarded speculation and the financialization of small businesses. This was achieved through an emphasis on the specialness of venture capitalists themselves, and centering their role in the life cycle of what were identified as “innovative” small businesses, which were further identified as playing

¹⁶⁹ SEC Rules 144 and 146 are addressed in Chapter 6

a uniquely powerful role in the American economy. The crisis of the recession created an opening through which substantial deregulation could be achieved. By collapsing together financialization, venture capital, innovation, and economic growth, the Casey Task Force and Casey Report largely invented and certainly normalized the view that the venture capital funding structure, particularly as manifest in the limited partnership organizational model, is a basic and inextricable part of what would come to be identified as the “innovation economy.”

CHAPTER TWO

GET THERE FIRST OR GET SHOT DOWN FIRST: THE CASEY TASK FORCE AND THE MAKINGS OF THE CASEY REPORT

By the time of his appointment to head the Small Business Administration Task Force on Venture and Equity Capital in 1976, William J. Casey had served the Nixon Administration in various financial policy and regulatory positions. He had served as Chairman of the SEC (1971-1973), Undersecretary of State for Economic Affairs (1973-1974), and Chairman of the Export-Import Bank (1974-1976). Casey was firmly embedded in the Washington bureaucratic system of financial regulation. He had significant experience as a Wall Street lawyer, business publisher, and private investor. I argue that, contrary to popular narratives that center West Coast venture capitalists as drivers of venture capital funding in high technology, that it was the East Coast and Mid-West financiers and bureaucrats on the Casey Task Force who were the most influential in promoting the regulatory reforms which, in the late 1970s and early 1980s, laid the groundwork for venture capital as it is practiced today.

The Task Force's 1977 report and testimony positioned venture capitalists as central to the growth of American small business and the development of high technology firms. In doing this, they combined the ideological and rhetorically potent figure of the American small businessman with the impressive economic impact of the most well-known high technology firms, like Digital Equipment or the Fairchildren firms. Most importantly, the Task Force codified the still-developing practices of a community of investors that was, until that point, unprofessionalized. The Task Force characterized the venture capital community, which was

described as at the time by business publications as “an unrecognized industry”¹⁷⁰ as a mature and stable community of professionalized investors. The business model put forth in their report and testimony placed venture capitalists at the vanguard of business development, equating the financing of business with the work of inventing and developing technology and operating a business day-to-day.

The official Task Force Report portrayed the venture capitalist as the primary risk taker, a patriot on the front lines or intrepid frontiersmen. This image of venture capitalists as patriotic risk takers was used by the Task Force to justify the revision of multiple bodies of regulations, put in place in the aftermath of the Great Crash of 1929 and other financial scandals to safeguard investments and small investors, in order to maximize potential returns and profit avenues for the venture capitalist. This use of patriotic imagery to promote or valorize financialized market activities was not new, but the narrative the Casey Task Force put forth differed from those presented by DuPont, as discussed in the last chapter, or by the New York Stock Exchange in that they centered the venture capitalist as a necessary and irreplaceable intermediary, instead of obscuring the role of financial middlemen in favor of a non-professional Everyman figure. The Task Force was invested in promoting the venture capitalist as a particular market actor, not simply the broad participation in financial markets themselves.

Though the Casey Report is repeatedly cited in the Congressional record as a key influence on the financial regulatory reforms which took place from 1978 through 1981, its role has since been largely forgotten. By examining Casey’s personal history in venture capital, the internal workings of the SBA Task Force and the crafting of the Casey Report, and the reception

¹⁷⁰ Reiner, p 362

and later citation of the Report through the Congressional record and in other venues, we can see the moment the modern venture capital industry started to take shape in particular ways. There were multiple potential funding models for small businesses in general and the growing high technology sector specifically. Some, like SBICs, were being piloted by the SBA. However, the Casey Task Force identified the institutionally-supported limited partnership venture capital firm model and delivered a set of regulatory recommendations that directly favored this funding model. I argue they made these recommendations for specific personal and political reasons.

By positioning the *venture capitalist* as the motivational actor of the high technology sector, and by drafting regulatory reforms intended to benefit the institutionally supported limited partnership firm structure, the Casey Task Force and Casey Report set in place the financial and political conditions for the “innovation economy” in its contemporary manifestation: independent entrepreneurs funded by venture capitalists who select, mentor, and guide their development, using cash provided by arms-length limited partners, often large institutional investors like pension funds or insurance companies. This chapter examines the formation of the Task Force and the initial research avenues pursued. First, I will review the major regulatory recommendations ultimately made by the Task Force in order to place these early days in context.

Three major sets of reforms, recommended by the Casey Report, created these conditions. First, the Report strongly advocated for revisions to the “prudent man rule” set for in the Employee Retirement Income Security Act (ERISA), passed in 1974. ERISA was intended to protect pensions and other retirement vehicles from risky investment strategies. The Casey Report recommended that portions of pension funds should be accessible for invested in high-

risk venture capital funds. When these recommendations were adopted, a massive movement of capital from pension funds into the venture capital market was triggered, leading to a boom in venture capital funds in the 1980s and solidifying the limited partnership firm as the dominant structure of venture capital. This structure allowed venture capitalists to assemble large funds in order to engage in a shotgun-style investment strategy without exposing their own personal capital to risk, while reaping lucrative rewards and, ultimately, personal fame and prestige as well.

The second set of reforms pertained to the revision of SEC Rules 144 and 146. These rules, covering the private placement of unregistered securities and the subsequent secondary sale of those securities, were initially crafted to protect small investors from predatory sales practices. The Casey Report advocated the loosening of regulations regarding these practices, making it easier for venture capitalists to invest in exchange for equity in early stage companies, and to then quickly liquidate those investments at a later date for any reason, including a lack of faith in the investment. These reforms were enacted by the SEC in the years following the release of the Casey Report.

The third set of reforms aimed to reduce the capital gains tax by almost half, from a high of 49.5% to “pre-1969” levels,” that is below 25%. Lowering the capital gains tax, instituted as a guard against individuals using speculative investing as a primary income stream, has been a pet issue of investors since the advent of the New Deal. This reduction would directly impact the earning of venture capitalists, including those who served on the Task Force, and Casey himself. Lowering the capital gains tax directly increased the profits of all investors, but particularly

venture capitalists operating limited partnership firms. This would further solidify the central role of that organizational model.

The regulatory changes enacted according to the recommendations of the Casey Report allowed for the influx of institutional capital that gave rise to the wave of visibly successful venture capitalists, such as Arthur Rock and Kleiner-Perkins, in the 1980s. The constant references to venture capitalists within the report itself, with the implication that they represented an established professional community, and in the other writings of Casey and other members of the Task Force helped constitute the venture capitalist as a central figure in and essential to present-day conceptions of the “innovation economy.”

The materials analyzed in this chapter come primarily from the personal archive of William J. Casey, held at the Hoover Institution at Stanford University. Other materials analyzed in this chapter and the next come from the personal archives of Duane Pearsall, held at the Worcester Polytechnic Institute, Congressional archives held by the Library of Congress, and other records held by the Hathi Trust.

Casey’s National Venture Capital Association Address

In 1974, William J Casey had just been appointed as the head of the Export-Import Bank, a federal corporation that operates as the official export credit agency, and generally as a facilitator regarding the export and import of goods into and out of the United States. This would be the last of his federal appointments under President Richard Nixon.

Shortly after Casey took this appointment, the recently-founded National Venture Capital Association (NVCA) invited Casey to deliver an address at their inaugural meeting at the Plaza

Hotel in New York City. This address is significant for two reasons. First, it provides a public record of Casey's thoughts and ideas on venture capital just before the establishment of the Casey Task Force. Second, there is significant overlap between the organizers and attendees of this address and later members of the Task Force or individuals who would contribute to the Casey Report in other ways. As such, a brief discussion of the correspondence surrounding the address and the address itself is useful here.

Though Casey was not a member of NVCA, he was known to the members of the organization from his recent tenure as the Chairman of the SEC and from his own informal venture capital activities. Charles Lea, then president-elect of NVCA and general partner of New Court Private Equity, wrote Casey regarding the meeting and the proposed content of Casey's address in April 1974. In this letter, Lea describes the nascent venture capital community and its view of itself at the time, and articulates the threats to their industry. Calling the venture capital community "a friendly, fairly relaxed group of professionals who know each other reasonably well," Lea wrote, "we, who have been active in the formation of this new association, believe [venture capital] to be a constructive force in the Nation's business. We are honored that you give us special recognition by being our first outside speaker." Indicating that the meeting would have a general focus on the securities markets, Lea wrote

Of serious concern to the venture capital community is the lack of market for the products they have been creating in the last three or four years. Some of us feel that at the root of the problem is the illness of the securities industry and it might be useful to give us some perspective, as a practicing venture capitalist on the one hand and a government regulator on the other, as to what the future might hold in terms of hope.¹⁷¹

¹⁷¹ Correspondence from Charles Lea (President Elect of NVCA) to William J. Casey, 2 April 1974, Box 172, Folder 1, William J Casey Collection, Hoover Institution, Stanford University

Lea would later become an influential member of the Casey Task Force, and as such, his view of the venture capital community as congenial, almost fraternal group, well known to each other, and of special value to the national economy, is significant. While on the Task Force, Lea would direct focus toward measures that would support developing venture capital as it was practiced at New Court, including the limited partnership firm structure, and away from regulatory measures pertaining to other modes of small business financing.

Later that same week, Stanley Rubel, Administrator of NVCA and self-identified “publisher of the professional journal for the industry, books on venture capital and SBIC activities,” and “part time venture capitalist,” also wrote to Casey. Rubel’s letter, more detailed than Lea’s, describes the NVCA’s concerns regarding federal regulations that were impacting “the free flow of venture capital”:

Such areas as liquidity and incentives are at the heart of our concern, but just as important is the trend for the government to continuously expand its regulatory scope in a way that is detrimental to the health of venture capital investing....*Many of these trends seem to affect the venture community by accident and one objective of NVCA is to make the regulatory agencies aware both of the importance of venture capital on the nation’s economy and also of the potential effects of these increasingly stifling rules and regulations....*Of course, our members are also very concerned about the changes currently taking place in the securities market and how these changes will affect future underwritings, security values, liquidity, and the ability to realize gains in venture backed companies in future years. We are particularly interested in how you see the current problems in the financial community and weak securities markets as affecting small company financing...and with particular emphasis on the rulings by the SEC in the past few years that affect *liquidity of restricted securities* and *qualified private placement financings*.¹⁷² [emphasis added]

¹⁷² Correspondence from Stanley Rubel to William J Casey, 9 April 1974, Box 172, Folder 1, William J Casey Collection, Hoover Institution, Stanford University

Rubel articulates a sentiment that would be repeated by others involved with the Task Force and in Congress: that the venture capital industry was running aground on regulations that were being mistakenly or accidentally applied to venture capital, but which had been written to curb excesses in other investment industries. After receiving this letter, Casey wrote to Alan B. Levenson, Director of Corporate Finance at the SEC. He quotes a large section of Rubel's letter, writing:

I would like to say something about what the SEC has accomplished in both providing protection for venture investments and making it easier to make them....Could you send along whatever you think would provide the basis for a few hundred words on the present state of 144 and 146 without taking me into too much detail.¹⁷³

The reform of SEC Rules 144 and 146, which directly governed the “liquidity of restricted securities” by regulating their secondary sale, and established criteria for “qualified private placement financings,” would prove to be central to the work of the Casey Task Force. These reforms would be of such special interest to Casey personally that he would author a law review article on the subject, which will be examined in more detail later.

Casey also included a copy of the full NVCA membership, saying that Levenson “might be interested in scanning the composition of this group.” NVCA members who would later participate in the Casey Task Force and Casey Report included Charles Lea, Stanley Rubel, and Paul Bancroft, then Vice President of the New York-based Bessemer Securities Corporation. Other notable actors included E.F. Heizer, a correspondent of the Task Force, and Thomas

¹⁷³ Correspondence from William J Casey to Alan B Levenson (Director, Division of Corporate Finance, SEC), 1 May 1974, Box 172, Folder 1, William J Casey Collection, Hoover Institution, Stanford University

Perkins, founding general partner of Kleiner & Perkins, which would go on to be one of the most influential venture capital firms in the Bay Area.

Casey delivered his address on 15 May, 1974. As he was still in public service at the time, Casey's assets were held in a blind trust where he had no direct control or influence over them, and he was not an active venture capitalist. He described his "keen appreciation of the critical and constructive role which entrepreneurship and venture capital have to play not only in our own economy but in the world," and cast his career in parallel to those of his audience, saying, "[b]efore I took the cloth and joined the government I was a practicing venture capitalist who both won and lost, and experienced the same problems and the satisfactions which you have."¹⁷⁴

War service had been a defining experience for Casey and many other men of his generation. Throughout his life, Casey would compare the civilian sphere of business and finance with the sphere of war, and this speech made this connection clear: "[T]he venture capitalist is the cutting edge. He is in the front line. He can get there first or he can get shot down first. If you were not prepared to face that you wouldn't be here."¹⁷⁵ This valorization of the venture capitalist as risk-taker, brave and honorable in the mould of Allied soldiers from the Second World War was characteristic of Casey's views of the venture capitalist, and would later justify many of the measures suggested by the Casey Report which were described as incentives and rewards for patriotic, financial risk-taking.

¹⁷⁴ Typescript of Address by the Honorable William J. Casey, Chairman and President Export-Import Bank of the United States Before the National Venture Capital Association, as released by the Export-Import Bank, 15 May 1974, Box 172, Folder 1, William J Casey Collection, Hoover Institution, Stanford University

¹⁷⁵ *ibid*

In this address, Casey lays out his view of the capital crisis which the Casey Task Force would be commissioned to solve in two years' time. It should be kept in mind that this address was taking place in the middle of the recession of 1973-1975, one of the worst economic downturns since the Great Depression.

Today, only the largest and highest quality US corporations can raise equity capital. New issues¹⁷⁶ have fallen off alarmingly. Corporate liquidity needs are enormous....[Small companies and creative individuals] need money. For the last fifteen years the bulk was supplied by some 41,000 'venture' public offerings supplemented by private funds of wealthy private investors and more recently some institutional investors [pension funds and banks]. Many of the larger corporations that enter the area have retired. It takes an unusual mentality to develop this type of business and it appears that there is too much of a conflict between the large corporate management approach and entrepreneurship. It is today almost impossible to raise such funds and yet the country needs innovation to keep us competitive through the development of new ideas.¹⁷⁷

In this excerpt, we see several concepts that would be repeated throughout the Casey Report.

First, Casey uses IPOs as a measure of the national economy, conflating the health of financial markets with the health of the nation overall. Second, Casey casts the venture capitalist as a unique actor in business and finance, describing the "unusual mentality" possessed by the successful venture capitalist, and thus, the audience he was speaking to. That "unusual mentality" is presented as the solution to the "conflict between the large corporate management approach and entrepreneurship." The role of the venture capitalist, who has been held out as a special actor, is thus collapsed into that of the entrepreneur, and an equivalence is drawn between

¹⁷⁶ By "new issues," Casey is here referring to initial public offerings, or IPOs. The Task Force would later rely on NVCA-reported measures that marked a decline in the financial total of IPOs from \$256 million in 1972 to \$49 million in 1975; and early stage underwritings from 418 in 1972 to 4 in 1975. The use of this measure in the Casey report is discussed in greater detail in the next chapter.

¹⁷⁷ Casey, NVCA Address, p 1

the financier and the patriotic role of “innovation” in technology and business in keeping the US “competitive through the development of new ideas.”

In determining the measurements that describe a problem, one also determines the solutions to be offered. Casey’s view, later repeated by the SBA and the Task Force, was that the dip in the number of IPOs was in and of itself the problem to be solved independent of broader national contexts.¹⁷⁸ As identified by numerous scholars, such as Wendy Brown and David Harvey, a key neoliberal stance is the interpretation of all aspects of life and society through an economic, market-based lens. Here I would like to highlight the Casey Task Force’s use of IPOs and self-reported investment numbers to define that neoliberal perspective: defining the measure defines the problem and defines the solution. Michelle Murphy, in her study of the use of economic measures deployed by national governments as related to family planning programs¹⁷⁹ and the use of environmental and health measurements as related to ‘sick building syndrome,’¹⁸⁰ has traced similar processes. Murphy frames these as *regimes of perceptibility*, a process of receiving the world through “focusing on, isolating, and rendering intelligible a more narrowly delineated set of qualities.”¹⁸¹ For Murphy, as well as for us here, the key move is that of measurement, the definition of measurement proxies, and the relationship of those proxies to

¹⁷⁸ The locking in of IPOs at the core of the venture capital strategy would set the stage for the Dot Com bubble of the late 1990s, wherein venture-backed companies that had no definable product or significant profit track record, most infamously Pets.Com, would IPO at high initial stock prices and then collapse. The contemporary preference on the part of venture capitalists for acquisitions over IPOs as an ultimate exit strategy, interestingly, runs directly counter to the strategies of these early venture capitalists.

¹⁷⁹ Murphy, Michelle. *The Economization of Life*. Duke University Press. 2017.

¹⁸⁰ Murphy, Michelle. *Sick Building Syndrome and the Problem of Uncertainty*. Duke University Press. 2006.

¹⁸¹ Murphy (2006), p 24.

broader, more abstract concepts like health, the environment, safety, and productivity. These measures in turn define the scope of potential solutions.

For Casey and the Task Force, IPOs are the measure of national political and economic health, the indicator of a crisis, and the mechanism by which that crisis will be solved. In this NVCA speech, and as we will see in the Task Force materials, Casey and others conflate the growth of financial markets through IPOs and rising stock prices and ever-increasing levels of self-reported private investment with the success of the American democratic project, domestically and internationally. This allows Casey and the Task Force to cast the progress of the still-developing venture capital profession as identical with the health of American democracy itself. Alternative business models, investment structures, or regulations that interfere with the predominant venture model can be dismissed as un-American *because* they are not venture capital and because their impacts are not the impacts of venture capital. Casey and the Task Force do not just articulate the challenges they focus on as economic or market-based: they define and describe them using market measures which are rendered identical, at emotional and ideological levels, with concepts like “patriotism,” “democracy,” and “the future of the United States.” The market is turned into a measure of the spiritual health of the nation. Solutions to financial market problems are therefore *also* solutions to problems of the American spirit, or the American “venture spirit.”

This move was necessary, in part, because the venture capital community had not yet reached a level of professionalization and organization wherein it could, independently of other financial actors, capture a regulatory body like the SEC. The aims of the venture capitalists involved with the Task Force was, in many ways, to encourage the practices and paths of

professionalization within their own industry through crafted regulation. That is, they sought to define venture capital through regulatory moves as much as they sought to protect it through these moves.

The work of Casey and the Task Force was less an attempt at regulatory capture and more a continuation of the “vendor state” shift the US government underwent in the second half of the 20th century.¹⁸² Gerald F. Davis describes *vendor states* as governments that, “following the lead of corporations—have increasingly shifted from sovereigns to vendors competing in the marketplace of laws and contracting out tasks beyond their ‘core competence.’”¹⁸³ In his NCA speech and later, Casey and other members of the Task Force would argue for the lowering of taxes on foreign investment, making it easier for foreign investors to participate in US markets. The Task Force’s two-pronged argument, that equity investment in high technology businesses was crucial to the future success of the United States as a democratic project and that any direct participation by the US government in equity investment was undemocratic, simultaneously frames support of the growing high technology industry as a necessity and as beyond the government’s purview. By articulating an imperative and then declaring it beyond the reach of government, the Task Force attempted to paint the US government into a corner by presenting its only legitimate option to be encouraging private investment primarily through policy mechanisms aimed at relaxing regulatory constraints on profit-making.

Casey’s NVCA speech and the correspondence surrounding it repeats this message: if venture capital was not succeeding as well as it could or if certain laws and regulations were

¹⁸² Davis, Gerald F. *Managed by the Markets*. Oxford University Press. 2009.

¹⁸³ Davis, p 8

interfering with its maximum profitability, this was due to a lack of education on the part of the public or the unintentional over-extension of laws and regulations intended to curb the excesses of other industries. Needed capital was being withheld from the markets as newly designed vehicles like index and mutual funds, along with the legal shielding of pension funds through ERISA, diverted capital from investment in fledgling businesses. This withdrawal of funds from active investment Casey ascribed to faltering confidence and a lack of economic education on the part of the general public, saying, “The people have liquid savings and have been selling stocks for 10 years. We must restore their confidence. We must get more savings [into the market].”

Later in the address, Casey elaborated:

The biggest obstacle to liquid capital markets is economic ignorance. We must educate not only our political leadership but also the constituency starting in the schools. This is even more basic than tax incentives. If the voting constituency understand, so will the political representatives.¹⁸⁴

Lack of understanding and lack of daring were repeated themes in the Task Force materials. Rather than explicitly casting the regulatory fight facing venture capital as a clash of values with regulators on one side and venture capitalists on the other, Casey, Rubel, and many others maintained that the decline in investments was an accidental side-effect. All that was needed to restore investment was more education, of the public and of regulators and lawmakers, by venture capitalists. This rhetoric of “unintended consequences,” as Senator Gaylord Nelson would term it in 1979,¹⁸⁵ allowed venture capitalists to rhetorically separate themselves from other, more established financial actors whose activities fell within the purview of regulators and

¹⁸⁴ Casey, NVCA Address, p 5

¹⁸⁵ Nelson, Gaylord. *Discussion and Comments on the Major Issues Facing Small Business, A Report of the Select Committee on Small Business, United States Senate*. 4 December 1979. p 2

whose bad behavior was the cause of so much strife. Though the activities of venture capitalists was not meaningfully different than these financial actors, and though their activities would provoke similarly damaging financial bubbles within the high technology sector for decades, this positioning allowed venture capitalists to argue that their activities should be shielded from regulation and taxation.

The Task Force's First Meeting

In July of 1976, two years after Casey's address at the first meeting of NVCA, the Small Business Administration convened a Special Task Force on Venture and Equity Capital. Their mandate was to

[develop] new approaches to obtain adequate access to capital for new ventures, growth, and expansion for small and medium-size businesses. As projected capital shortages become realities, small business will be hit the hardest unless strong countermeasures are taken.¹⁸⁶

SBA Administrator Mitchell Kobelinski appointed Casey, who by this time had left public service, to serve as Chairman of the Task Force. The Task Force was made up of 17 members drawn primarily from active venture capital and investment firms from New York City and other East Coast states, and also included successful entrepreneurs, business school professors, and heads of various manufacturing and small business trade groups.¹⁸⁷

¹⁸⁶ Correspondence from Mitchell Kobelinski to William J. Casey, 23 July 1976, Box 189, Folder 9, William J Casey Papers, Hoover Institution, Stanford University, California

¹⁸⁷ SBA Task Force on Venture and Equity Capital member list, included in Correspondence from Mitchell Koelinski to William J. Casey, 23 July 1976, Box 189, Folder 9, William J Casey Papers, Hoover Institution, Stanford University, California

The same day Casey received a letter confirming his appointment, he also received a memo from Peter McNeish, an SBA staff member assigned to serve as secretary to the Task Force. The memo contained background material and potential discussion questions for Task Force members to consider in preparation for their first meeting. The questions covered a range of topics related to small business financing including SBICs and loans, and included this question:

There was a considerable expansion of venture capital in the middle and late sixties. Was this simply a sign of the overheated conditions of the times? Is there an identifiable secular trend in the availability of venture or equity capital for small business?¹⁸⁸

The presence of this question indicates the novel and disunited nature of venture capital practice even as late as 1976. Firms like ARD and D&R had only just started posting the exponential profits a few years earlier that would later become a defining criteria of the modern venture capital mystique. While the financial markets were beginning to recover from their collapse, the aftershocks and echoes of the recession were still strongly felt, and many investors were still avoiding investments perceived to be risky. As we will see in Task Force records and contemporaneous media accounts, there was confusion as to what “venture capital” even was and how it differed from other forms of business investing. A key question for the Task Force would be whether the IPO boom in the 1960s had been an economic blip or whether it represented a sustainable advancement that should be defended.

The establishment of NVCA as one of the first professional association of venture capitalists two years prior represented an initial attempt at an organized lobbying force for the

¹⁸⁸ Memo regarding first SBA Task Force meeting, background materials, and discussion questions, Peter McNeish (Secretary to the Task Force) to SBA Task Force Members, 23 July 1976, Box 191, Folder 3, William J Casey Papers, Hoover Institution, Stanford University, California

fledgling profession. But questions like McNeish's make clear how uncertain and potentially unstable the venture capital phenomenon was considered to be by regulators, policy makers, and those outside the venture capitalists' "friendly group." The Casey Task Force became an opportunity for early venture capitalists to construct a popular view of their profession as central to the economy. Technological innovation, if funded robustly, could create jobs, grow the GDP, and protect the status of the US economy globally.

The first meeting of the Casey Task Force took place on July 30, 1976, at the offices of the Small Business Administration in Washington DC. The SBA subsequently produced a lengthy memo, circulated to its members, describing the events and conversation. The memo provides a comprehensive summary of the existing points of consensus, disagreement, and questions posed by the members of the Task Force as they first convened to discuss the "extremely important" "problem of capital formation," which they described as "crucial to [the continuation] of free enterprise system."¹⁸⁹

While the Casey address of two years prior avoided mentioning the financial and civil unrest of contemporary moment, this memo shows that Task Force as a whole did not duck this context. The "chaos of the last ten years" was connected to the risk aversion of individual and institutional investors:

The psychology of the American mind is important: That is—does the banker and the investor have confidence in the stability and predictability of the economy generally? The chaos of the past ten years has sent shock-waves throughout all of society. Specifically, these uncertainties have led lenders and investors alike to husband

¹⁸⁹ Summary of the Proceedings of the First Meeting of the SBA Sponsored Task Force on Venture and Equity Capital for Small Business, John Werner (Office of Investment Management and Evaluation), 30 July 1976, Box 189, Folder 3, William J Casey Papers, Hoover Institution, Stanford University, California

their resources, to disburse them only to the largest of the major corporations. That has meant that small and new concerns have not been able to fill their financial needs. Inflation, price controls, recessions, civil unrest, new social and environmental legislation—all of these have led to the chaos which has impacted so adversely on small business.¹⁹⁰

While the Task Force here acknowledges the strong impact the financial, political, and social climate of the time had on investing, they also note that the availability of less risky financial vehicles made high risk investments in small business or with venture capital funds less attractive for individual investors. The memo describes the “the availability of low risk/high return government securities,” and “the secular trend toward intermediation of savings” as making the “small investor” unprepared to “invest in small companies.”¹⁹¹ There was some disagreement between Task Force members as to whether the retreat of the individual investor from venture investing and the stock market in general was due to “problem of shortage of funds or the problem of misallocation of funds,” that is, whether the small investor was broke or simply foolish.

On the institutional investor side, the Task Force pointed squarely at the “prudent man” rule as enacted by ERISA in 1974. Prior to the passage of ERISA, pension funds both public and private had begun to explore investing in venture capital funds as limited partners, an arrangement that allowed venture capitalists to increased greatly their available investment capital, and thus the spread of investments they were able to make and their potential personal

¹⁹⁰ Summary of the Proceedings of the First Meeting of the SBA Sponsored Task Force on Venture and Equity Capital for Small Business, John Werner (Office of Investment Management and Evaluation), 30 July 1976, Box 189, Folder 3, William J Casey Papers, Hoover Institution, Stanford University, California

Interestingly, two contemporaries of the Task Force, James Buchanan and Richard Wagner wrote in 1977 that it was economic inflation itself that generated social chaos. Buchanan and Wagner’s overt moralizing of financial markets and their ideological kinships with the Casey Task Force is discussed in Chapter Six.

¹⁹¹ *ibid*

payout. To review, an early adopter of this firm structure was Task Force member Charles Lea, whose firm, New Court Private Equity, had organized as an institutionally-funded limited partnership in 1972, just two years prior to the passing of ERISA. ERISA's prudent man rule, according to the Task Force members, had severely curtailed this type of investment on the part of the pension funds, cutting off the growing venture capital industry large source of liquid capital:

One of the big sources mentioned was the funds generated in pension plans. It was indicated that even though the funds of these plans are partially invested in equity securities, the type of firm whose securities are purchases is severely restricted by the 'prudent man' provisions of the Employee Retirement Income Security Act (ERISA). Pension fund management can't go into smaller, riskier situations either directly or through an agent intermediary due to legal barriers or potential liability created by ERISA.¹⁹²

A summary section headed "Problems Highlighted by the Task Force" gave ERISA pride of place, along with SEC Rules 144 and 146, and capital gains tax.

The Task Force's Original Interests

Initially, Casey was not personally interested in pursuing the ERISA and SEC angles, though he clearly demonstrates awareness of both sets of issues in his NVCA address. From the outset, Casey, together with Harvard Business School Professor Patrick Liles, pursued a different path, exploring "what larger corporations do to finance and otherwise support entrepreneurship in smaller and related businesses."¹⁹³ They focused on franchise and dealership models, hands-on

¹⁹² *ibid*

¹⁹³ Correspondence from William J Casey to Patrick Liles (Professor, Harvard Business School, Member SBA Task Force), 4 August 1976, Box 191, Folder 1, William J Casey Papers, Hoover Institution, Stanford University, California; identical text also appears in Correspondence from William J Casey to Mitchell Kobelinski, 11 August 1976, Box 191, Folder 1, William J Casey Papers, Hoover Institution, Stanford University, California

supply chain management, and “in-kind” assistance in the form of the provision of lab space or raw materials. Pursuant to this, a short survey was distributed by Task Force member Harry G. Austin Jr.¹⁹⁴ to small business owners. The survey inquired as to anecdotal evidence of “the financing that larger companies do or otherwise support entrepreneurship in smaller and related businesses” and solicited opinions as to whether this activity “should be encouraged by the government even to the extent that perhaps a tax break could be given to the larger corporation for their interest in the smaller manufacturer.”¹⁹⁵

The respondents did not agree with the basic premise of these questions. Two typical responses appear in the Task Force archive, handwritten on the returned questionnaires:

Dear Harry I find this approach shocking and unbelievable! Large corporations know how to get a tax break. And I sincerely feel that it would be a perversion of the cause of the smaller manufacturer to give big companies a break for dealing with us. NO FIRM, BIG OR SMALL WILL OR SHOULD DEAL WITH ANOTHER ONE UNLESS IT BENEFITS BY SUCH DEALING. Large businesses deal with us because it is in their best interest, so why reward them? WHAT NONSENSE! Dealing with large firms, I can tell you that they do finance projects we handle for them, simply because I would have to charge them for financing if they did not want to make advance payments—It is simply saving them money. SO WHY REWARD THEM. With best regards and my respect to you for doing all this work, Bill.¹⁹⁶

Harry—I know you want the truth!—I worked for for [sic] GE, W [underlined], and [Bebeoch & Wilcox G], all blue chip people for 15 years. Help in purchasing, at W and B&W,—I never saw any financial help to small businesses. It was strictly the damn price

¹⁹⁴ President of the Pennsylvania-based James Austin company, a bleach and janitorial supply manufacturing company. Austin was also the president of the Smaller Manufacturers’ Council, a professional association based in Pittsburgh, PA. The survey was distributed to members of this professional association.

¹⁹⁵ SBA Survey Letter from Harry Austin, 2 September 1976, Box 190, Folder 3, William J Casey Papers, Hoover Institution, Stanford University, California

¹⁹⁶ Handwritten Response to SBA Survey Letter from William (Bill) Gluck/Gluco Inc to Harry Austin, 8 September 1976, Box 190, Folder 3, William J Casey Papers, Hoover Institution, Stanford University, California

gets the job. In fact, running [illegible] I fought to get payment for small businesses on materials delivered but not paid for due to greedy financial thinking ie WORK ON THEIR MONEY! I fought with the treasurer of W to pay \$10,000 for tooling a year after the tools were completed and the suppliers were saving W \$100,000 on the job. 1 and 2¹⁹⁷ are bullshit! Don't buy it! Big businesses will kill small businesses for \$1.00!!!¹⁹⁸

With this approach having been thoroughly and colorfully turned aside, Casey abandoned it, concentrating instead on the ERISA and SEC angles that would appear in the final Report.

Several members of the Casey Task Force submitted their own reports and research letters regarding various aspects of capital formation and American small business. The Task Force also commissioned several studies from outside professional research groups, as well as from individuals like Stanley Rubel. These materials further illustrate the views held by members of the Task Force and contemporaries that would shape the recommendations of the Report. Several were wholly incorporated into the Report itself.

Task Force member Don Steffes¹⁹⁹ contributed a research report entitled “A View of the Beginning and Smaller Entrepreneur, the Commercial Banker, SBA and Their Inter-Relationships In Regard to the Obtaining of Capital.” This report laid out a portrait of the American entrepreneur in the early 1970s and their use of debt capital or loans as raised from banks and SBICs. While the Task Force did not use his recommendations regarding bank loans

¹⁹⁷ This refers to hand-annotations on the text of Harry Austin's original survey letter, which this response is written on the second page of.

¹⁹⁸ Handwritten Response to SBA Survey Letter from George Saxon/Condenser Cleaners to Harry Austin, (ND, postmark 2 September 1976), Box 190, Folder 3, William J Casey Papers, Hoover Institution, Stanford University, California

¹⁹⁹ President of the Kansas-based McPherson State Bank and Trust Company.

and debt capitalization, his descriptions of the entrepreneur and American capitalism provide an interesting insight into how this class regarded the financial crisis of the 1970s, and why the Task Force viewed seemingly prudent and socially beneficial practices like personal savings as detrimental to economic growth. Steffes' report identified three major issues with capital formation, which would be repeated throughout the Task Force materials: an over-concentration of large institutional players and investors in the market, who, it was argued, were too conservative in their investment practices due to fiduciary liability concerns and lack of experience with small businesses; a lack of smaller and personal investors willing to engage in high risk/high reward investments, wherein the risk of loss was high but the potential returns were significant; and high taxes on capital gains and other regulations that make profiting from investments too difficult to attract informed investors.

Steffes begins his report praising American thrift and industriousness:

The remarkable economic progress of our country has been primarily the result of a society with a social and political system which has allowed and encouraged individual enterprise through the natural desire to accumulate, combined with the right to retain property and pass it on to succeeding generations. This progress has been aided by, but not necessarily caused by, an abundant supply of natural resources which may have been, and probably were, exploited in the past. This exploitation was not malicious, but simply the natural use of available assets as had been occurring for thousands of years.²⁰⁰

The “economic progress” made by the US over the previous 200 years, Steffes claims, is due to “delayed gratification,” where “[t]he combined savings of many individuals, their investment into equities or heavy cash values retained in life insurance” combined to support their local

²⁰⁰ “A View of the Beginning and Smaller Entrepreneur, the Commercial Banker, SBA and Their Inter-Relationships In Regard to the Obtaining of Capital,” Don C. Steffes (Member, SBA Task Force), August 1976, Box 191, Folder 8, William J Casey Papers, Hoover Institution, Stanford University, California

community and local industry. Steffes identifies two problems which have tripped up this prosperity: an “accelerating concentration” in industry, retail, and financial markets, centered away from local communities, and which operate on “huge blocks of capital” provided by “major money center banks, giant insurance companies, and other large financial institutions”; and the rise of consumerism and the decline of personal savings, which Steffes ascribes to “[t]he idea of instant gratification, or consumption” being “successfully merchandised.” He goes on to blame high government spending for modeling what he sees as a widespread shift to living on credit, saying

Both federal and local units of government have shown voters and consumers how painless it is to live on future income, earnings, or taxes. This development has the added tendency to eliminate the desire to save, and therefore, further compounded the problem of capital formation.²⁰¹

Circuitously, Steffes holds government profligacy and government regulations on financial markets and investments responsible for both people not saving and for people saving in the wrong ways: through protected pension funds and other specialized retirement vehicles. Savings held in these institutional vehicles is not available for the type of investment Steffes believes to be the most productive or potentially profitable.²⁰² He blames capital gains and inheritance taxes, instituted “[i]n order to finance the ever increasing needs and wants of voters,” for having a

severely adverse effect on the desire and ability of individuals to save, invest, accumulate and personally dispose of wealth to individuals and organizations of his or her own choosing. The

²⁰¹ *ibid*

²⁰² This idea that savings held in conservative investment vehicles or not invested in the market at all is “unproductive” or even “idle money” was also repeated by the New York Stock Exchange as it sought to promote more wide-spread market participation. This is discussed in Chapter Six.

incentives for individual effort and deprivation are not as great as they once were.²⁰³

Steffes' articulation of this shift, from the "delayed gratification" of savings and investment towards the "instant gratification" of consumption and spending as encouraged by "public policy," was repeated in the Casey Report as the first "Impediment to Small Business Growth."²⁰⁴

Finally, Steffes describes what he sees as a primary social shift in the United States:

For several centuries, all shades of opinion seemed to agree on the common goal of 'Economic Progress' and differed only on the methods of achieving it. Now this is in question and we are experiencing a period of extreme distrust.²⁰⁵

Despite his strong critiques of capital concentration, financial regulations, taxation, and personal spending trends, Steffes concludes what might be described as the "theory section" of his report by saying:

Certainly, none of these thoughts are meant to be critical of the concentration of capital or the growth of any particular segment of our society. They are only meant to emphasize the fact that the trends are taking place and that they seem to be somewhat irreversible. Certainly nothing can be gained by attempting to stop such a trend. To paraphrase Lincoln, it is impossible to help the

²⁰³ *ibid*

²⁰⁴ Task Force on Equity and Venture Capital for Small Business, US Small Business Administration, Published Report: *Report of the SBA Task Force on Venture and Equity Capital for Small Business*, January 1977, Box 194, Folder 4, William J Casey Papers, Hoover Institution, Stanford University, California

²⁰⁵ Steffes, "A View of the Beginning and Smaller Entrepreneur"

poor by hurting the rich.²⁰⁶ Additional advantages for those who are not participating in the trend should be discovered. It would seem socially and economically desirable that continued efforts should be expended to aid and assist small businesses and to keep this segment a vital part of the national economy. If for no other reason, small business and entrepreneurs do provide an important standard of comparison and help to keep the laws of competition alive, well, and functioning.²⁰⁷

This is an interesting set of statements, because it in part explains why the Casey Report focused primarily on recommendations which included reinterpreting, clarifying, or otherwise nudging existing laws and regulations, rather than on the passage of new laws or the drafting of new regulations. The most influential aspects of the Casey Report, such as its ERISA recommendations, involved no substantial changes to the law as it was passed, but instead relied on tilting the official interpretation of a key phrase in one direction or another.²⁰⁸ Similarly, the Task Force's critiques of those financial laws and regulations, which had been passed as part of New Deal reforms, did not quarrel with the measures directly. Instead they insisted that they

²⁰⁶ The quote Steffes paraphrases here is known as the "You Cannot" quotation. It has been widely misattributed to Lincoln, particularly by conservative politicians, most notably Ronald Reagan in his 1992 speech to the Republican National Convention. Originating in a 1916 pamphlet entitled *The Ten Cannots* (sic), written by Presbyterian minister and opponent of organized labor Rev. William J.H. Boetcker, the original quotation reads

You cannot bring about prosperity by discouraging thrift.
 You cannot strengthen the weak by weakening the strong.
 You cannot help little men by tearing down big men.
 You cannot lift the wage earner by pulling down the wage payer.
 You cannot help the poor by destroying the rich.
 You cannot establish sound security on borrowed money.
 You cannot further the brotherhood of man by inciting class hatred.
 You cannot keep out of trouble by spending more than you earn.
 You cannot build character and courage by destroying men's initiative and independence.
 And you cannot help men permanently by doing for them what they can and should do for themselves.

Edward Steers. *Lincoln legends: myths, hoaxes, and confabulations associated with our greatest president*. University Press of Kentucky. 2007. p 191

²⁰⁷ Steffes, "A View of the Beginning and Smaller Entrepreneur"

²⁰⁸ The manner in which the Labor Department ultimately clarified ERISA's articulation of fiduciary prudence are explored in Chapter Five.

were being applied to venture capitalists *by mistake*. Though the personal politics of Casey and others on the Task Force were directly opposed to the New Deal, the work of the Task Force involved more interpretive sleight-of-hand, more subtle intellectual sabotage than a frontal policy assault.

This mode of governance through reinterpretation, suggestion, tweaks, and seemingly earnest corrections to the mere misapplication of existing laws and regulation has been noted by Wendy Brown as a particularly insidious practice of neoliberal policy-making, saying

...[N]eoliberalization in the Euro-Atlantic world today is more often enacted through specific techniques of governance, through best practices and legal tweaks, in short, through ‘soft power’ drawing on consensus and buy-in, than through violence, dictatorial command, or even overt political platforming. Neoliberalism governs as sophisticated common sense, a reality principle remaking institutions and human beings everywhere it settles, nestles, and gains affirmation.²⁰⁹

Though Brown suggests that in the 1970s and 1980s, neoliberal policy was imposed through “fiat and force,” I would suggest that the Casey Task Force represents an early manifestation of the soft power of neoliberal policy in practice. It was precisely the model that Brown identifies, of claiming “best practices” and “sophisticated common sense,” which in the case of early venture capital was framed as taking a well informed, appropriate, and profitable “business man’s risk” with other people’s money, that allowed the unprofessionalized venture capital community to solidify its role in the high technology economy. Ironically, the venture capital community of the mid-1970s was too immature and disorganized to operate through an established, dedicated lobbying organization. NVCA depended, for its lobbying clout, on the relationships members like Charles Lea had established in their capacities as well known and

²⁰⁹ Brown, Wendy. *Undoing the Demos: Neoliberalism’s Stealth Revolution*. Zone Books. 2015. p 35

successful Wall Street financiers, not as specialized venture capitalists.²¹⁰ The soft power of suggestion, and then conforming themselves as a profession to those suggestions that were successful, was perhaps the only path open to them at the time.

In advance of the first meeting, another member of the Task Force, Richard Hexter²¹¹ sent a letter to the other Task Force members laying out basic definitions of the “institutional universe we are discussing” and of the capital formation problem. His summary of the problem harmonizes with others elsewhere in the archive of the Task Force:

First, we have the problem of intermediation in that many individuals, who used to invest individually, are now pooling most of their assets—either voluntarily or involuntarily—in institutional form. Next, we have structural problems in that many institutions are not staffed or permitted to invest in small or medium sized businesses. Thirdly, there is the economic problem caused by poor experience on the part of most institutions who invested in small businesses in recent years. In addition, we have a disrupted investment community which has many good alternative investments with a better risk/reward ratio and faces a lackluster new issues market. Fourthly, tax and regulatory problems exist because recent changes in capital gains taxes and ERISA have made it less attractive for institutions to take a smaller company risk.²¹²

Hexter describes possible “solutions to existing problems” as falling into either “tax incentives” or “liquidity incentives” while dismissing a third option:

²¹⁰ For more on the role of Charles Lea in the passage of ERISA reforms, see Chapter Six.

²¹¹ President of the New York-based investment bank, Ardshiel Associates. Ardshiel would specialize in leveraged buyouts in the 1970s.

²¹² Correspondence from Richard Hexter (President, Ardshiel, Member SBA Task Force) to Bunce, Sword, Witter, Casey, “Re: ADVANCE THOUGHTS ON INSTITUTIONS INVESTING IN SMALL COMPANIES (in preparation for our subcommittee meetings, August 27, 1976),” 16 August 1976, Box 191, Folder 1, William J Casey Papers, Hoover Institution, Stanford University, California

There is a third area which would involve direct subsidies or government guarantees²¹³ which we may wish to consider, but my capitalistic soul rebels at those alternatives. I would prefer that we remove disincentives, provide some spurs to the institutional money manager, and let free market forces determine how much and where the investment dollars flow.²¹⁴

This mention and dismissal of government guarantees or subsidies indicates that the Task Force was aware of the potential utility of this type of direct or more direct government investment, but had a strong preference for “free market forces” and the creation of incentives through tax policy and other forms of deregulation. In this agenda-setting letter Hexter favors “free” or “natural market forces.” He articulates a specific concern with easing the way for venture capitalists and other investors to exit investments once a business had grown to certain size, or when it became apparent an investment would not prove sufficiently profitable, writing

In many respects, the best solution to the small company problem might be to provide good capital access and liquidity to the medium size company. By ensuring a good flow at the end of the pipeline, natural market forces might well provide the start up capital needed during earlier development stages.²¹⁵

This focus on what might be termed “deal flow” would be echoed several times by other members of the Task Force. Task Force member Travers Bell²¹⁶ wrote in September to fellow member, William R. Hambrecht,²¹⁷ providing one such echo:

²¹³ It should be recalled that “government guarantees” of loans were the basis of how SBICs operated.

²¹⁴ *ibid*

²¹⁵ *ibid*

²¹⁶ Chairman and founder of the New York investment private equity firm Daniels & Bell Inc. At the time, Daniels & Bell was the only black-owned member of the New York Stock Exchange. See “An Empire in Black Business,” *New York Times*, 18 April, 1982. Sec. 3, p 6.

²¹⁷ As a partner in San Francisco investment bank Hambrecht and Quist, Hambrecht was the only West Coast investor on the Task Force. Twenty years after his service on the Task Force, Hambrecht would found WR Hambrecht & Co, a private investment bank that utilizes a unique auction process which allows the general investing public to purchase stock as part of IPOs, rather than restricting availability to accredited investors.

The major deterrent to venture capital as expressed by all is the lack of a public market for investors to look towards for payment. The price-earnings multiple have contracted so small that the public [offering] route has been all but abandoned. Emphasis should be made here, to the extent that the public market expands, so will venture capital.²¹⁸

Bell's letter describes venture capital activity in mid 1970s, with perspectives obtained from conversations with investors involved with venture-type investment in the New York City and East Coast financial community. The overwhelming majority of these operated out of established banks, investment houses, or other financial establishments, with venture investments representing a small part of a much larger institutional portfolio. He describes a depressed arc from 1973 thru 1976, with firms in the first three years "averag[ing] approximately three investments per year [per firm] with an average of \$1 million per investment." The average number of investments doubled in 1976. The companies Bell's contacts were investing in were larger, more stable, and more mature than previous years:

[t]he smallest company currently being invested has \$3 million in revenue with the largest having \$20 million in revenue. Only one of the new investments [in 1976] is in a relatively early stage company, early stage now consists of companies at least 4 or 5 years old.²¹⁹

Bell notes 1975 in particular as an "unusual" year," with the venture capitalists he talked to exploiting the lingering bear market to buy "undervalued public marketable securities" with "substantial resources were committed to this program. It was highly profitable."²²⁰ This type of

²¹⁸ Correspondence from Travers Bell (member SBA Task Force) to William R Hambrecht (member SBA Task Force), 13 September 1976, Box 191, Folder 1, William J Casey Papers, Hoover Institution, Stanford University, California

²¹⁹ *ibid*

²²⁰ *ibid*

activity, where investors consciously turn to stocks in the public financial markets whose values have been depressed by overall slumping market conditions, complicates the Task Force's narrative that equity investment as a practice was in immediate danger of collapse. In considering types of incentives that might be offered to venture capitalists to encourage investment in smaller, younger companies, Bell mentioned "investment tax incentives...focused toward the 'small businessman' (\$5 million or less)" and specifically mentions ERISA: "As you are well aware, the ERISA legislation has been a major disincentive for venture capitalists because of fiduciary unknowns."²²¹

Despite the Task Force's focus on encouraging equity investment in young businesses, it is not clear that equity investment was sought out or desired by small businesses in the 1970s. Steffes's "View of the Beginning" report notes explicitly that the majority of entrepreneurs at the time preferred debt-based financing of the type that could be secured from local banks:

The new businessman is very unsophisticated in the matter of equity and, typically, would borrow as much as possible. Also, he would rather have 100% ownership of a very small business than 10% of a very large business, and probably would not start the business at all if he thought he had to share management or ownership. Certainly, some of these opinions on his part may be misguided, but it is very difficult to change them.²²²

Steffe's observation is further borne out by historical research of the period, including the work of Reiner. It is apparent that, in the early 1970s, entrepreneurs were not interested in equity financing, perhaps due to an unwillingness to dilute their ownership shares of their own

²²¹ *ibid*

²²² "A View of the Beginning and Smaller Entrepreneur, the Commercial Banker, SBA and Their Inter-Relationships In Regard to the Obtaining of Capital," Don C. Steffes (Member, SBA Task Force), August 1976, Box 191, Folder 8, William J Casey Papers, Hoover Institution, Stanford University, California

businesses. At least, the venture capitalists who made up the Task Force believed this to be true. Steffes' dismissal of this preference as unsophistication on the part of "new" businessmen is reminiscent of the Task Force's calls for public education and concerns over the mistaken application of regulations.

If entrepreneurs at the time preferred debt financing, what was the "venture and equity capital" shortfall the Task Force had been convened to address? I was not able to locate any archival records that might shed light on why the SBA felt it necessary to convene the Task Force in the first place. However, we could surmise that following the scandals of the loan-based SBIC program, the SBA might have felt that equity investment was an avenue worth pursuing. I posit that the established investment community and the developing venture capital community used the recession of the early 1970s as a crisis opportunity to reframe the role of equity investment in the US economic and democratic project. This included centering the venture capitalist and their investment practices in a sector of the economy that had shown the potential for high growth during the government-funded Space Race days, and using the economic anxiety following the market crash and recession to shape financial regulations to the best advantage of venture capitalists rather than following contemporary business practices and norms.

Economic anthropologist Janet Roitman has examined the use of crisis and crisis narratives particularly in financial and economic contexts to create the conditions for regulatory and ideological change.²²³ Casey and the Task Force do not use the word "crisis" to describe their problem set. However, they isolate the market measures they have chosen, IPOs and underwriting, from the broader economic context, and cast their downturn as alarming,

²²³ Roitman, Janet. *Anti-Crisis*. Duke University Press. 2014

unexpected, and something that it is vital to repair. They do not use the word “recession” to describe the contemporaneous economic situation in the final Report, though others at the time did. They prefer to describe the worst economic downturn since the Great Depression in less systemic terms, as they did in a late draft, where the market collapse is referred to as a “bearish market.”²²⁴ These descriptive choices allow Casey and the other Task Force members to isolate the aspects of the recession that pertain most directly to their concerns, and to advocate for the direct treatment of these symptoms as most crucial to the nation’s economic recovery.

The activities of financial capital that pertain most directly to venture capital investment are treated as metonymic measures of the health of the nation in these early materials. This would continue throughout the composition of Report and through its release and promotion. The condition of these activities, IPOs, underwritings, the private placement of the securities of young companies, are described in report drafts and correspondence as “alarming,”²²⁵ “invisible,” and “all but abandoned.”²²⁶ Task Force members tie the state of IPOs and underwritings to the state of “a basic tenet of the American way of life—the free enterprise system.”²²⁷ In this way, they are able narrow the field of analytical view from a wide perspective of stacked national economic, social, and political crises that the country was still recovering from in 1976. Instead, the focus is fixed to one group of financial actors: small businessmen and equity investors. In this telling, the recession is not due to a destabilized foreign currency market,

²²⁴ p 5, Task Force on Equity and Venture Capital for Small Business, US Small Business Administration, *Draft Report*, January 1977, Box 193, Folder 1, William J Casey Papers, Hoover Institution, Stanford University, California

²²⁵ Task Force Draft Report, January 1977

²²⁶ Hambrecht letter

²²⁷ p 9, Task Force Draft Report, January 1977

an oil embargo, record breaking unemployment, or the resignation of a sitting President. Instead, the Task Force holds, even in these early materials, that the economic downturn follows from a weakening of the American principles of capitalism and free markets, equated with freedom, prosperity, and the American way, which might be restored to health through a regulatory rollback. The atrophy of these principles can be observed in the decline of these specific financial measures, and the restored health of the principles will be apparent when the financial measures return to profitable levels. The Task Force equates failure to support the the venture capitalist and his practices with failure to support America at large, writing in the Report that “[t]he greatest loss [from the downturn in underwritings], of course, is not only to the small businessman, but to the American economy and the American people.”²²⁸ Without the free flow of “risk capital,” another term for venture capital, “our economic progress and competitiveness in world markets will erode and young people will be denied opportunity,”²²⁹ as Casey articulated in his prepared Congressional statement several months after the publication of the Report.

Roitman describes the “crisis” designation as a “post hoc and necessary political denunciation of a particular situation.”²³⁰ In the crafting of their report, the Casey Task Force shift the crisis characterization away from the recession and its widespread impacts and toward the financial markets and the specific financial practices of members of the Task Force like Charles Lea. The crisis becomes the one circumscribed by rising capital gains taxes, ERISA

²²⁸ p 10, Task Force Draft Report, January 1977

²²⁹ p 1, Typescript of Statement by William J. Casey Before the Subcommittee on Capital, Investment and Business Opportunities of the Committee on Small Business, House of Representatives, 12 May 1977.

²³⁰ Roitman, p 49.

prudence standards, and financial regulations. Solutions to the roadblocks standing in the way of the growth of venture capital become the solutions to the recession.

Other Influences Within the Archive

The Casey archive of Task Force materials contains press clippings, letters, and copies of previous reports on venture capital and technological innovation commissioned by government agencies and private actors dating as far back as 1949. Many of these documents have been hand-annotated with underlinings and notes, presumably by Casey, indicating potential sources for ideas, concepts, and framings that would later appear in the Casey Report.

Multiple fact sheets regarding Texas Senator Lloyd Bentsen’s “Stockholder Investment Act of 1973” are present in the archive, and Casey refers directly to Bentsen’s proposed bill in his NVCA speech. Bentsen’s proposed bill contained several provisions which would later appear, in one form or another, in the Casey Report, including an early post-ERISA proposal to allow pension funds to engage in venture capital investing:

VENTURE CAPITAL FROM PENSION FUNDS — Pension managers would be given leeway to invest 1% of the assets of any pension plan in companies with capital accounts of less than \$25 million. This would be an exemption from any prudent man rule for 1% of the pension assets. However, the ‘leeway clause’ would not relieve fiduciaries from any prohibitions against self-dealing or fraudulent transactions. The ‘leeway clause’ would relieve a fiduciary from liability with respect to the *risk of an investment*. This provision would facilitate the flow of pension investments to new and expanding smaller companies that are in great need of equity capital and which present a higher than normal risk but offer the possibility of a higher than normal return.²³¹

²³¹ “Stockholder Investment Act of 1973” Senate Bill 2842, proposed by Senator Lloyd Bentsen of Texas, a factsheet of which is present in Casey’s papers related to this speech. Hoover Institution, Stanford University

Other provisions included limitations on the stock holdings of pension managers; a graduated capital gains tax; and liberalized capital loss treatment for investors and corporations.

A few months after the Casey Task Force was convened and as a draft of the Casey Report was being prepared, NVCA published their own report on venture capital. The report, entitled, “Emerging Innovative Companies--An Endangered Species,”²³² appears in the archives, along with a letter from Task Force secretary Peter McNeish, commenting on the similarities between the two documents.

The close parallels between their report and ours is, to say the least, interesting, i.e:

-Its ‘political’ charm is jobs and increased tax revenues impact, and

-It hits hard on drying up of venture capital investments (public and private)

Though having a slightly different slant toward ‘emerging innovative’ companies, stressing the need for management, and being less specific, their recommendations are also very close to ours.²³³

The NVCA report parallels many of the approaches and framings the Task Force would use. This is not surprising. As discussed previously, the Task Force and NVCA shared several key members and research associates. The NVCA report’s opening illustrates that the Task Force was not alone in their urgent linkage of the health of venture capital practices and the health of the nation:

Unless some solution to the present shortage of capital for large and small companies alike can be found, America’s productive

²³² The impact of this report is addressed in the Introduction.

²³³ Correspondence from Peter McNeish to William J. Casey regarding similarities between NVCA report and Task Force report; 1976 December 9; William J. Casey Collection; Box 191, Folder 1, Hoover Institution, Stanford University

resources will grow old and the productivity of its workers will decline. Should this happen, our standard of living will decline.²³⁴

Both the Casey Report and the NVCA report rely heavily on a MIT Development Corporation study on “sales and employment trends among selected young high technology companies, innovative companies, and mature companies.”²³⁵ Both use this study to argue for the unique economic impact of young high technology companies in particular, though in theory the Task Force was convened to address equity investment for small businesses in general. The MIT study, entitled, “The Role of New Technical Enterprises in the US Economy,” was commissioned and published in January of 1976 by the US Commerce Department’s Commerce Technical Advisory Board (CTAB). Given the reliance on the “New Technical Enterprises” report by both the Task Force and NVCA, it is worth spending some time unpacking its origins, methodologies, and findings.

MIT’s “New Technical Enterprises” builds the foundations for much of the economic reasoning and assumptions of the Casey Report. Its introduction, written by the Assistant Secretary of Commerce for Science and Technology, begins, “The climate today as seen by entrepreneurs is very poor for the start-up of highly innovative, risky, advanced technology companies, and our impression is that fewer and fewer of them are emerging.”²³⁶ The report itself goes on to assert that “[t]echnology plays a crucial role in the maintenance of a sound

²³⁴ National Venture Capital Association, “Emerging Innovative Companies--An Endangered Species.” 1976 November 29. William J Casey Collection. Box 191, Folder 6. Hoover Institution/Stanford University.

²³⁵ NVCA “Emerging Innovative Companies.” p 1

²³⁶ Commerce Technical Advisory Board, Department of Commerce, “The Role of New Technical Enterprises in the US Economy,” January 1976, William J. Casey Collection, Box 192, Folder 3. Hoover Institution, Stanford University

domestic economy, its application is essential for the enhancement of productivity, creation of new jobs, and our ability to compete in the world marketplace.”²³⁷ The report continues

Many foreign countries recognize the importance of maintaining a healthy climate for technical innovation and have taken positive steps particularly in the support of new product development, to encourage the innovative process. Our country unfortunately has no effective spokesman for either the entrepreneur or new enterprise generation. Congress has historically shown an increasingly lack of understanding of the innovative process, *the need for incentives for the entrepreneur and the venture capitalist*, and the role of new technical enterprises in the US economy. While mechanisms for more effective applications of science, technology, and innovative management represent a general requirement of both large and small companies, *the new technical enterprise has made a unique contribution to the American economy*.²³⁸ [emphasis added]

The role of the venture capitalist is not a central concern of the MIT report. Nevertheless, in this paragraph the linkage between the interests of “innovative” entrepreneurs and the venture capitalist are clearly made. In the Task Force’s hands, this linkage would become almost parasitic, as the Task Force attaches the figure of the venture capitalist to the figure of the innovative entrepreneur and subsumes the latter into the former.

MIT’s emphasis on the role of the venture capitalist in “new technical enterprises” is not surprising. By this point, the MIT Development Corporation had been actively investing in entrepreneurial projects developing at the Institute. MIT was heavily involved with Georges Doriot’s ARD in the early days of the firm. ARD even had offices in buildings on the MIT campus.²³⁹ Financial regulations, particularly those governing the investment of trust assets, had

²³⁷ CTAB, “New Technical Enterprises,” p 1

²³⁸ CTAB, “New Technical Enterprises,” p 1

²³⁹ Etzkowitz, Henry. *MIT and the Rise of Entrepreneurial Science*. Routledge. 2002. p 3-4, 74

led MIT to step back from its financial investments in dedicated venture funds. However, the MIT Development Corporation, as a separate entity from MIT the Institute, remained interested and engaged with the venture capital community.

The MIT report positions the venture capitalist centrally within the high technology sector, and the high technology sector centrally within the American economy at large. The report emphasizes the unique, transformative role of what are referred to as “young high technology companies,” then pivots to the importance of venture capital itself, framing the venture capitalist as the actor most capable of creating the “environment for a new generation of technical enterprises necessary to yield a future Texas Instruments, Xerox, or Polaroid.”²⁴⁰ This type of bait-and-switch rhetoric would be repeated in the Casey Report. The MIT report itself bases its logics on a three-part comparison between “mature companies,” “innovative companies,” and “young high technology companies,” comparing their rates of growth across sales and jobs across different periods of time. The tables as they appear in the published report are replicated below as figures 2 and 3.

²⁴⁰ CTAB, “New Technical Enterprises,” p 1

TABLE I
Average Annual Growth (Compounded) ⁽²⁾
1945-1974

Innovative Companies	Sales	Jobs
Polaroid	14.0%	
3M	14.1%	9.0%
IBM	16.8%	9.0%
Xerox	24.2%	10.2%
Texas Instruments (1953-1974)	21.2%	19.4%
Weighted Average	16.5%	17.3%
		10.8%
Mature Companies	Sales	Jobs
Bethlehem Steel	4.9%	
DuPont	8.6%	-1.7%
General Electric	8.4%	2.6%
General Foods	8.2%	3.5%
International Paper	9.2%	4.5%
Proctor & Gamble	9.6%	2.8%
Weighted Average	7.8%	3.8%
		1.9%

⁽²⁾ *Moody's Industrial Manual*, Moody's Investors Service, Inc., New York, New York.
 See Appendix A for more detailed data.

The above data cover the 29 year period from 1945 through 1974. Over the short 5 year period 1969 through 1974, young, high technology companies have shown a far more spectacular growth rate. (See Table II.)

Figure 2: CTAB, "New Technical Enterprises," p 2

TABLE II			
Average Annual Growth (Compounded) ⁽²⁾			
1969-1974			
Young High Technology Companies			
Date Incorp.		Sales	Jobs
1968	Data General	140.5%	82.5%
1959	National Semiconductor	54.3%	59.4%
1960	Compugraphic	50.2%	24.0%
1957	Digital Equipment	36.8%	30.7%
1964	Marion Labs	24.5%	25.4%
	Weighted Average	42.5%	40.7%

⁽²⁾ *Moody's Industrial Manual*, Moody's Investors Service, Inc., New York, New York.
See Appendix A for more detailed data.

During the five-year period 1969-1974, the average annual percentage growth rates of the companies in each of these three groups was:

	Sales	Jobs
Innovative Companies	13.2%	4.3%
Mature Companies	11.4%	0.6%
Young High Technology Companies	42.5%	40.7%

Figure 3: CTAB, "New Technical Enterprises," p 3

The calculations presented here are another example of metonymic measurements and calculations. The calculations used in the "New Technical Enterprises" are mathematically correct, however the manner and context in which they are deployed presents a distinctly slanted view of the role of these "young high technology companies" in the national economy, and subsequently the role of venture capital in those companies and the economy at large. In many ways, the MIT report would serve as they transplanted scaffolding of the Casey Report.

The MIT report presents three tables of figures as “average annual growth rates (compounded)”. “Mature” companies are represented by Bethlehem Steel, DuPont, General Electric, General Foods, International Paper, and Proctor; the “innovative” companies are represented by Polaroid, 3M, IBM, Xerox and Texas Instruments; and the “young high technology companies” are represented by Data General, National Semiconductor, Compugraphic, Digital Equipment, and Marion Labs. The tables take up a full two pages of a fifteen page printed report. The report argues that young technology companies, with their high rates of growth, are of unique benefit to the national economy, saying

It is suggested that the concept of innovation within the large corporation is viewed mainly in terms of cost reduction and increased productivity in an effort to remain competitive. In the small technically-based new enterprise, *innovation is a way of life and is responsible for the creation of new products, processes and job opportunities.*²⁴¹ [emphasis added]

The report sells this conclusion in two ways. First, it creates the impression that the rates of growth shown by the “young high technology” companies during their early years is normal, expected, and sustainable by referring to these high growth rates as “trends.”²⁴² Second, the report compares companies at vastly different development stages, presenting growth calculations as percentages. In this way, a young company that doubles its very small workforce can appear to have a larger impact on general employment than a larger, more mature company, even if that larger company is adding more jobs in total. In these ways, “growth” is decontextualized from the broader economic and social context.

²⁴¹ CTAB, “New Technical Enterprises,” pp 3-4

²⁴² CTAB, “New Technical Enterprises,” p 4

The sales and job growth rates of the “mature” and “innovative” companies are calculated and averaged over a period of 30 years, while the “young high technology” companies’ job and sales growth are calculated and averaged over five years. The growth rates of the companies are calculated and presented without reference to companies at the same development stage in other sectors outside of high technology, which might in theory show if other successful young companies experience similar growth patterns during their early years. By calculating the compounded average annual growth of each set of companies, the calculations presented smear dozens, or in some cases, essentially *hundreds* of years of growth and economic impact on the part of the “innovative” and “mature” companies into one figure, which is weighted toward the most recent period of its business cycle where its growth in terms of sales and employment would be more stable. The figures presented for the “high technology” companies, covering the first few years of their incorporated lives, are weighted towards periods of growth and expansion, even more so because of the economic context of the time in which they were launched.

The youngest “high technology” company of the group, Data General, was 6 years old in 1974, while the elder statesman, Digital Equipment, was 17 years old. The youngest “mature” company, the reincorporated Bethlehem Steel, was 70 years old in 1974, while the oldest, DuPont, was 172 years old. The “young high technology” companies and the “innovative” companies all benefitted from the Space Race, either through direct government funding in the form of grants, subsidies, or procurement contracts; or through the hiring of scientists and engineers who had been trained in Space Race funded university departments. The MIT report acknowledges this, writing

The business environment which led to the growth of companies like IBM, 3M, Polaroid, Texas Instruments, and Xerox in the post World War II years, and which encouraged the establishment of Digital Equipment, National Semiconductor, and other high technology companies in the 1950's and 1960's was a favorable one. Entrepreneurs were plentiful and enthusiastic. They were encouraged by economic incentives and by the freedom of the system which allowed them to function and to be creative without the constraints inherent in large corporations. *US Government research and development funds were available to small companies, and more than a few entrepreneurs built successful businesses on DOD and NASA contracts that nurtured the 'know how' ultimately utilized not only for the sponsor's mission but also in high technology commercial products.* Capital was obtainable, either from established venture capital sources, individual investors or through the sale of securities to the public.²⁴³ [emphasis added]

The compounded annual average growth rate calculation, given as a single figure percentage, presents the sheer fact of growth as more impactful than the companies themselves, or their actual sales or employment figures. As an example: the most impressive “young high technology company,” as judged by the presented compounded annual average growth rate figures, is Data General. Incorporated in 1968, the six year old company is listed as having a growth rate of +140.5% in its sales and +82.5% in its workforce. In raw numbers, what this translates to is an increase in sales from 1 million in 1969 to 83.2 million in 1974, with Data General's workforce growing from 170 people in 1969 to 3,452 in 1974. While this expansion is certainly impressive, the compounded annual average growth rate figures are misleading in terms of the perceived impact and sustainability of this expansion. To compare, “mature” General Electric's compounded annual average growth rate is presented as +8.4% of its sales and +3.5% of its workforce from 1945-1974. This translates to an increase in sales from \$1.298 *billion* in

²⁴³ CTAB, “New Technical Enterprises,” p 4

1945 to \$13.413 billion in 1974, with its workforce expanding from 148,233 people in 1945 to 404,000 people in 1974.²⁴⁴ While Data General grew more in comparison to itself during its six years old life, to claim that it had a larger impact on US society at large than General Electric in terms of services, employment, or economic contribution, is to value growth for growth's sake, or growth for the good of those who would benefit from growth-as-such, namely equity investors.

The MIT report makes observations and policy recommendations that are oriented to benefit of venture capitalists and other investors. Several of the recommendations would later appear in some version in the Casey report, including a reduced capital gains tax and a general review of SEC rules and reporting requirements.²⁴⁵

I am not arguing here that readers of the MIT report were duped or otherwise fooled by the measurements presented. Rather, I argue that the MIT report presented a set of measures that intentionally and exclusively presented the *growth* of high technology companies as of unique benefit to the American economy and free market ethos, regardless of any other impacts. Moreover, it is not simply any growth, nor was it growth as measured in absolute numbers of new jobs created or profits earned. Rather, the growth that matters for the MIT report is growth that might best be translated into significant increases in the value of equity shares. The regimes of perceptibility that the MIT report participates in privilege financialized logics of growth while obscuring other economic, social, and political measures and effects.

²⁴⁴ All data cited in this paragraph can be found in Appendix A of CTAB's "New Technical Enterprises" report, on pages 14 and 15.

²⁴⁵ CTAB, "New Technical Enterprises," pp 12-14

The logics of growth presented here—whereby a fast rate of exponential growth in and of itself is argued to be better for the economy and society as a whole than stability—represents an early manifestation of what is now called “disruption” or “disruptive innovation.” Disruptive innovation is the idea that stable industries must be overturned in favor of “innovative” newcomers whose business have the potential to grow in market value quickly. The initial high growth potential of such young companies can be wildly profitable for certain equity investors. But they are also unstable. Data General, for example, was acquired and shut down by EMC in 1999. Digital Equipment would also collapse in the 1990s, and was eventually acquired by Compaq. The appearance of the “disruption” forerunner in this report, and the fact that its logics reappear in the NVCA and Casey Reports, is a crucial example of how this exploitative market motivation was a core component of the venture capital-backed innovation system from the outset.

CHAPTER THREE

EPITOMIZING AMERICAN FREE ENTERPRISE: THE DIFFUSION OF THE CASEY LIFE CYCLE MODEL

After its publication, the Casey Report was influential along two distinct but related paths. First, the Report put forward a set of policy recommendations. The influence of these recommendations can particularly be felt in the areas of ERISA and SEC regulation reform. In these areas, the archival, citation, and oral history evidence indicates that the writings and testimony of Task Force members, including that of William J Casey, Duane Pearsall, and Charles Lea were especially influential. This material is explored in detail in Chapters Five and Six. This chapter is dedicated to the Report's second path of influence.

The published text of the Casey Report dedicated a full page to a detailed schematic model of "A Growing and Successful Company." This model, fully entitled "Life Cycle of a New Enterprise: Model of a Growing and Successful Company, 1975-1976 Financial Market Conditions," would prove to be influential in its own right in a number of areas, including regulatory policy, the popular perception of venture capitalist, and the professionalization of the developing community, just as the concrete policy recommendations in the Report would be.

In the years following the publication of the Casey Report, the Model, variously referred to as the "Casey Model" and the "Life Cycle Model," would become detached from the original context of the report, and become a referential touchstone in several areas of policy and thought not directly related to the Task Force's original policy goals. Over more than fifteen years of citations and references, the Model would eventually be severed from the contexts of its creation and its original authorship. Multiple federal agencies, including the SBA and the Office of

Technology Assessment would either claim the model as their own work product or be mistakenly credited for it by others. Often these misattributions occurred as the Model was being cited as factual background material. The model was *genericized* both in its authorial origins and in terms of its original intellectual purpose. As its context of creation faded away, so did awareness of the intellectual motivation for its creation, i.e. the advocacy of a specific policy agenda. As the Life Cycle Model was rendered from something specific into something generic, its values, logics, and conclusions regarding the role of limited partnership equity venture capital in the high technology sector became part of what communication historian Caroline Jack has referred to as the “economic imaginary”²⁴⁶ of the technology and innovation sector, or what economic historians Foucade and Khurana call the “common sense of capital.”²⁴⁷ Both of these articulations are used to describe the ways in which specific ideological concepts, the economic philosophy of Milton Friedman in the case of Jack’s analysis, or the theory of shareholder value in the case of Fourcade and Khurana, become common background knowledge or concepts that are assumed to be part of standard economic thinking.

Over the course of a decade and a half (and beyond), the Life Cycle Model moved from serving a persuasive function specifically tied to the policy and regulatory goals of the Task Force to serving as a basic, commonly invoked illustration of how high technology businesses functioned. This transformation occurred despite significant contemporaneous evidence that the Life Cycle Model was not based in a rigorous study of prevailing business conditions, and was intended to be a persuasive tool tied to a specific policy agenda.

²⁴⁶ p 518. Jack, Caroline. “Producing Milton Friedman’s *Free To Choose*: How Libertarian Ideology Became Broadcasting Balance.” *Journal of Broadcasting and Electronic Media*. September 2018. pp 514-530

²⁴⁷ p 348. Fourcade, Marion and Rakesh Khurana. “The Social Trajectory of a Finance Professor and the Common Sense of Capital.” *History of Political Economy*. Vol 49 Issue 2. 2017. pp 349-382

This chapter will examine the Life Cycle Model,²⁴⁸ its conditions of creation so far as they can be determined, and its reference and citation record in the years following the publication of the Casey Report. In the first section, I will discuss different theories of how models function as performative objects regarding policy, professionalization, and the construction of epistemic infrastructures and cultures of capital, with a particular focus on models of innovation and of economic processes. In this discussion and throughout the chapter, I refer to “performativity” in the sense of Donald MacKenzie’s theory of the performativity of economic and financial theories.²⁴⁹ MacKenzie argues that certain economic and financial theories influence the market realities they purport to only describe. In the second section I will examine the model itself according to these theories. In the third section I will examine the citations and references to the Casey Model as they appear in the historical record, primarily in US governmental archives, law review articles, policy papers, and other popular press items. Though this analysis, I argue that the Life Cycle Model meets the standard for MacKenzie’s strongest category of performativity, Barnesian performativity. The Life Cycle Model, through its diffusion, citation, its use as a justification of policy changes, and its incorporation into the epistemic infrastructure of US business and the high technology sector, had a material impact on the functioning of that sector, shaping business practices and policy to operate more in line with the dictates of the Model.

²⁴⁸ Both “Casey Model” and “Life Cycle Model” are used at different points in the Model’s public intellectual history. In this chapter, I use “Life Cycle Model,” as it is the name that appears in the archival record most frequently.

²⁴⁹ MacKenzie, Donald. *An Engine Not A Camera: How Financial Models Shape Markets*. MIT Press. (2006) p 15-25

Theorizing the Model

The concept of the “model” and the work that it performs is well studied in the field of science and technology studies. In this section, I will be examining theorizations of the model specifically as it appears in policy debates surrounding innovation policy and financial and economic policy in order to better understand the roles played by the Life Cycle Model after its initial publication. In the decades following the Casey Report’s initial publication, the Life Cycle Model traveled through multiple policy areas. It was invoked as a demonstration of expertise, a referential touchstone, and a source of factual background context.

Tracing the Life Cycle Model’s adoption in innovation and business thought and writing allows us to better understand the processes by which the high technology sector in the US became financialized. For a decade after its release, those arguing for policy changes to boost financialized investment in high technology would reference the Life Cycle Model as evidence that such investment practices were the historical norm, despite contemporaneous evidence to the contrary. Building on the work of Benoit Godin, Michelle Murphy, Rebecca Slayton, Stephen Hilgartner, Donald MacKenzie, and Marion Fourcade, among other, the following sections will present a set of theoretical understandings of models through which the transfigurations of the Life Cycle Model can be understood.

The Life Cycle Model progressed through three separate but overlapping stages from its initial publication through its deployment and diffusion through a set of policy issues and literatures. First, in the Casey Report the Life Cycle Model is used as a persuasive rhetorical object, intended to support the specific policy goals of the Report itself. Here, I explore how the schematic construction of the Life Cycle Model contributed to its translatability and

transportability between disciplines and policy areas, making it an understandable and compelling rhetorical tool in multiple contexts.

A few years after the publication of the Casey Report, the Life Cycle Model entered a second stage as an object of expertise as it is deployed repeatedly in debates surrounding participation in minority business programs administered by the SBA. Here, the model is used as part of an invocation and performance of expertise by the SBA's critics. Minority businessmen, in debating the legitimacy of a specific set of regulations, invoked the Life Cycle Model in part to establish their own expertise in SBA policy, and also to establish their own standing to participate in policy discussions at the Federal level. Further, I discuss the ways in which the Life Cycle Model became part of an invocation and performance of expertise on the part of minority business owners as they negotiated with the SBA.

Based on these citations, it also appears that these businessmen understood the Life Cycle Model to be part of the 'epistemic infrastructure'²⁵⁰ of how businesses function and how business interacts with government agencies. To recall, this describes the perceived socio-technical mesh of bureaucracies, cultural practices, technical constructs, and physical infrastructures that straddles and connects governmental agencies like the SBA with the world of civilian industry and business. A nongovernmental 'business discourse'²⁵¹ occurs within business communities at conferences, in professional publications, and through trade associations and correspondence, through which professionals develop and trade knowledge of how best to interact with and manipulate the bureaucratic governance structures like the SBA. 'Epistemic infrastructure,' as a

²⁵⁰ Murphy (2017), p 6

²⁵¹ Fourcade and Khurana, p 349

concept that both includes knowledges and understandings as well as bureaucratic processes and physical infrastructures, allows us to identify and examine the ways in which the Life Cycle Model became a tenacious reference within the business discourse of small and minority owned businesses in the United States, despite the SBA's (surprising) best efforts to the contrary.

Parallel to and beyond this deployment, the Life Cycle Model was also becoming part of the 'economic imaginary'²⁵² of the high technology sector in the United States. The economic, financial, and ideological logics and assumptions of the Life Cycle Model became a sort of common sense background knowledge regarding how high technology firms operated in the United States, with particular regard to the central role of venture capitalists in that operation. In the 1980s, the Life Cycle Model separates from its original contexts of publication, and is cited not back to the Casey Report or Task Force, but rather to one of a handful of federal agencies including the SBA in general and the Office of Technology Assessment. The status of the Life Cycle Model as a source of factual background knowledge with no acknowledgment of its origins as a persuasive rhetorical object in turn shaped the continued professionalization of the venture capital community. As late as the mid 1980s, venture capitalists still felt the need to define basic aspects of itself to policy makers in testimony and other documents and the public at large through media relations. There was still broad confusion as to what types of financial activities constituted 'venture capital.' Eventually, as the theory of shareholder value became the "common sense of capital,"²⁵³ in a similar way the Life Cycle Model influenced discussions of venture capital at a policy level as well as the evolution of the venture capital industry itself.

²⁵² Jack, p 518

²⁵³ Fourcade and Khurana, p 348

tracks the company's growth through a time period of anywhere between nine and twenty years according to the chart's notations, mapping an extensive set of "Company Characteristics," "Applicable Government Regulations," and "Principle Financing Sources" with the company's age, revenues, and debt load. Unsurprisingly, the "applicable government regulations" are all discussed in the Casey Report, as well as the "principle financing sources." The Life Cycle Model, as presented here, portrays an economic micro-world, tailored to the concerns and considerations of the Casey Report.

The "Life Cycle" as depicted is optimistic, showcasing a generic company pouring capital and effort into research and development, sticking with the project through difficult early years, and ending on the track to strong growth. The schematic shows "Annual Net Income" and "Cumulative Net Income," noting the "Annual Break Even Point" at the end Phase 2, "Early Growth," attractively positioned at the schematic's middle point, and the "Cumulative Break Even Point," at the end of Phase 4 or "Sustaining Growth." Both income lines dip into the negative numbers in the company's younger days but eventually exit the schematic on a cheerful "up and to the right" trajectory, powered by a lucrative entry into the public stock markets, also known as an initial public offering or IPO.

There are no materials in the Casey papers that relate directly to the development of the Model itself. It is unclear at this point which member of the Task Force was responsible for the design of the schematic or the choice to include it so prominently. However, a 1983 document entitled "The Issue of 20 Year Firm Development," prepared by the SBA as a reference appendix in response to Congressional queries quotes a 1981 letter by Harvard Business School Professor and Casey Task Force member Patrick Liles, in which he states:

...the [Life Cycle] chart was in no way intended to represent the results of a study by the Task Force or a summary of studies done by others. The chart was only intended to give a very generalized notion of a new enterprise life cycle.²⁵⁵

In fact, an SBA description the Life Cycle Model as a “hypothetical”²⁵⁶ intended to serve as a scaffold for the “collective experience and wisdom”²⁵⁷ of the Task Force members appears in multiple documents and hearings. However, the text of the Casey Report does not describe the Life Cycle Model as a “theory” or “intuition” or even as a reflection of the “collective wisdom and experience” of the Task Force members. The Model as presented is not hedged at all. Rather, it is introduced in this way: “The chart on the next page illustrates the stages a company must go through to achieve maturity as a corporate entity.”²⁵⁸

The “life cycle” metaphor at the core of the model is not unique to the Casey Model or unexpected given the intellectual context of managerial and innovation thought at the time. Science and technology scholar Michelle Murphy has noted the heavy influence studies of ecology had on the development of business management thought in the 1970s. Murphy states

²⁵⁵ p 402. Prepared Testimony of James C. Sanders, Administrator, Small Business Administration. “Appendix: The Issue of 20 Year Firm Development.”; U.S. House. Committee on Small Business. Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems. H.R. 863, to Amend the Small Business Act. Hearing, 20 April 1983.

²⁵⁶ p 95. Small Business Administration. “13 CFR Part 124. Amendment 13. Minority Small Business and Capital Ownership Development Assistance SBA Rules and Regulations.”. 23 November 1981. This descriptions first appears in the SBA rule making document cited above that establishes 8(a) participation limits. This rule making is either reproduced in full, in part, or in revision as an attachment to testimony in several hearings including: U.S. Senate. Committee on Small Business. Federal Minority Business Development Program. Hearing, 24 March 1983.; U.S. Senate. Committee on Small Business. S. 1022 A Bill to Make Small Businesses Owned by American Indian Tribes Eligible For the SBA 8(a) Program. 11 May 1983; U.S. House. Committee on Small Business. Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems. H.R. 863, to Amend the Small Business Act. Hearing, 20 April 1983.

²⁵⁷ SBA, Minority Small Business. p 95.

²⁵⁸ Published Casey Report, p 4

that the “cybernetically inflected...systems ecology” that emphasized the management of systems of organic and inorganic components, “its flows, relationships, and second-order consequences, made systems ecology enormously attractive as a management ideology for business.”²⁵⁹ The Casey Report’s reliance on the *life cycle* as a central metaphor, especially in this deployment which emphasizes the life of the corporation within a broader system of laws, regulations, and financial resources, fits the Model into an existing trend in managerial literature. Rather than separating the firm out from its environment(s), the life cycle metaphor implicitly creates relationships and systems of interdependencies between the business itself, the law, and other financial actors. The Report then argues that the business’s environment could be improved by select, directed interventions in the legal and financial ecosystems the business grows within. This metaphor would be taken up and extended by several actors in their citations of the Life Cycle Model.

The Casey Report does not discuss the Model solely as a “life cycle.” Rather, the Report adds the concept of a “pipeline,” which was less prevalent in the literature of the time:

The cycle of a business enterprise requires different types of capital at each stage of its life. The highly developed US marketplace has spawned investors for each of these many stages. The result can be imagined as a financial pipeline along which successful companies move from start-up to maturity. If the pipeline flows smoothly, all types of investment capital can function. If it clogs at any point, capital dries up all along the pipeline. Facilitating the turnover of initial investments to more conservative investors is critical to unblocking the flow of initial higher risk investments in smaller businesses. In fact, the Task Force believe that creating better prospects of liquidity for early

²⁵⁹ Murphy (2006) p 132

investors will, in itself, restore the flow of equity investment in the early stages of business life.²⁶⁰

The metaphors of “life cycle” and the “pipeline” are each sequential, step by step. All life stages or parts of the pipeline must be moved through in a specific sequence, and none can be skipped before progressing to the next. The text of the Casey Report similarly describes the organizational, financial, and temporal figures presented in the Life Cycle Model as stages that “must” be achieved and moved through before later stages can be arrived at:

Traditionally, businesses have used a mixture of internal and external financing for their needs. Small businesses cannot grow very fast if they have to finance themselves solely out of their earnings. In most cases external sources *must* provide the financing for significant growth. As show on the chart, however, a hypothetical company moving through the system *must* reach a revenue level of up to \$10 million before public financing becomes even remotely possible. Moreover, *it is not until* business reaches revenues of \$25 to \$40 million that all sources of public and private funding become, in some measure, available.²⁶¹

The stages set out in the Life Cycle Model depict successful entry into the public financial markets as a vital step to reaching “maturity,” and self sufficiency. The policy recommendations made in the Casey Report, including loosening the prudence standard in ERISA, lowering the capital gains tax, and the revisions to SEC Rules 144 and 146, are framed as facilitating that entry. Companies “without access to public securities markets” are depicted as having a grim future, stuck in a debt cycle of short term notes “renewed and rewritten at regular intervals”²⁶² by the local bank. Not even that debt-bound future was secure, however: “as more and more local

²⁶⁰ Published Casey Report, p 4-6

²⁶¹ Published Casey Report, p 6. Emphasis added.

²⁶² Published Casey Report, p 8

banks are absorbed by large banks, the entrepreneur may find himself faced with a more impersonal and cautious branch manager, who may not want these small business risks.”²⁶³ The Life Cycle Model, and the Casey Report’s accompanying narrative, depicted early and frequent infusions of private equity investment followed by a debut on the public securities markets as the only way for companies to grow.

The Life Cycle Model is presented in the context of the Report as a factual, realistic depiction of how a “growing and successful company” works, financially, organizationally, and with regard to legal and regulatory considerations. Its presentation is as a generic and widely applicable model, both in the schematic as drawn and in the explanatory text in the Casey Report. No industry or sector or product is explicitly identified. However the characteristics and life stages described, such as the extensive time and money dedicated to “R&D,” indicate a company in the high technology sector. This identification is supported by later SBA documents that identify the Casey Report and the Life Cycle Model as narrowly concerned with the problems of “new, high-technology firms.”²⁶⁴ But since the model is identified only as a “New Enterprise” and “A Growing and Successful Company,” the Model is not restricted to that sector as presented.

There are two observations to be made here. The first is that the commissioning body behind the Life Cycle Model, the SBA, appears to have understood it to be narrowly relevant to a specific industry and a particular set of policy objectives. This is clear from the SBA documents mentioned above, which will be contextualized and examined in more detail below. The second

²⁶³ Published Casey Report, p 8

²⁶⁴ SBA, *Minority Small Business*. p 95.

is that the Life Cycle Model was nevertheless expressed in generic terms that allowed it to be extrapolated from and applied to policy areas, industries, and sectors outside of high technology. This genericness, translatability, and potential applicability beyond the specific policy debates the Model was crafted to address continued to be exploited for years after the Casey Report was originally published.

In his work on models of the innovation process, historian Benoit Godin argues that genericness, translatability and cross-disciplinary applicability are the rhetorical strengths of pictorial or schematic innovation models similar to the Life Cycle Model. The schematic or figurative simplification of “a reality” or a “class of theories” reduces what is otherwise a particular argument or point of view to an abstract portrayal of “no specific opinion.”²⁶⁵ The translation into schematic form, Godin argues, strips the subjectivity and specificity from the process the model symbolizes. A set of subjective observations or theories are rendered as seemingly objective illustrations of a reduced, simplified, and basic reality. Schematized, the model becomes author-less and “canonical.”²⁶⁶ Godin argues that the schematized or figurative model

serves to give existence to a typical or exemplary theory or conceptual scheme, to synthesize, to caricature. Reduced to a generic appearing schematic, models constructed in this way can be intellectually picked up from their original application and re-applied in a variety of contexts. The schematic form takes a particular idea and renders it transportable in a way that other expression do not. A model is a paradigmatic perspective, in the sense of a summary or caricatures of a theory or a set of theories of tradition.²⁶⁷

²⁶⁵ Godin (2017), p 213

²⁶⁶ Godin (2017), p 213

²⁶⁷ Godin (2017), p 211

This paradigmatic abstraction schematizes and renders objective “stories or narratives,”²⁶⁸ as we see in the Life Cycle Model. Here, the model dramatizes and codifies business and economics against a backdrop of financial policy. Particular policy and tax questions and financial inflection points are highlighted and centered. Godin observed that the models of the innovation process that became influential and widespread in the 1950s-1980s did so because they addressed themselves directly to policy makers:

Sociologists, economists, and scholars from management schools and public policy started modeling innovation and technological innovation as explicit contributions to policy: improving agricultural practices, maximizing the benefits arising out of basic research, making firms more competitive at the national and world market levels.²⁶⁹

The Life Cycle Model, as depicted in the Casey Report, similarly addresses itself to policy concerns while at the same time attempting to tell a generic business narrative. Particular emphasis was placed on the importance of participating in public securities markets and the making available of institutionally controlled capital to venture capital funds. Specific policy outcomes that were argued for in the text of the Report were dramatized within the schematic of the model. The Life Cycle Model employs both generic and specific approaches. On the one hand, the narrative of the business “life cycle” presented appears non-specific. The Model might be extrapolated to any industry. On the other hand, specific laws, regulations, and funding structures are invoked by name and linked to stages of the life cycle. So in the Life Cycle Model we have a rhetorical object that is constructed as a generalizable schematized narrative with a specific advocacy agenda embedded within it. This approach, depicting the policy agenda as

²⁶⁸ Godin (2017), p 203

²⁶⁹ Godin (2017), p 220

beneficial for business generically instead of in a specific sector, was effective in accomplishing those policy reforms. The embeddedness of these policy recommendations further meant that even after the policy agenda was achieved, the continued influence of the Life Cycle Model continued to promote those policies.

As the Life Cycle Model remained in circulation, those emphases continued to influence discussions regarding the high technology sector. The Task Force's emphasis on financialized institutionally funded limited partnership venture capital remained in circulation though the discursive presence of the Model even as the Task Force itself faded from view. The Life Cycle Model was a conceptualization of the high technology sector that was in competition with other conceptions, including funding models that relied on government support or direct spending. The schematic was altered in some of its later incarnations, and aspects of the Model, like its invocations of specific laws and regulations, were frequently omitted. However, the fundamental animating assumptions and values of the Task Force remained in play.

Godin describes schematic, policy-oriented “innovation” models as occupying a transdiscursive, action-oriented rhetorical space. Their narrativized simplification and schematization makes the concepts, assumptions, and values they contain more portable, between theorists themselves and between theorists, social scientists, practitioners, and policy makers. The policy-oriented model is readily applicable, it “directs change and action”²⁷⁰ through its strong narrative momentum. In this case that momentum was locked into a specific sequence through the “life cycle” and “pipeline” metaphors. The policy-oriented model,

²⁷⁰ Godin (2017), p 219

presented as a “paradigmatic perspective”²⁷¹ drawn from reality, illustrates a “proper ordering of the efforts.”²⁷² Here, the Life Cycle Model itself became a to-do list of policy solutions to a perceived narrow economic crisis.

The narrative of the Life Cycle Model further fulfills an *anticipatory* function. Murphy’s work on the extension of the concept of “the economy” to touch all aspects of human life describes the manner in which financialized *anticipation* directs human action in the present. Murphy describes “anticipation” as a “temporal orientation toward the future and an affective state,” bringing together “yearning, desire, aspiration, anxiety or dread.” This affective state brings the future into the present as a tangible thing. Anticipation also adds an affective sheen to financial speculation, a specifically future-oriented financial activity, “enlivening its probabilistic and gambling urges with feeling.”²⁷³ Anticipation allows the affective abstraction of the present to serve the future, and the future to drive the present. Murphy draws attention to the affect-laden nature of seemingly sterile quantitative concepts like GDP and economic dominance in her descriptions of these concepts as “phantasmagrams”:

The macroeconomy is miraculated for us through measures like GDP that operate as *phantasmagrams*, quantitative practices that are enriched with affect, propagate imaginaries, lure feeling, and hence have supernatural effects in surplus of their rational precepts. The term *phantasmagram* draws attention to the felt and astral consequences of social science quantitative practices, such as algorithms, equations, measures, forecasts, models, simulations, and cascading correlations. I use the term to name the affective stimulus of an index like GDP beyond its calculative efficiencies....Phantasmagrams conjure ineffable realms that can

²⁷¹ Godin (2017), p 211

²⁷² Godin (2017), p 219

²⁷³ Murphy (2017), p 115

take shape as a collective phantasy in excess of the representational and logical limits of quantification practices themselves.²⁷⁴

The Life Cycle Model is similarly phantasmagraphic and anticipatory. Though it appears objective, its hopeful progression, its triumphal up-and-to-the-right exit into the field of possibilities outside the confines of the schematic, and its invocations of the dramatic and virtuous struggle of the American businessman, the Model summons a ‘collective phantasy’ of patriotic economic striving thrust into the future.

The Life Cycle Model operates on several temporal levels. The life cycle depicted takes anywhere from nine to twenty years to reach ‘maturity.’ By pinning the “economic conditions” depicted to “1975-1976,”²⁷⁵ the Life Cycle Model is projected both backwards and forwards in time, creating a ideal (non-existent) history for the financial practices shown and imagining a equally ideal financial future in which those practices are imagined to thrive. Though the Life Cycle Model trades in metaphors of biological or infrastructural time through the metaphors or lifecycles and pipelines, it actually operates on the scale of patriotic, “economic speculative time,”²⁷⁶ where the success of the national economic project is tied together with financial speculation and forecasting. Achieving an ideal future for the nation is reliant on acting on that patriotic future in the financial present, from the position afforded by an idealized financial and patriotic past.

In the case of the Life Cycle Model, this narrative schematic sequencing was further buttressed by the use of financial and temporal figures. Godin describes numbers as

²⁷⁴ Murphy (2017) p 24

²⁷⁵ see Figure 1.

²⁷⁶ Murphy (2017), p 13

“validating”²⁷⁷ a model, adding layers of “scientificity”²⁷⁸ and a sheen of effort and expertise. It is not clear where the Casey Task Force found the numbers and timescales used in the Life Cycle Model, and Professor Liles indicated they were not the result of any study conducted by the Task Force or by anyone else, for that matter, nonetheless these figures would be repeated as fact by various actors within the high technology and minority business sectors for years. Godin describes how numbers and statistics entrench models of innovation processes within bureaucratic and regulatory infrastructures in this way, as the model serves as:

...a thought figure that gives scholars a framework and heuristic device to study technological innovation, but also that simplifies and affords administrators and agencies a sense of orientation when it comes to thinking about the allocation of funding to R&D....²⁷⁹

Godin argues that statistics on research and development became proxies for successful ‘innovation’ due to the prevalence of the linear model of innovation. The use of this model, and the R&D statistics it relied on, became self-perpetuating as pro-innovation policies were crafted to buoy R&D statistical measurements. In this way, aided by selected statistics and the methodological rules it lays out, the linear model becomes “social fact.”²⁸⁰ In a parallel process, I argue that equity investment from limited partner venture capital firms and the entrance of companies into the public securities markets became central proxies of success within the high technology sector in part because of the continued circulation of the Life Cycle Model. There is nothing intrinsic to attracting equity investment organized in this particular way or achieving a

²⁷⁷ Godin (2017), p 220

²⁷⁸ Godin (2017), p 213

²⁷⁹ Godin (2017), p 77

²⁸⁰ Godin (2017), p 77

well-performing IPO that make these measures particularly revealing of technological creativity, ingenuity, or the popularity or success of a new technology. Rather, these measures are indicators of the success of limited partner venture capital as a financial practice irrespective of the sector it is active in. Further, once the initial policy reforms that enabled the growth of limited partner venture capital were put into place, there is no intrinsic reason that those reforms could not have been reversed. The road that ultimately led, for example, to the re-opening of pension funds as capital sources for limited partner venture capital funds contained many switchbacks. After the Department of Labor's re-articulation of ERISA's prudence standard in 1979, policies to restrict risky investments by pension funds and other institutional investors might have been re-implemented or implemented through other policy mechanisms. Instead, the deregulatory push continued, gaining momentum and ultimately implicating other protected financial vehicles like traditional trusts. The continued circulation of the Life Cycle Model contributed, in part, to a new understanding of how high technology companies had been funded in the past and should be funded in the future as well as to a broader deregulation of financial processes. This was accomplished in part because the Casey Report, the Life Cycle Model, and the Task Force's other writings repeatedly framed limited partner institutionally funded venture capital as a long-standing, historically established and valued actor in American business, though there is no evidence this is the case. Additionally, the continued circulation of the Life Cycle Model after the accomplishment of the Casey Report's main policy goals allowed it to be entrenched within the conversations and cultures of the high technology sector, specifically within policy-making circles, where its assumptions became, to use Godin's phrase, a social fact.

The Model in the Archive

Model as (Contested) Infrastructure: The 8(a) Program

Beginning in 1981, businessmen began to cite the Casey model, referred to primarily as the “Life Cycle Model,” to critique another SBA program, the 8(a) preferential federal subcontracting program intended to assist minority owned businesses. In this section, I shall briefly discuss the 8(a) program, the ways in which the Life Cycle Model was critically leveraged against it, and how the SBA unsuccessfully attempted to discredit the Model in return. The use of the Life Cycle model in this context indicates the extent to which the underlying economic and cultural logics of the Model and the Report itself, which installed equity-based venture capital at the core of the technology sector, had expanded beyond the borders of that sector, crossing over into much broader economic and socio-political territory. By the early 1980s, access to equity capital had, in the words of one witness, become a “civil rights” issue.²⁸¹

The 8(a) program’s history dates back to 1958, when the SBA began developing a “minority set-aside”²⁸² program to preferentially funnel federal subcontracts to businesses owned and operated by “socially or economically disadvantaged” minorities²⁸³. In 1978, the SBA program was passed into law. This Congressional attempt sought to standardize the

²⁸¹ U.S. House. Committee on Small Business. Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems. Small Business Administration’s 8(a) Program. Hearing, 21 May 1981. (Testimony of Rotan Lee)

²⁸² p 441 Drabkin, Jess H. “Minority Enterprise Development and the Small Business Administration’s Section 8(a) Program: Constitutional Basis and Regulatory Implementation.” *Brooklyn Law Review*. Vol. 49 Issue 433. (1983)

The following history of the 8(a) program is primarily drawn from this contemporaneous law review article, which narrates the regulatory history of the 8(a) program and its constitutional implication in some detail. The article also cites the Life Cycle Model, its role in the 8(a) debate, and discusses the criticisms ultimately leveled at the Model by the SBA. The author dismisses those criticism and argues that the Life Cycle Model should be used as a reference point to determine the length of time a business should remain in the 8(a) program.

²⁸³ Drabkin, p 441

administration of the program through several reforms. This included the creations of definitions for the term “socially disadvantaged groups” as including but not limited to

...Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities...who have been subjected to racial or ethnic prejudice of cultural bias because of their identity as a member of a group...”²⁸⁴

Further, “economic disadvantage” was defined as a diminished ability to participate competitively in the free market “due to diminished capital and credit opportunities.”²⁸⁵ A contemporary commentator, attorney Jess Drabkin, wrote in a 1981 law review article on the 8(a) program that “the purpose of the program was to enable minority-owned businesses to eventually compete in the open market”²⁸⁶ by providing them with early protection from competitive market forces that they might not have otherwise been able to withstand. By 1980, over 4,500 firms had participated in the 8(a) program.²⁸⁷

In late 1981, in response to a Congressional requirement to limit the time firms could participate in the program, the SBA instituted the “Fixed Program Participation Term,” or FTTP, regulation, which limited participation in the 8(a) program to a period of up to five years with a potential one-time extension of two years. Before the FTTP was instituted, firms were “graduated” from the 8(a) program based on a set of economic criteria which included profitability, non-governmental sales outside the 8(a) program, certain financial ratios, and comparisons between the 8(a) firm’s business and financial profiles with other similar firms in

²⁸⁴ Drabkin, p 441

²⁸⁵ Drabkin, p 442

²⁸⁶ Drabkin p 441

²⁸⁷ Drabkin p 443

their sector. The FTTP regulation did away with these subjective, evaluative criteria, instead instituting hard time-caps on a firm's potential period of protection, regardless of its level of success at the end of that term. The SBA stated that these were intended to "change the 8(a) program from a subsidy program to an incentive program."²⁸⁸

As soon as the prospect of a fixed participation term was floated, the minority business community resolutely critiqued the stipulation. Many believed the policy change was motivated by racism on the part of the Reagan Administration. In May of 1981, the Philadelphia attorney and African American community leader Rotan E. Lee delivered extensive oral and written testimony to a House subcommittee, criticizing the term limit proposal.²⁸⁹ He and other witnesses at the hearing repeatedly invoked the Life Cycle model, and its depicted timeline of ten to twenty years necessary for a firm to reach "maturity," as justification for why the proposed 5-7 year term limits were too short and unfair to minority business owners.

Lee's invocation of the Life Cycle Model was not divorced from its original context in the Report, unlike other citations which would come later. Rather, Lee relied upon and played up the prestige of the original Casey Report and its authors. He even emphasized that the Casey Report was not specifically about minority businesses as a credit to its reliability, saying, "The reports I was referring to may be given greater credence because they don't speak about minority small businesses. They talk about economic life cycles, the life cycle of a business, how long it takes."²⁹⁰ The implication here was that reports written with a specific focus on minority

²⁸⁸ Drabkin p 462

²⁸⁹ U.S. House. Committee on Small Business. Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems. Small Business Administration's 8(a) Program. Hearing, 21 May 1981.

²⁹⁰ Hearing: Small Business Administration's 8(a) Program, testimony of Rotan Lee. p 89

business might be interpreted to have a bias towards those businesses, and that a report with a more pure economic focus would be less biased. Later in his testimony, Lee further elaborated his understanding of the Casey Report and the Life Cycle Model:

...Mr William J Casey, who is now the head of the Central Intelligence Agency, and this report very clearly stated that you need about 15 or 20 years in order for you to really reach that cycle of business growth where you can claim that you have matured.²⁹¹

Lee's written testimony, submitted for the record, contained a more detailed discussion of the Casey Report, the Life Cycle Model, and its degree of penetration into the Black business community. Here, he further leans on the prestige of the Report and its SBA pedigree as a way to cut through the "umber of racism" that might otherwise obscure regulatory conclusions favorable to Black business:

The incubation of Black enterprise under the panoply of the federal partnership is materially different from, and can be dangerously mistaken for, economic maturity. The latter requires excruciating analyses of multiple factors, which are, for the most part, quantifiable ones. According to a Task Force on Venture and Equity Capital for Small Businesses, appointed in July 1976 by former SBA Administrator Mitchell P. Kobelinski, business viability is coincident with its cycle of growth in relation to the different types of capital required at each stage of its life. The Task Force's report, completed in 1977 (dubbed the 'Casey Report,' after its chairman, now director of the CIA) asserts that the life cycle of a new business (1975-1976 Financial Market Conditions) spans fifteen to twenty years before maturity, necessitating the redoubling of private investment efforts before the mere consideration of reaching that business pinnacle of success: 'Going public!'

The 'Casey Report' has gained notoriety amongst Black entrepreneurs, and *it is a paramount reference in defense against the vagarious thinking of the SBA and its present leadership on the*

²⁹¹ Hearing: Small Business Administration's 8(a) Program, testimony of Rotan Lee. p 91

issue of business viability, the actual predicate to a determination of a company's success within the 8(a) program. Because the number of racism often veils the credence of any analyses proffered by Blacks or assessed to their advantage, then, perhaps (using the 'Casey Report' as an example, yet, a particular reference), the SBA, if not the [Reagan] Administration might be persuaded by the words and thoughts of those it holds in high esteem. I feel quite safe in challenging the SBA to produce any study, treatise, report, or other analytically-based document which can defensibly support a business maturation process of from three to five years, or demonstrate why such a proposition is so contrary to more enlightened thought.²⁹²

Lee was not the only individual at this hearing to bring up the Casey Report or the Life Cycle Model. The subcommittee's chairman, Representative Parren Mitchell of Maryland, noted that Casey had been invited to testify before the subcommittee on this matter in the next month²⁹³. The next witness, a Puerto Rican businessman, further invoked the Casey Report and the Model, saying:

I am saying that if what you are saying, 2 to 5 years, 4 to 6 years for the new [sic], that figure should be looked at. It should be looked at with respect to the Casey report. If Casey is saying it takes 10 to 15 years to mature a company, for Christ sake, use the same rules and regulations with respect to how long an 8(a) company should be supplied.²⁹⁴

In his oral testimony, Lee also discussed the importance of equity investment from within minority communities, and the creation of a "black millionaire class" in order to provide that investment and capital at scale. His discussion of this is worth quoting at length, as it indicates

²⁹² Hearing: Small Business Administration's 8(a) Program, testimony of Rotan Lee. p 93. Emphasis added.

²⁹³ Hearing: Small Business Administration's 8(a) Program. p 96

²⁹⁴ Hearing: Small Business Administration's 8(a) Program, testimony of Santos Abrilz. p 105

the degree to which the idea of equity investment and economic model of privately placed venture capital had spread beyond the high technology sector:

The fact of the matter is, we are talking about developing an economic community base for minority people in this country, and to do that requires the massive injection of capital to build the businesses that are necessary to develop the jobs and the investment factor to create a reasonable basis of a cyclical reality within the minority community today, whether that happens to be Detroit or Peoria, Illinois.

The fact of the matter is the issues involved are no less real in the minority economic community than they are in the economic community as a whole....Once in a while [executive salaries] becomes an issue in one of the major papers, like the other day when they made an issue of how much money the Secretary of State was making when he was working with United Technologies, which I can tell you was probably more money than the net worth of some of the companies we are talking about today on an annual salary, but it did not become an issue, and there appears to be some type of information factor that exists about this developing, evolving class of black millionaires who are going to do something or be something or whatever that case may be.

It is really not about that. It has nothing to do with that, and I am very sick and tired of hearing at the agency level, 'We don't want to make black millionaires,' and *I am saying we need to have black millionaires because it is the millionaire class of environment that is primarily responsible for the private placement of capital in the society today for the economy to evolve.* That is exactly the kind of economic class you need to create, and I am saying that the Small Business Administration, the Federal Government as a whole, is not helping in that process.²⁹⁵

Lee, the subcommittee members, or the other witnesses do not make reference to other aspects of the Casey Report in this hearing. The work that might have been thought to be the main work of the Report, the advocacy of specific policy and regulatory goals, has here been pushed aside.

²⁹⁵ Hearing: Small Business Administration's 8(a) Program, testimony of Rotan Lee. p 91. Emphasis added.

Instead what is of interest is the intellectual logics and justifications those policy and regulatory goals had relied on, i.e. the animating role of equity investment, as represented in the Life Cycle Model and, as Lee put it, what it says about “the life cycle of a business,” how it works, its phases of growth, the central role of equity investment, and ultimate entry into the public stock market. Lee and the others are focused on the Model both for the claims it makes about economic reality, or *a perceived* economic reality.

They also focused on the Model and the Report for the structure and performance of expertise invoking it entailed. In his book on the dramaturgy of expertise in scientific reports, science and technology scholar Stephen Hilgartner notes the importance of textual and metatextual elements in the production and dissemination of these expert publications. These elements include the associations and relative prestige of the authors, their special interests or expertise in the issues at hand, and the claims that might be made as to the rigor of the studies conducted. While the particular authorship and biographical details of the Life Cycle Model fell away during its lifetime in public circulation, the governmental provenance of the Model was constantly invoked in this debate over the FTTP additions to the 8(a) program.

The developmental history of the Life Cycle Model, the prestige of its authors at the time of the Model’s development and in their later careers (for example, the routine acknowledgement of Casey’s new position as the head of the CIA), and the SBA’s position as the Model’s commissioning authority were repeatedly invoked by the SBA’s critics as an argument for why the FTTP term was inappropriately short, and why it should not be implemented. The SBA responded to these critics by attempting to discredit the Life Cycle Model with regard to the 8(a)

debate specifically and at a basic intellectual level. This effort was successful in some ways and unsuccessful in others, which will be discussed shortly.

The repeated invocations of the Life Cycle Model by minority businesspeople might be understood in two ways. First, that these repetitions are by businesspeople, not policymakers, give us an opportunity to speculate on how thoroughly the Casey Report in general and the Life Cycle Model in particular had filtered out of the high technology policy world and into the broader “business discourse”²⁹⁶ or what Fourcade and Khurana describe as those “corporate boards, business magazines, consulting firms, and business schools....whose business it is to produce a narrative about the purpose of the corporation and justifications for how to make money.”²⁹⁷ Lee and others seem to indicate that the diffusion of the narrative and justification contained within the Report was not fixed to debates regarding the high technology sector or the role of venture capitalists specifically. It appears from this case that sectors of American business treated Life Cycle Model and the Casey Report as a source of facts. Second, looking at these citations through Hilgartner’s theory, the repeated invocations of the Casey Report, the Life Cycle Model, and the prestige-laden metatextual elements of these intellectual objects may have been key parts of a performance of expertise by systemically disadvantaged groups as they attempted to influence policy. In deploying this specific reference, the speakers marked themselves as conversant in the epistemic infrastructures the SBA participated in and which witnesses like Rotan Lee perceived the Life Cycle Model to be partially reflective of. Lee and others appear to invoke the aura of expertise surrounding the Casey Report in part to bolster their

²⁹⁶ Fourcade and Khurana, p 349

²⁹⁷ Fourcade and Khurana, p 349

own positions as experts both in the sense of performing accepted and accredited knowledges and in the sense of a kind of passcode, a correctly deployed reference that establishes one's right to a space at the table. From here we might theorize that referencing the Casey Report and the Life Cycle Model mattered as much for its prestige-exchange value as for its actual intellectual contents.

The SBA's (Ineffective?) Rebuttal

Rotan Lee was far from the only person to bring up the Casey Report and the Life Cycle Model to critique the SBA's FTTP regulation—a debate that lasted well past 1981. In March of 1983, additional Senate hearings were convened regarding the by-then implemented FTTP regulation. In his opening remarks, committee chairman Senator Lowell Weicker of Connecticut called the regulation "...something which has caused considerable controversy in recent months, and has prompted some charges that this administration is insensitive to the needs of minority business."²⁹⁸

During the course of these hearings, the new SBA Administrator, James C. Sanders, appended to his testimony the text of the SBA's FTTP rulemaking document.²⁹⁹ This document included a lengthy rebuttal of "the four-stage 'Life-Cycle model' of business development which appeared originally in the Casey Report."³⁰⁰ By this point, two other studies had favorably cited

²⁹⁸ p 2, U.S. Senate. Committee on Small Business. Federal Minority Business Development Program. Hearing, 24 March 1983. (Testimony of Senator Lowell Weicker)

²⁹⁹ U.S. Senate. Committee on Small Business. Federal Minority Business Development Program. Hearing, 24 March 1983. (Testimony of James C. Sanders); Appendix to the Testimony of James C. Sanders. Small Business Administration. "13 CFR Part 124. Amendment 13. Minority Small Business and Capital Ownership Development Assistance SBA Rules and Regulations." 23 November 1981.

³⁰⁰ SBA, "Minority Small Business and Capital Ownership Development Assistance SBA Rules and Regulations." p 95

the Model, one from the Wharton Business School and one from the National Association of Securities Dealers. Both of these studies were, in turn, frequently cited by FTTP critics.

“Because of the importance and frequency of the argument,” the SBA document continued, “it is necessary to examine this contention closely.”³⁰¹

The document provides several reasons why the Life Cycle Model as it appears in the Casey Report is not relevant to the 8(a) program. First, the Task Force was narrowly focused on “the financial problems of new, high-technology firms which had a great potential for growth and profitability,” and as such was “not sufficiently relevant to either the development path of small business in general or the 8(a) client population in particular.”³⁰² Further, the SBA document notes that the Life Cycle Model was created to “provide a framework for their findings and recommendations.” It was a “hypothetical” model constructed by the Task Force “based on its collective experience and wisdom” for the purposes of “recommend[ing] solutions” to the “financial problems of the small businessman today....”³⁰³

While this might have been sufficient for rebutting the Casey Report and Life Cycle Model’s relevance to the implementation of limited participation terms for the 8(a) program, the SBA document goes even further. Quoting a 1981 SBA-funded study led by MIT economists David L. Birch and Susan MacCracken entitled “Corporate Evolution: A Micro-Based Analysis,” the SBA document states, “After conducting several tests, [Birch and McCracken] conclude, ‘There is not a great deal of support for a strong life cycle model of corporate evolution.’ In other

³⁰¹ *ibid*

³⁰² *ibid*

³⁰³ SBA, “Minority Small Business and Capital Ownership Development Assistance SBA Rules and Regulations.” p 95-96

words, the biological analogy of firms being born, growing, maturing, and dying, is not a typical pattern.” The SBA document concludes, “Summarily, based upon the foregoing, it is SBA’s view that the Casey Report and other cited studies should not be used as a source of 8(a) policy guidance.”³⁰⁴

This SBA document does not just rebut the applicability of the Casey Report to 8(a) rulemaking, but appears to serve as a rebuttal to the Life Cycle Model as a whole in any context. Birch and MacCracken’s report refutes the entire generalizable eco-biological framework upon which the Life Cycle Model is based, while the SBA’s the earlier arguments reduce the Life Cycle Model to a “hypothetical” rhetorical object intended to support only the special policy goals of the Task Force.

It appears from this SBA document that the Birch and MacCracken report was commissioned by the SBA at least in part to test and perhaps debunk the Casey Task Force’s Life Cycle model.³⁰⁵ Why the SBA would spend time and money to commission a report debunking a previously commissioned blue ribbon task force report is unclear. It may be that the new SBA Administrator, James Sanders, was sweeping away the last remaining traces of his predecessor, Mitchel Kobelinski. Kobelinski had originally commissioned the Task Force and was a strong public supporter of the Casey Report and the Life Cycle Model, as is apparent from his Congressional appearances in support of the Report and its recommendations. It certainly seemed as though Sanders was viewed by some as a substantial administrative improvement over

³⁰⁴ SBA, “Minority Small Business and Capital Ownership Development Assistance SBA Rules and Regulations.” p 96

³⁰⁵ I have not been able to locate the text of this report in any archive, though I have located several extensive citations outside this SBA document, including in the article by Drabkin cited earlier in this chapter.

his predecessors. In the same 1983 hearing in which this SBA document was first entered into the record, Senator Weicker stated:

The present Administrator of the Small Business Administration, Jim [James] Sanders, I have known since the first day he walked into that job. We now have, at SBA, a man who is shaking that agency around to the point where it is not a dumping ground for every political hack that comes around.³⁰⁶

Whether, by the early 1980s, the SBA considered the Casey Report to be the product of “political hacks” is not clear, but it is apparent that by the 1980s, the SBA was not throwing itself behind the promotion of the Report, its Model, and its conclusions with the zeal that it had in the years just following its publication.

In another hearing, in April of 1983, this time before a subcommittee in the House of Representatives, Sanders appended to his testimony a revised and extended version of the rebuttals contained within the SBA rulemaking document discussed above. Entitled, “The Issue of 20 Year Firm Development,” the document began

Included in the House Small Business Committee report entitled ‘Minority Business Development Efforts of the Small Business Administration’ are certain assumptions about the evolution of business firms. Simply stated, it is argued that approximately 20 years are required for a typical firm to ‘develop’ from its ‘birth’ until it reaches ‘maturity.’ At various times in other forums this argument has been used to recommend a maximum term in the 8(a) program of ten to twenty years
Our comments are as follows:

-The testimony cited as evidence does not support the argument.

-No studies can be found in the literature to support the contention.

³⁰⁶ U.S. Senate. Committee on Small Business. Federal Minority Business Development Program. Hearing, 24 March 1983. p 4

-Recent evidence indicates that the life cycle hypothesis itself is not a good explanation of the evolution of firms.³⁰⁷

The document repeated the rebuttals contained within the SBA FTTP rulemaking, including the rejection of the eco-biological life cycle metaphor. “Twenty Year Firm Development” also included extensive quotations from the previously quoted 1981 letter by Casey Task Force member, Harvard Business School Professor Patrick Liles. These quotations were briefly referenced earlier in this chapter, but I shall include them at greater length here:

...the [Life Cycle] chart was in no way intended to represent the results of a study by the Task Force or a summary of studies done by others. The chart was only intended to give a very generalized notion of a new enterprise life cycle....I strongly disagree with the implications of the time base indicated on the [Casey Report] chart for the length of each phase. In particular, the possible cumulative time to break even of eleven years would be a situation completely outside the realm of an independent business unless it were the intention of the entrepreneur to pursue the situation for noneconomic reasons. Except for a few capital equipment intensive ventures, such as cable television, or an extended start-up period for a franchise with dozens of new openings annually, most start-ups should break even well within three years. For the breakeven to extend beyond three years usually means serious, if not fatal, trouble with markets, management, or both.³⁰⁸

The document then rejects the Life Cycle model and the Casey Report more broadly and bluntly than the previous from the rulemaking document, stating

Summarily, the Casey Report in all its manifestations, can be rejected as a source of 8(a) policy guidance. It was designed for other purposes, it is applicable to other problems, and it is irrelevant to our task....In conclusion, we have been unable to find

³⁰⁷ U.S. House. Committee on Small Business. Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems. H.R. 863, to Amend the Small Business Act. Hearing, 20 April 1983. (Prepared Testimony of James C. Sanders, Administrator, Small Business Administration) “Appendix: The Issue of 20 Year Firm Development.” p 400

³⁰⁸ “The Issue of 20 Year Firm Development,” p 402

support anywhere in the literature for the claim that it takes twenty years for a firm to mature.³⁰⁹

If the bloom had gone off the Casey Report's rose as far as the SBA was concerned, the same could not be said for those policymakers and businesspeople outside the SBA. The Casey Report and the Life Cycle Model would continue to be invoked in hearings, government reports, and business and law review articles related to minority enterprise in general and the 8(a) program in particular until at least 1988, eleven years after the Casey Report was originally released and seven years after the SBA had first begun its attempts to discredit it.

In May of 1983, Senate hearings were held on whether businesses owned by Native American tribes would be eligible for participation in the 8(a) program. Again the Life Cycle Model was invoked, again Sanders was called to testify, and again he appended the SBA's rebuttals of the Life Cycle Model to his testimony.³¹⁰

In 1984, Bruce Kirchhoff, who had served as the Chief Economist for the SBA and the Assistant Director of the Minority Business Development Agency at the US Department of Commerce, cited the Casey Report in an article on the impact of federal policy on minority businesses for the scholarly journal *Business & Society*. Repeating the Life Cycle Model in full, Kirchhoff wrote, "A typical life cycle of a new enterprise is characterized by six stages: (1) research and development; (2) start-up; (3) early growth; (4) accelerating growth; (5) sustaining

³⁰⁹ "The Issue of 20 Year Firm Development," p 403

³¹⁰ U.S. Senate. Committee on Small Business. S. 1022 A Bill to Make Small Businesses Owned by American Indian Tribes Eligible For the SBA 8(a) Program. Hearing, 11 May 1983 (Testimony of James Sanders)

growth; and (6) maturity.”³¹¹ Kirchhoff did not comment on the SBA’s previous dismissals of the Life Cycle Model despite his previous tenure there.

In June of 1987, at House hearings again related to the 8(a) program, the Casey Report, the Life Cycle Model, and those models it had influenced were cited in the written testimony of Alfred C. W. Daniels, a businessman in the aerospace sector and former president of the Black Corporate Presidents of New England (BCPNE).³¹² Daniels wrote

Moreover, BCPNE calls the Sub-Committee’s attention back to the commentary attached to the relations catalyzed by PL 96-481 which referred to the ‘life-cycle of the new enterprise.’ That paradigm [sic] expanded life-cycle was drawn from the SBA sponsored Casey Report on high technology firms. Our constituency believes that the promise of the upcoming Aspen amendments (effective date 01 OCT 87) and the DoD 5% goal (04 MAY 87 Fed Register) gainsay any earlier suggestion that 8(a) portolio [sic] firms should not anticipate the life-cycle of that ambiance.³¹³

In 1988, at a Senate hearing on the Minority Business Development Program Act, Senator Larry Pressler of South Dakota entered into the record a letter written by one Richard Rangel, the president of a South Dakota construction firm and member of the Senator’s small business advisory committee.³¹⁴ At issue was another set of regulations which would adjust the term of participation in the 8(a) from the then maximum seven years to eight years. Rangel wrote:

³¹¹ p 19. Kirchhoff, Bruce A. “Assessing the Impact of Federal Policy on Minority Business Enterprise.” *Business and Society*. Vol. 23 Issue 1. April 1984. pp 15-23.

³¹² U.S. House. Committee on Small Business. H.R. 1807 A Bill to Reform the Capital Ownership Development Program. Hearing, 12 May 1987 (Testimony of Alfred C. W. Daniels)

³¹³ Hearing: Capital Ownership Development Program, testimony of Alfred C. W. Daniels. p 108

³¹⁴ U.S. Senate. Committee on Small Business. Minority Business Development Program Reform Act of 1987. Hearing, 2 February 1988. (Attachment to Testimony of Senator Larry Pressler.) Correspondence from Richard M. Rangel to Larry Pressler. 13 April 1988 (attached after the fact)

While this increase in term is helpful, I am convinced that the term is not long enough, particularly given the bill's introduction of competition into the 8(a) program. A ten year program would provide a more realistic opportunity for firms to achieve competitive viability upon leaving the program....The Senate Small Business Committee's own survey is strong support for the fact that a ten-year term is more reasonable and would increase the likelihood of firms continuing as successful firms post-graduation. A study conducted for the SBA by William Casey, 'The Casey Report,' says that most small businesses require a period anywhere from 8 to 12 or 14 years to become competitive. This is even more true for minority businesses which have additional hurdles to overcome. In fact, as recently as last week my bonding surety stated that my firm was still in a 'probationary period' even though we have successfully completed contracts for over 8 years.³¹⁵

Rangel included a briefing paper which repeated his contentions regarding the Casey Report and the Life Cycle Model almost word for word.³¹⁶

The SBA's campaign *against* the Casey Report and the Life Cycle Model in the context of the 8(a) debate bring us to an interesting moment in the development of this rhetorical object. Here we see an example of how such objects can detach from their original contexts and crafted purposes, becoming interpolated and embedded with a host of auxiliary or alternative meanings and functions. The invocations and rebuttals in this debate show the Life Cycle Model becoming detached from its original work of persuasion and its status as a falsifiable proposition relevant within a particular context, and becoming part of a contested epistemic infrastructure of business and economics through its diffusion through the cultural circuits of capital including journal articles, correspondence, and other unidentified avenues. To its proponents in this debate,

³¹⁵ Hearing: Minority Business Development Program Reform Act of 1987, Rangel correspondence. p 493

³¹⁶ Hearing: Minority Business Development Program Reform Act of 1987, Rangel correspondence. p 497

Casey's Life Cycle Model served as both a description of reality and evidence of expertise. The Life Cycle Model had been translated or transported, in the sense Godin describes, from the high technology discourse and policy space to the minority business space, where it had apparently taken root. However, the SBA, the government entity that had originally commissioned the Task Force, the Report, and the Model, had moved on institutionally and intellectually. Perhaps as far as the new SBA administration was concerned, the technopolitical power of the Task Force had been spent in its original high technology context and the work had no broader application. Perhaps a more aggressive intellectual cleaning-house was taking place within the agency. Or perhaps as Rotan Lee and unspecified others has implied, the SBA's choice to regard minority businesses participating in the 8(a) program as different from the high technology businesses that were the subject of the Task Force report was rooted in racial bias. Despite the SBA's apparent rejection of the LCM's applicability to the 8(a) program along with its application as a general theory of business beyond the context of the high technology sector, the model nonetheless lived on. The question is whether this was the result of the influence of those whose interests were served by it, the minority business community or financiers who wished to extend its impacts, or the fact that the abstract and generic form of the Model itself lent itself to "transdiscursive" and "transportable" applicability across multiple domains as Godin describes.

The Casey Report and the Life Cycle Model exist in the early 1980s in different senses for different populations. To the members of the minority business community that participated in the 8(a) debates, the Life Cycle Model supported the epistemic infrastructures they needed to interact with in order to participate in certain programs. These epistemic infrastructures, the "bureaucracies, standards, forms, technologies, funding flows, affective orientations, and power

relations”³¹⁷ had to be contended with if their businesses were to survive. The invocation of the Casey Report and the Life Cycle Model by these businessmen are attempts to contend with the SBA in its own language, to revise its infrastructures using its own materials.

As we shall see in the next section, despite the SBA’s disavowals, the Life Cycle Model continued to spread along a separate citation path pertaining primarily to high technology, innovation and finance. Along this path, the Life Cycle Model was separated from the Casey Report and its specific authorship, and deployed as an expert source of factual context. In contrast to the 8(a) debate, where the expertise of the model resided in its pedigree and provenance, in this case the Model drifted almost entirely from its contexts of authorship. Multiple actors, including policymakers, federal officials, businesspeople, and others cited the model, crediting it to a handful of different federal agencies, including the SBA. It was cited as a source of fact, or a reflection of reality, canonical and objective partially because of its lack of authorship. In this way, this second citation path follows another characterization of the model by Godin, in which the model becomes a “perspective that has become canonical, to the extent that no one knows the origin of the perspective...”³¹⁸ This genericizing of the Life Cycle Model rendered it as part of Jack’s “economic imaginary” or Fourcade and Khurana’s “common sense of capital,” an unquestioned shared assumption about *how business works*. This allowed the Life Cycle Model, created by the Casey Task Force to advocate for their particular policy recommendations, to continue to inform and impact the spheres of economic and financial policy, as well as the evolving professional culture of the venture capital industry, as it engaged

³¹⁷ Murphy (2017), p 6

³¹⁸ Godin (2017), p 211

in a dance of mutual influence with policy makers, the world of high technology, and other financial actors.

The Model as Common Sense

As various actors contested the Life Cycle Model regarding its applicability to minority business concerns, it nevertheless continued to circulate and gain currency in other contexts. This parallel citation path was both less contested and more resonant with the Life Cycle Model's initial contexts of construction and deployment. Along this path, the Life Cycle Model continued to be a point of reference for financial, tax, and innovation policy related to the high technology sector. While references to the Life Cycle Model regarding minority businesses and the 8(a) program consistently emphasized the origins and pedigree of the Model and the Casey Report, routinely connecting the 1977 publication with Casey's new position as the head of the CIA, references and citations along this other path did not maintain this strict authorship connection. Rather, specific authorship of the Model fell away, and it became quickly associated simply with the SBA. Some particularly enthusiastic adherents, such as New York Representative John LaFalce would insist on correctly crediting the Report and the Model to Casey, but more often than not the authorial pedigree was disregarded. In some cases even the attribution to the SBA was lost. Towards the end of the citation path, the Life Cycle Model is credited to a handful of different federal agencies who had no role in its initial development.

A second difference between the two citation paths is that in the context of minority business/8(a) policy, the Life Cycle Model and the Casey Report were predominately described verbally in order to emphasize specific conclusions and implications, while in this parallel path,

the schematic itself is the focus. In these cases, the schematic is reproduced in full or adapted with some changes. Often these changes would make the schematic appear more generalizable or less hedged than the form in which it had originally been published. This process of schematic reproduction and alteration is symptomatic of how the Life Cycle Model became part of the general common sense of capital. This was despite the strong critiques of the very conceptual foundation of the Model lobbed by the SBA in the early 1980s. The SBA's critiques, though they contributed to the passing the 8(a) participation term limits, did not appear to cross over into these other conversations. Thrift's "cultural circuits of capital" in this case never appeared to cross.

Beginning in 1979, two years after the publication of the Casey Report, and extending at least until 1993, with one late outlier in 2004, the Life Cycle Model was repeatedly reproduced and referenced as a factual explanation of how the funding of innovative businesses worked. It was rarely, if ever, presented in conversation with critiques, though we know from the 8(a) debates that such critiques existed and were not unknown or obscure. Rather, the invocations of the Model portray it as a generalized snapshot of how innovative firms are born, grow, and mature. It is described as the result of studies and analysis, rather than as a hypothetical constructed to support a set of policy goals. It was attributed most often not to a commissioned panel advocating for a set of policy outcomes but to either the SBA, the General Accounting Office (GAO), or the federal Office of Technology Assessment (OTA), ostensibly disinterested and neutral agencies charged with providing objective information and advice to the government. These patterns and shifts underscore the ways in which the Model became understood not as a specific type of persuasive rhetorical object seen in the context of its attached policy goals, but as

part of the expected, unquestioned, common vernacular knowledge of the type Jack names as the *economic imaginary*. Over the course of sixteen years, Casey's Life Cycle Model became a common-sense description of "ground truth,"³¹⁹ that was part of an economic education, not a speculative proposition or a tool of persuasion.

The first appearance of the Life Cycle Model is in a 1979 study commissioned by the Council of State Planning Agencies, later republished in a collected volume by Duke University Press in 1983. The "Innovations in Development Finance" study by economists and entrepreneurs Lawrence Litvak and Belden Daniels described the manner in which states might assist small innovative firms experiencing gaps in financing that the capital markets were failing to fill. The Life Cycle Model, cited to the Task Force Report and the SBA, but with no mention of Casey or the other Task Force members, appears without the "annual net income" line, and with some formatting and font changes, but is otherwise identical its original published form.³²⁰ The changes made, with the exception of the deletion of the "annual net income" line, are predominately cosmetic and appear to function mainly to condense the schematic on the page. It is reproduced here as Figure 5.

³¹⁹ Jack, 518

³²⁰ p 30. Litvak, Lawrence and Belden Daniels. "Innovations in Development Finance." *Financing and Local Economic Development*. Michael Barker, ed. Duke University Policy Studies. Durham, NC. 1983.

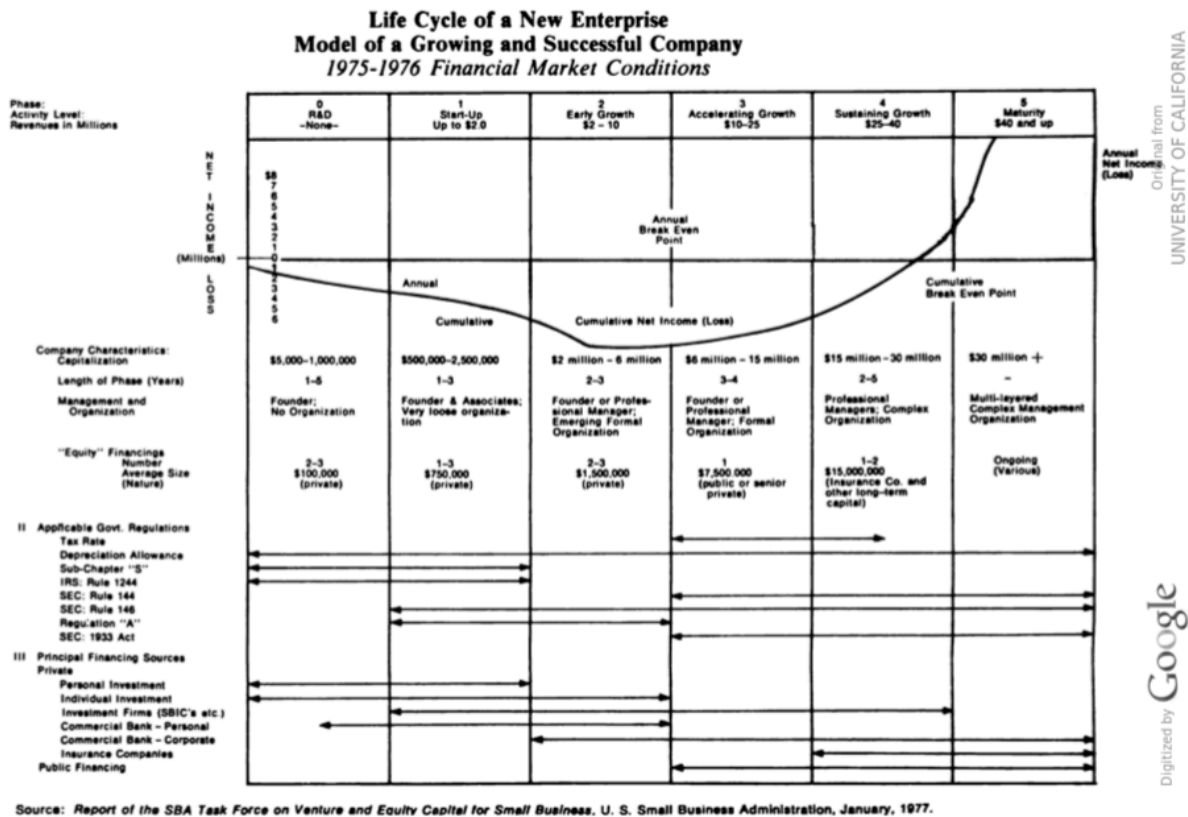


Figure 5: Life Cycle Model as it appears in Litvak and Daniels' "Innovation in Development Finance" study. Note the jog in the "cumulative net income" line where in the original schematic, the "cumulative net income" line is crossed by the "annual net income" line; the reformatting of the text in the lower part of the chart; and the differently drawn but identically positioned arrows. This indicates that this version of the Life Cycle Model was constructed by directly editing a copy of the Life Cycle Model as originally published.

Litvak and Daniels write:

As the following chart illustrates, an enterprise must be able to tap different sources and kinds of funds at different times over its life-cycle of growth. Foreclosing any one of them—particularly at its 'stage' specific time of need—can have the same effect as depriving a developing organism of a vital nutrient. For example, during its first years a small firm will not be generating any positive net income, but will still need a constant flow inflow of funds for research and planning, acquisition of physical plant and equipment, and operating expenses. Financing here must largely be in equity form—that is, capital in exchange for a pro rata share in

the firm's future income—rather than debt requiring periodic, regular payment of fixed interest and principle.³²¹

Here we can see Litvak and Daniels accepting and extending the eco-biological metaphor at the core of the model, as well as accepting as factual the economic assumptions and processes the Model dramatizes. It is unsurprising, then, that Litvak and Daniels go on to identify state worker pension funds as an ideal source of funds to serve as equity investment vehicles in young, high technology enterprises.³²²

In 1981, the Life Cycle Model was cited in the professional legal journal *The Business Lawyer*, in an article summarizing the findings of a conference on small business tax law convened in Hot Springs, Virginia in March of 1980. The conference was organized “to bring together individuals from a variety of disciplines and backgrounds to examine specific tax-related topics pertaining to small business with emphasis on capital formation and retention.”³²³ Under the heading “Tax Incentives for Innovation,” attorneys Chernin and Morse wrote

During the Spring of 1977, two major Federal agencies concluded that the ability of the US to innovate for commercial and defense purposes was in ‘serious decline.’ In its ‘model’ of growing and successful companies, the US Small Business Administration’s Task Force on Venture and Equity Capital for Small Business identified R&D as the first phase in the life cycle of a new enterprise. The characteristics of that phase, which generally lasts from one to five years, include a cumulative net loss and very low capitalization.³²⁴

³²¹ Litvak and Daniels, p 30

³²² Litvak and Daniels, p 34

³²³ p 485. Cherin, Richard and Richard Morse Jr. “The Homestead Small Business Tax Conference: Issues Affecting Small Business Capital Formation and Retention.” *The Business Lawyer*. Vol. 36. January 1981.

³²⁴ Cherin and Morse, p 515

In this case, the schematic of the Life Cycle Model was not reproduced, but its assumptions regarding the length and capitalization needs of the research and development phase were relied upon to construct tax recommendations in areas of policy and practice. It should be noted that Cherin and Morse here conflate the Task Force with its commissioning agency, writing that “two major Federal agencies concluded,” confusing its origins as the product of a commissioned task force, rather than that of a federal agency proper.

In August of 1982, the Life Cycle Model was extensively cited and analyzed in a General Accounting Office (GAO) report on the state of the venture capital industry. Due to this GAO report’s contents and subsequent influence in and of itself, I have broken out an analysis of this document into its own section, later in the chapter.

In 1983, the Life Cycle Model was again cited in a House hearing regarding Japanese involvement in the American equity and venture capital market. This is another instance of the Life Cycle Model being cited simply to the SBA rather than to the Task Force, indicating again that it was becoming genericized, and held as an objective reflection of reality produced by a government body, rather than as a specific and particular tool of persuasion.

In this case, the Silicon Valley marketer, Regis McKenna, who at the time of this hearing had worked with Apple, Genentech, and several other successful Silicon Valley technology firms, was called to offer expert testimony on the growth and financing of Silicon Valley technology firms. McKenna’s testimony included several charts developed by McKenna and his firm, pertaining to the “Typical Product Life Cycle for High Technology Product,” “ROI Generation

for Reinvestment in Next Round of R&D,” and “Impact of Japanese Entry on Capital Formation of Competing US Firms.”³²⁵

McKenna included an adapted version of the Life Cycle Model schematic,³²⁶ which he introduced in this way:

This is a chart that was prepared by the Small Business Administration back in about 1978, I believe. It shows the requirements for capital. And, again, I would say that a company today—indeed, any one of you on the panel that has a good business plan—could get \$1 to \$2 million to start a business. It would be fairly easy for you to do that. There’s a lot of capital, there’s almost 2 billion dollars of venture capital out there, and getting early financing is easy.

As a company begins to prove itself in its development, it can go out again to the venture capitalists. This is all private capital and very accessible. And, of course, as you move out further and further, then you have to get more and more capital, because the requirements, for example, to build a wafer fabrication plant today, is in the neighborhood of \$50 to \$100 million. To start that same company took less than \$5 million. So there are enormous requirements for capital as industry develops; and becomes more competitive in that industry, you need to have a lower cost of capital.³²⁷

³²⁵ pp 683-685. U.S. House. Committee on Banking, Finance, and Urban Affairs. Subcommittee on Economic Stabilization. Industrial Policy. Hearing, 19 August 1983 (Testimony of Regis McKenna)

³²⁶ Hearing, Industrial Policy, testimony of Regis McKenna, p 688

³²⁷ Hearing, Industrial Policy, testimony of Regis McKenna, p 689.

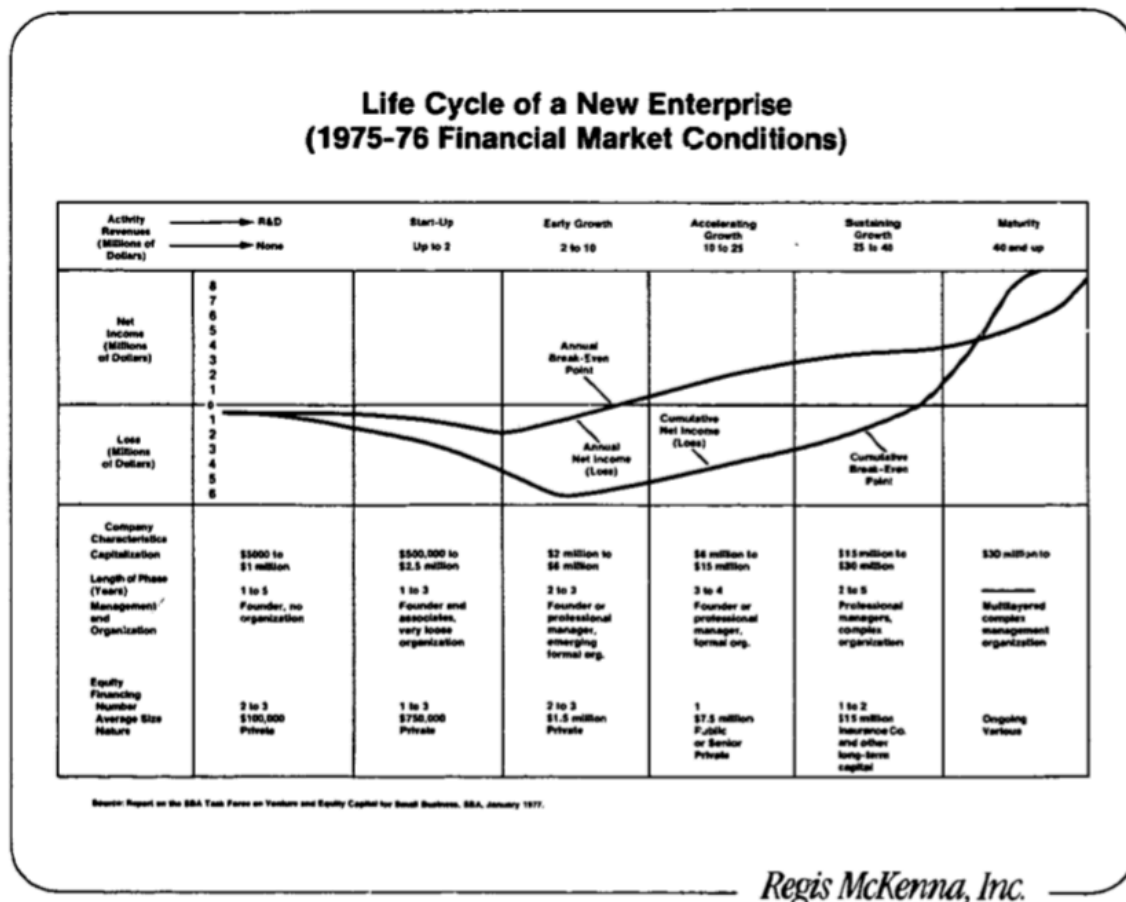


Figure 6: Life Cycle Model as it was presented by Regis McKenna. The text of this version is essentially identical to the Life Cycle Model's original publication, with slight changes in punctuation or spacing. The subtitle, "Model of a Growing and Successful Company," is missing. The lines of the schematic are slightly different to the original in a way that indicates they have been imperfectly traced.

By 1983, the policy recommendations made in the Casey Report had predominantly been implemented, particularly the ERISA prudence reforms which opened up pension funds as capital sources for venture capital investments. What McKenna is describing here is a financial landscape that has itself been shaped by the policy recommendations dramatized in the Life Cycle Model. McKenna's testimony is in this way an example of the ways in which the Life Cycle Model meets the standard for Barnesian performativity as described by MacKenzie.

Unlike other instances where the Life Cycle Model was mis- or incompletely attributed, in this case the Chairman of the Subcommittee, New York Representative John LaFalce, jumped in to correct the record:

While you have that chart—it was done not by the SBA but by the SBA Task Force on Venture Capital in January of 1977. In that month I was elected chairman of the Small Business Subcommittee, and my first hearing was on that chart and that report. The chairman of that Task Force is the present head of the CIA, Bill Casey. It was also known as the Casey Task Force on venture capital.³²⁸

To which McKenna responded

As there's a number of other charts in there, I won't go into detail. But I think that we do see that to remain competitive internationally—and we must remain competitive internationally—the competitive cost of capital is certainly very very important. In fact, I think it is the major requirement.³²⁹

This exchange illustrates a contrast between the 8(a) hearings, which routinely and repeatedly tied the the Life Cycle Model to the Task Force and to William Casey by name, and this second citation path, wherein the association of the Life Cycle Model and Casey became less and less important as the Model became more integrated within the dominant economic imaginary and the epistemic infrastructure of the high technology sector. While the Casey Report and the Casey Task Force as such had particularly dedicated proponents including Representative LaFalce, the appeal and currency of the Life Cycle Model relied less on the prestige of its specific authors (as appears to have been at least in part the case with the 8(a) citations) and were more the result of what its assumptions and logics allowed in terms of the investment practices of

³²⁸ Hearing, Industrial Policy, testimony of Regis McKenna, p 689.

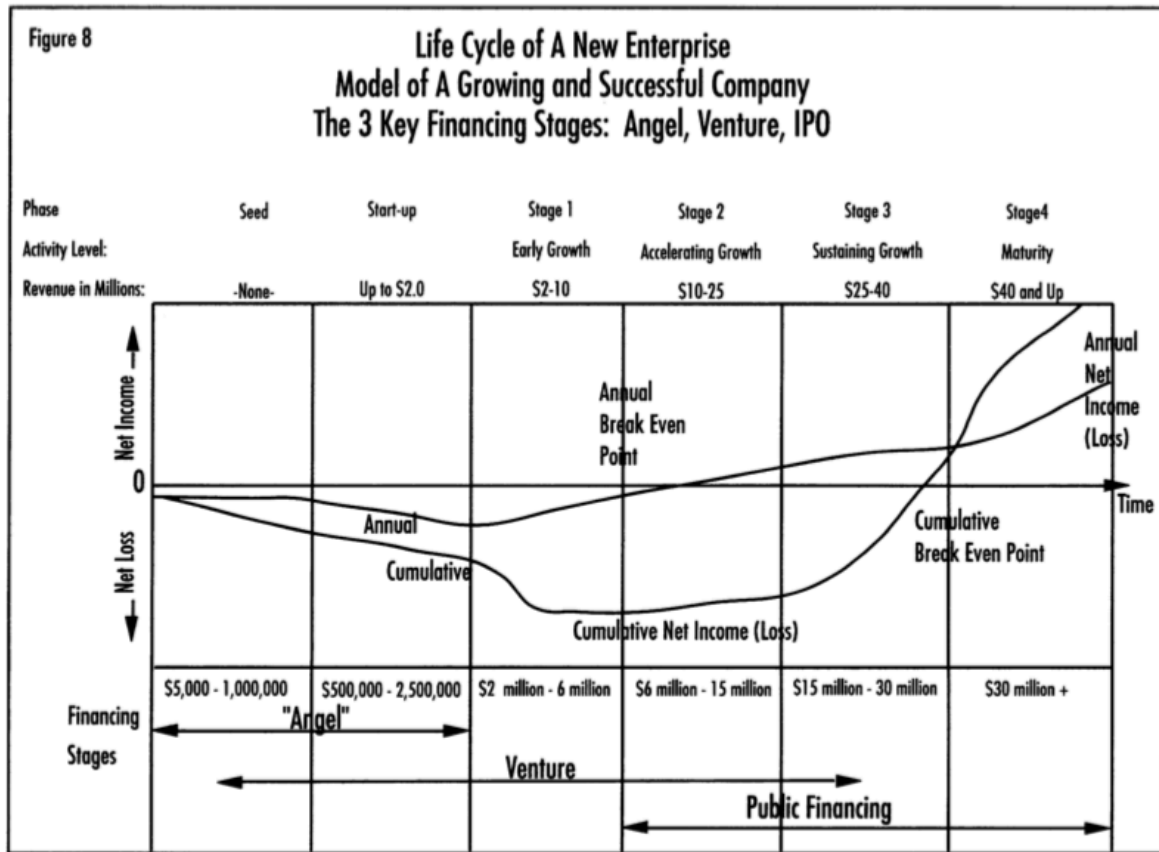
³²⁹ Hearing, Industrial Policy, testimony of Regis McKenna, p 689.

the high technology sector. These assumptions and logics justified the financialization of high technology firms. This was presented in the Model as required and as a historical norm, rather than as an option or a potential choice a firm might make. This citation path shows that operating assumption migrate from a “hypothetical” intended to advocate for a specific set of policy outcomes to an apparently generic, objective description of the way things work in the economy more generally. This is the performativity of the Model in action.

The Life Cycle Model was subsequently completely divorced from its authorial origins in a 1993 working paper from the President’s Office of Science and Technology Policy (OSTP). This paper, entitled “Aspects of Performance in the High Technology Sector,” featured an adapted version of the Life Cycle Model schematic under the section heading “Sources of Financing,” with the following description:

New high technology firms receive equity financing from a variety of sources: informal investors, venture capitalists, partnerships, non-financial corporations, state agencies, small business investment corporations (SBICs), pension funds, stock offerings, and mergers. These sources tend to play complementary rather than competing roles, as is shown in Figure 8.³³⁰

³³⁰ p 32. Broz, Joseph S. et al. Executive Office of the President, Office of Science and Technology Policy. “Aspects of Performance in the High Technology Sector.” Issues in Science and Technology Policy Working Paper. 1993



Source: Adapted From U.S. Congress, Office of Technology Assessment, 1984

Figure 7: The Life Cycle Model as adapted and presented in the the OSTP working paper. There have been some changes in terminology and some deletions in the text, and the lines of the schematic have been traced over while maintaining their general arc. The second half of the schematic, showing the applicability of regulations is completely missing, and the detailed breakdown of equity investors has been grossly simplified. However the calculations, general form, and overall intention of the schematic remains the same.

“Figure 8” is a clear adaptation of the Life Cycle Model schematic as it appears in the Casey Report. The figure retains the first two sections of the original title, “Life Cycle of a New Enterprise/Model of a Growing and Successful Company,” and features the familiar six-stage life cycle, though here the “R&D” stage is identified as the “Seed” stage. The “Cumulative” and “Annual” “Net Income” curves are slightly different from other replications of the model

schematic, but are nonetheless recognizable; the differences are cosmetic and do not make any meaningful change in how the model would be read. The most significant change introduced in the ‘Figure 8’ version of the Life Cycle Model is the introduction of “Angel,” “Venture,” and “Public Financing” terminology to replace the much more detailed and complex articulations of the various equity financing modes and participants in the original version of the schematic.

‘Figure 8’ is cited as “Adapted from U.S. Congress, Office of Technology Assessment, 1984.” In fact, there is no reference to the SBA or the Casey Task Force, under any name, anywhere in the OSTP working paper. I have been unable to find an appearance of the Life Cycle Model in any currently archived Office of Technology Assessment report from 1983, 1984, or 1985. The OSTP working paper lists in its bibliography a July 1984 OTA report entitled *Technology, Innovation, and Regional Economic Development*. However, the copy of this report I was able to locate does not contain any version of the Life Cycle Model schematic, and does not make mention of the Casey Report or Task Force by any name, nor are there any indications that pages are missing, such as a reference to figures or appendices that are clearly absent.

Because of this archival gap, it is unclear what the OSTP’s source was for its version of the Life Cycle Model schematic. It is therefore impossible to say where the citation break took place: whether the Office of Technology Assessment cited the Life Cycle Model back to the SBA or to the Casey Task Force, or whether the OTA was the source of the “Angel”/“Venture”/“Public Financing” terminology, or if that citation break and terminology addition occurred at the point the OSTP working paper was written.

However it occurred, the citation break stuck, at least along this path. In 2004, D. Allan Bromley, the director of the OSTP at the time the ‘Figure 8’ working paper was released,

published a paper in the scholarly journal *Technology in Society*. The paper's intention was to provide a "clearly articulated statement of US technology policy," along with "some historical context."³³¹ This high level "context" covered the period from chemical magnate Pierre Samuel DuPont DeNours' arrival in the US in 1800 to Bromley's service in the first Bush administration and NAFTA in a breezy nine pages.

Only one figure appears in the paper: a copy of 'Figure 8' from the OSTP working paper. Here it is captioned, "Figure 1. Life cycle of a new enterprise. Model of a growing and successful company. The three key financial stages: Angel, Venture, IPO. *Source*: Adapted from US Congress, Office of Technology Assessment, 1984."³³²

³³¹ p 455. Bromley, D. Allan. "Technology Policy." *Technology in Society*. Vol. 26. pp 455-468. 2004

³³² Bromley, p 465

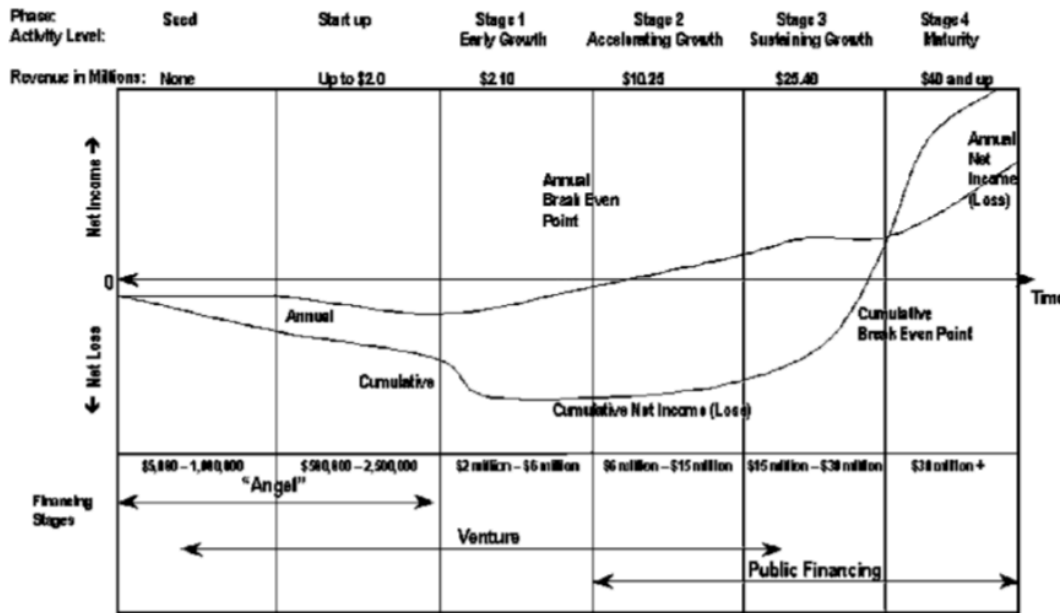


Fig. 1. Life cycle of a new enterprise. Model of a growing and successful company. The three key financing stages: Angel, Venture, IPO. *Source:* Adapted from US Congress, Office of Technology Assessment, 1984.

Figure 8: Life Cycle Model as it appears in Bromley's academic history of U.S. technology policy.

In Bromley's text, he explains that during the first Bush administration, the OSTP discovered that despite broad consensus that smaller and younger companies were a major source of job creations within the US, there was no systemic study or statistical database of small companies to support this assumption. "Therefore," Bromley writes, "OSTP undertook such a study...":

...with a number of surprising results as shown in Fig. 1, which illustrates the early life cycle of a typical, new, high-technology enterprise. We found that typically the first tranche of support came from angel investors (uncles, aunts, and mothers-in-law) with an average net worth of less than US\$300,000, who, having established the new entity, in a relatively short time sold off their equity in it, and moved to a new startup. The second tranche

typically came from venture capitalists, while the third came from SBIRs or other government sources.³³³

Again, this paper fails to mention the Casey Report or Task Force by any name, nor is the SBA mentioned in connection with the creation and publication of this model. The “Angel”/“Venture”/“Public Financing” or “IPO” language used in both the ‘Figure 8’ paper and Bromley’s 2004 paper do not represent a significant diversion from the “Principal Financing Sources” identified in the Model’s original appearance in the Casey Report in 1977. To review, in the original publication, the “Principal Financing Sources” identified were “Personal Investment” and “Individual Investment” (analogous here to “Angel”); “Investment Firms (SBIC’s, etc)”, “Commercial Bank—Personal” and “Commercial Bank—Corporate” (analogous here to “Venture”); and “Insurance Companies,” and “Public Financing” (analogous here to “Public Financing” or “IPO”). It remains unclear where the OSTP and Bromley originally encountered the Life Cycle Model or what OSTP “study” Bromley is referring to here, as the version of the Life Cycle Model that appears in both the ‘Figure 8’ paper and Bromley’s paper reproduces not only the linear schematic of the original Life Cycle Model but also the specific financial figures for “Revenue” and “Financing” through each of the six life cycle stages.

Regardless of where the original encounter or the citation break occurred, it is clear that the Life Cycle Model became a persistent intellectual object, whose influence and utility persisted for years past the point when the policy goals it had been designed to support had been achieved. That it continued to be cited and reproduced after it was severed from its contexts of

³³³ Bromley, p 464

creation indicates that its influence and utility was not dependent solely on the prestige of its original creators.

The 1982 GAO Report and its Descendants

At this point I would like to take a few steps back and examine another appearance of the Life Cycle Model in the early 1980s. In August of 1982, the General Accounting Office, known in the present day as the Government Accountability Office, produced at the request of Senator Lloyd Bentsen and the Joint Economic Committee a report entitled “Government-Industry Cooperation Can Enhance the Venture Capital Process.”³³⁴ The GAO, which houses the office of the Comptroller General of the United States, is the final, non-partisan audit authority of the United States federal legislative branch, and is the office that legislators and other federal agencies turn to for fact checking, audits, technical evaluations, and other investigative services, regarding issues and events under their regulatory purview.

The 1982 GAO report is a keystone citation of the Model, cited only to the SBA and not to the Task Force or Casey, for several reasons. First, as we shall shortly see, the GAO’s report devotes extensive space to the reproduction and analysis of the Life Cycle Model schematic, over-interpreting a level of detail and rigor into the Model that was simply not present in its original construction and publication context. This over-interpretation is almost as if the GAO were retroactively reading a deeper expertise and intellectual engagement into the original Life Cycle Model, based primarily on ways the venture capital industry had evolved since the Model’s publication. This is again representative of how the Model adheres to MacKenzie’s

³³⁴ U.S. General Accounting Office. *Government-Industry Cooperation Can Enhance the Venture Capital Process. Report to Senator Lloyd Bentsen, Joint Economic Committee*. GAO/AFMD-82-35. 12 August 1982.

strongest, Barnesian standard of performativity, wherein the presence of a financial theory in the financial and business sectors brings those sectors into closer accord with the theory itself. Second, the body of the report itself further replicates and repeats the logics of the Casey Report and the Life Cycle Model, particularly around the irreplaceable role of public financial markets in the growth and maturity of companies, and the specialness of venture capitalists as financial actors. Finally, in analyzing and re-releasing the Life Cycle Model under the imprimatur of the GAO, the Life Cycle Model appeared more objective, more intellectually rigorous, and less tied to specific policy outcomes than it originally was. The 1982 GAO Report anchored a separate citation stream for the Life Cycle Model, and a separate avenue of influence for its logics and assumptions, as the GAO Report itself was cited and referenced in subsequent hearings and reports.

The 1982 GAO Report is also a uniquely illuminating document for our broader examination of the early history of venture capital, for its detailed description of the state of the venture capital industry in the early 1980s, and the ways it had shifted since the 1970s. Their analysis is based off of interviews with venture capitalists and detailed examinations of 72 venture-capital funded high technology firms. The Report presents a snapshot of what “venture capital experts believe”³³⁵ about their industry, its growth, and its interactions with government and regulatory bodies, as well as analysis and findings that are presented as the results of the GAO’s own “studies.”³³⁶ That the Life Cycle Model appears in this latter section indicates the

³³⁵ GAO Report, p 4

³³⁶ GAO Report, p 1

degree to which the Life Cycle Model was considered an objective, analytical, intellectual finding, at least by the staff of the GAO.

The GAO Report describes a growing, influential industry that still struggled with professionalization, internal maintenance of norms and standards, and its interactions with policymakers and government regulators. It is interesting to note that even as late as 1982, basic terms including “venture capital” itself were acknowledged to be unclear or commonly misused, requiring clarification:

The term ‘venture capital’ is commonly taken to mean any or all forms of investment in business enterprise. For this report to have relevance or even to be understood, it is essential to distinguish between the venture capital process to create high-technology, high-growth firms, and all other forms of venturing. There are significant differences, for example, in the scope of investments, degree of risk, extent of risk analysis, goals and objectives of investors, economic and financial return on investment, extent of investor participation in managing the firm created and the form investments take—whether through debt or equity financing.³³⁷

By the time the GAO Report was released in 1982, five years had passed since the original publication of the Casey Report, and several of its key regulatory recommendations had been implemented. Large reductions in capital gains tax had been passed in 1978 and 1981; the SEC had revised Rules 144 and 146; and most significantly, ERISA investment guidelines had been relaxed.³³⁸ The GAO report paints a picture of an industry that had experienced significant professional and financial shifts since the downturn of the late 1970s. Privately held venture capital firms, as opposed to SBICs, publicly traded firms, or corporate subsidiaries, had become, in the words of the GAO report:

³³⁷ GAO Report, Appendix 2 p 2

³³⁸ A more detailed discussion of these regulatory changes appears in Chapter Five.

...the dominant institutionalized source of classic venture capital activity. *Most are limited partnerships*, usually with two to four general partners and several sophisticated investors as limited partners. To a lesser extent, they are closely-held corporations. As of about mid-1982, as estimated 130 private venture capital firms existed in the United States, *funded by pension trust funds*, major corporations, insurance companies, endowment funds, wealthy individuals, and foreign investors. Private firms generally begin by raising a venture fund ranging from \$15 million to \$100 million—roughly three times the size of typical funds during the 1960s and 1970s. The time required to place these funds into promising ventures and then to see them mature to fruition *usually dictates a life expectancy for a fund of about 10 to 12 years*.³³⁹

The GAO report ascribes this growth, in large part, to the increased participation of pension funds as limited partners in venture capital investments,³⁴⁰ though the report notes that the venture capitalists appear to have felt differently:

Venture capitalists believe the growing availability of venture capital is a direct result of (1) reducing the capital gains tax from 49 percent to 29 percent in 1978, (2) relaxing pension trust fund investment rules in 1979, and (3) further reducing the capital gains tax for individuals from 28 percent to 20 percent in 1981. In their opinion, these changes have created incentives for risktaking not seen in the United States since 1969.

By far, the largest source [of capital committed to venture capital funds] in 1980 was the pension trust funds—\$190 million or 29 percent of the today \$657 million committed—with an increase of nearly 400 percent over [the]1978 to 1979 [period]. While the Department of Labor has no specific data to support these figures, the general trend appears to be consistent with the primary objective of the Department in setting pension investment policy. That is, to create an environment that gives pension fund managers

³³⁹ GAO Report, app 2 p 4. Emphasis added.

³⁴⁰ As noted in the Introduction, subsequent historians of venture capital would agree with the GAO's position here.

flexibility to exercise prudent investment strategies over a broad range of opportunities, including venture investments.³⁴¹

The main argument of the GAO Report, emphasized on its first page, was that “dialog between the Government and the [venture capital] industry must be improved,” requiring that “...both Government and the venture capital industry must be alert to other issues that will influence whether the complex venture capital process works successfully.”³⁴²

This reference to the “complex venture capital process” refers, in part, to the Life Cycle Model, which is reproduced in the GAO Report under the section heading “How the venture capital process works.”³⁴³ This appearance is prefaced by an extended narrative description of, among other characteristics, the venture capitalist’s selection process for investments, the active role the venture capitalist expects to take in assembling and mentoring the management team of a firm in which they are invested, and the role equity compensation, i.e. payment in stock or stock options, is expected to play in venture capital funded firms.³⁴⁴ Following this discussion, the Life Cycle Model is introduced:

STAGES OF BUSINESS DEVELOPMENT AND INVESTMENT

It is important to see how a new venture processes from an idea to a mature business enterprise. A successful business enterprise

³⁴¹ GAO Report, app 2 p 34

³⁴² GAO Report, p 1

³⁴³ GAO Report, p 13

³⁴⁴ Regulatory and tax policies had been passed in 1976 that made compensation in the form of stock and stock options less attractive. This issue was touched on in the Casey Report, but it did not become a more widely considered issue until 1980-1981. At this point, the issue of founder and employee compensation in the form of stock or stock options became an important issue for the venture capital industry and the high technology sector, and triggered a wave of Congressional appearances by early venture capitalists, particularly those from the West Coast who had not been particularly active in the direct lobbying of lawmakers before. Tom Perkins, the co-founder of the storied Silicon Valley venture capital firm Kleiner Perkins Caufield & Byers, delivered his first major piece of Congressional testimony on this issue in 1981.

passes through six phases, each one distinctly different in size, capital needs, managers, the way it is affected by Government rules and regulations, and where it finds capital for operations, growth, and expansion.

Chart 12 shows the life cycle of a new enterprise under fairly ideal conditions. The chart shows the kinds of milestones that must be met to proceed from one phase to the next, the kinds of activities that are occurring, what the sales and capitalization looks like, and where capital resources come from. (The dollar figures used are very conservative. Depending on the complexity and sophistication of each business enterprise, dollar figures could be two or three times those shown in the chart.³⁴⁵

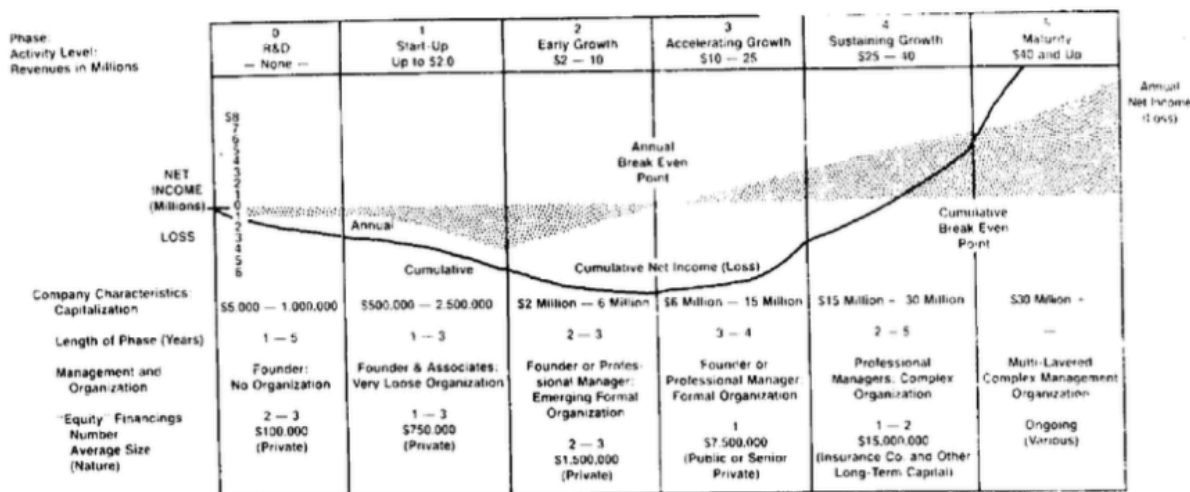
The Life Cycle Model as presented in the GAO's "Chart 12"³⁴⁶ is not a copy of the original publication version of the Life Cycle Model schematic, but an adaptation, with greyscale shading added and some text missing, specifically the "1975-196 FINANCIAL MARKET CONDITIONS" disclaimer.

³⁴⁵ GAO Report, app 2 p 20

³⁴⁶ GAO Report, app 2 p 21

Chart 12

LIFE CYCLE OF A NEW ENTERPRISE MODEL OF A GROWING AND SUCCESSFUL COMPANY



SOURCE: Small Business Administration

Figure 9: Life Cycle Model as it appears in the GAO Report in the first instance. In the pages that follow, each individual section is broken out of this chart, and presented and analyzed individually. It appears this was done by cutting a copy of the schematic up into six individual sections.

Over the next eight pages, half of the chapter's fifteen pages, the GAO Report breaks the Life Cycle Model down into each of its six stages, and explains each in detail using the hypothetical life story of a technology firm, beginning:

Assume that two or three bright scientists and engineers in an existing large company develop a good idea for a new product. The company, however, does not give the idea a high priority and the investors decided to strike out on their own. (Such individuals could come from Government, universities, or research institutes, or simply be 'garage' inventors.)³⁴⁷

³⁴⁷ GAO Report, app 2 p 21

Using this fictional company biography, the GAO report dramatizes the Life Cycle Model stage by stage, with each stage-section of the schematic being reproduced at half-page scale. This biography, hung on the scaffolding of the Life Cycle Model, provides an illustration of how thoroughly the Life Cycle Model as developed and promoted by Casey and the Task Force had become a common-sense understanding of how businesses, primarily in the technology sector, operated and grew.

The fictional biography presented in the GAO report hews closely to the Life Cycle Model and, in so doing, to the logics and assumptions of the original Casey Report. The fictional company's difficulty in acquiring bank loans and their need for equity investment rather than more debt is described, as is their preparation of a business proposal to present "to a venture capitalist who reviews" it "against the venture criteria described earlier,"³⁴⁸ primarily the potential for rapid market growth. The willingness to accept venture capital, and the giving up a "50 percent or more" equity share in their company, "quickly separates those individuals content to manage a small, independent business from those who aspire to build a significant growth business."³⁴⁹ The ability to offer equity positions or compensation in the form of stock options is emphasized as a necessity for enticing "talent to give up secure positions for ones in which success depends entirely on skills and personal drive."³⁵⁰ Additional infusions of venture capital in exchange for additional shares of equity occur. These, along with the shifts in management structure and revenue described in the Life Cycle Model, are described as "critical milestones" in the fictional firms' development "because they reinforce earlier projections of markets, growth

³⁴⁸ GAO Report, app 2 p 22-23

³⁴⁹ GAO Report, app 2 p 23

³⁵⁰ GAO Report, app 2 p 23

potential, and return-on-investment calculations” on the part of the venture capitalist.³⁵¹ But ultimately and “most important[ly],” the GAO Report describes “progress to this point” as “dictat[ing] success in the next phase: the new firm’s move to acquire expansion capital through a public stock offering.”³⁵²

The company’s entrance into the public markets is described as essential for both the company and the venture capitalist. For the company, an IPO marks a new phase of growth with:

...new permanent capital in the form of increased equity investment; new borrowing capacity through an improved debt to equity ratio; working capital; and capital for expansion, marketing, and perhaps acquisitions of its own.³⁵³

For the venture capitalist, however, the IPO is the endgame:

For the venture capitalist, liquidation is the payoff. The preference is for public offering or at least an upward merger. Both offer high returns to the investors to whom the venture capitalists are accountable. The venture capital firm should now be able to either distribute its investment in cash or liquid securities to its investors (usually limited partners) or plow the returns back into other promising ventures. Obviously, to achieve high returns, a venture capitalist must have a number of big successes to offset failures and marginal successes. No institution other than the venture capitalist approaches investments with this rationale. As a result, according to industry representatives, aggregate returns on investment for professionally managed venture capital funds historically have averaged 25 percent or more, compounded annually.³⁵⁴

³⁵¹ GAO Report, app 2 p 25

³⁵² GAO Report, app 2 p 25

³⁵³ GAO Report, app 2 p 26

³⁵⁴ GAO Report, app 2 p 25

The GAO Report does not treat the Life Cycle Model as a theory or hypothesis of how a venture capital backed enterprise might evolve. Rather, it treats the Life Cycle Model as the expected ideal, a life pattern to be aspired to and planned for, rather than what it apparently was, a hypothetical “generalized notion,” as Liles had described it to the SBA, intended to support specific policy outcomes.

Further, the GAO Report emphasized claims that can also be found in the Casey Report regarding the specialness of the venture capital process, its fundamental ties to both the technology sector in particular and to the American free-enterprise system in general, and implications this held for the industries capacities for self-governance. A key contention of the Casey Report was that venture capitalists were special actors both in financial markets and in the technology sector, with the unique capacity to manage risk and to identify and foster successful technologies and companies. The GAO Report makes similar claims, stated at one point, “Clearly, the role of the venture capitalist is far more than that of a supplier of capital to an entrepreneur to develop and market product”³⁵⁵ due to their active involvement in company management, knowledge of the technology sector, and knowledge of “myriad” applicable financial laws and policies.³⁵⁶ The analysis of the Life Cycle Model occurs in the Report’s second chapter, entitled “The venture capital process—a unique free enterprise approach to entrepreneurial activity in the United States.”³⁵⁷ Under the subsequent heading “Critical Elements of the Venture Capital Process” the GAO Report states:

³⁵⁵ GAO Report, p 5

³⁵⁶ GAO Report, p 5

³⁵⁷ GAO Report, app 2 p 2

The process epitomizes the American free enterprise system through a highly sophisticated methodological approach of combining technology, entrepreneurial talent, and capital resources to meet an identified market need.³⁵⁸

In addition to arguing that the special equity investment limited partnership venture capital model was a perfect manifestation of the American free market system, the GAO Report further argued that the industry was under threat, partially from its own success.

The GAO Report noted that the loosening of ERISA prudence regulations had unleashed a wave of institutional capital. However, the industry argued that that increase in capital was not matched by an increase in the “number of experienced venture capitalists available to manage the growing supply of venture capital...”³⁵⁹ A primary concern articulated by venture capitalists in the GAO Report was that this excess supply of capital would attract inexperienced or incompetent novice venture capitalists to the industry:

...creating the possibility that inexperienced venture capitalists may make less sound decisions than those with experience. This would hurt the industry’s image and lessen the success of the process. To avoid this, professional standards must be strengthened to ensure that new entrants are fully qualified to manage the process.³⁶⁰

However, this need for stronger professional standards did not extend to an openness to government regulation. Rather, the presence of inexperienced venture capitalists was a risk to the professional specifically because it could attract the wrong kind of government attention:

³⁵⁸ GAO Report, app 2 p 5

³⁵⁹ GAO Report, p 5

³⁶⁰ GAO Report, p 6

A major challenge to the existing venture capital industry is to train, by apprenticeship or some other means, enough competent analysts and portfolio managers to accommodate this large growth in available capital. If this is not done, according to venture capitalists, numerous new, inexperienced, maybe incompetent venture capital firms are likely to be formed. If their investment records and rationale are seriously flawed, the entire industry could suffer. This, in turn, could result in Government rules and regulations that stifle entrepreneurship and could affect the public securities market. The established venture capital community is very much concerned about this.³⁶¹

Here the GAO Report echoes claims we saw in the Casey Report itself and stated by members of the Task Force in the archive: that well-meaning government regulations had, out of ignorance, unintended, deleterious effects on this uniquely effective and uniquely *American* financial industry, and that the best way forward for everyone was for government to keep out of industry's way.

³⁶¹ GAO Report, app 2 p 36

The GAO Report, like the Casey Report from which it drew so much, became an influential citation in academic, popular, and policy publications.³⁶² It was cited in Congressional hearings regarding venture capital, industrial policy, and financial policy nearly a dozen times in the decade following its publication. In a nearly dozen academic business and legal publications, the GAO Report was cited as an authoritative source on the impact and state of venture capital from the late 1980s through till at least 2011. Given its reliance on the Life Cycle Model for its analysis, this citation path serves as a subsequent, secondary trail of influence for the Life Cycle Model in particular and the logics and assumptions of the Casey Report in general.

Tracing the afterlife of the Life Cycle Model illustrates how a specific policy argument became a generalized support structure for a economic imaginary that in turn undergirded the material transformation of the relationship between finance, technology, and business development in the

³⁶² A selected bibliography of documents that reference the GAO Report follows: The President's Task Force on Private Sector Initiatives. *Investing in America: Initiatives for Community and Economic Development*. Eds. Berger, Renee; Kirsten Moy, Neal Peirce, Carol Steinbach. December 1982. See pp 83.; GAO. Report to the Ranking Minority Member, Subcommittee on Federal Services, Post Office, and Civil Service, Committee on Governmental Affairs, U.S. Senate. *Public Pension Plans: Evaluation of Economically Targeted Investment Programs*. March 1995. See p 66; U.S. Congress. Joint Economic Committee. Subcommittee on International Trade, Finance, and Security Economics. *Role of the Venture Capital Industry in the American Economy*. Hearing. 30 September 1982. See p 64. Testimony of Kip Hagopian, founder of venture capital firm Brentwood Associates. Describes the GAO report as "one of the most comprehensive and insightful works ever done on the venture capital industry."; U.S. Congress. Joint Economic Committee. *Industrial Policy Movement in the United States: Is It the Answer?* Staff Study. June 1984. See p 81.; U.S. Senate. Subcommittee on Savings, Pensions, and Investment Policy. *Promotion of High-Growth Industries and U.S. Competitiveness*. Hearings. January 1983. See p 168. Testimony of Morton Collins, general partner of DSV Associates, a limited partnership venture capital firm, and director of NVCA. Collins quotes a full page of the GAO Report.; U.S. Congress. Joint Economic Committee. *Industrial, Policy, Economic Growth and the Competitiveness of U.S. Industry*. Hearings. July 1983. See p 50. Testimony of H. William Tanaka.; U.S. House. Committee on Merchant Marine and Fisheries. *Maritime Policy and Regional Economic Development: Capital Formation in the Maritime Industry*. Hearings. April 1984. See p 413. Testimony of Donald N. Ross. ; Thompson, Chris. "The Geography of Venture Capital." *Progress in Human Geography*. March 1989.; Ibanez, Fernan. "Venture Capital and Entrepreneurial Development." Background Paper or the 1989 World Development Report. *Policy, Planning, and Research, The World Bank*. 1989. See p 7. Refers to the GAO Report as "the most complete study, so far" of venture capital's contributions to entrepreneurship; Florida, Richard and Martin Kenney. "Venture Capital and High Technology Entrepreneurship." *Journal of Business Venturing*. Vol. 3. Issue 4. Autumn 1988.; Yusuf, Shahid, Koaru Beshima and M. Anjum Altaf. Global Change and East Asian Policy Initiatives. *The World Bank*. July 2004.

US. Historians such as Thomas Hughes³⁶³ have noted how high technology, like manned space flight, symbolized national identity in the United States throughout its history. More so, as science and technology studies scholar Sheila Jasanoff³⁶⁴ has documented, technology policy in the United States is often intertwined with and deferential to free market economic logics. The Life Cycle Model's post-Casey Report citation path illustrates one way in which that deference was enacted, and how the twinning of US national identity and high technology was expanded to include finance and financialization.

In its appearances in the 8(a) debates, we see how the Life Cycle Model was severed from its original application, becoming a touchstone reference for minority businesspeople, despite the SBA's attempts to discredit it entirely. That appeals to the Life Cycle Model were not successful in preventing the SBA from enacting participation term limits for the 8(a) program does not diminish the fact of its spread or its function as part of a contested epistemic infrastructure of US small business policy, or its apparent function as part of a performance of expertise on the part of minority businesspeople delivering evidence and testimony during the 8(a) debates. For these businesspeople, the Life Cycle Model served as a reflection of the way things were, bolstered by the reputations of the men who had conceived of it, and by its origins within the agency they were appealing to. While the SBA did not accept the Life Cycle Model as part of the bureaucratic infrastructure of the 8(a) program, these private individuals, within their economic imaginary understood the Model as part of the epistemic infrastructure of US business. The advocacy for its influence on 8(a) policy by multiple individuals, from various parts of the

³⁶³ Hughes, Thomas. *American Genesis*. New York, NY. Penguin Books. 1989.

³⁶⁴ Jasanoff, Sheila. *Designs on Nature*. Princeton, NJ. Princeton University Press. 2005.

country, for years, testifies to the tenacity of the Life Cycle Model beyond high technology and finance policy spheres.

The repeated appearances of the Life Cycle Model, as a cited reference and as a reproduced schematic iteratively detached from its origins provides further proof of how the Model and its motivating assumptions became part of the economic imaginary, part of a set of assumed, authorless ground truths³⁶⁵ about how business, finance, and the high technology sector worked in the US. As the Model moves further away from its contexts of creation, there is less and less interest in contesting it. Rather, it is simply reproduced as a reflection of reality, held at various points to be both idealized, generalized, and accurate. It is a type of Panglossian mirror, always showing the best of all possible worlds, which might be this one, or which this one might aspire or return too. In that this mirror image became reality, the Model demonstrates Barnesian performativity, as its diffusion shaped actual financial activities to be more in line with its own expectations. The Life Cycle Model's wide diffusion, coupled with the early success of the Casey Report's policy agenda, which will be examined in detail in the next chapter, set the conditions by which the use and reference to the Life Cycle Model in economic and financial policy made the activities of the high technology sector more like the Life Cycle Model in terms of the pursuit of venture capital by start-ups, the participation of institutional investors in venture capital funds, and the pursuit of the IPO as the primary criterion for success. It is critical to track the appearances of the Life Cycle Model as separate from the Casey Report's regulatory influence in general, as it is the diffusion and acceptance of the Life Cycle Model that explains

³⁶⁵ Jack, p 518

why the Casey Report's regulatory influence *persisted* when it might have otherwise been rolled back.

CHAPTER FOUR

“I WOULD VERY MUCH LIKE TO USE YOUR REPORT IN TEACHING MY CLASS”: THE CASEY REPORT’S CIRCULATION IN THE CULTURAL CIRCUIT OF CAPITAL

A month or so after the Casey Report was released at the beginning of 1977, William J. Casey received a letter from Samuel W. Bodman, a professional acquaintance in the venture capital sphere. Having received a copy of the Report directly from Casey, Bodman sang its praises, and ended his letter with a telling postscript:

P.S. I still teach school one afternoon a week in Chemical Engineering at M.I.T. Much of my class deals with entrepreneurship and new enterprise generation. With your permission I would very much like to use your report in teaching my class this coming fall.³⁶⁶

The Bodman correspondence gives us a view into how the Casey Report became such an influential document in the development of the venture capital industry. As I will argue in this chapter, the Report initially spread through personal networks, media reports, and professional associations. It would take four months for Congressional hearings to be held on the Report and its recommendations, by which time the Report had already been covered in daily newspapers and in *Forbes* magazine. It appears that the Casey Report’s momentum outside of the halls of government would ultimately power its influence within those policy-making spaces.

The Casey Task Force enjoyed an influential public life. Its primary purpose was to produce a set of policy recommendations and lobby for their passage on various fronts; this

³⁶⁶ Correspondence from Samuel Bodman (Fidelity Venture Associates) to William J Casey. 10 March 1977, Box 191, Folder 1, William J Casey Collection, Hoover Institution, Stanford University, California

project unfolded in the halls of government, through Congressional testimony by Task Force members and SBA staff, citation of their final Report in research and advocacy documents produced by various government offices, agencies, and task forces, and via “cultural circuits of capital”³⁶⁷ in communities of business professionals and the broader popular economic culture and media. The Casey Report would be cited over and over as a source of factual background material and as a policy handbook, directing the advocacy agenda of lobbying organizations, professional associations, and independent businessmen.

We can observe, as we did with the Life Cycle Model in the previous chapter, how via this process the Casey Report became a common reference point for policy makers, businesspeople, financiers and venture capitalists interested in the potential of the innovative high technology sector. References to the Report can be found in contemporaneous newspaper and magazine coverage including “how-to’s,” editorials, and investment explainers as well as news coverage. References also appear in professional and academic publications in areas outside the direct purview of the Casey Report, as well as in interpersonal correspondence. The Report’s assumptions became part of the economic imaginary of high technology, a shared common understanding of the sector operated economically and politically. Further, as the sector developed in the years following the Report’s publication, its policy recommendations were adopted and implemented. The Report’s logics and assumptions became embedded in the epistemic infrastructure of the high technology sector, and the Report itself was returned to again and again as a trustworthy reflection of reality, despite the fact that it had not been a true mirror when it was originally released in 1977.

³⁶⁷ Thrift, Nigel. *Knowing Capitalism*. Sage Publications. London. (2005) p 6

This and the following chapters track the appearances of the Casey Report in contemporaneous publications, as well as correspondence in the Casey and Pearsall archives. In this project, I attempt to trace the influence of the Report on a set of policy outcomes. I focus on two sets of policy reforms I argue would have a profound impact on the venture capital industry: the 1979 ERISA prudence standard re-articulation by the Department of Labor, and the reform of SEC Rules 144 and 146. Though other policy recommendations made in the Report were also adopted and influential, these two sets of policy changes enabled the venture capital industry to exist, grow, and operate in the form it does today. Without these policy changes, the core practices of modern venture capital would be illegal. These changes established an environment that specifically encouraged the institutionally supported limited partnership equity investment venture capital firm model.

Through the influence of these documents, a protected environment was created, tailored for one firm model and one financial structure to succeed. This firm model became the dominant form of venture capital and the preferred mode of investment in the high technology space. The Casey Report's uptake and influence in the business and legal presses, business schools, and popular media was crucial in publicizing and promoting this policy agenda. Its presence in those arenas made the institutionally supported, limited partnership firm model familiar and attractive to financiers, entrepreneurs, and the general public.

“He Has Personally Passed Out Over a Hundred Copies”

The Casey Report was released to the public in January and February, 1977.³⁶⁸ Hearings dedicated to its review were held in May of that year. It is apparent in Congressional records that the Report was not taken up as a respected point of reference regarding fiscal and financial policy within government until after those May hearings. However, the Casey Report was influential outside of policy circles *before* the hearings. It was this presence within the cultural circuits of capital that led to its later policy influence.

Nigel Thrift has described the cultural circuit of capital and business as made up of “business schools, management consultants, management gurus and the media.”³⁶⁹ For Thrift, this “circuit” serves several functions in the continual production and reproduction of capitalism and structures of capitalist value. A key function is the role of the cultural circuit in reifying “virtual notions” or theories through the implementation of “solutions” or structuring programs.³⁷⁰ The Report’s release seems to have been keyed to extend beyond the world of policy and to specifically tap into this cultural circuit. Rather than simply being distributed within policy circles, its publication was accompanied by a multi-page press release which stated that implementing the report’s recommendations would “produce substantial increases in jobs, tax revenues, and productivity...[and] make a major contribution to the growth of the US economy and the vitality of our free enterprise system.”³⁷¹ The circulation of the Report through

³⁶⁸ The exact date of publication is unclear. The published Report shows a January publication date, but the press release accompanying its publication is dated to 1 February 1977.

³⁶⁹ Ibid

³⁷⁰ Ibid

³⁷¹ “New Sources of Venture Capital Sought for Small Business,” Typescript of Press Release regarding Report Publication for general release, James B Ramsey (SBA), 1 February 1977, Box 194, Folder 4, William J Casey Papers, Hoover Institution, Stanford University, California

these cultural circuits prior to its breakthrough into the policy-making arena contributed to its motivating potential and the persuasiveness of its policy agenda.

There are no materials in the Casey papers that describe how the Report was originally distributed. Testimony during the May 1977 Congressional hearing indicates that the SBA “transmitted [the Report] to each member of the Small Business Committee of the House and Senate, other committees of the Congress having an interest in the subject and to key officials of the executive branch.”³⁷² However, as I will show in this chapter, this initial distribution by SBA was not instrumental in bringing the Report to the attention of policymakers or others with an interest in financial policy. Correspondence found in the Casey papers, including the Bodman letter quoted at the beginning of this chapter, indicates that the Report was most effectively distributed hand to hand, through direct personal networks by Task Force members, by individual SBA officials, and by businesspeople, lobbyists, and other professionals. The policymakers who would be the Report’s strongest supporters had their most memorable encounters with the Report through the media, not the SBA’s distribution list.

Two sets of letters illustrate these personal distribution networks. The first letter was sent to Casey by Samuel W. Bodman, the former technical director of Georges Doriot’s American Research and Development venture capital firm, and at the time of this correspondence the president of Fidelity Venture Associates,³⁷³ the venture capital arm of Fidelity Investments, a major asset management firm based in Boston, MA. Addressing Casey familiarly as “Bill” and writing to him directly at his New York law firm, Bodman writes:

³⁷² U.S. House. Committee on Small Business. Subcommittee on Capital, Investment, and Business Opportunities. Small Business Access to Equity and Venture Capital. Hearing. 12 May 1977. (Testimony of A. Vernon Weaver). p 3

³⁷³ Bodman would go on to serve as Secretary of Energy under President George W. Bush.

I very much appreciated your letter of February 25th and the enclosed report of your task force on venture capital. The subject addressed in your report is one of great interest to me and I spent a considerable amount of time with Dick Morse discussing these issues in my capacity as a Director of the M.I.T. Development Foundation.³⁷⁴ Unfortunately, that activity is being discontinued as a result of the problems you have discussed in your report.

As an independent operator in the venture capital business I have become very disillusioned about the national trends which you discussed so well in your report. I am enclosing herewith a Xerox copy of a recent Boston Globe article which purports to describe the situation here in Massachusetts. As you know, this state was once a bastion of new enterprise formation. Because of the kind of fuzzy thinking exemplified by this article the local venture capital scene is nearly as disastrous as the rest of the state's miserable economy.

You are to be congratulated for the clarity of the presentation in your report and for the quality of the recommendations which you have made. I am fairly busy with my own business activities here in Boston, but if there is any way in which I can be helpful to you in implementing some of your recommendations I would certainly be willing to try.

I hope to have the pleasure of seeing you again personally in the near future.³⁷⁵

Following the signature there is a postscript:

P.S. I still teach school one afternoon a week in Chemical Engineering at M.I.T.³⁷⁶ Much of my class deals with entrepreneurship and new enterprise generation. With your permission I would very much like to use your report in teaching my class this coming fall."³⁷⁷

³⁷⁴ This is the organization that authored the MIT/CTAB report discussed in Chapter Two.

³⁷⁵ Correspondence from Samuel Bodman (Fidelity Venture Associates) to William J Casey. 10 March 1977, Box 191, Folder 1, William J Casey Collection, Hoover Institution, Stanford University, California

³⁷⁶ Coincidentally, Landau held a doctorate in Chemical Engineering from MIT, though it had been awarded in 1941.

³⁷⁷ Ibid

This letter suggests that Casey, and perhaps other Task Force members, distributed copies of the Report to their social and professional circles in their own personal capacities, rather than solely relying on the SBA's distribution program. Further, recipients of the Report were in positions of influence not only in the developing venture capital industry, but also in education. Bodman in particular was involved in business education and the education of engineers who might go on to found commercial ventures. The Casey papers do not contain any further material from this correspondence, and there is no way to know for certain if Bodman did use the Casey Report in his chemical engineering classes at MIT. However, his mention of the possibility is suggestive of how the Report might have circulated outside of policy spheres.

Bodman's eagerness to adopt the Report for use in his class gives us another example of how the Casey Report might have become integrated into the developing common sense, or economic imaginary, of high technology entrepreneurialism. Bodman's letter notes that his class touches on "new enterprise generation." His class, at a prestigious and elite institution already strongly invested in entrepreneurship, would itself constitute an aspect of the epistemic infrastructure of the U.S. high technology sector. The inclusion of the Report in such a class would have exposed entrepreneurially-minded students to the Life Cycle Model, the Casey narrative of equity investment in U.S. business, and anticipatory expectations the Casey Task Force assigned to successful companies. The inclusion of the Report in an entrepreneurial syllabus would have influenced the expectations of a small but potentially politically significant cohort of MIT students regarding the "technologies, funding flows, affective orientations, and power relations"³⁷⁸ that might then be part of the drama of their own start-ups. The narrative

³⁷⁸ Murphy (2017), p 6

created by Casey and the Task Force to dramatize their theories and policy recommendations would, in this case, be delivered directly to a generation of potential entrepreneurs who might most successfully embody and enact those theories and narratives.

The second set of correspondence of interest is between William J Casey and a core member of the Task Force, Duane Pearsall. In this exchange, we find indications that non-governmental groups, particularly the pro-business lobbying organization the US Chamber of Commerce, distributed a large number of copies of the Report to their members as well as to policymakers and other interested parties.

Some twenty months after the Casey Report's 1977 release, Casey wrote Pearsall a brief letter containing an update on the Report's influence on specific SEC and tax policies:

I don't know why it took so long, but there does seem to have been a payoff on the efforts of our Task Force. First, the SEC has loosened up on 144, as indicated by the clipping I am enclosing from the *Wall Street Journal*. The Regulation A exemption is being increased. Finally, the Senate Finance Committee has approved a graduate corporate rate, reduced the capital gains tax to 25% and doubled the amount of loss of small business stock which can be charged against ordinary income.³⁷⁹

Pearsall responded that Casey's characterization of the success and impact of the Report was an "understatement," saying that the influence of the Report could be measured outside of any direct policy impact to date:

Your letter of October 3 was an understatement of the impact of the 'Casey Report,' quoting Ivan Elmer, Director of the Center for Small Business in the US Chamber [of Commerce], 'the SBA Task Force Report has become a handbook of directions for legislative and regulatory action for Small Business.' He has personally passed out over a hundred copies. I have been asked to serve on the

³⁷⁹ Correspondence from William J Casey to Duane Pearsall, 3 October 1978, MS055-03-0004/3 Small Business Records, Misc Correspondence SBA Task Force, Digital WPI, Worcester Polytechnic Institute

new administration's 'Policy Review Committee on Technology and Industrial Innovation.' This is being conducted through the Department of Commerce....Senator Nelson has scheduled a meeting for November 16 to draft a Small Business Program for next year. I'll make book that two or three of those items will be lifted from the 'Casey Report.'³⁸⁰

Pearsall would go on to participate in several committees, including the one mentioned here, and would testify before Congress multiple times regarding innovation and the American small business community. He would invoke the Casey Report frequently during these activities. Other Task Force members and administrators, including William Hambrecht and Mitchell Kobelinski would also cite the Casey Report as they were called to testify before various Congressional committees.

For a major lobbying organization to reference distributing “hundreds of copies,” and to use it as a “handbook of directions for legislative and regulatory action” indicates the Casey Report’s formative power and influence. While other trade organizations, particularly NVCA, which shared members and materials with the Task Force, were actively lobbying Congress and federal agencies during this time, there is little evidence that their reports and lobbying materials were swallowed whole like Casey Report appears to have been or otherwise used as guides for the advocacy of other organizations. Anecdotes such as this one point to how the Report crystallized a complete regulatory and legislative agenda, wrapping it in a compelling and appealing ideological justification. This justification, which placed limited partnership venture capital at the center of the high technology sector and the American Dream itself, would be

³⁸⁰ Correspondence from Duane Pearsall to William J Casey, 2 November 1978, MS055-03-0004/3 Small Business Records, Misc Correspondence SBA Task Force, Digital WPI, Worcester Polytechnic Institute

echoed in the media coverage of the Casey Report, the appearances of Task Force members and their associates in the press, and as a constantly repeated touchstone in Congressional testimony.

Media Appearances

Mainstream and financial press coverage of the Casey Report began almost as soon as it was published, perhaps due to the distribution of the press release. The first newspaper appearance I was able to identify occurred in February 1977, several weeks after the Casey Report's publication. The Florida daily paper, the *St Petersburg Times*, dedicated a full article to the Casey Report in the business and finance section. The several hundred word item repeats key figures from the Casey Report as "facts," reproduces the Casey Report's policy recommendations, and contains lengthy quotes from SBA Administrator Mitchell Kobelinski, William J. Casey, and John P. Birkelund. Birkelund was the president of New Court Securities, the US investment arm of the Rothschild family office and the parent-firm to New Court Private Equity. Birkelund and Lea were early adopters of the limited partner firm model at New Court Private Equity where Birkelund was Charles Lea's boss. Though Birkelund was not a member of the Task Force, he is quoted at length in multiple articles supporting the Task Force's conclusions and recommendations.³⁸¹

The *St Petersburg Times* item is typical of other coverage of the Casey Report from 1977. The article adopts the Report's alarmist tone and repeats its characterization of venture capital's role in the high technology sector as one with a long history and a uniquely powerful role in the American project. The item leads with:

³⁸¹ Birkelund was also quoted in several newspaper articles pertaining to ERISA reform, an area of the Task Force's interest that his colleague, Charles Lea, was particularly active in. These materials, and Charles Lea's role in ERISA reform, will be examined in detail later in this chapter.

For centuries, risk capital³⁸² has fueled American enterprise, transforming new ideas and technologies into a vast array of commercial products and services. Inventive entrepreneurs from Ben Franklin to Henry Ford have used the system to turn their genius into millions—and to build the nation into an economic powerhouse.³⁸³

The article picks up vocabulary from the Casey Report, specifically the “pipeline” terminology to refer to specific sequences of funding that seems to have been uncommon at the time:³⁸⁴

A recently published report prepared for the Small Business Administration (SBA) confirms the gravity of the problem and offers a broad range of affirmative-action proposals designed to reactive [sic] the venture capital pipeline.³⁸⁵

More newspaper coverage of the Casey Report pops up in May of 1977, when an article by marketing columnist Joe Capo of the *Chicago Daily News* was syndicated nationwide. The last installment of a three-part series on the state of small business in America, the article drew heavily on the Casey Report, the MIT Development Corporation study, and interviews with John P. Birkelund. Similar to the *St Petersburg Times* article, Capo argued that “[s]mall business in the United States should be put on the list of endangered species”³⁸⁶ and that “[e]vidence from many

³⁸² At this time, it appears that the terms “risk capital” and “venture capital” were used interchangeably, with “risk capital” being the more popular phrasing in the 1970s. It was not until the mid-1980s that the term “venture capital” became dominant. For this reason, the Report’s promotion of the term “venture capital” in its title, throughout the body, and in testimony, appears to be an intentional move, perhaps to promote the optimistic idea of the new “venture” over the pessimistic concept of “risk.” This framing is discussed in greater detail in the next chapter.

³⁸³ Stephens, Mark. “‘Capital Gap’ threatens business.” *St Petersburg Times*. 6B. 21 February 1977

³⁸⁴ As far as I have been able to determine, the first invocation of the concept of a “pipeline” with regard to venture or risk capital investments was in the Casey Report in 1977: “The cycle of a business enterprise requires different types of capital at each stage of its life. The highly developed U.S. marketplace has spawned investors for each of these many stages. The result can be imagined as a financial pipeline along which successful companies move from start-up to maturity. If the pipeline flows smoothly, all types of investment capital can function. If it clogs at any point, capital dries up all along the pipeline.” (Published Report, p 4)

³⁸⁵ Stephens, Mark.

³⁸⁶ This phrasing is similar to the title of the contemporaneous NVCA report, “Emerging Innovative Companies: An Endangered Species,” however the article does not reference that report directly or otherwise indicate that Capo had encountered it.

sources indicates that small business is being choked off from capital, the lifeblood of any entrepreneur.” As for what those sources were, Capo writes

In recent months countless articles on the subject have appeared in financial journals. Many of them were based on a report by a Small Business Administration task force that was issued in January, and which described the decline in small business investment as ‘catastrophic.’³⁸⁷

The *St Petersburg Times* and the Capo articles interpreted the Casey Report for a general interest, national audience, focusing on the Report’s high-level takeaways and recommendations. Other papers covered the Casey Report from a more local angle. In July 1977, the *Minneapolis Star* published an analysis of the Casey Report and its implications for business development in Minnesota as part of a five-part series “exploring the availability—or unavailability—of investment for new, technologically oriented companies.”³⁸⁸ Similar to the Capo article, the *Star* article featured an interview with Birkelund and analysis of the MIT Development Corporation study, here cited to the “MIT Development Foundation.”³⁸⁹

One month later, in August of 1977, an essay by businessman Martin Stone appeared in the large regional business magazine *California Business* and was subsequently syndicated in newspapers nationally. Headlined “How Government Makes It Difficult to Start A Business,” the essay began

³⁸⁷ This article was syndicated across a range of local and regional papers over a period of at least eight months with slight changes in content, length, and headline. Several representative citations follow: Capo, Joe. “Small Business ‘Should Be Put on Endangered Species List.’” *The Cincinnati Enquirer*. B9. 14 May 1977.; Capo, Joe (credited to Chicago Daily News). “Small Business Choking for Lack of Capital.” *The Billings Gazette*. p 10. 24 May 1977.; Capo, Joe. “Small Business: Endangered Species? Big Money Flows to Major Firms.” *The Atlanta Constitution*. p 26. 6 December 1977.

³⁸⁸ Chucker, Harold. “Purse Strings Tighten Up: Untried Ventures Scare Big Investors.” *The Minneapolis Star*. p 11. 15 July 1977.

³⁸⁹ Ibid.

The other day I picked up a report headed ‘Venture and Equity Capital for Small Businesses,’ prepared by the United States Small Business Administration in January 1977. The report brought to mind certain observations which have troubled me particularly in the past six or seven years.³⁹⁰

Stone’s essay echoes the Casey Report on the purported decline in venture capital for start-ups, repeating many of its critiques, logics, and policy recommendations. Stone lays particular emphasis on the Report’s lament that “public policy...discourages” public investment in “innovation, growth, and the creation of jobs” through participating in venture capital and market investment. Instead, the public is “encourage[d]” to participate in “government-sponsored lotteries,”³⁹¹ wasting their money in an unproductive way. “Government sponsored lotteries” is a direct quote from the Casey Report, where they were similarly disparaged as an unproductive use of personal funds.³⁹²

Almost a year later, in May 1978, in the course of reporting on the testimony of local industrial executives at an SEC hearing in Washington DC, an article in the Rochester, NY, daily paper, the *Democrat and Chronicle*, reviewed and quoted from the Casey Report at length.³⁹³ The article, headlined “Original function of market lost,” repeated much of the Casey Report’s logic and conclusions as fact, like coverage in other newspapers in the previous year.

³⁹⁰ Stone, Martin. “How Government Makes It Difficult to Start a Business.” *Colorado Springs Gazette-Telegraph*. p 59. 21 August 1977.

³⁹¹ Stone, Martin. “How Government Makes It Difficult to Start a Business.” *Colorado Springs Gazette-Telegraph*. p 59. 21 August 1977.

³⁹² The Report’s disparagement of lotteries and particular aversion to comparisons between venture capital and any type of gambling, while at the same time valorizing the risks taken by venture capitalists themselves, is discussed in Chapter Six.

³⁹³ Tanner, Anne. “SEC Told Original Function of Market Lost.” *Democrat and Chronicle*. p 59. 21 May 1978.

Coverage of the Casey Report itself continued for more than a year after the Report's publication in 1977. Additionally, Task Force members appeared in newspaper coverage of business and finance in major newspapers and syndicated articles. They served as experts, often repeating the Casey Report's logics, conclusions, and recommendations. Patrick Liles,³⁹⁴ Stanley Golders,³⁹⁵ SBA deputy administrator Patricia Cloherty³⁹⁶, and William J Casey³⁹⁷ all appeared in newspaper coverage of venture capital and small business from 1977 through 1980.

The continuing coverage of the Casey Report and appearances of Task Force members in daily newspaper coverage across major metropolitan areas and large syndication areas is significant. Through this continued presence in news media, the logics and conclusions of the Report diffused through populations outside policy circles. As discussed previously, at this time the general public understanding of what venture capital was and how it functioned was in flux. The concept of venture capital that the Task Force favored, equity investment over a set period of time that resulted in a profitable IPO or acquisition exit for the investor, was not yet established. Rather, I have found a number of contemporaneous newspaper articles that characterize venture capital investment as a *loan*. One such article, "Hard time to start: It's not a piece of cake," appeared in the *Chicago Tribune* in September of 1980:

Venture capital money is also difficult to get. Venture capital firms loan money to people who can't get it from the bank. And they

³⁹⁴ Fuerbringer, Jonathan. "Risk Capital Is Hard To Get." *The Boston Globe*. p 48. 6 March 1977.

³⁹⁵ Elsener, James. "Getting a Loan is Not Easy: Some Lenders Requires Potential Borrowers to Risk Their Assets Too: Good Management Attracts Investors." *Dayton Daily News*. p 69. 27 March 1977.

³⁹⁶ Bonner, Richard. "Despite Many Obstacles, Small Businesses Thriving." *Press Sun-Bulletin*. p 10. 24 November 1978.

³⁹⁷ New York Times News Service. "SEC Incumbent Willing to Stay Under Reagan." *The Missoulian*. p 56. 30 November 1980.

usually charge higher interest rates than the bank because it is a greater risk. Few small businessmen can afford those rates. And the venture capitalist is wildly speculative and expects the entrepreneur to be wildly successful, [business consultant Raymond] Margolies says.³⁹⁸

Other syndicated coverage as early as 1970 described a venture capital funds as “mutual funds,”³⁹⁹ an open-ended investment vehicle that continually sells shares to smaller investors, usually on the open financial markets. This type of fund structure is most comparable with the handful of publicly traded venture capital funds that had previously operated, like ARD. However, it is not the fund structure described by the Task Force and is uncommon today.

Other evidence of the unsettled, shifting nature of the public understanding of venture capital can be found in classified ads placed in the business and finance sections of local newspapers. In a survey of ads appearing in the business and finance sections of newspapers with local, regional, and national distribution from 1960 through 1980, I was able to identify ads seeking venture capital for start-ups and small business, ads advertising the availability of venture capital, and ads recruiting investors and venture capitalists. Ads that fell into these categories throughout this time period frequently conflated venture capital with loans, lenders,

³⁹⁸ Schumer, Fern. “Hard Time To Start: It’s Not A Piece of Cake.” *Chicago Tribune*. p 29. 30 September 1980.

³⁹⁹ Porter, Sylvia. “Explanation of New Mutual Funds Given.” *The San Bernardino County Sun*. p 10. 7 January 1970.

Sylvia Porter was a nationally syndicated financial columnist working out of the *Washington Post* who achieved a significant amount of fame and influence during her career. In 1960 she appeared on the cover of *TIME Magazine*.

real estate development, equipment leasing, expansion financing, or other general business capital needs.⁴⁰⁰

Several ads repeated the idea, found in the *Chicago Tribune* article, that venture capital stepped in when banks couldn't or wouldn't provide additional loans. A small classified ad in the Wyoming *Caspar Star-Tribune* in 1978 read, "When your bank can't help—money to loan, \$100,000 & up for mortgage, venture capital or risk capital."⁴⁰¹ A larger ad placed by "Concept Capital Resources Co" from the same year in the New York *Post-Star* used tag-line "We pick up where your bank leaves off," listing "Venture Capital" fourth among a list of ten offered business capital services.⁴⁰² Another 1978 ad in the Ohio *Times-Recorder* placed by the Los Angeles-based "Computer Capital Corporation" read

OWN YOUR OWN MONEY BUSINESS

'Become a Financier'

Represent over 2,000 Lenders

Ideal for executive type person. Operate from your own dignified professional office. Clients come to you for venture Capital Assistance. Must be sincere with well-rounded business background. Instant Hi income for right person.

U.S. \$18,000 CASH REQ.⁴⁰³

⁴⁰⁰ Business historian Martin Kenney has noted that "venture capital" was conflated with loans and lending almost as soon as the term was coined, with a 1938 *Wall Street Journal* editorial stating, "there is no 'venture capital' to speak of [in the US economy] because there is no venture spirit on the part of capital owners or those who normally would be *borrowers* of that capital." (Kenney, 1686) Kenney does not mention that this confusion as to the equity nature of venture capital persisted until the 1980s.

⁴⁰¹ Heizer, Bob/Heizer Realty. "WHEN your bank can't help--." Classified Ad. *Caspar Star-Tribune*. p 41. 14 September 1978.

⁴⁰² Concept Capital Resources, Co. "BUSINESS CAPITAL For Any Worthwhile Projects." Ad. *The Post-Star*. p 14. 27 January 1978.

⁴⁰³ Mr. Vander/Computer Capital Corporation. "OWN YOUR OWN MONEY BUSINESS." Classified Ad. *The Times Recorder*. p 30. 7 May 1978.

As with newspaper coverage, some ads in this timeframe described an equity-based venture capital firm and deal structure that is similar to its modern incarnation. A number of ads from the period placed in major regional California papers like the *San Francisco Examiner* and the *Los Angeles Times*, by publishers and firms based on both coasts, advertised single and multi-day seminars on “How to negotiate equity for capital”⁴⁰⁴ and:

How to obtain venture capital...structured for entrepreneurs, attorneys, company owners, consultants, corporate executives, accountants who wish to learn where, when and how to obtain ‘seed money,’ venture capital and make private stock placements.⁴⁰⁵

Other ads in the same region and time frame offered how-to books and bi-coastal directories of

partnerships, investment bankers, industrial corporations, and major Small Business Investment Companies who are engaged in the venture capital business...This book is a must for any entrepreneur, small businessman, accountant, lawyer, or business consultant involved in the financing of a business. Never before has such detail been compiled about high-risk capital suppliers.⁴⁰⁶

These media artifacts indicate that, while public and business awareness of venture capital as a specific mode of equity investment was growing throughout the 1970s, possibly due in part to the educational and outreach efforts of these firms placing these ads, that understanding was far from common or uncontested. Firm organization was also diverse. Ads and articles describe firms variously as publicly traded funds, as traditional equity partnerships where the partners themselves put up financial stakes, and as following the new institutionally-supported

⁴⁰⁴ United States Management Incorporated. “VENTURE CAPITAL in LOS ANGELES.” Ad. *The Los Angeles Times*. p 120. 24 May 1970.

⁴⁰⁵ Decision Resources Corporation. “How to Obtain Venture Capital.” Ad. *The San Francisco Examiner*. p 59. 28 April 1970.; Decision Resources Corporation. “How to Obtain Venture Capital.” Ad. *Arizona Republic*. p 51. 7 July 1970.

⁴⁰⁶ Technimetrics. “Venture Capital New Directory.” Ad. *The San Francisco Examiner*. p 64. 16 September 1970.

limited partnership model. It appears from this evidence that “venture capital” was understood more broadly as capital *for a new venture* as late as the early 1980s. This capital could and commonly did take the form of a loan rather than an equity investment.

In this context, the repeated and syndicated coverage of the Casey Report, which emphasized the concept of *venture capital* as an established equity investment practice with a significant and patriotic history and specific firm structure, in support of a specific identified policy agenda, and its distribution as an intellectual object through capital’s cultural circuits, stands out. At the time the Casey Report was released in 1977, even the name of the investment practice, *venture capital*, was contested. Texts from the period use the terms “venture capital,” “equity capital,” and “risk capital” more or less interchangeably. As journalists and syndicated columnists repeated the Casey Report’s salient points as fact, this coverage further spread the Casey Report’s version of what *venture capital* was and how it functioned in the American high technology sector.

Professional Circuits of Capital

The Casey Report also circulated through professional legal and business circuits outside of the press and government. Primarily in law review articles and academic studies of business performance, these citations show that the Casey Report was taken up both as a source of factual background material, and as a guide for the interpretation and advocacy of policy by those professional populations responsible for interpreting government policy: lawyers, accountants, and other business professionals and scholars. These professions operated within and reinforced the epistemic infrastructure of the high technology sector. The Casey Report was also covered as

straightforward news in professional journals like the *Journal of Accountancy*.⁴⁰⁷ The law review articles and other scholarly documents examined in this section are not policy documents per se; they were written by and for professionals, lawyers, businesspeople, and academics, rather than policymakers. In these circuits, it is possible that these documents served to introduce broad professional communities to the concept of venture capital as equity investment, to normalize the idea of the institutionally-supported limited partnership firm structure, and to provide a set of policy goals these communities could lobby for, as indicated by the Duane Pearsall letter cited above. The popular media coverage provided the general public with simple, surface-level descriptions of the Casey Report, and their new construction of venture capital. These specialized documents provided professional, practitioner audiences with detailed analyses, both of the Casey Report itself and of second level arguments and conclusions based on the Report's assumptions, logics, conclusions, and presented histories. The Report became a go-to citation for professionals writing on high technology businesses, particularly those with a pro-deregulation slant. Its arguments and recommendations quickly became a touchstone, invoked repeatedly as a show of expertise or as supporting arguments for related policy proposals. Many of these documents treat the theories and conclusions of the Report as reflective of reality, though as has been shown that was not the case when the Report was first published. Other documents depict the Report as an idealization that should be made reality or returned to. These documents provide further evidence of how the Casey Report, like the Life Cycle Model, became part of the epistemic infrastructure of the American high technology sector.

⁴⁰⁷ "SBA Makes Recommendations to Promote Venture Capital." *The Journal of Accountancy*. pp 10-12. May 1977.

A number of articles that would fall into this category focus on the Casey Report's recommendations regarding the reform of SEC Rules 144 and 146. These articles reference William J. Casey's 1977 *Fordham Law Review* article "SEC Rules 144 and 146 Revisited." Casey wrote this piece at the same time as the Report and repurposed a significant amount of material and language originally intended for the Report itself. These articles are analyzed in Chapter Six, which addresses Rules 144 and 146. Similarly, the materials that focus on ERISA reform will be discussed the next chapter, dedicated to ERISA. This chapter reviews only those materials that reference the Casey Report and its findings in a general way or without a specific focus on these two areas of policy change, though the majority of those materials make passing reference to or mention ERISA and Rules 144 and 146 in the course of their other discussions.

Citations of the Casey Report in law review articles and academic studies of business began shortly (in academic time) after its publication in 1977. The first citation appeared in January of 1978 in an issue of *The Business Lawyer*, a peer-reviewed business law journal published by the American Bar Association, in an article arguing for a "unified small business legal structure."⁴⁰⁸ The author, a law professor from the University of South Carolina, cited the Casey Report as a factual reference regarding the financial realities faced by small businesses and the significance of their role in the US economy.

A second 1978 citation appears in a National Science Foundation (NSF) compilation of projects that received funding from the agency and which had been completed that year. The compendium notes that Willard T. Carleton, a professor of finance at the University of South

⁴⁰⁸ Haynsworth, Harry J. "The Need for a Unified Small Business Legal Structure." *The Business Lawyer*. Vol. 33. pp 849-872. January 1978.

Carolina, had completed with his doctoral student, Ian A. Cooper,⁴⁰⁹ a project entitled, “An Analytical Framework for Investigation of Financial Constraints on High Technology Venture.”⁴¹⁰ The goal of this project was to develop and test a model for evaluating the logic, performance, and role of venture capital in the high technology sector and the ways in which public policy influenced their participation and performance. According to the project’s write-up in the compendium, Willard and Cooper used the policy recommendations in the Casey Report as the subject matter upon which to test their analytical model and upon which to build their “new theory”⁴¹¹ of venture capital investment. They relied on it to such an extent that the Report itself is discussed extensively in the project’s write-up in the NSF compendium. The \$39,300⁴¹² grant began in 1975 and concluded in 1978.

In 1979, the RAND Corporation⁴¹³ cited the Casey Report in their own report, “Federal Activities in Urban Development,” as a source of factual background and context regarding the decline of venture capital financing. RAND stated, in a section particularly critical of SBICs:

According to the "Report of the SBA Task Force on Venture and Equity Capital for Small Business," venture capital for small businesses has dried up since 1969 because of lack of strong direct

⁴⁰⁹ Currently a professor of finance at the London Business School by way of the University of Chicago.

⁴¹⁰ National Science Foundation. “AN ANALYTICAL FRAMEWORK FOR INVESTIGATION OF FINANCIAL CONSTRAINTS ON HIGH TECHNOLOGY VENTURES” *Summaries of Projects Completed in Fiscal Year 1978*. US Government Printing Office. p 1048. 1978/1979.

NB: I have been unable to locate a copy of this report in any accessible archive

⁴¹¹ National Science Foundation, p 1048.

⁴¹² Accounting for inflation, this would be nearly \$160,000 USD today.

⁴¹³ The RAND Corporation is a non-profit think tank founded in 1948. Initially intended to provide research and analysis to the US Air Force, RAND frequently undertakes government-funded studies on a wide range of issues. It has had particular historical impact regarding the use of systems and computational analysis to evaluate the impacts of policy decisions, and research in the areas of national security, economic, and technology.

federal encouragement to equity investments in small businesses combined with a tax structure that discourages them.⁴¹⁴

This trend of citation—simply as factual background—continued as law review articles drew on the Report through 1981. These articles covered a range of subjects, from assessments of “performance-based pay”⁴¹⁵ for financial advisors to analyses of the effects of various securities regulations on different aspects of small business and the high technology sector.⁴¹⁶ These texts referenced the Casey Report as “the most widely recognized” contemporary study on “the capital formation problem of small enterprise.”⁴¹⁷ Other articles drew long quotations from the Report, lauding it as “characteristic” of the opinions of “many” in government and business regarding the negative impact of regulation on business.⁴¹⁸ Some authors were law students, graduate students in finance,⁴¹⁹ professors of law⁴²⁰ or business, while others were attorneys in private practice⁴²¹ or businessmen. One article was authored by New York Governor Hugh Carey.⁴²²

⁴¹⁴ Vernes, Georges; Vaughan, Roger J.; Yin, Robert K. *Federal Activities in Urban Economic Development. R-2372-EDA*. RAND. Santa Monica, CA. April 1979. p 92.

⁴¹⁵ Porter, David P. “Performance-Based Compensation for Investment Advisers to Business Development Companies.” *Case Western Reserve Law Review*. Vol. 30. No. 676. 1980.

⁴¹⁶ Cavanagh, Mark Edward. “Securities Regulation: Improved Financing Alternatives for Small Issuers.” *Washington & Lee Law Review*. Vol. 38 No. 875. 1981.

Titus, Robert B. “Assessing the Impact of Securities Regulation on Small Business: How to More Effectively Bridge the Capital Gap.” *University of Bridgeport Law Review*. Vol. 1. No. 19. 1980.

⁴¹⁷ Tashjian, Richard G. “The Small Business Investment Incentive Act of 1980 and Venture Capital Financing.” *Fordham Urban Law Journal*. Vol. 9. 1981.

⁴¹⁸ Carey, Hugh L. “New Business Development.” *Fordham Urban Law Journal*. Vol. 9. No. 785. 1980. p 678

⁴¹⁹ Porter, “Performance-Based Compensation.”

⁴²⁰ Haynsworth, “Unified Small Business Legal Structure.”

⁴²¹ Titus, “Assessing the Impact of Securities Regulation.”

⁴²² Carey, “New Business Development.”

The ideological stances and conclusions of the citing articles are similar, all taking what could be considered a broadly neoliberal stance in harmony with the ideological assumptions of the Casey Report itself. The authors advocated for reductions in federal regulations, including securities regulation and for increased government spending in the high technology sector, but only in the form of tax breaks for investors, entrepreneurs, and corporations. They generally valorized the role of small high technology businesses and the venture capitalist in the US economy. The originating discipline of the articles ranged from academic law, policy, and finance to business and governance. This spread of professions is significant. It was not just lawyers *or* businessmen *or* policy professionals who read and used the Report in their work. Rather, professionals with different and distinct roles within American business found the Report compelling and useful. As they continued to cite the Report across a range of professions, disciplines, and publications, its influence on the epistemic infrastructure of the high technology sector as a whole concretized in the text of these professional documents. In these spheres, the Report served as a reference for factual background and context as to the state of the contemporary small business, both generally and specifically with regard to the high technology sector. It supplied biographical detail regarding the purported history of equity-based venture capital investment in the US, and provided a source of inspiration for policy recommendations and their theorized impact on the future of industry.

Before discussing the Report's appearances in the Congressional record, I will highlight an anecdote from the first such hearing which may shed some light on how the Report came to the attention of such a wide audience outside government.

The Report has several strong advocates in Congress, but the earliest and most persistent was New York Representative John J. LaFalce, an influential representative who served as the Representative for New York's 36th, 32nd, and 29th districts for 28 years, from 1975 through 2003. LaFalce was re-elected 13 times, and served as chairman of House Small Business Committee and as the Ranking Democrat on the House Financial Services Committee. LaFalce routinely championed the Casey Report and its recommendations, particularly when taken in comparison to the by-then visibly distressed SBIC program.

LaFalce called the first set of hearings in which the Casey Report would be invoked in May 1977, four months after its publication. Held before the House Subcommittee on Capital Investment and Business Opportunities, the hearings were entitled "Small Business Access to Equity and Venture Capital" and focused in large part on the Casey Report itself. LaFalce's interest in the Casey Report did not stem from his experience with the SBA or being delivered the Report by another government body. Rather, LaFalce identifies an article in a recent issue of *Forbes* as his primary exposure to the Report, saying in response to the testimony of then-SBA Administrator Vernon Weaver:

The thrust behind my question was that while we have a specific responsibility on this committee and you have a specific responsibility as Administrator to make sure that we develop the SBIC concept to its full potential, and we will do that, by the same token we also have an advocacy role insofar as other laws are concerned and other committees and other departments or agencies. We have to give certain priorities of time [sic]. Shall we be spending more of our time and effort in continuing the surtax exemption, for example, rather than this change in the SBIC? We try to keep these things in perspective. That is why I am extremely interested in the advocacy role that your Agency will play with the other departments regarding some of these recommendations [in the Casey Report]. That is why I was interested that you intend to

pursue [promoting the recommendations of the Casey Report] to the White House, Treasury, Labor, and SEC, because I think perhaps the greatest role of the Small Business Administration is an advocacy role as far as the changes in the tax laws are concerned, in ERISA laws, security laws and regulations, et cetera. They are not going to call us and tell us what the problems of small businesses are. We are going to have to actively go out. *To my knowledge, this task force report has drawn little or no attention prior to this time. I saw a mention of it once in a Forbes magazine article. I don't know if anybody else saw it.* I do know that at meetings of other committees on which I serve I made reference to the report to previous secretaries and to Chairman Schultze and they were not aware of it. I sent Mr. Schultze a copy, et cetera. I think that is a very very important part of all our jobs.⁴²³

Given his ranking role on the Committee on Small Business in the House of Representatives, LaFalce should have received a copy of the Report when the SBA distributed the Report in January of 1977. However here, LaFalce gives credit to an article in *Forbes*, which seems extraordinary. LaFalce does not describe the article in any further detail, but I was able to identify the likely piece in the April 15 1977 issues of *Forbes*. This two page column by former US Ambassador to France, then-current East Coast venture capitalist Thomas P. Murphy was titled “Venture Capital: Out in the Cold.” The column begins

If Adam Smith could return, I think he'd be upset to learn that in the world's biggest capitalistic country the government has become the biggest venture capitalist. What Smith would discover—and so, perhaps, will A. Vernon Weaver, Carter's nominee for administrator of the Small Businesses Administration—is that for about five years now there has been virtually no risk capital available for smaller companies except from the SBA.⁴²⁴

⁴²³ U.S. House. Committee on Small Business. Subcommittee on Capital, Investment, and Business Opportunities. Small Business Access to Equity and Venture Capital. Hearing. 12 May 1977. (Testimony of A. Vernon Weaver) p 10. Emphasis added.

⁴²⁴ Murphy, Thomas P. “Venture Capital: Out in the Cold.” *Forbes*. 15 April 1977. pp 158-159.

As with other press citation of the Report, Murphy repeats the Report's figures and views regarding the downturn in underwritings from 1972 to 1975, the supposed negative effects of the high cost of registration, and the concentration of investment capital in established companies. He also reasserts the Report's logic regarding the role of small businesses in the job market, which itself was drawn from the MIT Development Corporation/CTAB study:

Roughly half the American economy is small businesses. It happens to be the half that furnishes most of the jobs everybody says we need: entry level jobs for youngsters, service jobs for women, and something else that you cannot quantify—it finds places for the millions who don't fit the tie model at Xerox and the phone company.⁴²⁵

Going on, Murphy repeats the Report's points regarding ERISA's impact on the willingness of pension trustees to invest in risky startups:

As for the big money, pension funds, the new ERISA (Employee Retirement Income Security Act) makes the trustees personally liable for anything invested that does not meet the prudent-man rule. As a result, prudent pension trustees no longer patronize cheap restaurants for fear of meeting entrepreneurs who might importune them for capital.⁴²⁶

Murphy does not source his statements regarding the lack of risk capital, the downturn in underwritings, the concentration of capital in the financial markets, the role of small businesses in employment, or the negative impacts of ERISA and the costs of registration back to the Casey Report initially, though all the claims he makes are to be found there. Rather, he presents these statements as self-evident facts, tipping his hand only in the last two paragraphs.

For disaster fans (those of you who loved *Airport*, thrilled to *Earthquake*), there is a widely ignored booklet published by the

⁴²⁵ Ibid.

⁴²⁶ Ibid.

SBA called “Report of the SBA Task Force on Venture and Equity Capital for Small Business.” It is a sensible report, it deals with the problems I have dolefully outlined, and it is free (write: Office of Investment, 1441 ‘L’ St. N.W., Washington, D.C. 20416).⁴²⁷ Let us hope a former small businessman from Georgia⁴²⁸ reads it. Otherwise, I just don’t know how I will explain this mess to Adam Smith if he comes back.⁴²⁹

I have no direct evidence pointing to how Murphy might have initially encountered the Report nor does he explain how he found it in his column. Because he had been a practicing venture capitalist for several years by 1977, it’s possible that he had received the Report through a national organization like NVCA or through a personal connection a member of the Task Force. In any case, by writing a full column based on the Report and directing *Forbes* readers as to where they might acquire the Report for themselves, it’s likely that Murphy increased the size of the business and policy publics who had heard of the Report, were conversant in its logics, conclusions, and recommendations, and who had perhaps personally acquired and read it in part or in full. Here we have a clue as to why the Casey Report enjoyed a fairly wide-ranging life in citation in comparison to other government reports on similar subjects produced around the same time.

It appears that knowledge of the Casey Report first circulated through cultural circuits before becoming an influential part of the policy discourse. It was cited by and used as the basis of reporting in influential venues like *Forbes* and nationally syndicated financial columns, in addition to local newspapers. Evidence from personal correspondence indicates that personal

⁴²⁷ The “Office of Investment” referred to here is an office within the Small Business Administration. Murphy is directing his readers to write directly to the SBA for copies of the Report.

⁴²⁸ This is a reference to President Carter.

⁴²⁹ Murphy, “Venture Capital: Out in the Cold”

networks were also key to the Report's influence. We saw further evidence of these interpersonal distribution networks in the previous chapter, particularly with regard to the popularity of the Casey Report among communities of minority business owners. Professionals and scholars also made extensive use of the Report in their professional publications and research. This evidence seems to indicate that the Report's circulation was not initially prompted by its influence in policy circles, but that its stream of influence might have flowed in the opposite direction, with the Report gaining credence and popularity among journalists, businesspeople, and financial professionals before returning to the attention of policymakers.

Government Citations and References

From 1977 through 1981, the Casey Report is referenced in Congressional testimony in at least thirteen separate hearings. The Casey Report was invoked in hearings related to various tax and financial regulation proposals; the SBIC program; the impact of ERISA on institutional investment; antitrust enforcement; the activities of the SBA; and various bills related to small business investment capital formation and innovation. In the time period from 1977 through 1985, at least six different government-commissioned reports and studies cited the Report. These reports were commissioned by federal offices including the Small Business Administration, the Commerce Department, the Treasury Department, as well as by the Senate Select Committee on Small Business. These reports were often intended to provide policymakers and regulators with general background on a broad topics such as "Small Business and Innovation";⁴³⁰ "Creating

⁴³⁰ Office of the Chief Counsel for Advocacy, US Small Business Administration. "Small Business & Innovation: A Report of an SBA Office of Advocacy Task Force." May 1979

Jobs Through the Success of Small Innovative Businesses”;⁴³¹ and the special problems of “Women Business Owners” and capital formation.⁴³² At least one was commissioned to serve as delegate reading for a White House conference on small business in America.⁴³³ These reports repeated the recommendations of the Casey Report, primarily regarding ERISA and SEC Rules 144 and 146. Like other citations, they used the Casey Report as a source for quantitative data on the early 1970s IPO decline, the special job growth potential of “innovative” companies, and the projected economic benefits of a protected venture capital investment class. It is apparent that the Report remained, for several years after its publication, a popular touchstone for policy-makers concerned with small business, high technology, innovation, and financial regulation. I will not be reviewing each of these citations here, but will focus on those that relied particularly strongly on the Casey Report or that offer an interesting perspective on its uptake in policy spheres.

As mentioned previously, the first of these hearings was convened by Representative LaFalce and held before the House Subcommittee on Capital, Investment, and Business Opportunities of the Committee on Small Business in May 1977. In a letter from LaFalce inviting Casey to testify, LaFalce notes that the first full day of the scheduled three days of hearings was to focus on the Casey Report in detail:

The May 12 hearing will focus on the Report of the SBA Task Force on Venture and Equity Capital for Small Business, and we are looking forward to hearing from you on this subject because of

⁴³¹ “Recommendations for Creating Jobs Through the Success of Small, Innovative Businesses: A Report to the Assistant Secretary of Commerce for Science and Technology by the Commerce Work Group on Job Creation.” December 1978

⁴³² Treasury Department Study Team. “Credit and Capital Formation: A Report to the President’s Interagency Task Force on Women Business Owners.” April 1978.

⁴³³ U.S. Senate. Select Committee on Small Business. ““Discussion and Comments on the Major Issue Facing Small Business to the Delegates of the White House Conference on Small Business.” Report. 4 December 1979.

your Chairmanship of the Task Force and your role in shaping the Report's recommendations. It would be appreciated if you would concentrate your remarks on those aspects of the report that you are most familiar with and which you consider the most significant. In particular, we would like to receive your views on which of the Report's recommendations are most critical, and which, if any, you do not totally endorse.⁴³⁴

Six Task Force members delivered oral or written testimony in the hearing's first two days, together with two SBA senior staff members. LaFalce had apparently taken the Casey Report, its assumptions, logics, and findings to heart. In his opening remarks, LaFalce stated,

The availability of different types of capital for small enterprise is perhaps the single most important subject matter within [the subcommittee's] jurisdiction, and the subject is all the more compelling due to the widespread evidence that the availability of essential capital for new and growing concerns is not keeping pace with the demand.⁴³⁵

He continued in this opening statement to restate the Report's logics and conclusions in strong, affect-laden terms, describing the extant market for investment capital for small businesses as "narrowing...to the point of extinction."⁴³⁶ He further said of the Report's analysis of the drop-off in small business stock offerings from 1969 to 1971:

That statistic frightened me. The data is frightening in terms of the statement it makes about the capacity of our risk capital markets to sustain and nurture small firms that have the potential for tremendous expansion and concomitant job creation.⁴³⁷

⁴³⁴ Correspondence from John LaFalce (US House of Representatives) to William J Casey regarding testimony before the Committee on Small Business Committee on Small Business/Subcommittee on Capital, Investment, and Business Opportunities, 4 May 1977, Box 194, Folder 5, William J Casey Collection, Hoover Institution, Stanford University, California

⁴³⁵ Hearing, Small Business Access to Equity and Venture Capital. Hearing. 12 May 1977. Opening remarks of John LaFalce, p 1

⁴³⁶ Ibid, p 2

⁴³⁷ Ibid p 2

In addition to serving as the Congressional debut for the Report, the May 1977 hearings give us a window into how the SBA and its new leadership under Vernon Weaver⁴³⁸ viewed the Report in its original context, outside of the 8(a) debate which would occur several years later. Administrator Weaver here seems broadly enthusiastic about the Report, its conclusions, and its recommendations, in striking contrast to the stated views of his successor, James Sanders, who denigrated the Report's relevance with regard to the 8(a) issue as well as to business more generally. Weaver describes the Task Force as having done "an excellent job in analyzing this problem and presenting it in clear and precise terms."⁴³⁹ Weaver's testimony here amounts to a full, unqualified endorsement of the Report. Indeed, he concludes his testimony by repeating a main point of the Report, that "the availability of 'risk capital' is the most pressing financial problem facing small business today,"⁴⁴⁰ and later clarifies this point further, saying, "The [SBA]'s position is that equity capital to small business should come from the private sector, overpoweringly so."⁴⁴¹ Invoking recently sworn-in President Jimmy Carter, Weaver said

As President Carter has told me, more loans—or more debt capital—is not what an already overly debt-burdened company needs. What they need is some form of risk capital that will stay with these companies over time and help assure their orderly growth.⁴⁴²

In these statements, Weaver throws the support of the new SBA leadership behind the Report's overarching ideological conclusion that there was something uniquely powerful about

⁴³⁸ Vernon Weaver was the immediate successor to Mitchell Kobelinski, who commissioned the Report, and predecessor to the strong critic of the Report, James Sanders

⁴³⁹ Hearing, Small Business Access to Equity and Venture Capital. Hearing. 12 May 1977. Testimony of A. Vernon Weaver, p 3

⁴⁴⁰ Ibid, p 6

⁴⁴¹ Ibid, p 10

⁴⁴² Ibid, p 4

private equity investment in small business. Government, he held, should expend its efforts and resources in encouraging equity investment from the private sector rather than pursuing other modes of investment in small business and high technology sector growth. This model would contribute to the diminishing of alternative modes of support, such as direct equity investments by the state in the technology sector, patent-sharing, exploring loan-based or co-op models like the SBIC program, or other models of investment.

After Administrator Weaver, six Task Force members delivered oral and written testimony, including William Casey, Stanley Golder, William Hambrecht, Charles Lea, Duane Pearsall, and Patrick Liles. Through their testimony, the Report's reasoning and conclusions were repeated and emphasized. Charles Lea took the opportunity to enter the Life Cycle Model into the hearings records,⁴⁴³ and Casey handed out copies of his recently published law review article, "SEC Rules 144 & 146 Revisited" to the subcommittee members.⁴⁴⁴ Following the testimony of the Task Force members, LaFalce adjourned the hearing, despite saying that they might "go on endlessly" on the topic.⁴⁴⁵

LaFalce's interest in the Report did not wane. Less than a year later, in February of 1978, LaFale again convened a meeting of the House Subcommittee on Capital, Investment, and Business Opportunities. The purpose of this hearing was to review a bill proposed by LaFalce, H.R. 9549 or the *Capital, Investment, and Business Opportunities Act*, "designed to facilitate

⁴⁴³ Hearing, Small Business Access to Equity and Venture Capital. Hearing. 12 May 1977. Testimony of Charles Lea, p 25

⁴⁴⁴ Hearing, Small Business Access to Equity and Venture Capital. Hearing. 12 May 1977. Testimony of William J Casey, p 21

⁴⁴⁵ Hearing, Small Business Access to Equity and Venture Capital. Hearing. 12 May 1977. Closing remarks of John LaFalce, p 37

small business's access to venture and equity markets.”⁴⁴⁶ LaFalce had introduced this bill in the House in October of 1977, shortly after the May 1977 hearings, where it had died. The purpose of the February 1978 hearings was to review and revise the bill for re-introduction. In his opening statement, LaFalce ascribed the inspiration and motivation for the bill directly to the Casey Report and the hearings held less than a year prior:

This proposal resulted from a series of hearings our subcommittee held last year wherein it considered the difficulties small businesses are experiencing in obtaining venture capital and equity financings. At that time, the report of the Small Business Administration Task Force on Venture and Equity Capital for Small Business—the so-called Casey Report—served as the focal point of those hearings. Testimony was taken from A. Vernon Weaver, the Administrator of the SBA; Mr. William Casey; and from venture capitalists and academicians. This testimony confirmed that much needed investment capital for small business has become more limited in recent years. As a result of those hearings, I introduced this bill to ameliorate these deficiencies and to encourage investment in small business. The bill incorporates many of, although not all, the suggestions made by the witnesses and by the task force report....Since the time of our hearings, the Small Business Administration has continued to study this problem, and, over the past several months, has proposed a number of alternative approaches. This afternoon we will hear from Patricia Cloherty, Deputy Administrator of the Small Business Administration, as well as from two representatives of venture capital associates [sic], the National Association of Small Business Investment Companies and the National Venture Capital Association, all of whom will comment not only on the bill, but alternative proposals. I sincerely hope that out of these hearings we will be able to formulate legislation which will impose the situation for small business by stimulating their ability to attract new and much needed venture and equity capital.⁴⁴⁷

⁴⁴⁶ U.S. House. Committee on Small Business. Subcommittee on Capital, Investment, and Business Opportunities. H.R. 9549: The Capital, Investment, and Business Opportunity Act. Hearing. 22 February 1978.

⁴⁴⁷ Hearing, H.R. 9549: The Capital, Investment, and Business Opportunity Act. Opening Remarks of John LaFalce, p 2

Later in these hearings, LaFalce had read into the record the statement of an absent member, Representative J William Stanton of Ohio:

I don't suppose there is anything more in keeping with our free enterprise system, than an adequate supply of capital to business, particularly to small business. It has been said many times that the viability of small business, which is in the main, highly competitive, is the mainstay of our free way of life. That it has been said so often in no way makes it less important. Anything that we can do here in the committee and in the Congress to stimulate the flow of capital is something that we should rigorously pursue.⁴⁴⁸

LaFalce continued to invoke the Casey Report in multiple hearings through 1978. He called Task Force members to testify multiple times and used the Report's recommendations as the basis for multiple bills. Task Force members would repeatedly invoke the Report and its growing reputation and influence in hearings related to multiple aspects of American small business and innovation. In his testimony regarding SBICs in May 1978, former Task Force member Stanley C. Golder said, "To our knowledge, every competent observer deems the report a landmark, and it is constantly being referred to."⁴⁴⁹ However, reforms were not occurring at the speed some thought they should. Later in this May hearing, LaFalce comes close to chastising an administrator from the Small Business Administration, Patricia Cloherty, for what LaFalce considered to be the SBA's failure to put forth "any really strong effort to adopt recommendations and advocate them before other agencies within the Carter Administration and other appropriate congressional committees."⁴⁵⁰ LaFalce continued:

⁴⁴⁸ Hearing, H.R. 9549: The Capital, Investment, and Business Opportunity Act. Written statement of J William Stanton, p 2

⁴⁴⁹ U.S. House. Committee on Small Business. Subcommittee on Capital, Investment, and Business Opportunities. Small Business Investment Company Program. Hearing. 8 May 1978. Testimony of Stanley C. Golder, p 168

⁴⁵⁰ Hearing, Small Business Investment Company Program, Comment of John LaFalce, p 182

...[T]hings are happening right now, where if there were a strong voice within Government saying that maybe this would be the greatest thing that ever happened, if that is how you saw it, it would give tremendous impetus to those movements [to implement reforms laid out in the Casey Report]. For example, in the Ways and Means Committee now, there is a move afoot in which I believe we have a majority of the members of the House Ways and Means Committee to return capital gains tax rate to pre-1969 levels. If we could do that, it would seem to me that the effect would be 1,000 times great than the SBCA-SBIC program with all the improvements we could make to the SBIC program.⁴⁵¹

Later in 1978, LaFalce's Subcommittee convened hearings on HR 12666,⁴⁵² a legislative measure intended to address those critiques of ERISA articulated in the Casey Report and from other sources. HR 12666 was written, as LaFalce indicates in the Congressional Record, in accordance with recommendations from the Casey Report: "What we are trying to do here is just follow the suggestion of the Casey report on this point which calls for a basket clause."⁴⁵³

At the time, LaFalce was promoting the Report in the House, the Report had another cheerleader in the Senate. There, the main proponent of the Casey Report was Senator Gaylord Nelson, the three-term senator from Wisconsin who is now best known for founding Earth Day in 1970. As chairman of the Select Committee on Small Business, Nelson called multiple former members of the Task Force to testify on tax proposals in 1978⁴⁵⁴ and 1979, including Duane Pearsall. This provided them ample opportunity to re-emphasize the Casey Report

⁴⁵¹ *ibid*, p 182

⁴⁵² U.S. House. Committee on Small Business. Subcommittee on Capital, Investment, and Business Opportunities. H.R. 12666. Hearing, 18, 19, 20, July 1978.

⁴⁵³ Hearing, H.R. 12666, p 34.

The "basket clause" LaFalce refers to here is described in the Casey Report recommendations as the 5% basket clause, which would designate 5% of pension fund assets as able to be invested in high risk investments. The implications of this are explored in detail in the next chapter.

⁴⁵⁴ U.S. Senate. Select Committee on Small Business. Evaluation of the Administration's 1978 Small Business Tax Proposals and Other Alternatives. Hearing, 14, 20, 28 February 1978.

recommendations and to assert its quality and impact. In these and other hearings⁴⁵⁵, Pearsall restated the findings of the Casey Report and he strongly recommended its policy agenda. Fellow Task Force member William Hambretch, called by Nelson to testify before the Senate Select Committee on Small Business on May 22, 1979 regarding capital formation, focused his testimony almost entirely on restating the logic, methods, and recommendations of the Casey Report, entering a copy of the Life Cycle Model into the record as part of his testimony.⁴⁵⁶ Hambretch noted, “As a businessman with very little experience in Washington, I was particularly delighted to see many people who were interested in the report and were willing to do something about the problem; and it is very gratifying to see that a lot of progress has been made.”⁴⁵⁷

Nelson also heavily cited the Casey Report in testimony he provided to other Senate subcommittees, including in lengthy written testimony submitted to the Senate Subcommittee on Securities Committee on Banking, Housing, and Urban Affairs in 1980. In this written testimony, Nelson writes that

[t]he ‘Casey Report’ concluded that in order to have meaningful turnaround in small business capital formation policy, simultaneous action is needed on many fronts....[I]n our view, the point made by the Casey Report is valid...[T]he task of improving the climate for investing in small enterprise involves addressing all of these areas simultaneously, systematically, and continuously.⁴⁵⁸

⁴⁵⁵ U.S. Senate. Committee on Finance. Subcommittee on Taxation and Debt Management Generally. Various Tax Proposals. Hearing, 24, 28 March, 1980.; U.S. Senate. Committee on Small Business. H.R. 5607 - Small Business Innovation Act of 1980. Hearing, 4, 19, 20, 27 March 1980.

⁴⁵⁶ U.S. Senate. Select Committee on Small Business. Capital Formation. Hearing, 22 May 1979. Testimony of William Hambretch. p 773

⁴⁵⁷ Hearing, Capital Formation. Testimony of William Hambretch. p 774

⁴⁵⁸ U.S. Senate. Committee on Banking, Housing, and Urban Affairs. Subcommittee on Securities. Federal Securities Law and Small Business Legislation. Hearing, 2 June 1980. Testimony of Gaylord Nelson, p 684

In this testimony, Nelson describes the contemporaneous state of venture investing in 1980 as “in a shambles, and this unfortunate state of affairs seems to result primarily from federal regulatory policy.”⁴⁵⁹ Nelson recommends several bills which incorporate and cite to various Casey Report recommendations, including SEC rule reforms, specific regulatory exemptions for venture capital firms, and ERISA reforms, writing, “I would hope that 1980, like 1958, will be viewed as a landmark year for Congressional action to improve small business capital formation.”⁴⁶⁰

Like other advocates of the Casey Report, Nelson believed that the primary culprit in the downturn in small business growth was federal regulation, which he was careful to describe as *mistakenly* impacting venture capital and small business growth. In his introduction to a 1979 report compiled by his Select Committee on Small Business on the “major issues facing small business,” Nelson wrote

Historians will look back at what we do and apply to our decisions the ‘Law of Unintended Consequences.’ No matter how careful we are, there will be things we cannot or do not see now. For example, back in the early seventies, when government regulations began to escalate, it appears to be simply a direct means for preventing excesses and abuses. Today we are faced with the unintended consequences of those actions. We know that the cumulative bulk of all government regulations is itself a growing problem for small firms. In this case the unintended consequences of yesterday’s actions are the problems we must solve today.⁴⁶¹

⁴⁵⁹ *ibid*, p 702

⁴⁶⁰ *ibid*, p 685

⁴⁶¹ U.S. Senate. Select Committee on Small Business. ““Discussion and Comments on the Major Issue Facing Small Business to the Delegates of the White House Conference on Small Business.” Report. 4 December 1979. p 2

It should be recalled here that well-intentioned but misapplied laws, or laws with ‘unintended consequences,’ was a theme also touched on by the Task Force. Casey, along with other Task Force members and associates like Stanley Rubel returned repeatedly to the idea that if lawmakers properly understood venture capital, how different it was from other types of finance, and thus how harmful regulations intended to curb financial “excesses and abuses” were, the regulatory threats being encountered by the nascent industry would be easily turned aside. Nelson clearly agreed with that view—that venture capital, as the special practitioner of heroic and historic investing, should have special treatment.

In this report, Nelson referred to the Casey Report as “an important evaluation of the capital formation problem.” A lengthy recap of the Report made up the entirety of the “background” section.

Nelson seems to have accepted the Report’s rhetorical collapsing of the role of the venture capitalist with the role of the entrepreneur, a rhetorical move that conferred the political, patriotic symbolism that the entrepreneur embodied as an extension of the American Small Businessman onto the venture capitalist. This is then used as political and rhetorical justification for the rollback of regulatory measures intended to protect investors and the economy at large. This rollback is justified with the argument that the regulations hamper the investment activities of venture capitalists. This justification is further invoked to argue for significant tax incentives for venture capitalists, which, it is claimed, properly reward risk-taking by maximizing investor profits.

LaFalce and his peers on various subcommittees seem to have held similar views — that outdated and overreaching regulation was hampering venture capital investment. LaFalce in

particular appears to agree that venture capital investment should hold the same rhetorical and political space as the small businessman. In the hearings of the House Subcommittee on Capital, Investment, and Business Opportunities in 1978, he argued that the financial regulations passed in the wake of the Great Crash of 1929 were no longer needed, saying “Glass-Steagall is a relic of a different era, an era when you had a great many banks going bust, when you did not have the type of financial safeguards or insurance you have now.”⁴⁶² In hearings before the same subcommittee a month later, LaFalce asked a representative of the Treasury Department if the “official position” of the Department was that the ERISA acronym actually stood for “Every Rotten Idea Since Adam,”⁴⁶³ and entered the roster of Casey Task Force participants into the Congressional Record in order to justify the Casey Report’s ERISA recommendations.⁴⁶⁴

In the Select Committee Report, Nelson quotes the “penetrating observer of human nature” Alexis de Tocqueville, “I am of the opinion that the true cause of [American] superiority must not be sought for in physical advantages but that it is wholly attributable to moral and intellectual qualities.” Nelson goes on to say

There is a direct, reciprocal relation between these moral and intellectual qualities and their expression independent business venturing. The existence of these attributes in the American people creates a vibrant pattern of enterprise that reaches into every crossroads town in the country. But if we take away this creative outlet, if we make it prohibitively difficult to go into business, we will actually be attacking and damaging the very qualities that make this country strong.⁴⁶⁵

⁴⁶² Hearing: Small Business Investment Company Program. Testimony of John LaFalce, p 184

⁴⁶³ The representative denied this, though this particular backronym would persist in congressional records until at least 1985.

⁴⁶⁴ Hearing, H.R. 12666. Hearing, comment of John Falce. p 105.

⁴⁶⁵ *ibid*, p 2

Nelson then clarifies two pages later

Capital is the lifeblood of business, and the ability to raise capital for existing and new businesses is fundamental to the health of the enterprises themselves, the American economy, and the free enterprise system.⁴⁶⁶

Nelson then essentially parrots the Casey Report's descriptions of the economic and regulatory factors which were claimed to be negatively impacting capital formation, including ERISA, capital gains taxation, and regulatory roadblocks to private securities placement.

The Casey Report was one of several reports commissioned by various agencies within the US government and other organizations to examine small business, high technology, and financing in the mid 1970s. However, unlike other reports produced by hired research firms, blue ribbon task forces, or nascent lobbying organizations like NVCA, the Casey Report enjoyed wide citation and reference in the popular media, professional publications, and in government hearings and documents. The Report's persistent presence in popular, professional, and government contexts gesture to its role in shaping the discourse surrounding how the fallout from the 1970s economic recession might best be addressed and how both small business and high technology might be encouraged.

⁴⁶⁶ *ibid*, p 4

CHAPTER FIVE

EVERY ROTTEN IDEA SINCE ADAM: THE CASEY REPORT AND ERISA REFORM IN VENTURE CAPITAL

The Casey Report, released in 1977, made a set of policy recommendations that touched on pension regulation, capital gains tax regulations, stock option allocation, investment rollovers, and various Securities and Exchange Commission (SEC) rules. If properly implemented, the Report argued that its recommendations would make “make a vital contribution to America’s free enterprise system” by freeing venture and equity capital into the entrepreneurial economy. The Report continued with this line of reasoning, stating that “critically needed new venture and equity capital will flow to the small business sector of our economy, which in turn will produce substantial increases in jobs, tax revenues, and productivity.”⁴⁶⁷

The majority of the Casey Report’s recommendations were enacted over the following decade, from 1977 through the mid 1980s. This chapter and the next will examine a set of recommendations that proved central to the developing venture capital industry: the clarification of the ERISA⁴⁶⁸ prudent man rule and the establishment of its basket clause; and the reform of SEC rules 144 and 146. These reforms set the conditions of possibility for the contemporary practice of venture capital financing in two ways: first, by opening up pension fund and, ultimately, other trust assets to investment in high risk venture capital funds; and second, by permitting the types of unregistered securities acquisitions, direct solicitation, and secondary sales that make up the basic actions of modern venture capital transactions. Without these two

⁴⁶⁷ Published Report, Report of the SBA Task Force on Venture and Equity Capital for Small Business, U.S. Small Business Administration, January 1977, Box 194, Folder 4, Hoover Institution, Stanford University, California

⁴⁶⁸ Employee Retirement Income Security Act (1974)

sets of reforms, venture capital as it is practiced today would be impossible. Though I cannot cleanly attribute both of these sets of reforms to the Casey Report and the Task Force alone, there is substantial evidence of the direct influence of the Report and its associated discussions on these policy reforms in the form of citations and attributions within government documents and relationships between Task Force members and significant policy actors.

In Chapter One I discussed the conditions surrounding ERISA's original passage in 1974. In this chapter I address the Report's recommended reforms for ERISA. I briefly review those conditions and its perceived impacts before moving on to describe the recommendations of the Casey Report, the reforms that were ultimately enacted, and the significance and impact of those reforms both on venture capital and in the broader financial context. This section includes a history of the prudent man rule and debates surrounding its role in both pension regulation and trust law. These reforms constituted a risk shift between the labor and financial sector, in the same way the arrival of the 401(k) was identified as a risk shift by political scientist Jacob Hacker.⁴⁶⁹ This risk shift is of particular interest as the valorization of the venture capitalist as a distinct financial profession was predicated by the Task Force on his unique appetite and capacity for risk. Finally, I examine the proof of that influence I have found in archives, oral histories, and through the tracing of citations in government, business, and legal publications. In particular, I review the role of Charles Lea and his colleague John P. Birkelund. Both these experienced financiers worked for New Court Securities and New Court Private Equity, part of the family office of the Rothschild family. There is substantial evidence that Lea and Birkelund both played significant roles in the passage of the Task Force's recommended ERISA reforms.

⁴⁶⁹ Hacker, Jacob. *The Great Risk Shift*. Oxford University Press. 2008.

The Report's Recommendations

After spending over a decade in development, ERISA, or the Employee Retirement Income Security Act, was passed in 1974. Senator Lloyd Bentsen of Texas championed the act, intending it to protect workers' pensions, insurance payouts, and medical reimbursements from collapse due to mismanagement, fraud, or refusal by one party to fulfill their contractual obligations. Passage of the bill was prompted by several high profile instances of pension funds collapsing, being abruptly cancelled or rendered moot by unreasonable qualification requirements. In 1973, Texas Senator Lloyd Bentsen, introducing a bill that would become part of ERISA, praised the American private pension system but added a caveat:

[U]nfortunately there are instances where workers have not received pension benefits that they have earned through years of long, hard labor. Their dreams of financial security after retirement have been shattered. Promises have been broken. In these instances America's private retirement system has not only failed to perform adequately, it has performed very poorly.⁴⁷⁰

A complex piece of legislation, ERISA had a range of impacts on the practical function of pensions and some other types of institutional capital funds. Many of these are not directly relevant to this project and I will not explore them here. Relevant to this project is ERISA's establishment of a mandatory federal prudence standard for the fiduciaries of private pension funds. As discussed in Chapter 1, previous to the passage of ERISA, there was no federal prudence standard for trusts⁴⁷¹ in general, and no mandatory prudence standard applied to

⁴⁷⁰ Bensen, Lloyd. "Statements on Introduced Bills and Joint Resolutions: Comprehensive Private Pension Security Act," *Legislative History of the Employee Retirement Income Security Act of 1974*. Prepared by the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate. April 1976.

⁴⁷¹ A trust is a particular fiduciary arrangement whereby a third party (a trustee or a fiduciary) holds and controls assets on behalf of a beneficiary. They are expected to act in the interests of the trust's beneficiary.

pension funds in particular. Rather, the fiduciaries of pension funds had been guided by articulations of prudence and other regulations that are developed and implemented at the state level and which vary state-by-state. Fiduciaries often used exculpatory contractual clauses to exempt themselves from those prudence standards, shielding themselves from liability for losses suffered by the funds under their care. ERISA established a single mandatory prudence standard for the fiduciaries of pension funds, enforced by the Department of Labor. Further, the legislation disallowed exculpatory contractual clauses. All fiduciaries of pension funds, public and private, were now to be bound by a shared standard of prudence and shared rules governing liability.

The Department of Labor argued that ERISA had been enacted in order to ensure that promises made to workers were kept. The Department's Administrator of Pension and Welfare Benefits Programs, Ian Lanoff, penned a law review article in defense of the law in 1978, writing:

...ERISA did not create the promises to pay benefits that companies and private pension plans have made to workers participating in so-called "defined benefit" plans. It simply ensures that those promises are kept. ERISA merely states that if such a defined benefit plan exists, workers must become eligible for benefits after a reasonable length of service and the plans must set aside adequate funds to provide for these benefits. ERISA's penalty provisions are an issue only when the pension plans have not set aside sufficient funds.⁴⁷²

Lanoff explained that the Department of Labor understood pension schemes to be a form of deferred wages voluntarily taken on by workers, which benefited employers as pension schemes incentivized workers to remain with the company for long periods of time.⁴⁷³ "It is grossly

⁴⁷² Lanoff, Ian D. "Reporting and Disclosure and Prudence in Investment Under ERISA." *Labor Law Journal*. Vol. 26. No. 6. 1978. p 325

⁴⁷³ *ibid.*

unfair,” he wrote, “to ask workers to forgo wage increases when they have no assurance that a benefit will be there when they retire.”⁴⁷⁴

In the years following its passage, the financial sector loudly criticized ERISA. Financiers and pension fiduciaries complained it was too complex, and that it overly restricted investment. Some commentators went so far as to lay the blame for the downturn in underwritings, IPOs, and reported investments in small business during 1974-1976 directly at ERISA’s feet. These critics argued that the harsh restrictions and liabilities created by ERISA caused pension funds to concentrate their investments in conservative government bonds or the common stock of well-known established companies, so-called “blue chips” or the “Favorite Fifty.” Lanoff and others in the financial sector and within government countered this criticism by pointing out that the prudence standard implemented by ERISA was no different than the prudence standards which already existed for the fiduciaries of trusts generally. They argued that the downturn in investment and IPOs in the years following the passage of ERISA was more likely due to the recession and harsh market conditions that had arrived in 1974. Lanoff stated in the article quoted above that his research “clearly showed that the concentration of pension investments [in a few stocks] began before ERISA.” Moreover, since ERISA’s passage in 1974, Lanoff notes that the diversification of investments held by pension funds had actually *increased*:

Between 1974 and 1975, pension investments continued to be relatively concentrated. But then, between 1975 and 1976, there appears to have been a significant move toward diversification of pension investments. In 1975, 45% of stock investments by pension plans were composed of the ‘Favorite Fifty’ stocks. In

⁴⁷⁴ *ibid.*

1976, by contrast, only 17% of stock investments by pension plans were composed of ‘Favorite Fifty’ stocks.⁴⁷⁵

Regardless, in 1976 the Casey Task Force formed part of the chorus blaming ERISA for the so-called equity crisis it had been convened to address. The Task Force recommended a set of reforms to ERISA as part of its collection of policy reforms. First, the Report recommended that ERISA be clarified to “to declare a policy that pension funds may invest in a broad spectrum of American companies within the ‘prudent man’ rule and that it applies to the total portfolio rather than any individual investment.”⁴⁷⁶ This recommendation represents a interpretive shift wherein the prudence of any one investment is considered in the context of the portfolio as a whole, rather than on an individual basis: “This shift would allow for losses, large or small, by one set of investments to be compensated for by gains elsewhere in the portfolio without the fiduciary being considered to have breached their obligations of prudence.”⁴⁷⁷

This recommendation sharply departed from previous norms of interpretation and implementation of prudence standards in trusts and pensions. Up to this point, the understanding of prudence standards as applied to fiduciaries was that the prudence of investments were judged on an individual basis, that is, investment by investment and stock by stock. Fiduciaries could and sometimes were held liable in the courts for the losses of individual securities within a portfolio if they were significant enough or represented particularly egregious mismanagement or malfeasance. This liability held even if the gains of the portfolio as a whole outweighed the

⁴⁷⁵ Lanoff, p 327

⁴⁷⁶ Typescript of Press Release, “Report Publication: New Sources of Venture Capital Sought for Small Business,” by James Ramsey/Small Business Administration. 1 February 1977. Box 194, Folder 4. William J. Casey Collection, Hoover Institution, Stanford University

⁴⁷⁷ Published Report, Report of the SBA Task Force on Venture and Equity Capital for Small Business, U.S. Small Business Administration, January 1977, Box 194, Folder 4, Hoover Institution, Stanford University, California

losses. This possibility of significant personal liability on the part of fiduciaries, which might be incurred by a single bad investment in an otherwise successful portfolio, was intended to instill caution and conservatism, as each individual investment would represent a specific personal legal and financial risk. Lanoff wrote in his 1978 article that this placing of liability and risk onto the shoulders of employers and fiduciaries was intentional, stating:

ERISA's critics are correct in saying that the law shifted the burden of risk from the workers to the companies. That is precisely what ERISA intended, and that's the way it should be.⁴⁷⁸

Though stated as such, the Casey Report's recommendations would adopt a method of understanding and balancing risk known as "modern portfolio theory" or MPT. MPT was developed by economist Harry Markowitz in the early 1950s while at RAND and the University of Chicago under Milton Friedman. Markowitz's theory presented a new understanding of *risk* as a value-neutral quantification of the volatility and profit potential of a given security, and of a portfolio as a whole. Although MPT came to influence in business circles in the 1970s, at the time of the Casey Report's publication the theory was not yet fully integrated into financial and trust regulations. MPT argued that the value of a single investment could not be judged in isolation. Rather, a security could only be evaluated properly in the context of the complete investment portfolio. There, its risk could be understood in relation to and balanced against the risk of the other held securities and of the market as a whole. The goal of MPT, properly applied, was the creation of "efficient" portfolios. In an "efficient" portfolio, the risks inherent to particular securities, or their "alpha" risk, are balanced by other securities in the portfolio. The portfolio as a whole is balanced against the systemic risk of the market itself, or the "beta" risk.

⁴⁷⁸ Lanoff, p 325

For example, a portfolio that holds shares in, say, a new experimental technological enterprise that has a potential for high profitability but also a high risk of failure could be balanced by holding a much more conservative investment, such as US Treasury bonds. Another term for this is “hedging” risks.

The Report further recommended that up to 5% “of the assets of any plan” be allocated to a “basket” “within which investment managers can invest according to standards of prudence and liquidity appropriate to higher risk small business investments.”⁴⁷⁹ This recommendation would allow up to 5% of the total assets of any pension plan, regardless of its type or structure or expected mode of payout, to be functionally exempted from ERISA’s stated prudence standard, and instead be governed by the standards of higher-risk investment communities, such as venture capital firms.

Due to the high risk nature of venture capital investments and the likelihood that any given venture capital fund would incur significant losses which may or may not be compensated for by the ultimately successful returns of other investments in the fund, these policy shifts were absolutely necessary if pension funds were to invest in venture capital firms in any significant amount.

Impact on the Developing Venture Capital Industry

In the years following the passage of ERISA at least two attempts were made to pass amendments to the law through Congress. These attempts prefigured and foreshadowed those reforms recommended by the Casey Report on a legislative basis, but they both failed to pass as

⁴⁷⁹ Published Report

legislative amendments.⁴⁸⁰ The Casey Report did not recommend a legislative remedy to the problems it identified with ERISA. Rather, the Report focused on clarifications that might be issued directly by the Department of Labor without legislative interference or oversight. Two years after the publication of the Casey Report, in 1979, the Department of Labor issued such a clarification to ERISA's "prudent man rule."⁴⁸¹ This clarification adopted and applied the principals of modern portfolio theory without identifying it as such:

The Department is of the opinion that (1) generally, the relative riskiness of a specific investment or investment course of action does not render such investment or investment course of action either *per se* prudent or *per se* imprudent, and (2) the prudence of an investment decision should not be judged without regard to the role that the proposed investment...plays within the overall plan of the portfolio. Thus, although securities issues by a small company or a new company may be a riskier investment than securities issues by a 'blue chip' company, the investment in the former company may be entirely proper under the Act's 'prudence' rule.⁴⁸²

In addition to shifting the interpretation of ERISA's prudent man rule, the Department's clarification explicitly established that pension funds could invest up to 10% of their assets in venture funds,⁴⁸³ a move that was in keeping with the "5% basket clause" recommended by the Casey Report and directly referenced by LaFalce in 1978.⁴⁸⁴ These changes to ERISA—even though seemingly minor and presented as matters of interpretation rather than legislative shifts—

⁴⁸⁰ p 73. Elizabeth Popp Berman, *Creating the Market University: How Academic Science Became an Economic Engine* (Princeton, NJ: Princeton University Press, 2012)

⁴⁸¹ The definition, history, and impacts of the prudent man rule are addressed in detail in section three of this chapter.

⁴⁸² Pension and Welfare Benefit Programs, 29 CFR Part 2550, Rules and Regulations for Fiduciary Responsibility; Investment of Plan Assets Under the 'Prudence' Rule. 44 Fed. Reg. 37,221-37,222. 26 June 1979.

⁴⁸³ Gompers, p 2

⁴⁸⁴ Hearing, H.R. 12666, p 34.

in fact dramatically transformed the venture capital industry. They opened up a huge source of investment capital for firms pursuing the institutionally support limited partnership firm model.⁴⁸⁵ Venture capital historian Paul Gompers called the ERISA revision “the single most important factor accounting for the increase in money flowing into the venture capital sector.”⁴⁸⁶ Gompers notes that in 1978, a year before the ERISA clarifications were made, the total amount of capital invested in new venture funds was around \$216 million. Pension funds accounted for 15% of that, or \$32.4 million. Individual investors made up the largest share of new capital at 32%, or \$69.12 million. Ten years later, in 1988, the total invested in new venture funds reached \$3 billion with pension funds providing 46% of that, or \$1.38 billion. Individual investors, comparatively, fell to 8%, or \$240 million.⁴⁸⁷ However, the effects of the ERISA revision were apparent as soon as five months after they took effect. Senator Gaylord Nelson wrote in his December 1979 report on the Select Committee on Small Business:

Together these items [the 1978 reduction in capital gains tax and the ERISA prudent man clarification] have resulted in the flow of more than one-half billion dollars in new venture capital to the small business community since the end of 1978. *As a result, the venture capital industry has been able to survive.* According to testimony by the National Venture Capital Association before the committee, the infusion of new capital has added almost 50 percent to the amount of funds which are available to finance new and small business.⁴⁸⁸

⁴⁸⁵ Clowes, Michael. *The Money Flood: How Pension Funds Revolutionized Investing*. Wiley. 2000.

⁴⁸⁶ Gompers, p 12

⁴⁸⁷ Gompers, p 13

⁴⁸⁸ U.S. Senate. Select Committee on Small Business. “Discussion and Comments on the Major Issue Facing Small Business to the Delegates of the White House Conference on Small Business.” Report. 4 December 1979. p 9. Emphasis added.

The lion's share of this new influx of capital flowed to firms using the limited partnership structure. In the years that followed, limited partnership firms went from managing 35% of the venture capital pool in 1977 to 75% in 1987.⁴⁸⁹

Around the time the Department of Labor issued the ERISA clarification, Congress sharply reduced the capital gains tax.⁴⁹⁰ However, Gompers claims its impact on capital investment in venture funds was negligible, because “up to 70% of the money flowing into new funds [after 1978] is from tax-exempt sources such as pension funds, endowments, trusts, and foreign companies.”⁴⁹¹ Lowering the capital gains tax, a perennial political cause amongst the investing class, has no effect on these institutional investors as they pay no such tax. It does, however, have a direct impact on the personal profits of venture capitalists, particularly those who operate according to a limited partnership model and who receive a significant amount of their compensation in the form of capital gains.⁴⁹²

Gompers and other historians of venture capital have referred to the clarification of ERISA as the beginning of the “institutionalization” of venture capital. The opening up of pension funds to venture capital investing shifted the capital base of venture funds from private individuals, public investment from the financial markets, and a mix of institutional funds to a base made up in large part of pension funds with the roles of individuals and other institutional investors being greatly diminished.

⁴⁸⁹ Reiner, p 399

⁴⁹⁰ The 1978 Revenue Act effectively halved the capital gains tax from 49.5% to 28%.

⁴⁹¹ Gompers, p 12

⁴⁹² Capital gains are the financial gains realized from the sale of a property or investment. That is, it is income that is not earned through labor, but rather realized through the sale of assets.

Impact Beyond Venture Capital

The 1979 clarification of ERISA reverberated beyond opening the door for pension fund participation in venture capital funds. Several authors have credited the Department of Labor's regulatory shift with catalyzing the process of dislodging the prudent man standard from the center of trust law and normalizing the application of modern portfolio theory to trusts in general. This triggered the financialization of trusts,⁴⁹³ enabling capital that had previously been protected by legal and community standards of prudence and care to enter into the financial markets.

The application of MPT to pension fund management and trusts in general was controversial. Indeed, the academic and professional circuits of the legal and business communities in the US from the 1970s through the 1990s frequently and hotly debated the issue. For decades, legal professionals, business people, and regulators argued over whether MPT and the traditional prudence standard were fundamentally incompatible, and if MPT "should replace the prudent person rule entirely."⁴⁹⁴ A thorough exploration of the evolution and debates regarding the regulations of trusts and pensions in the latter half of the twentieth century is beyond the scope of this project. However, here I will provide a brief timeline of the histories of trust and pension regulation that are relevant to the development of ERISA, its 1979 clarification, and the downstream effects of that clarification on financialization. This will provide essential background necessary to understand the role of ERISA and prudence in the debates, which I will return to at the end of this section.

⁴⁹³ A trust is a financial instrument whereby one party is entrusted with the safeguarding of assets for the benefit of a third party (often a child or other dependent).

⁴⁹⁴ pp 1187-1188, Johnson, Stephen P. "Trustee Investment: The Prudent Person Rule or Modern Portfolio Theory, You Make the Choice." *Syracuse Law Review*, Vol. 44, No. 4, 1993

When ERISA was passed in 1974, the common law regarding trusts was encapsulated in the *Restatement (Second) of Trusts*, hereafter referred to as *Restatement (Second)*. This document, published in 1959 by the American Law Institute (ALI), contained black letter law⁴⁹⁵ and commentary on the common law of trusts, compiled by selected committees of lawyers, judges, and legal scholars. It acted as the canonical source for the interpretation of US common law until it was superseded by the *Restatement (Third)* in 1990.

The *Restatement (Second)* defines the duties of a trustee or fiduciary in part as

In the absence of provisions in the terms of the trust or of a statute otherwise providing, to make such investments and only such investments *as a prudent man would make of his own property having in view the preservation of the estate and the amount and regularity of the income to be derived*.⁴⁹⁶

The *Restatement (Second)* goes on to clarify this rule, colloquially known as the “prudent man rule,” in its commentaries. In particular, the *Restatement* notes that the prudent man rule contains a “requirement of caution.”⁴⁹⁷ This requirement of caution has two implications of direct interest to our conversation. The first is that the trustee has a requirement to manage the trust assets “with a view to the safety of the principal and to the securing of an income reasonable in amount and payable with regularity.”⁴⁹⁸ Commentators of the period describe this as a primary commitment on the part of the trustees to avoid capital loss to the principal assets of the trust.⁴⁹⁹ The second

⁴⁹⁵ “Black letter law” refers to the basic principals of the law, those which are considered within the legal profession to be well-established to be point of being beyond dispute. The *Restatements* produced by the ALI are considered standard, reliable reference texts regarding the content and basic interpretation of the law.

⁴⁹⁶ *Restatement (Second) of Trust* §227, p 529. Emphasis added.

⁴⁹⁷ *Restatement (Second) of Trust* §227, p 529.

⁴⁹⁸ *Restatement (Second) of Trust* §227, p 531

⁴⁹⁹ Pozen, Robert. “The Prudent Person Rule and ERISA: A Legal Perspective.” *Financial Analysts Journal*. March-April 1977. p 31

implication laid out by the *Restatement* is that investments made primarily as an attempt to *grow* the principal, in contrast to investment aimed at *preserving* the principal, are by definition speculative and imprudent, though they might be considered good investments in other contexts:

In making investments, however, a loss is always possible, since in any investment there is always some risk. The question of the amount of risk, however, is a question of degree. No man of intelligence would make a disposition of property where, in view of the price, the risk of loss is out of proportion to the opportunity for gain. *Where, however, the risk is not out of proportion, a man of intelligence may make a disposition which is speculative in character with a view to increasing his property instead of merely preserving it. Such a disposition is not a proper trust investment, because it is not a disposition which makes the preservation of the fund a primary consideration.*⁵⁰⁰

The *Restatement (Second)* commentaries further clarify specific types of investments that, barring explicit terms of the trust allowing them, would be considered imprudent on their face. In particular, the *Restatement* names the “purchase of securities for purposes of speculation, for example, purchase of shares of stock on margin or purchase of bonds selling at a great discount because of uncertainty whether they will be paid on maturity”⁵⁰¹ and the “purchase of securities in new and untried enterprises”⁵⁰² as, by definition, imprudent investments for trusts. An illustrative example is further given, in case the matter was unclear: “A bequeaths \$100,000 to B in trust. *B uses \$10,000 in purchasing the bonds of a newly formed corporation organized to manufacture a new kind of airplane. This is not a proper investment.*”⁵⁰³

⁵⁰⁰ Restatement (Second) of Trust §227, p 531. Emphasis added.

⁵⁰¹ Restatement (Second) of Trust §227,p 532

⁵⁰² Restatement (Second) of Trust §227,p 532

⁵⁰³ Restatement (Second) of Trust §227,p 532. Emphasis added.

The last aspect of the *Restatement's* consideration of the prudent man rule relevant to our discussion concerns the trustee's duty to diversify, stated as such

Except as otherwise provided by the terms of the trust, the trustee is under a duty to the beneficiary to distribute the risk of loss by a reasonable diversification of investments, unless under the circumstances it is prudent not to do so.⁵⁰⁴

The *Restatement* further clarifies in the following commentary

The trustee is under a duty to the beneficiary to exercise prudence in diversifying the investments *so as to minimize the risk of large losses*, and therefore he should not invest a disproportionately large part of the trust estate in a particular security or type of security. It is not enough that each of the investments is a proper investment under the rule stated in Section 227.⁵⁰⁵

To summarize, the prudent man rule as articulated in the *Restatement (Second)* required that trustees behave with their primary view being to the preservation of the principal assets of the trust; stipulated investments intended to grow the principal assets of a trust through speculative investment to be imprudent *per se*; specifically identified the purchase of uncertain or undervalued securities in the hopes of growth as well as investments into “new and untried enterprises” as speculative and imprudent; and, finally, contained a requirement that a trustee engage in prudent diversification of a portfolio to “minimize risk of large losses.” When ERISA was developed and passed, this was the dominant understanding of the prudent man standard.

Contemporaneous commentators noted that the ERISA prudence standard, which differed from the *Restatement (Second)* prudence standard in several ways, was nonetheless “predicated”

⁵⁰⁴ Restatement (Second) of Trust §228, p 541.

⁵⁰⁵ Restatement (Second) of Trust §227, p 532. Emphasis added.

on the “guidelines of personal trust law”⁵⁰⁶ and “adopted much of the philosophy”⁵⁰⁷ of the *Restatement* regarding prudence, diversification, and speculation. Congress described the ERISA prudence standard as “codif[ying]...certain principals developed in the evolution of the law of trusts,”⁵⁰⁸ with the resultant standard being “strikingly similar.”⁵⁰⁹ As Administrator Lanoff noted in his law review article, shielding employees from financial risk by placing that “burden” on the shoulders of companies was “intended” and “the way it should be.”⁵¹⁰

When ERISA was passed in 1974, it was the first federal standard of prudence to be established.⁵¹¹ Previously, prudence standards were established and adjudicated on a state-by-state basis. As was discussed in the first chapter, this piecemeal standard was inadequate for the protection and regulation of pensions. The standards were haphazardly enforced, as the majority of states permitted pension fund fiduciaries to exempt themselves from any prudence standard using exculpatory clauses in their contracts. ERISA aimed to close enforcement loopholes and create an enforceable standard where none had been present previously through the establishment of federally defined, federally enforced standard. The ERISA standard differed in several ways from both the previous state standards and the *Restatement (Second)* standard.

⁵⁰⁶ Bern, Nancy F. "Fiduciary Responsibility: Prudent Investments under ERISA," *Suffolk University Law Review*. Vol.14, No. 4 (Summer 1980): p 1070

⁵⁰⁷ Hutchinson, James D. "The Federal Prudent Man Rule under ERISA," *Villanova Law Review*. Vol 22, No. 1. December 1976. p 34.

⁵⁰⁸ House Report No. 93-533. Employee Benefit Security Act of 1973 Report Together With Supplemental, Additional, and Individual Views. 93rd Cong., 1st Sess. 11. 1973. p 220

⁵⁰⁹ Pozen, p 31

⁵¹⁰ Lanoff, p 325

⁵¹¹ Bern, p 1073

First, the ERISA standard of prudence was mandatory and could not be contracted out of by pension fund trustees.⁵¹² Second, when taken in conjunction with the rest of the ERISA statute, the ERISA standard allowed for fund losses caused by imprudent investments to potentially be recovered from a trustee through a lawsuit.⁵¹³ Third, where the *Restatement (Second)* defined prudence as the actions that a “prudent man would make of his own property,” the ERISA standard defined prudence as acting

with the care, skill, prudence and diligence under the circumstances then prevailing that *a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.*⁵¹⁴

This shift in language, from a man managing “his own property” to a man managing an “enterprise of like character,” was made because ERISA’s framers were concerned that the prudent man rule in common law did not provide the “sufficient flexibility” needed to manage “pension and welfare benefit plans whose financial dealings are significantly more complicated than those of personal trusts.”⁵¹⁵ The Secretary of Labor at the time, George Shultz, testified before Congress that the flexibility afforded by this shift would allow the ERISA standard to adequately govern firms and plans “of varying size, complexity, and purposes.” He argued that it would enable trustees to be evaluated “in terms of the actions of other trustees facing similar circumstances,” and “would include consideration of such factors as prevailing economic conditions and the characteristics of the particular plan.”⁵¹⁶

⁵¹² Hutchinson, p 21

⁵¹³ Hutchinson, p 34

⁵¹⁴ Employee Retirement Income Security Act of 1974. Title 29. U.S.C. § 402 (1974). Emphasis added.

⁵¹⁵ Hutchinson, p 26

⁵¹⁶ Testimony of Secretary of Labor George Shultz as described in Hutchinson, p 26

This shift would prove to be contentious and impactful, opening the door to the application of MPT to pension funds and triggering decades of debate. In the business and legal literature, multiple commentators would argue that this shift constituted a fundamental change in the prudent man rule. They argued the “man” in question had been transformed from an intelligent but basically amateur private citizen managing his own affairs into a financial professional, operating within a community of other professionals. Commentators referred to this new standard of prudence as the “prudent expert rule.”⁵¹⁷ The *prudent expert*, it was argued, possessed special, professional knowledge of the financial sphere. He was able to avail himself of sophisticated strategies, theories, and practices outside the amateur knowledge and abilities of the average prudent man of common trust law. Several commentators argued that the prudent expert standard created a standard of prudence based on *conduct* rather than *results*. The common law prudence standard held an expectation that the trust principal would be preserved first and foremost. Under the prudent expert theory, however, a trustee who could show that he had abided by the prevailing professional conduct standards of his community of similarly situated trustees could be held to have behaved prudently, regardless of losses suffered by the principle or the fund.

⁵¹⁷ For advocacy of the ‘prudent expert rule’ analysis, see, for example: Aalberts, Robert J. and Percy S. Poon. “The New Prudent Investor Rule and the Modern Portfolio Theory: A New Direction for Fiduciaries.” *American Business Law Journal*. Vol. 34 No. 39. 1996; Blair, Roger D. “ERISA and the Prudent Man Rule: Avoiding Perverse Results.” *Lexeconics: The Interaction of Law and Economics*. Martin Nijhoff Publishing. Boston. 1981.; Ravikoff, Ronald B. And Myron Curzan. “Social Responsibility in Investment Policy and the Prudent Man Rule.” *California Law Review*. Vol. 68 No. 518. May 1980.; Pozen, Robert. “The Prudent Person Rule and ERISA: A Legal Perspective.” *Financial Analysts Journal*. March-April 1977.

For rebuttals of the ‘prudent expert’ analysis, see, for example: Bern, Nancy F. “Fiduciary Responsibility: Prudent Investments under ERISA,” *Suffolk University Law Review*. Vol.14, No. 4 (Summer 1980): p 1070; Klesch, Gary. “Interpreting the Prudent Man Rule of ERISA.” *Financial Analysts Journal*. January-February 1977.; Hutchinson, James D. “The Federal Prudent Man Rule under ERISA,” *Villanova Law Review*. Vol 22, No. 1. December 1976.

This interpretation seemed to rely on the established practices and standards of a professional community of private pension fund fiduciaries. This reliance is reminiscent of the ways in which the venture capital community at this time were arguing that they constituted a coherent industry with definable norms and coherent practices. An example of this is the Casey Report, with its historicizing of venture capital practices and insistence that the venture capital community had at this point regular, recognized practices that were shared widely. In both cases, however, this claim is debatable. In the case of private pension fund fiduciaries in particular, a major impetus of ERISA's passage was to codify and regularize a deeply fragmented and unregulated financial sector. The prudent expert interpretation, like the origin stories told by the early venture capitalists, seems to do a great deal of the work in creating the prudent expert.

Many commentators who accepted the prudent expert interpretation of ERISA's prudence standard advanced the argument one step further, arguing that the prudent expert should be permitted to make use of the most sophisticated and innovative financial practices and theories available in their management of pension fund portfolios. A representative comment, from Robert Pozen in an article appearing in the *Financial Analysts Journal*, reads:

By establishing the prudent expert standard, ERISA opened the door to modern investment practices. For example, because most investment experts for large financial institutions view their investment decisions in terms of the whole portfolio, ERISA should allow pension managers to adopt that viewpoint.⁵¹⁸

⁵¹⁸ Pozen, Robert. "The Prudent Person Rule and ERISA: A Legal Perspective." *Financial Analysts Journal*. March-April 1977. p 32

Specifically, these commentators argued that pension fiduciaries should explicitly be allowed to deploy the risk-balancing algorithms of modern portfolio theory.⁵¹⁹ The Casey Report, published three years after the passage of ERISA, and its authors were part of a group of lawyers, businessmen, and commentators arguing for the incorporation of MPT into the ERISA prudence standard.

To review, MPT viewed the “risk,” variability, or volatility of a given security as an additional piece of information or characteristic of the security. Risk was considered to be a value-neutral⁵²⁰ or even positive aspect of a given security. Risk was a tool that could be artfully deployed and incorporated in the construction and management of a maximally efficient portfolio, that is, a portfolio that provides the largest gains and smallest losses possible in a given market context. Compare this to the accepted understanding of the prudent man standard, which was strongly risk-averse. Writing in favor of the application of modern portfolio theory to pension fund management, commentators writing in professional law reviews and business journals noted that pension fund trustees were operating “in a marketplace that has accepted modern portfolio theory.”⁵²¹ They argued that a professional community existed against which the prudence of a trustee was to be judged, and that community was one which had adopted

⁵¹⁹ For advocacy of incorporating modern portfolio theory into pension fund management due to the introduction of the prudent expert standard see, for example: Pozen, Robert. “The Prudent Person Rule and ERISA: A Legal Perspective.” *Financial Analysts Journal*. March-April 1977.; Weil, Kenneth C. “Common Stock: The Forbidden Trust Investment.” *Alabama Law Review*, Vol. 33, No. 2, Winter 1982.; Cooper, Jeffrey A. “Speak Clearly and Listen Well: Negating the Duty to Diversify Trust Investments.” *Ohio Northern University Law Review*, Vol. 33, No. 3, 2007.; Aalberts, Robert J. and Percy S. Poon. “The New Prudent Investor Rule and the Modern Portfolio Theory: A New Direction for Fiduciaries.” *American Business Law Journal*. Vol. 34 No. 39. 1996.; Yaron, Gil. “The Responsible Pension Trustee: Re-Interpreting the Principals of Prudence and Loyalty in the Context of Socially Responsible Institutional Investing.” *Estates, Trusts & Pensions Journal*, Vol. 20, No. 4, June 2001

⁵²⁰ See pp 427, Johnson, Michael T. “Speculating on the Efficacy of Speculation: An Analysis of the Prudent Person’s Slipperiest Term of Art in Light of Modern Portfolio Theory.” *Stanford Law Review*, Vol. 48, No. 2, January 1996

⁵²¹ Hutchinson p 52; see also Pozen p 32

modern portfolio theory. Therefore, its standards of conduct and prudence inherently incorporated it already. Others argued that pension funds had particular obligations, including the payment of taxes,⁵²² the delivery of defined benefits at a future time,⁵²³ and the challenges of keeping up with inflation,⁵²⁴ which were not born by a typical trust. These commentators argued that pension funds should therefore be permitted to use speculative investments, and the risk-exposure and management practices of MPT to substantially increase the value of their funds, as opposed to simply maintaining and preserving the contributions of the employee-beneficiaries. Still others argued that the liability risks inherent in the ERISA standard induced a “perverse” conservatism in pension fund trustees, which would lead to inefficient market returns inadequate to fulfill the fund’s obligations, and that this would be best remedied by an explicit adoption of MPT.⁵²⁵

At the same time, other legal and business professionals, writing in professional journals, took the opposite view, arguing that MPT was directly contradictory to or incompatible with standards of prudence, both as understood in common law and in the 1974 ERISA articulation.⁵²⁶ This conflict continued to be a source of debate for decades after the 1979 Department of Labor clarification that incorporated MPT into the ERISA prudence standard as per the Report’s recommendation. This continued conversation indicated the uneasy settlement that the Department of Labor’s clarification represented.

⁵²² See, for example, Aalberts p 50.

⁵²³ Aalberts, p 50.

⁵²⁴ Blair, p 79

⁵²⁵ Blair, p 62

⁵²⁶ Hutchinson, p 53

The debate is perhaps best summed up in an article appearing in the *Syracuse Law Review* in 1993, almost 15 years after the Labor Department issued their clarification. Titled “Trustee Investment: The Prudent Person Rule or Modern Portfolio Theory, You Make the Choice,” the author writes

The prudent person rule has been considered too restrictive and conservative, with the effect of harming the trust beneficiaries the most. On the other hand, modern portfolio theory has been considered a radical departure from the traditional standard, risking the trust principal to speculative investments. The answer to whether modern portfolio theory should replace the prudent person rule is not entirely clear.⁵²⁷

The view that MPT and dominant understandings of prudence were incompatible was also held by those *advocating* for the application of MPT to trusts and pensions. Bevis Longstreth, an SEC commissioner under President Ronald Reagan, made this argument in his 1986 treatise on the prudent man rule, wherein he argued that only *processes* of risk management might be considered imprudent, but not any particular investment in and of itself:

Prudence should be measured principally by the process through which investment strategies and tactics are developed, adopted, implemented, and monitored. Prudence is demonstrated by the process through which risk is managed rather than by the labeling of specific investment risks as either prudent or imprudent. Investment products and techniques are essentially neutral; none should be classified prudent or imprudent per se. It is the way in which they are used, and how decisions as to their use are made, that should be examined to determine whether the prudence standard has been met.⁵²⁸

⁵²⁷ pp 1187-1188, Johnson, Stephen P. "Trustee Investment: The Prudent Person Rule or Modern Portfolio Theory, You Make the Choice." *Syracuse Law Review*, Vol. 44, No. 4, 1993

⁵²⁸ p 110. Longstreth, Bevis. *Modern Investment Management and the Prudent Man Rule*. Oxford University Press. Oxford. 1986. Emphasis added.

To review, in the decades following the passage of ERISA and the subsequent clarification, commentators on both sides argued that MPT was incompatible with existing prudence standards on a number of fronts. This debate covered both pension funds as regulated by ERISA *and* traditional trusts, and the regulation of traditional trusts would go on to take cues from the evolution of the ERISA prudence standard. First, the stated goal of MPT is to achieve capital growth through a balancing of varying types of risk. This contradicted the common law understanding of prudence, which held risk as a thing to be avoided and discouraged seeking profit in favor of a conservative, “safety first”⁵²⁹ model of asset management. As previously noted, the *Restatement (Second)* standard holds that the “preservation of the estate” should be of primary importance, not growth or seeking opportunities for profit. Second, particular types of securities, such as poorly rated bonds, options, futures, common stock, or the stock of “untried enterprises” in particular, were singled out by the *Restatement (Second)* and by the courts as being imprudent by definition.⁵³⁰ Third, the duty of diversification outlined in the *Restatement (Second)* and in ERISA defined diversification as an action undertaken explicitly to protect against large losses due to imprudent over-investment in a single security or type of security, while MPT defined diversification as a tool to balance risk within the portfolio. Essentially, MPT deployed diversification in order to introduce and control a variety of risks in a given portfolio in the service of creating a maximally efficient portfolio. The *Restatement (Second)* and ERISA standards held diversification as a fiduciary obligation to avoid losses due to over-investment of

⁵²⁹ Blair, p 68

⁵³⁰ See, for example, Weil, p 410 and Johnson, p 1179

the trust in any one investment *only*. Risks were not considered as a factor to be “balanced” through diversification, but only as a thing to be avoided.

In 1990, the *Restatement (Second)* was superseded by the *Restatement (Third)*. This document, which served the same black letter law function as its predecessor, “unequivocally endorsed modern portfolio theory.”⁵³¹ The relevant section reads:

The trustee is under a duty to the beneficiaries to invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust. (A) The standard requires the exercise of reasonable care, skill, caution, and *is to be applied to investments not in isolation but in the context of the trust portfolio and as a part of an overall investment strategy, which should incorporate risk and return objectives reasonably suited to the trust.*⁵³²

An analysis of the prudent investor rule as it appears in the *Restatement (Third)* further explained the standard as it incorporated the values of modern portfolio theory:

Investments such as real estate and *venture capital* and techniques such as borrowing or future transactions, are not per se prohibited. Rather, they may be used to reduce overall portfolio risk or to increase expected return without a disproportionate increase in risk. *Restatement (Third)* permits a trustee to purchase volatile assets, even to structure an overall portfolio which is volatile—provided that the aggregate risk level is consistent with the beneficiary’s objectives, and non-market risk has been minimized.⁵³³

This shift in the *Restatement (Third)* was, unsurprisingly given the above discussion, controversial in and of itself. In a frequently cited 1990 article in the *North Carolina Law*

⁵³¹ p 6, Levy, Robert A. "The Prudent Investor Rule: Theories and Evidence." *George Mason University Law Review (Student Edition)*, Vol. 1

⁵³² Restatement (Third) of Trust §227. Emphasis added.

⁵³³ Levy, p 7

Review, law professor Paul Haskell called the *Restatement (Third)*'s articulation of the "prudent investor standard"⁵³⁴ a "radical" departure from previous understandings of the prudent man standard,⁵³⁵ concluding:

At the present time the economic landscape is a mine field...Some of our major industries have great difficulty competing with foreign products...Many of our older cities have rotting infrastructures (bridges, sewer lines, water mains, gas lines). The social pathology of our urban centers worsens. Unless the business cycle is obsolete, a recession is long overdue. *When this nation decides to face up to the reality of its situation, it will be enormously expensive, with uncertain consequences. I would suggest that anyone who is daring with another's money in these circumstances is not acting responsibly.*

The prudent investor rule defined in the *Restatement (Third) of Trusts* §227 allows for higher risk-return objectives than are permitted under the traditional prudent person rule, without authorization by the trust instrument. *Indeed, it would allow aggressive investment strategies such as new ventures without authorization by the trust instrument.* Such practices, of course, would be permissible only if they were considered suitable and reasonable given the circumstances of the trust. It is suggested that such fiduciary practices are peculiarly inappropriate in the present economic climate. It is also my position that such practices should always require authorization in the trust instrument. It is my view that the Restatement makes a profound contribution by its introduction of portfolio theory to fiduciary law. The Restatement's break with tradition on the matter of risk-return objectives for fiduciaries is, in my view, not well-founded....⁵³⁶

Financial sociologist and historian Sabine Montagne has written on the position of pension funds as entities that straddle across the legal and moral chasm between social protection

⁵³⁴ The *Restatement (Third)*'s adoption of the "investor" terminology to replace the "man" in the "prudent man rule" is a further reflection of the perceived primacy of the financial professional and the professionalized investing community in this space.

⁵³⁵ p 107, Haskell, Paul G. "The Prudent Person Rule for Trustee Investment and Modern Portfolio Theory." *North Carolina Law Review*. Vol. 69 No. 1. 1990.

⁵³⁶ Haskell, pp 110-111. Emphasis added.

and financial speculation reflected in the *Restatement (Second)*'s prudent man rule, and on the role of ERISA reform in contributing to the financialization of pensions and trusts. Montagne argues that the historical, moral legitimization of the pension fund as a form of social protection, accomplished by the collective deferral of wages on the part of workers and the competent stewardship of those deferred wages by their employers, depends on the pension fund's "appropriation" of the "protective heritage"⁵³⁷ of the paternalistic family trust. Montagne notes that "the protective dimension of the [family] trust is...guaranteed by the legal exteriority which superimposes its own supervision over that of the trustee and acts in the name of moral doctrine and later, public order."⁵³⁸ The power of the trust instrument, is in Montagne's view, both moral and political. It is a mechanism for enabling the paternalistic protection of the weak by the strong, who are simultaneously restricted from exploiting their position by a recognized standard of conduct: the prudent man standard. Montagne further argues that by taking up the prudent man standard and codifying it in its original statute, ERISA and thus the social and financial form that is the pension fund itself avails itself of the moral and political legitimacy of the long-standing form of the family trust. Montagne then argues that in adopting modern portfolio theory in 1979, in "total opposition to the substantive prudence of the *Restatement [Second] of Trusts*,"⁵³⁹ pension funds became embedded in communities of professional investors and money managers who usurped the moral and political legitimacy pensions had gained from their

⁵³⁷ p 26, Montagne, Sabine. "In trusts we trust: Pension funds between social protection and financial speculation." *Economic Sociology: The European Electronic Newsletter*: Max Planck Institute for the Study of Societies (MPIfG), Cologne, Vol. 8, Iss. 3. 2007.

⁵³⁸ Montagne, p 27

⁵³⁹ Montagne, p 28

adoption of the trust form to legitimize their own professional practices of financial management and speculation. Montagne describes thusly:

The law has thus reconfigured its conception of the protection of the beneficiary with the arrival of investment managers in the pension funds. The transformation set off by ERISA is system-wide: it does not just do away with the prohibitions established by a few specific rules, which prevented a financial logic from dominating investment decisions. Rather, it directly establishes this logic by providing a legal rationalization for the pension industry's system of social organization. And it contributes to that system's legitimacy by making it consistent with the [basis] of the trust.⁵⁴⁰

Montagne concludes by describing the ways in which this set of legal shifts served to legitimize risk-taking and to accelerate the financialization of social protection schemes in the forms of pensions and other trusts:

Ultimately, the legal transformation of the trust contributes to the legitimization of finance. On the one hand, it makes employees' financial risk-taking acceptable by redefining fiduciary protection. On the other, it reinforces the position of the financial intermediaries: the blocking of employee savings in the [pension] trust gives [financiers] control over liquidity on the financial markets without any legal constraints to achieve a substantive performance. Fiduciary capitalism does not mark the advent of a new compromise between wage-earners and capital but rather, a renewed form of the seizure of fiduciary power by institutional investors and a new stage in the history of the expansion of finance.⁵⁴¹

To review: in making its recommendation for reforms to the ERISA prudence standard that embrace MPT, members of the Task Force were part of a small but loud chorus made up primarily of lawyers, financial professionals, and professional investors. Though it was presented as a simple clarification, these actors, including the Task Force, were advocating for a significant

⁵⁴⁰ Montagne, p 30

⁵⁴¹ Montagne, p 31

and fundamental change in ERISA's prudence standard and the dominant understanding of fiduciary prudence at the time. The Report states that:

Attorneys advising trust officers has interpreted ERISA regulations conservatively, *although they do not differ significantly from commonly practiced standards of fiduciary responsibility*. As a result, trustees are reluctant to invest in companies without strong earnings records.⁵⁴²

This framing implies that it is just confusion over ERISA standards that is preventing pension fiduciaries from investing in young companies. By using the phrase “*commonly practiced standards of fiduciary responsibility*,” the Report appeals to a professional community standard of practice. This subtle and unmarked switch in emphasis does not acknowledge ERISA's original reliance on existing trust law, that is, the prudent man standard, or that the prudent man standard explicitly disallows speculative investment in young, not-yet-profitable companies. The framers of ERISA repeatedly emphasized that taking this type of speculative investment in untried enterprises off the table for pension fiduciaries was one of the goals of the original legislation. Lloyd Bentsen, in an 1977 interview with *Washington Post* financial columnist Nancy Ross defending the original ERISA prudence standard, said, “No one is going to bring a [liability] suit against a [pension] manager because the stock of General Motors or IBM went down the tube, but they might if he had invested in Widget Corp.”⁵⁴³ Other policymakers in Congress, bureaucrats at the Department of Labor, as well as attorneys and union leaders also opposed changing the ERISA prudence standard to incorporate MPT, or the adoption of a “basket clause” in any amount. Arthur L. Fox, an attorney for “10,000 dissident members of the

⁵⁴² Published Report, p 14. Emphasis added.

⁵⁴³ Ross, Nancy. “Bentsen Bill: Spread the Wealth In Pension Funds,” *The Washington Post*. Syndicated in *The Cincinnati Enquirer*. 5 June 1977. p 58

Teamsters Union,” testified to this before a 1977 Senate hearing on a proposed ERISA amendment, saying that “We simply don’t believe that managers of pension funds ought to be able to treat even a small percentage of their funds as ‘mad money.’”⁵⁴⁴

The success of the push for ERISA reform resulted in the Department of Labor’s 1979 prudence standard clarification and the establishment of a 10% high risk basket clause. This amounted to a stripping out of several of ERISA’s most impactful reforms, a meaningful deterioration in the wall ERISA intended to raise between pension fund beneficiaries and the risks of the financial markets, and a reversal of the recoverable liabilities ERISA had imposed on trustees. Finally, the reform of the ERISA prudence standard constituted an erosion of the fundamental understanding of standards of prudence in general.

ERISA prudence reform was an early step in a process that ultimately culminated in the *Restatement (Third)*’s establishment of the prudent investor rule, which wholeheartedly embraced MPT. Through this process, the trust vehicle transitioned from a fundamentally paternalistic, protectionist mechanism that prioritized the accountable preservation of assets by a strong actor (the trustee) on behalf of a weak actor (the beneficiary) to simply another asset class in the financial market. The high concentration of capital in pension funds and institutional trusts vehicles otherwise governed by the prudent man standard was a stated concern of the Task Force and others active in the professional conversation regarding financial investing at the time. The 1979 ERISA clarification and the subsequent 1990 introduction of the prudent investor rule freed pension funds and trusts in general from the intentional conservatism and risk-aversion of the

⁵⁴⁴ Ringle, William. “Penion Funds Should Be More Open, Witnesses Say.” *Gannett News Service*. Syndicated in *Honolulu Star-Bulletin*. 26 May 1977. p 23

prudent man rule, exposing a huge amount of capital to relatively unfettered participation in the markets in general and in venture capital funds in particular.

The Venture Capitalist Shifts the Businessman's Risk But Keeps His Valor

The ERISA prudence changes and the subsequent heavy investment by pension funds in venture capital funds constitutes a type of risk shift between the spheres of labor and finance. This represents a species of risk shift as described by political scientist Jacob Hacker.⁵⁴⁵ This risk shift resulted in a cultural environment where the venture capitalist was painted as a vital and patriotic market actor with special skills and capacities for risk while policies and firm structures were favored that allowed the venture capitalist to avoid meaningful personal risk almost entirely. This shift empowered the financial sector at the expense of organized labor and workers who did not participate in the financial markets.

The “risk shift” is a concept popularized by political scientist Jacob Hacker. He identifies the 1970s and 1980s as a time period where we see multiple moves at the levels of finance, industry, and policy to shift the financial and moral responsibility for health care, education, and retirement savings from government and employers to private individuals. For Hacker, a central moment in this transformation is the creation of the 401(k)⁵⁴⁶ individual retirement account in 1978. A 401(k) *defined contribution* retirement plan replaces a *defined benefits* pension. In a defined benefits pension, the benefits a worker will receive in the future are contractually defined

⁵⁴⁵ Hacker, Jacob. *The Great Risk Shift*. Oxford University Press. 2008.

⁵⁴⁶ A thorough explanation of a 401(k) is out of the scope of this project. It will suffice to say that “a 401(k)” is a colloquial phrase for a set of tax provisions that can be applied to wages an employee sets aside in an individual retirement account, along with any matching funds contributed by their employer. The employee maintains control of the account, determining their contributions, investment strategy, and withdrawals within some federal limits.

at their point of enrollment. In a defined contribution plan, like a 401(k), only the *contributions* of a worker and their employer, which can vary widely, and their tax treatment, are defined. The worker is encouraged through tax incentives to invest their 401(k) savings in the financial markets, in order to stay ahead of inflation and to grow their retirement savings at a faster rate.

401(k) plans proved immediately popular among employers upon their introduction.⁵⁴⁷ They were substantially cheaper than defined benefit pension plans, essentially free if an employer chose not to match employee contributions. There was considerably less bureaucracy involved in their management. Employers who were no longer interested in retaining the loyalty of skilled employees for decades did not need to invest in an expensive pension scheme, as shorter term employees would be happy to take their 401(k) accounts with them when they left. Finally, as unions became less common and less powerful throughout the 1980s, the organized pressure and leverage on employers to maintain pensions decreased.

The rise of 401(k) plans exploded participation in the financial markets. The United States Census Bureau has reported that in 1970, 15% of the US population reported owning one or more shares of common stock. In 1980, that number dropped to 13%. But by 1989, that number more than doubled, to 32%.⁵⁴⁸ Hacker convincingly argues that the rise of the 401(k) shifted the risk of preparing for retirement from corporate employers to employees, who found themselves forced into the financial markets through the 401(k) vehicle. Financiers benefited from the additional brokerage and management fees paid by the new market participants, as well

⁵⁴⁷ Hacker, p 109

⁵⁴⁸ *Statistical Abstract of the United States*. Washington D.C.: U.S. Census Bureau. 1970, 1980, 1989.

Current estimates placed the number of Americans participating in the financial markets through direct stock ownership, participation in a mutual fund, or other financial vehicle to be around 55%. This is down from a high of 62% between 2001 and 2008. (Saad, Lydia. "What Percentage of Americans Owns Stock?" Gallup. 13 September 2019. Available at <https://news.gallup.com/poll/266807/percentage-americans-owns-stock.aspx>)

as benefitting from the increased liquidity of the market in general. Workers now found their retirement savings ganged to the sometimes rising, sometimes falling fortunes of the financial markets, with little meaningful control and no guarantee that sufficient funds would await them upon retirement.

The ERISA prudence clarification constitutes an equally important and parallel risk shift, one that Hacker does not address in his work. 401(k) plans pushed individuals into market participation through multiple vehicles at varying levels of risk and return, including mutual funds, index funds, employee stock plans, and common stock acquisition. In aggregate, the impact on financial markets was huge. However, as noted above, it took over a decade to achieve a doubling in market participation. The ERISA prudence clarification, however, created a direct path between the assets of pension funds, that is, the deferred wages of workers, and high risk market participation through venture capital investment. Moreover, as I argued in section II of this chapter, this path was taken immediately. Substantial financial benefits in the form of increased investment by pension funds were felt by the venture capital industry within a year. Within a decade the amount of capital pension funds invested in venture capital had increased by over *four thousand percent*, from \$32.4 million to \$1.38 billion. Further, the limited partnership firm structure directly benefitted from this shift: firms using this structure went from managing 35% of the venture capital pool in 1977 to 75% in 1987.⁵⁴⁹

Both the ERISA prudence clarification and the growing infrastructural preference for limited partnership firms contributed to this risk shift, as both served to reduce or eliminate liability and need for personal investment on the part of pension fund fiduciaries and venture

⁵⁴⁹ Reiner, p 399

capitalists. As noted by Montagne and others, the ERISA clarification and subsequent adoption of MPT by the *Restatement (Third)* gave fiduciaries and financiers control over large blocks of assets and contributed to the liquidity of the markets without binding those actors to meaningful standards of performance.⁵⁵⁰ The limited partnership firm structure similarly allowed the venture capitalist to invest and profit from the capital gains of assets that were held in trust for the benefit of others. He had no need to stake any personal capital in order to receive his share of potentially significant capital gains at the end of a fund's life, though he was not prevented from doing so. And regardless of the fund's performance, he still received a regular management fee.

In this way, the combined effect of ERISA reform and the limited partnership firm structure constituted a significant risk shift from fiduciaries, financiers, and venture capitalists to the weakest party in these arrangements: the pension fund beneficiaries. The deferred wages of beneficiaries are exposed to the risk of the financial markets and to the especially high risks involved in venture capital investing. If the pension fund suffers losses that imperil future payouts, those losses will be felt by the beneficiaries in their retirement in the future, while venture capitalists and fiduciaries are, in the present, structurally shielded from most personal loss and liability.

The Role of Task Force Member Charles Lea and New Court Equity in ERISA Reform

Multiple historians of venture capital have identified the 1979 ERISA clarification as the pivotal moment in the development of modern venture capital. However, little attention has been paid to settling the question of who in the developing venture capital community was most influential in

⁵⁵⁰ Montagne, p 31

getting the clarification issued. Where that question has been addressed there is significant disagreement. Financial sociologist Martin Kenny has assigned credit to the National Venture Capital Association in general, while historian Tom Nicholas has primarily credited Senator Lloyd Bentsen and his “experience in the insurance industry”⁵⁵¹ for the reforms.⁵⁵² Prominent chroniclers of venture capital like Harvard Business School professor Paul Gompers credit ERISA reforms with the explosive growth of the venture capital industry in the 1980s but have not put forward theories of how the reforms came about.

I have discovered several lines of evidence that indicate that Charles Lea, an influential member of the Casey Task Force, was an early mover within the venture capital community regarding the push to reform the ERISA standard. First, circumstantially, Lea was the head of one of the first and few limited partnership firms to pursue pension fund participation prior to the 1974 passage of ERISA, and thus was in a position to be professionally impacted by ERISA’s passage when the majority of operating venture capitalists at the time would not have been. Second, as an early executive of NVCA, Lea was well positioned to influence the lobbying priorities of the organization. Third, oral history testimony from early venture capitalists collected by the University of California at Berkeley notes that Lea was one of the first people to flag ERISA as a problem for the profession, and a worthy target of lobbying energy. Fourth and finally, Lea’s colleague at New Court, John P. Birkelund, was a repeated presence in popular media coverage of the venture capital community in general and was particularly vocal regarding

⁵⁵¹ p 173 Nicholas, Tom. *VC: An American History*. Harvard University Press. Cambridge, MA. 2019.

⁵⁵² Bentsen was heavily involved with the original passage of ERISA and venture capital regulation in the late 1970s. He was also the senator who commissioned the GAO report, analyzed in Chapter 3, that featured the Life Cycle Chart in such detail. The relationship between Task Force member Charles Lea and Senator Bentsen is addressed later in this section.

ERISA reform. The personal influence of Charles Lea should be understood to have occurred in concert with the influence of the Task Force and the Report.

Determining what individuals held influence in this set of regulatory reforms may in turn help us to speculate as to the relationships between the developing venture capital industry and other older industries or sectors, in particular traditional finance. A popular narrative of Silicon Valley is that the region's success is due in part to generous, few-strings-attached in-group investing by successful entrepreneurs. This narrative, reflected in academic analyses such as the one presented by Annalee Saxenian, holds that "the growth of the venture capital business [in California] mirrored that of the local semiconductor industry, as successful entrepreneurs chose to reinvest their earnings in promising new companies."⁵⁵³ This narrative burnishes the image of venture capital investing as inextricably tied to high technology, originating from friendly relationships between technologists and engineers, and "having little to do with established economic and political institutions."⁵⁵⁴ In theory, Saxenian and others have argued, this "distance" is what allowed Silicon Valley technologists, and investors, to "[experiment] with novel and productive relationships" and "create an industrial system that operated very differently from the older one on the East Coast."⁵⁵⁵ However, the pivotal role of financier Charles Lea and the Task Force in the ERISA reforms points to an alternative history of venture capital, one where the practice is perfected, promoted, and protected by established, East Coast financial professionals working for banks, investment firms, insurance funds, and, in Lea's case,

⁵⁵³ Saxenian, Annalee. *Regional Advantage: Culture and Competition in Silicon Valley and Route 128*. Harvard University Press. 1994, 1996. p 27

⁵⁵⁴ *ibid*

⁵⁵⁵ *ibid*

one of the oldest financial family dynasties in Europe and North America. This history does not show venture capital's origins as intrinsically bound to the innovative world of high technology. Rather, by focusing on the individuals responsible for these impactful reforms and their social context, we can see venture capital investment as also closely tied to the established financial sector on the East Coast and more clearly in the history of financialization in North America in the twentieth century.

As briefly mentioned in the first chapter, at the time of ERISA's passage, Charles Lea was the general partner of the New Court Private Equity Fund, a subsidiary of New Court Securities, the US investment arm of the Rothschild family office. Founded in 1969 as a traditional investment corporation, Birkelund and Lea had reorganized the Fund as a limited partnership with a focus on venture investing in 1974. The Fund's limited partners included multiple private pension funds, such as those of IBM, AT&T, and RCA. The limited partnership firm structure allowed Lea and Birkelund to raise their management fee to 2% and also claim 20% of the carried interest at the end of the fund's life.⁵⁵⁶ Kenney has noted that the New Court Private Equity Fund's limited partner firm structure coupled with its reliance on private pension funds and other sources of institutional capital was unique at the time⁵⁵⁷ and considered it a significant step in the rise of the limited partner institutionally supported firm in venture capital. The 1974

⁵⁵⁶ This means that in addition to receiving a regular management fee equal to 2% of the fund's principal value, the general partners would also receive, at the end of the fund's life, a payment equal to 20% of the capital gains of the fund, with the remaining 80% to be distributed among the limited partners. This was substantially different from the traditional family office or investment corporation model, where investment managers would receive a salary for their management services but typically were not contractually entitled to a share of the capital gains.

⁵⁵⁷ The Heizer Corporation, run by NVCA founder Edward F. Heizer also relied on institutional capital in the form of public pension funds and insurance funds, but was organized as a corporation from 1974 through the 1980s, when it went public. Heizer was not a member of the Casey Task Force, but was in correspondence with the Task Force. [Kenney pp 1701-1702]

reorganization of the New Court Private Equity Fund is significant because, unlike the majority of other venture capitalists active in sector at the time of ERISA's passage, Lea and Birkelund would have been immediately negatively impacted by the withdrawal of pension funds from risky venture capital investments. Lea described the impact of ERISA among fiduciaries of pension funds in this way:

In 1974, almost out of nowhere, came the Employee Retirement Income Act of 1974; everybody calls it ERISA, and it set the rules and regulations for pension funds and so on, as to whether they can invest in private securities and alternative investments. The rules were pretty draconian. Once the fiduciary legal fraternity began to read these rules as promulgated by the Congress, they began to say to their clients, You can't invest in venture capital. There were cases where people had put investments and were committed to put investments into venture capital that had to pull back and couldn't complete the transactions.⁵⁵⁸

Edward F. Heizer was a Task Force correspondent and the founding president of NVCA whose Chicago offices the organization operated out of during its early years. He also counted at least one public pension fund, the Wisconsin Investment Board, and multiple university endowments among the investors in his corporate-structured venture capital fund. As such, Heizer would have also been in a position to observe the impact of ERISA on his investors. As the first two presidents of NVCA, Heizer and Lea were both well-positioned to alert the member firms⁵⁵⁹ of the potential threat posed by the ERISA legislation and to organize a collective response.

⁵⁵⁸ p 97 Lea, Charles. Interview by Carole Kolker. "Venture Capital Greats." Venture Capital Oral History Project. National Venture Capital Association. University of California at Berkeley. Berkeley, CA. October 2008.

⁵⁵⁹ According to the oral history testimony of Paul Wythes, an early venture capitalist, originally seventeen venture capital and investment firms participated in the founding of NVCA, including family firms like Bessemer and Venrock, as well as new dedicated venture capital firms like the Heizer Corporation. See p 88, Wythes, Paul. Interview by Mauree Jane Perry. "Venture Capital Greats." Venture Capital Oral History Project. National Venture Capital Association. University of California at Berkeley. Berkeley, CA. 8 May 2006.

According to several accounts, West Coast venture capitalists were uninterested in pension funds as a source of capital, due to either timing or because their capital needs were being met with other sources. In oral history testimony, Reid Dennis, founder in 1974 of the Silicon Valley venture capital firm Institutional Venture Associates, said that he specifically did not pursue pension funds as investors due to their being constrained by ERISA's prudent man rule:

...[O]ne of the things that's interesting—and we'll have to get into this later—when we started our independent venture funds after—it was 1973-74—we avoided pension funds. In the huge bull market of venture capital and fundraising, pension funds have become a major source of capital, and it's one of the things that has flooded the industry with so much capital that it doesn't know what to do with it. But we avoided pension funds because of the so-called Prudent Man Rule that the pension funds were bound by. If you had more than 25 percent of your capital came from pension funds, then the whole fund was subject to the—I think it was 25 percent; I believe that's right—the whole fund became subject to those Prudent Man regulations. *Well, the Prudent Man Rule on one side and venture capital on the other are really two diametrically opposed propositions to invest in a company that doesn't exist in the present time and bet on managers who you can't see them actually doing their management job in that environment.* But you expect that they can do it or else you wouldn't invest in them. But nevertheless, it's hard—is it prudent to—I suppose you could say, 'Look, the returns in venture capital have been so good that it's imprudent not to at least have a part of your fund in that area.' [laughter]⁵⁶⁰

According to Dennis, IVA's first fund was primarily capitalized by insurance companies, including his previous employer, Fireman's Fund.⁵⁶¹

⁵⁶⁰ p 30, Dennis, Reid and Pitch Johnson. Interviewer unknown. Venture Capital Oral History Project. National Venture Capital Association. University of California at Berkeley. Berkeley, CA. 22 September 2008. Emphasis added.

⁵⁶¹ Dennis, p 31

Several early venture capitalists, in oral histories and interviews, have credited Charles Lea with directing the attention of the nascent venture capital industry to ERISA and leading NVCA's efforts to promote reform of the prudent man standard. I have assigned Lea at least partial credit here for the Labor Department's prudent man clarification because two of his contemporaries at NVCA name him directly in oral history testimony; the timelines of those testimonies match the records available; and the narrative provided, direct negotiation with the Labor Department, matches the ultimate regulatory outcome. Further, Lea's name comes up repeatedly in connection with ERISA reform throughout the Congressional record. Lea appears to have contributed to over a dozen hearings that touch on ERISA reform between 1977 and 1979 through either written or oral testimony or the submission of written reports to which he contributed.

Lionel Pincus, who in the 1970s was the head of the Warburg Pincus private equity firm⁵⁶² and served on NVCA's founding Board of Directors, credits Lea and himself with driving NVCA's lobbying mission regarding ERISA reform:

On behalf of the NVCA, Charlie Lea and I led the negotiation with the Labor Department of the [pension] plan asset rules in 1978 and 1979. That produced the prudent man regulations and the contemporary venture operating company. These regulations made it possible for pension funds to invest directly in venture capital funds, opening a floodgate of new capital for our young industry.⁵⁶³

⁵⁶² Warburg Pincus had some capital from institutional investors, and primarily received its investment capital from family offices. Warburg Pincus was organized as a traditional investment fund, with the firm taking a 2.5% management fee to its investors, but taking no share of the capital gains. See p 118-119, Gupta, Udayan. *Done Deals : Venture Capitalists Tell Their Stories*. Harvard Business School Press. Cambridge, MA. 2000

⁵⁶³ Gupta, p 119-120

Warburg Pincus was not reliant on institutional investors prior to 1974, but after the prudent man clarification in 1979, the firm shifted to a primarily institutional investor base, including multiple private and public pension funds, which it maintained through the early 2000s.⁵⁶⁴

Paul Wythes, who in 1962 founded the Silicon Valley venture capital firm Sutter Hill Ventures as an SBIC,⁵⁶⁵ echoes Pincus's account in an oral history conducted by NVCA:

Well, you've got to give Lionel [Pincus] and Charlie [Lea] a lot of credit, but ERISA was so far from [Sutter Hill's] minds. [Sutter Hill] didn't want an ERISA limited partner; we didn't want to have to deal with all that stuff with the government. But to Lionel and Charlie's credit, they opened the floodgates, which was good. But we were not worried about all the government regulations.⁵⁶⁶

Wythes further provides some details as to the ways in which the early venture capital industry thought about its relations to policy making and lobbying.

Well, in those days I think we as an industry wanted to stay out of Washington and all the politics; we'd just do our thing and keep our noses to the grindstone and we'd do just fine, and we didn't need Washington telling us anything. That was the prevailing viewpoint in the venture capital industry. But when the NVCA got started, we thought maybe we ought to have a voice — a little voice. So as founding directors, we decided we did not want a Washington office, which is the antithesis of what's being done in the NVCA today. We were going to keep the overhead to a minimum. I think we met as a board on a quarterly basis; it wasn't every month or anything like that. And we'd move it around; we'd meet in different parts of the country.⁵⁶⁷

⁵⁶⁴ Gupta, p 120

⁵⁶⁵ Sutter Hill operated with funding solely from the Canadian development and financial-services company, Genstar, until 1986. See Bloomberg News, "Paul Wythes, early Silicon Valley venture capitalist, dies at 79," *The Mercury News*, 5 November 2012. Available at <https://www.mercurynews.com/2012/11/05/paul-wythes-early-silicon-valley-venture-capitalist-dies-at-79/>

⁵⁶⁶ Wythes, p 89

⁵⁶⁷ Wythes, p 86

Later Wythes continued on this theme:

...politics has become more important today in a way, unfortunately. Capital gains rates and stock options and all those issues we face as an industry today weren't so much of an issue in those days [during the founding of NVCA in 1972], so a lot of people just didn't want to get involved with the government in Washington, or even locally or state-wide.⁵⁶⁸

This perspective on the part of at least one prominent early West Coast venture capitalist, that policy debates were something that could be “stay[ed] out of” without any negative impact on the professional practices of venture capitalists, sheds some light on how and why it fell to East Coast financiers and bureaucrats with long histories in banking, investment, and tax policy, like those on the Casey Task Force, to push the most influential policy agendas that were the most successful in shaping the industry. Wythes comments are corroborated by, for example, the low numbers of West Coast venture capitalists appearing before Congressional committees in the 1970s when compared to East Coast and Mid-West venture capitalists and financiers. Tom Perkins did not appear before a Congressional committee until 1980, despite being founding general partner of the West Coast venture capital fund Kleiner Perkins and an early participant in NVCA. In his 1980 appearance, he delivered testimony on stock option allocation and taxation.⁵⁶⁹ Pincus, who was based in New York City, shared sentiments that seemed to describe a similar difference in approach between East Coast firms and West Coast firms, including Perkins.

⁵⁶⁸ Wythes, p 104

⁵⁶⁹ U.S. Senate. Subcommittee on Taxation and Debt Management. Senate Finance Committee. “Miscellaneous Tax Bills: S. 753, S. 1384, S. 1826, S. 1854, S. 1867, S. 2179, S. 2239, S. 2367, S. 2396, S. 2415 and H.R. 5973.” Hearing. 25 April 1980. Testimony of Tom Perkins. p 111-112.

After we had raised more than \$20 million [circa 1972-1973], I felt we had to become acquainted with the new West Coast firms I had started hearing about. So I decided to call them all up. I visited Reid Dennis, who was then at American Express. I called on Tom Perkins and met his partner Gene Kleiner. I met Pitch Johnson, a classical venture capitalist of the old school and still a great friend of mine. I also got acquainted with Sandy Robertson through our mutual friend and accountant, Arthur Dixon. I made several trips to California and met with many of the West Coast group who looked at me like I was some kind of freak from the East Coast, and I looked at them as regional techies.⁵⁷⁰

Finally, Charles Lea's colleague at the New Court Private Equity Fund, John P. Birkelund, was a frequent media presence, commenting on issues related to financial policy, small business, and venture capital throughout the 1970s. His name comes up in articles pertaining to ERISA, its impact on venture capital, and potential avenues of reform as early as 1976. In July of that year, Birkelund authored a column in the *New York Times* titled, "Who Would Finance a Xerox Today?"⁵⁷¹ In it, he wrote on what would be a primary theme of his public writings in this period: the concentration of the savings of individuals in pension funds, insurance funds, mutual funds, and other institutional market actors. This concentration of capital was also a favorite theme of the Casey Task Force. As capital was concentrated in a handful of institutional actors who were subject to various restrictions on their investment activities, less capital was available for the types of risky investments the early venture capital industry was pursuing. Birkelund summarized this as, "Obviously, savings in this country are flowing into fewer and fewer hands and fewer and fewer people are making investment decisions....As the savings stream has flowed more and more into large banks and large institutions, there has been a

⁵⁷⁰ Gupta, p 119

⁵⁷¹ Birkelund, John P. "Who Would Fund A Xerox Today?" *New York Times*. 25 July 1976.

corresponding tendency to take fewer risks.”⁵⁷² In this column, Birkelund quickly makes the connection between the conservatism of institutional financial actors and the “external pressures...inherent in the recently enacted Employee Retirement Income Securities Act.”⁵⁷³

In another column by nationally syndicated financial columnist Louis Rukeyser, which appeared in daily papers across North America in the winter of 1976, Birkelund, referred to as an “expert in the financing of small companies,” is described in this way

To Birkelund, who is president of New Court Securities Corp., the real threat for the next year or two is not the much discussed overall shortage of capital, but rather, ‘the way in which capital is allocated.’

The little guy, he argues, can’t get a fair shake these days in financing a business. Coming from a man whose own firm has an impressive record of support for innovative new companies (including Datapoint, Intel, Fotomat, Data100, and Sycor) his words are worth heeding.

As Birkelund sees it, the recent decline in the number of individual stockholders and the consequent concentration of savings in large banks, pension funds, and mutual funds has directed the flow of savings to institutions that he views as ‘less responsive to the needs of smaller corporations.’

This may not be entirely the institutions’ fault. For example, under the new Employee Retirement Income Security Act—known as ERISA—the pension funds are pressured strongly to do nothing that may not later seem to have been ‘prudent.’

But who, then, is going to take the extra risks that eventually might produce the biggest rewards—not only for the investors but for the country itself?⁵⁷⁴

As for Charles Lea himself, in oral history testimony he gives Stewart Greenfield and Edward Glassmeyer primary credit for driving NVCA’s efforts toward ERISA reform.⁵⁷⁵

⁵⁷² Birkelund, “Who Would Fund A Xerox Today?”

⁵⁷³ Birkelund, “Who Would Fund A Xerox Today?”

⁵⁷⁴ Rukeyser, Louis. “Dream in Trouble.” *News-Herald*. Ohio. 7 December, 1976.

⁵⁷⁵ Lea, “Venture Capital Greats.” p 90.

However, Glassmeyer's oral history testimony does not mention ERISA or pension investment in venture capital and his name does not appear in the Congressional record in connection with ERISA in any capacity. Stewart Greenfield, founder of the East Coast Alternative Investment Group, did not participate in the Venture Capital Oral History Project and has not sat for any interviews in equivalent detail. However he does appear to have testified on the subject of ERISA reform before a Congressional committee on at least one occasion in 1977, in a set of joint hearings that also included testimony from NVCA's then-president, David T. Morganthaler.⁵⁷⁶ However, Lea also takes some credit for himself, saying in his oral history testimony, "Suddenly [ERISA] appeared and was passed by Congress, and we found our livelihoods being threatened by it. It took us until 1979 to get that legislation reworked."⁵⁷⁷ Later, Lea mentions the utility of his personal connections with Lloyd Bentsen (mistakenly transcribed as "Benson"), the Texas senator who was involved with ERISA, and multiple other pieces of legislation of interest to the venture capital industry:

Well I'm sure we developed many [connections with congressmen who responded to the lobbying efforts of Lea and NVCA], but my memory isn't broad enough and I wasn't directly involved with each one of them. I do know that Lloyd Benson [sic], for example, who I spent a lot of time with, and he was very onboard, and he was very helpful during this period of time on not just ERISA but a whole host of things. I had gotten to know him a little bit accidentally, just going through a thing up in Vermont, a shooting school with him and his wife. During that week, we probably had dinner with him a couple of times, and then I saw him later. At least we were more than just another dude passing by. He was helpful, and I'd known his brother very slightly, and they were involved with a major company way out of my Smithers past. But

⁵⁷⁶ U.S. Senate. Subcommittee on Private Pension Plans and Employee Fringe Benefits of the Committee on Finance and the Select Committee on Small Business. Pension Simplification and Investment Rules. Hearing. May, June, July, 1977.

⁵⁷⁷ Lea, "Venture Capital Greats." p 98

you take full advantage of those connections when you can....Believe me it was very bi-partisan. I think we were focused on the national impact of what we were trying to do. Everybody was a prospect.⁵⁷⁸

This accreditation is not uncontested. In oral history testimony, James R. Swartz, a founding partner of Accel Partners, claimed credit for “getting [ERISA reform] done”⁵⁷⁹. Schwartz claims to have testified in the “original ERISA hearings” in “78, maybe 79, 77, 78”⁵⁸⁰. There are a number of inconsistencies in Swartz’s testimony when compared with other records. First, there is a discrepancy in Schwartz’s timeline, as the hearings for the original ERISA legislative package were held in 1974 and years prior. Second, despite his claims, I can find no record of Schwartz testifying before a Congressional committee on any topic before 1985, over a decade after the original ERISA package was passed in 1974 and six years after the Labor Department’s prudent man clarification was issued. Third, the ultimate effective avenue for ERISA reform was not through a legislative bill, though at least two drafted between 1974 and 1979, but through a regulatory rule clarification issued by the Labor Department.

Government Citations and References

As with other citations of the Task Force and the Casey Report, the Report was cited in policy debates surrounding ERISA as a source of factual background material. Specifically, the Report is invoked to describe a historical financial ideal, represented by the Life Cycle Model, and the

⁵⁷⁸ Lea, “Venture Capital Greats.” p 98

⁵⁷⁹ p 52, Swartz, James R. Interview by Mauree Jane Perry. “Venture Capital Greats.” Venture Capital Oral History Project. National Venture Capital Association. University of California at Berkeley. Berkeley, CA. 19 July 2006.

⁵⁸⁰ Swartz, p 55

ways in which recent regulatory changes had left things unbalanced; as a source of legislative and regulatory remedies; and as a centerpiece in a performance of prestige and expertise. Here I will review a collection of the most significant or interesting invocations of the Casey Report in ERISA debates. This review should not be considered exhaustive. Other mentions have been examined in Chapter Four, and some I considered to be repetitive or of little significance have been omitted.

As mentioned at the beginning of this chapter, historian Tom Nicholas credits Texas Senator Lloyd Bentsen with the ERISA clarification which had such a dramatic effect on the growth of the venture capital industry. It is true that as a lawmaker Bentsen was quite active regarding laws and regulations surrounding the venture capital industry. It is also true that he encountered and was influenced by the Casey Report, in addition to his social connections with members of the Task Force as reviewed above. In 1977, during Senate hearings for a set of bills involving venture capital for minority enterprises and SBICs, Bentsen's opening statement explicitly and favorably invoked the Casey Report in the first paragraph:

The purpose of today's hearings is to address a problem with which many of us on the Small Business Committee have been concerned for many years. It is a problem that was thoroughly examined by the Small Business Administration's Task Force on Venture and Equity Capital for Small Business. What is that problem? It can be summed up by the findings of the panel when it stated that 'Venture and expansion capital for new and growing small businesses has become almost invisible in America today.'⁵⁸¹

This was followed in the hearing itself by further invocations of the Report by witnesses, in this case by Herbert Krasnow, the president of the National Association of Small Business

⁵⁸¹ U.S. Senate. Select Committee on Small Business. Minority Enterprise Venture Capital Act of 1977 and Small Business Investment Company Development Act of 1977. Hearing. Opening statement of Senator Lloyd Bentsen. 3 October 1977. p 3.

Investment Companies,⁵⁸² and by A. Vernon Weaver, then-Administrator of the SBA,⁵⁸³ as well as the inclusion of the full text of the Report in the hearing records. Both witnesses emphasized and praised the Report's recommendations regarding ERISA.

The SBA's Chief Counsel for Advocacy, Milton Stewart, also took up the recommendations and logics of the Casey Report. In May of 1979, the SBA released a report entitled *Small Business and Innovation* which was then distributed to several House committees. *Small Business and Innovation* was itself a combination of three reports, two commissioned by the SBA and one commissioned by the office of the Secretary of Commerce. "To students of the innovation process," Stewart wrote in his introduction, "many of the recommendations [in the three reports] will have a familiar ring. They have figured in other citizen group studies extending from the Charpie Commerce Department Report almost twelve years ago to the SBA Casey Report of two years ago.⁵⁸⁴" The final report included in *Small Business and Innovation*, commissioned by the Office of the Secretary of Commerce, went on to repeat the Casey Report's exact recommendations regarding the clarification of the prudent man rule and the 5% basket clause, saying:

We find much merit in the recommendation of a a 1976-1977 Small Business Administration Task Force on Equity Finance that ERISA be amended in such a way as to increase the availability of capital to new, small, innovative firms without jeopardizing the safety of pension plan investments.

⁵⁸² Hearing, Minority Enterprise Venture Capital Act of 1977 and Small Business Investment Company Development Act of 1977. Testimony of Herbert Krasnow. p 53.

⁵⁸³ Hearing, Minority Enterprise Venture Capital Act of 1977 and Small Business Investment Company Development Act of 1977. Testimony of A. Vernon Weaver. p 33

⁵⁸⁴ U.S. House of Representatives. Committee on Small Business. *Small Business and Innovation*. Prepared b the Office of the Chief Counsel for Advocacy, United States Small Business Administration. Committee Print. May 1979. p 3

We recommend (1) that ERISA's prudent man standard be restated so that it is clearly applicable to the total portfolio of pension fund investments rather than individual investments, and (2) that pension fund managers explicitly be permitted to invest up to five percent of pension funds assets in small firms.⁵⁸⁵

Later in 1979, Mitchell Kobelinski appeared in his capacity as the *former* Administrator of the SBA to testify at a hearing regarding the SBA's mission and success as an agency. In his testimony he stated

While serving as Administrator of the SBA I appointed a special task force on venture and equity capital. This volunteer group of specialists, with a cross section of views and experience in dealing with the problem [of] raising venture capital, in my opinion, did a superb job in analyzing the major impediments in this area and suggesting solutions. Chairing this group was my dear friend and a gentleman well known to Washington through his many years of dedicated service, the Hon. William G.[sic] Casey, former ExIm Bank Chairman, former SEC Chairman, former Undersecretary of State. I urge this Committee to once again review the findings and recommendations of this task force which submitted its report in January 1977.

I am most pleased with the fact that Congress has already made certain legislative changes paralleling those recommendations and that the Securities and Exchange Commission has already made some regulatory changes along the recommended lines. However, much remains to be done if we are to provide our economy with the venture capital needed to create and expand the businesses that will deliver the employment opportunities needed in the future. We have experienced what I believe to be an alarming concentration of assets into ever larger financial institutions, for example... [p]ension funds assets have tripled since 1962 and it is estimated that by 1985 more than half of all equity capital will be in the hands of pension fund managers....⁵⁸⁶

⁵⁸⁵ Report, Committee Print. *Small Business and Innovation*. p 121

⁵⁸⁶ U.S. Senate. Select Committee on Small Business. Examination of the Mission of SBA. Hearing. Testimony of Mitchell Kobelinski. 3-4 October 1979. p 71.

Kobelinski then went on to review the Report's conclusions and recommendations regarding ERISA, the prudent man clarification, and the basket clause, emphasizing the Task Force's arguments regarding the concentration of capital in institutional investors like pension funds and trusts. Kobelinski also repeated the Task Force's argument regarding the "non-productive, dormant state" of the personal savings of individuals, which the Task Force and now Kobelinski argued could be put to better, and more patriotic, use in the financial markets, growing small businesses.⁵⁸⁷

In 1984, the Senate included, in a report accompanying a bill to establish a White House Conference on Small Business, a timeline of the ERISA prudence clarification that appeared to credit the Task Force and the Casey Report with prompting the Labor Department's action:

The adoption of the Employee Retirement Income Security Act of 1974 ('ERISA') has had a significant impact upon the investment of private pension assets in small business. Employee plan asset managers, who were uncertain about their responsibilities under ERISA's prudent person rule, adopted an extremely conservative investment strategy following passage of the Act. Small business access to pension funds was reduced as plans investments more heavily in blue chip securities.

In January 1977 the Small Business Administration Task Force on Venture and Equity Capital for Small Business expressed its concern that ERISA's fiduciary standards had isolated \$200 billion in pension assets from all but blue chip and fixed income securities. The Task Force suggested an amendment to the ERISA prudent person rule to clarify its application to the total portfolio of pension fund investments rather than to individual investments.

The Department of Labor published, effective July 23, 1979, a final ruling interpreting the investment duties of a fiduciary under the prudent person rule. The regulation adopted the total portfolio

⁵⁸⁷ Hearing, Examination of the Mission of SBA. Testimony of Mitchell Kobelinski. p 72.

approach to evaluating investments and expressly permitted investments in small businesses under certain circumstances.⁵⁸⁸

These citations, and others reviewed in the previous two chapters, provide evidence of the Report being used as a touchstone for a set of reforms and policy changes, including ERISA reforms. The Report was relied upon to provide factual background and policy suggestions, as well as ideological reasoning for why the recommended reforms were the best choice to sustain or restore the American, capitalistic way of life. This is particularly evident in debates surrounding the participation of individuals and their savings in financial markets. As was discussed in Chapter Two, the Task Force had a strong opposition to individuals shielding their personal savings from the volatility of the financial markets. Rather, Casey and the other Task Force members believed that the best and most patriotic role for savings accumulated by individuals was *in* the market, where it might contribute to the growth of American companies. We see that logic being repeated in the testimony of Kobelinksi and other policy makers.

Of all the policy recommendations made in the Casey Report, its recommendations regarding ERISA would, subsequent to their adoption by the Labor Department, have the greatest impact on the developing venture capital industry and on the broader world of finance. In fitting with the Casey Report's broader soft power strategy, the ERISA recommendation is presented as rulemakings or clarifications, rather than the passage of new laws or legislative agendas,⁵⁸⁹ with no attention whatsoever paid in the text to the extreme policy shift it represented. This

⁵⁸⁸ P 29. U.S. Senate. Report No. 98-380. S. 2479. "A Bill To Provide For A White House Conference On Small Business." Report. 26 March 1984.

⁵⁸⁹ Wendy Brown's theorization that neoliberal policy-making is often achieved most effectively through "specific techniques of governance, through best practices and legal tweaks, in short through 'soft power,'" is discussed in Chapter Two.

depoliticization allowed these reforms to be enacted without democratic exposure or oversight. This despite what might be argued as their fundamentally confiscatory nature, as financiers moved to claw back victories from labor. Regardless of the rhetorical soft-pedaling, the Report's recommendation that the Labor Department "declare a policy that pension funds may invest in a broad spectrum of American companies within the 'prudent man' rule and that it applies to the total portfolio rather than any individual investment" was a wholesale departure from the existing and accepted prudence standard that applied to trusts and to pension funds at the time. This was understood by financiers, lawyers, bureaucrats, *and* interested venture capitalists. The Labor Department's clarification of the ERISA prudence standard in 1979, made in part due to the concentrated lobbying efforts of the Casey Task Force members and in particular Task Force member Charles Lea and his New Court colleague John P. Birkelund, was part of a domino effect wherein modern portfolio theory and professionalized financial managers became embedded at the core of financial markets, trust funds, and pension funds. The opening up of pension funds to venture investment unleashed a torrent of capital into the developing financial discipline, and in particular into funds which followed the limited partnership firm model. This influx of capital into these particular firms set structural and financial norms for the industry that continue to the present day.

CHAPTER SIX

WILLING TO TAKE A BUSINESSMAN'S RISK: SEC RULES 144 & 146 AND FIGURING THE MODERN VENTURE CAPITALIST AS PATRIOTIC RISK-LABORER

While ERISA reforms addressed the type and amount of money available to venture capitalists for their investments, the Task Force had further policy recommendations addressing how those investments could be made. In this chapter, I examine the reforms proposed by the Task Force to Securities and Exchange Commission (SEC) Regulation A, and SEC Rules 144 and 146, a set of regulations enacted in the early 1970s that governed the private placement of securities and their subsequent resale. The SEC put both 144 and 146 into place during William J. Casey's tenure at the head of the agency, and as such, his commentary on the effects of the rules and his proposed reforms would prove particularly influential. The reforms proposed by the Task Force and ultimately adopted by the SEC substantially weakened the restrictions Regulation A and Rules 144 and 146 had placed on what qualified for the private placement exception, what types of information disclosures were required for a private placement to be valid, and the ease with which privately placed securities could be subsequently sold on the secondary market.

This chapter is divided in two parts. In the first part, I will first review SEC Regulation A and SEC Rules 144 and 146 as they were originally enacted. I then will review the reforms proposed by both the Task Force in the published Report and by Casey himself in a separately published law review article. Finally, I will examine the ultimate reforms enacted by the SEC and the available evidence of influence regarding the Report and Casey's publications.

In the second part of this chapter, I take up how these regulatory reforms were dramatized through the construction of the venture capitalist in the narratives presented by Casey and the

other Task Force members throughout the materials examined in this project. This work of narrative building is most evident in writings by Casey, including his solo-authored law review article on SEC Rules 144 and 146. I focus on how Casey and the other Task Force members cast the venture capitalist as the central innovator figure in their history of American business. I juxtapose this figure with other pro-capitalist, pro-finance narratives that were in circulation at the time. I argue that the figure of the venture capitalist as innovator, while in harmony with many aspects of these other narratives, differed by centering the venture capitalist in his capacity as a powerful financial actor in and of himself. Other narratives, like those presented by the New York Stock Exchange, downplayed the activities of professional financial actors in favor of promoting general participation in financial markets by a broad population of Americans.

Regulation A and SEC Rules 144 and 146

SEC Regulation A and Rules 144 and 146 regulated the initial private placement of securities and their subsequent sale on the secondary market. When a venture capitalist made an equity investment in a pre-IPO company, they acquired that stock through this private placement mechanism; that is, the equity they acquired was not being offered to the investing public at large, but through a private transaction between the venture capitalist and the business he invested in. If he later found it necessary or attractive to sell those stocks, he would frequently do so through the public financial markets. These three provisions, which fall under the Securities Act of 1933, were conceived of as protective measures,⁵⁹⁰ and were part of New Deal legislation also known as the “Truth in Securities Act.” Passed in the wake of the Great Crash of 1929, it

⁵⁹⁰ Siedman, Lawrence R. “SEC Rule 144A: The Rule Heard Around the Globe—or the Sound of Silence.” *Business Lawyer*. Vol. 47. November 1991. p 334

was one of the first federal regulations governing the sale of securities. The goal of the Act was to promote and enforce accuracy and transparency in corporate financial statements and to criminalize misrepresentation and fraud in the securities markets. The Act required that stock offerings to the general public be accompanied by prescribed financial disclosures and be registered with the SEC, created a year later by the Securities Act of 1934.

At the time of its original passage, lawmakers hoped that these measures would prevent high pressure sales tactics such as direct solicitation, as well as misrepresentation, and other deceitful practices in the sale of securities to unsophisticated buyers. Certain exceptions to the registration requirements were built into the Act. Relevant here is Regulation A, which created an exception for small private offerings, at the time defined as not in excess of \$100,000.⁵⁹¹ Private offerings, as opposed to public offerings, involve the sale of so-called “restricted securities” directly from the issuer of the stock to a small, select group of investors. Prior to the installation of Rules 144 and 146, private offerings did not require full registration or disclosure. This reflects the prevalent view amongst investors that the expense and hassle of compulsory registration or disclosure might dissuade small businesses from pursuing early equity investment. This type of securities placement, in small private offerings to outside investors is the key transaction in the type of venture capital investment that the Task Force was promoting. For venture capital investment to continue to function in the mould the Task Force casts, this type of transaction had to remain possible and, preferably, loosely regulated.

However, it is not clear that the Securities Act of 1933 or the SEC intended the private placement exception to be primarily used for this type of outside investment. The 1933 Act did

⁵⁹¹ Donworth, Charles T. “A Review of the Securities Act of 1933,” *Washington Law Review*. Vol. 8 Issue 2. October 1933. p 64

not delineate qualifying criteria for a private placement, only describing it as “transactions by an issuer not involving any public offering” and noting its exemption from registrations requirements.⁵⁹² The Act also stipulated that stock acquired in a private placement could not have been acquired “with a view to distribution.” As originally conceived of legislatively, use of the private offering exception was only valid if the stock was “not...subsequently introduced into the stream of commerce.”⁵⁹³ The SEC in 1935 attempted to further define the exemption based on common business practices and “administrative folklore.”⁵⁹⁴ Previous common practice had suggested that the low number of individuals involved, typically twenty-five or fewer, would qualify an offering for the private placement exemption. The SEC in 1935, however, argued that low participants numbers alone were not sufficient to determine the validity of a private placement.

The agency offered several additional factors to be considered when determining if a private offering had been made appropriately, beyond simply the number of offerees. The first of these factors, and the one of greatest interest here, considered the people involved in the transaction. The number of those receiving the offer, and their relationships to each other and to the offering entity were all considered. Their relationship to the offering entity is most relevant. It appears from subsequent legal interpretations that a very familiar, personal connection was assumed. In an analysis of major legal decisions regarding the private placement exemption, a 1974 legal note in the *Minnesota Law Review* stated that the SEC itself had identified “[p]ersons

⁵⁹² “SEC Rule 146—The Private Placement Exemption,” *Minnesota Law Review*. Vol 58 Issue 5. 1974. P 1125

⁵⁹³ *ibid* p 1125

⁵⁹⁴ *ibid*

with ‘special knowledge’ of the issuer such as ‘high executive employees’ as examples of offerees to whom a private offering would be appropriate.”⁵⁹⁵ The SEC’s statement to that effect as well as subsequent legal decisions imply that the private offering exemption was primarily intended for equity offerings to *employees*, not outside investors. The “special knowledge” the SEC assume those employees to have will be significant in our discussion of Rule 146, below.

Since its original passage, the Securities Act of 1933 has been amended multiple times. By 1970, the size limitation on offering imposed by Regulation A had been increased several times. In the 1960s, the limit was raised to \$300,000⁵⁹⁶ and by the 1970s, the limit had been raised again to \$500,000. By the 1970s, Regulation A, in the words of the Task Force “facilitate[d] securities offerings of \$500,000 and less by exempting them from the costly and time-consuming undertaking of full registration.”⁵⁹⁷ If a private offering of restricted securities was made in the amount of \$500,000 or less, under this law that offering potentially qualified for the private offering exemption and, providing it met certain other conditions, would not need to adhere to the disclosure requirements of a public offering. Offerings above that level graduated from eligibility for the private offering exception and *must* be made in the form of a public offering, subject to all the requirements of registration and disclosure.

Rule 144, drafted and enacted during William J. Casey’s tenure at the head of the SEC, regulated the resale of restricted securities initially acquired in private placements. Rule 144 placed restrictions on the ability of investors to resell these restricted securities on the public

⁵⁹⁵ “SEC Rule 146.” *Minnesota Law Review*. Vol. 58. No. 1125. 1974. p 1129

⁵⁹⁶ Steed, Robert L. “Corporate Financing Under Regulation A.” *Law Notes for the Young Lawyer*. January 1965. np

⁵⁹⁷ Published Report, p 15

market: first, the Rule required that investors must hold their securities for two years. This holding period was put in place in order to establish that the initial intent had truly been investment, not speculation or immediate resale. Second, after the two year holding period had elapsed, would-be sellers were subject to limitations as to the amount of stock they could resell on the public markets. These limitations were calculated in relation to the size of their stake and the amount of stock that had been placed or sold on the public markets already. In a given six months period, potential sellers could only sell an amount of stock that equaled one percent of all of that company's outstanding stock *or* the averaged weekly volume of that company's stock as traded in the market for the four weeks prior to the proposed sale, whichever amount was lower.⁵⁹⁸ Further, sellers were prohibited from employing certain sales tactics, such as direct solicitation of buy orders from individuals.⁵⁹⁹ The Rule further required that these secondary market sales be registered with the SEC and that they themselves be accompanied by the public disclosure of certain types of information about the original issuer.⁶⁰⁰

In a 1972 letter to Senator John Sparkman, then-SEC Chairman William J Casey described Rule 144 in this way

...Rule 144...conditions the resale of restricted securities on the availability of public information designed to assure informed trading markets and to encourage additional companies voluntarily to file financial data with the Commission. At the same time, the rule would establish more definite objective standards [for

⁵⁹⁸ "Revisited," p 588

⁵⁹⁹ Miller, Stephen R and Richard S. Seltzer. "The SEC's New Rule 144." *Business Lawyer*. Vol. 27. July 1972. p 1049.

⁶⁰⁰ *ibid.* p 1052

establishing when resale is permitted] and get us away from measuring psychological attitudes.⁶⁰¹

Previous to the enactment of Rule 144, there had been no regulation establishing definitive guidelines as to when a privately placed security could be safely been considered to have been a sincere *investment* in a growing company and not a form of financial *speculation*. Rule 144 was an attempt to establish those guidelines, as Casey stated, to get the SEC away from guessing at the “psychological attitudes” of the original buyers and to replace subjective assessments with an objectively delineated time period. This letter further clarifies the SEC’s intention to use Rule 144 as a way to induce disclosures to the general public at the point of secondary sales, which may be occurring before an IPO.

Rule 146 was issued in 1973 in an attempt to resolve confusion regarding who could participate in a private placement and what information the offeror was required to disclose. The disclosure exemption was attractive to companies for several reasons: it saved them the cost of registration, which could be substantial, and it allowed them to keep information like earnings (or lack thereof), costs, salaries, corporate structure, and other facts and figures out of the public eye while still providing access to equity investment. It is therefore unsurprising that the private offering exemption was inappropriately exploited in several cases. In one example, the 1972 *SEC v Continental Tobacco Co.* case, a company marketing a low tar, low nicotine cigarette exploited the small offering exception in their offering of securities to a “diverse group of people, not all of whom could be characterized as sophisticated investors, selected from the general public in a

⁶⁰¹ Correspondence from William J. Casey to John Sparkman on Rule 144, 6 January 1972, SEC Historical Society Holdings.

casual manner.”⁶⁰² They had no “special knowledge” of Continental or close association that might enable them to acquire that knowledge. Instead, these individuals were subject to “presentations using high pressure sales techniques and dramatic film strips.”⁶⁰³ The Fifth Circuit Court of Appeals granted the SEC an injunction to halt the private placement, concluding that it was not valid because, in part, the offerees did not have “a relationship with Continental [that would give] access to *the kind of information that registration would have disclosed*.”⁶⁰⁴ The Court further stated that the private offering exemption existed for situations where

...the number of offerees is so limited that they may constitute a class of persons having such a privileged relationship with the issuer that their present knowledge and facilities for acquiring information about the issuer would make registration unnecessary for their protection.⁶⁰⁵

The Court argued that disclosure requirements existed for the protection of the investor, and if the investor were in a position where they had access to information that was typically available in a disclosure, the requirement was moot. The SEC has previously argued, in a brief heavily relied upon by the Fifth Circuit in the *Continental* decision, “that the relationship of the offeree to the issuer should be essentially that of ‘insider’—one who occupied a privileged status vis-a-vis the offeror.”⁶⁰⁶ This criterion defined the appropriateness of a private placement based on the existing relationship between the offeree and the issuer, not the information provided. However, after the *Continental* decision, many financiers, including institutional investors,

⁶⁰² “SEC Rule 146,” p 1133

⁶⁰³ *ibid*

⁶⁰⁴ Quoted in “SEC Rule 146,” *Minnesota Law Review*. p 133

⁶⁰⁵ Quoted in “SEC Rule 146,” *Minnesota Law Review*. p 133

⁶⁰⁶ *ibid*, p 134

considered that this relationship-based standard would severely curtail the population of those who might be party to a legitimate private placement.⁶⁰⁷

As a result of this, the SEC sought to clarify exactly what information the offerees in a private placement must be afforded or have meaningful access to. The resulting standard implicitly widened the private placement exemption to individuals whose relationships with the issuer were less intimate. Immediately after the *Continental* decision, then SEC Commissioner Hugh Owens attempted to clarify the issue as such

(1) [T]he offerees must be shown to have access to material information concerning the issuer and (2) the access criteria cannot be met by merely providing, gratuitously, a promotional prospectus purporting to afford instant access and by having each offeree and purchaser sign a letter saying he has received and read such document.⁶⁰⁸

Rule 146 as issued by the SEC in 1974 generally followed this clarification. Its final form contained four provisions, summarized in the *Minnesota Law Review* note as such

First, the offeree in a private placement *should have access to the same kind of information that would be disclosed in a 1933 Act registration statement*. Second, the offeree, or a representative acting in his behalf, *should be capable of evaluating the risks of the investment and making an informed decision*. As an incident of such capability, the offeree should be able to bear the economic risk of the investment. Third, the manner of the offering should be consistent with the concept of a non-public offering. Fourth, the allowable number of purchasers should be small enough to limit the issue's distribution.⁶⁰⁹

Rule 146 essentially stated that, though small private placements were exempt from registration, they were still obligated to disclose the same type of information to a private placement offeree

⁶⁰⁷ *ibid.* p 135

⁶⁰⁸ Quoted in "SEC Rule 146," *Minnesota Law Review*. p 1135

⁶⁰⁹ *ibid.* p 1135. Emphasis added.

that would be required in a full registration. Failure to ensure that such information was available or failure to prove that the offeree was aware of such information could result in the placement being reversed with no obligation on the part of the offeree, also known as rescission.

Reforms Proposed and Adopted

SEC Rules 144 and 146 first appear in the Task Force materials when they are mentioned by Casey in his speech to NVCA members in May of 1974. This address has already been discussed in Chapter 2 and will not be rehashed in detail here. A few points bear mentioning. Casey appears to have been initially enthusiastic regarding Rules 144 and 146, to judge by the address. Casey states that the Rule 144 had been “quite successful” and was “successfully performing its function.” He describes Rule 146 as “a step in the direction toward creating greater certainty—more objective standards to the extent feasible—and should prove a ‘boon’ to venture capitalists.”⁶¹⁰ Therefore the criticisms leveled at the two Rules and Regulation A by the Task Force and by Casey himself in a simultaneously published *Brooklyn Law Review* article are surprising. In this section I will review this disjuncture, beginning with the Task Force’s proposed reforms, Casey’s critiques in his law review article, and finally considering the SEC’s ultimate actions.

The Task Force’s suggestions amounted to a massive increase in the quantitative limits imposed by Regulation A, and a substantial weakening of the restrictions put into place by Rules 144 and 146. In the Report, they begin by stating “To keep small firms with growth potential from being shut out of the public securities market, the SEC created Regulation A (based on the

⁶¹⁰ Casey, NVCA Address, p 5

small offering exemption in the Securities Act of 1933.”⁶¹¹ However this characterization, that the private placement exemption was created to “keep small firms...from being shut out of the public securities market,” is far from clear or intuitive. Looking at the relationship requirements articulated by the SEC at multiple points over the preceding decades, it does not appear that the primary intention of these special equity placements was to speed entry into the public securities market. Rather, the special placements appear to be an end unto themselves, either in the form of early investment capital as part of a close relationship or special sales to employees. This interpretation is further supported by the initial prohibitions against resale in the 1933 Act, and the mandatory holding periods and resale restrictions later introduced by the SEC.

The Task Force’s statement does make clear their view of the private placement exemption: as a tool to facilitate early equity investment in companies that will *ultimately* enter the public financial markets in a meaningful and profitable way that would benefit equity holders.

The Task Force recommended that the private placement exemption limit be increase from \$500,000 to \$3 million, a six-fold increase. In the Report, the Task Force argued that this increase was necessary because the current limit was “not much capital for a growing company in light of today’s needs and the value of today’s dollars.”⁶¹² Further, they argued an increase in the limit fit with contemporaneous financial practice:

...few firms in the contracted securities industry will underwrite an issue of less than \$3,000,0000 [sic] today and firms which do

⁶¹¹ Published Report, p 15

⁶¹² Published Report, p 15

handle small issues are anxious to take advantage of the savings in time and cost which Regulation A makes available....⁶¹³

Regarding Rule 146,⁶¹⁴ the Task Force “commended” the SEC “for an imaginative effort to clear up the difficulties created by the attrition of the statutory private offering exemption” but they argued that the 146 as it stood “will necessarily be cumbersome, complicated, and burdensome until Congress acts to restore the original intent of the private offering exemption.”⁶¹⁵ As a result, the Task Force recommended that the phrase “if material” be added to language referring to “information to be provided” to the offeree. Further, the Task Force recommended that “failure to furnish information or an inability to sustain the burden of proof with respect to other offerees will not permit a buyer who has been properly informed to demand rescission.”⁶¹⁶ These modifications would essentially reverse the intention of Rule 146. Rather than align the disclosure standards of private placements with the Securities Act of 1933 disclosure standards, this modification places the decision regarding what information to disclose in the issuer’s hands: he decides what is “material” and what constituted being “properly informed.” Moreover, the information disclosed at this stage would dictate the information disclosed to any secondary buyers. By removing the threat of rescission in the event of insufficient disclosure or inability to prove proper disclosure, the threat that was intended to enforce disclosure in private placement is removed.

In their recommendations regarding Rule 144, the Task Force states

⁶¹³ *ibid*, p 16

⁶¹⁴ The published Report lists the recommended reforms in the order of Regulation A; Rule 146; and Rule 144. I have retained that order here.

⁶¹⁵ Published Report, p 16

⁶¹⁶ Reversion or cancellation of the placement with no obligation on the part of the investor

The limitations that the SEC has developed on the secondary sale of securities are probably more damaging to small business financing in the public securities market than the high cost of registration and the near disappearance of the private offering exception. If the kind of risk money that goes into new and growing businesses cannot be readily recycled it is not usually invested. It is the inability to readily convert some of the profits on successful investments back into cash that has driven professional venture capitalists away from start-ups towards companies with proven earnings records. Furthermore, this leads to the liquidation of investments through large corporate takeovers instead of by sales in the public securities markets.⁶¹⁷

The Task Force recommended two reforms to Rule 144. First, they recommended that the period of time during which the sale of the securities was subject to quantitative limitations be reduced from six months to three months, after the two year holding period. They further recommended that the quantitative limitation itself be revised. Rule 144 had originally restricted the amount of privately placed stock that could be resold, in any six month period, in the public markets, to “one percent of outstanding stock or the average weekly volume [sold] over a four week period prior to a sale, whichever is less.”⁶¹⁸ The Task Force proposed flipping that limit to whichever figure was “higher.”⁶¹⁹ Second, they recommended that the holders of restricted securities be permitted to actively solicit for buyers of their shares on the secondary market. These recommendations were explicitly meant to provide more flexibility for venture capitalists looking to turn over an investment in comparatively short order, before the company was ready to make a full public offering or after a public offering had already been made. They would

⁶¹⁷ Published Report, p 17

⁶¹⁸ “Revisited,” p 588

⁶¹⁹ Published Report, p 18

provide an exit hatch for the venture capitalist who no longer wished to hold an investment for whatever reason, including a lack of faith in an investment's ultimate profitability.

This exit hatch would have been of particular interest to Casey. In 1975, just one year prior to his joining the Task Force, Casey's personal fortune had taken a massive hit. Before his entrance into public service, Casey had acquired tens of thousands of shares in Capital Cities, a young broadcasting conglomerate, in pre-IPO private placements. When Capital Cities went public, Casey \$10,000 investment turned into \$2 million and continued to rise. During his government service at the head of the SEC and other posts, Casey had placed his assets into a blind trust, where they were during the 1973-1975 recession. As he had acquired his Capital Cities equity, along with other investments, in private placements, Casey's broker was severely hampered in his ability to offload the falling stocks. As the markets tumbled, Capital Cities lost more than 70% of its value. Casey would, on paper, lose more than \$3 million dollars on his Capital Cities investment alone.⁶²⁰ This event might explain the disjuncture between Casey's evaluation of Rules 144 and 146 as a regulator and his subsequent view of them as a private investor, serving on the Task Force.

The Report's recommendations would essentially roll back the relatively recent regulatory measures enacted by the SEC. Those regulations had originally been crafted to ensure that those participating in private placements and the public financial markets in general were informed and protected from unreasonable sales tactics and opaque risks, as well as to clarify the qualifying parameters of a valid private placement. The Task Force described their recommendations as "restoring" the private offering exemption, again using language that

⁶²⁰ Persico, p 164

implies that the Task Force is only correcting damaging changes to a previously functioning financial system. In a law review article published at the same time as the Report, which is analyzed in detail in the next section, Casey echoes those arguments, stating that

For some thirty years after the enactment of the federal securities laws, risk money from the more substantial investors flowed in and out of new ventures and small businesses—sans regulation and without much difficulty or risk of litigation—under the private offering exception...⁶²¹

Later, he repeats almost verbatim the “pipeline” description of venture capital that appears in the Published Report itself:

Typically, a business enterprise requires different types of capital at each stage of its life. The highly developed US marketplace has spawned investors for each stage of the corporate cycle—a fact of business life that can be imagined as a pipeline along which certain companies move from start-up to maturity. If the pipeline functions smoothly, all types of investment capital can flourish. If it clogs at any point, capital dries up all along the pipeline. Facilitating the turnover of initial investments to more conservative investors is critical to unblocking the flow of initial risk investments to smaller businesses.⁶²²

These arguments and rationales—presented in both the published Report and Casey’s law review article—are, by now, familiar. They naturalize a vision of the flawlessly functioning markets of yesterday while casting blame on recent regulatory moves. As with other reforms proposed in the Report, these arguments appear to have been influential and mostly successful. In 1978, the SEC issued clarifications and reforms to Regulation A, Rule 144, and Rule 146. All three measures were reformed in line with the recommendations made by the Task Force. In the *SEC Docket* publications announcing and explaining these reforms, the SEC cited the Report and

⁶²¹ “Revisited,” p 594

⁶²² “Revisited,” pp 594-595

Casey's law review article, and no other sources, as being singularly influential and inspirational.⁶²³ These reforms shielded the basic transactional unit of the contemporary venture capital industry, the private placement, from additional disclosure obligations or risks of rescission; expanded the pool of companies and transactions that could take advantage of the private placement exemption by raising the limit significantly; and substantially eased the way for venture capitalists to divest themselves of investments sooner by selling them on the public financial markets.

The reforms to SEC Rules 144 and 146 relied heavily on a perception of the venture capitalist as unique among financial actors, as had the ERISA reforms. The Task Force justified both sets of reforms via their characterization of the venture capitalist as a standout figure among financiers, businessmen, and his fellow Americans: adept with risk, intelligent and daring in his appetite for it, with a special affinity for and capacity to shape the future without allowing his vision to be clouded by the past. The proposed reforms to Rule 146, in particular, leaned on a portrayal of the venture capitalist as an investor with little use for the past, who instead spends his energy (and capital) building the future through his investments and mentorship.

To the contemporary eye, these characteristics seem familiar. The venture capitalist, figured as the man with the keys to the future, is repeated again and again in popular news and business circuits. We recognize the future-oriented, risk-taking investor as an almost stereotyped description of a VC. To give an example using one current figure: Marc Andreessen, co-founder

⁶²³ *SEC Docket*, Vol. 15, March 3 1978, p 316, footnotes 5 and 8; *SEC Docket*, Vol. 15, No. 15, October 3 1978, p 1110, footnote 5

and general partner of the contemporary Silicon Valley venture capital firm Andreessen Horowitz, was featured on the June 2009 cover of *Fortune Magazine*, pointing at the reader like Uncle Sam under the headline “I Want You to Get the Future.”⁶²⁴ Three years later he appeared on the cover of *WIRED* with the headline “The Man Who Makes the Future.”⁶²⁵

A brief survey of venture capital coverage in the *New York Times* shows similar language being used across a span of decades. What follows is by no means an exhaustive or complete list of such invocations, but is instead intended to demonstrate the spread and persistence of these concepts and associations over time. In 1998, a 1,500 word column by veteran technology reporter, John Markoff, on the venture capital investing boom in Palo Alto was titled “Where the Future May Be A Table Away.” The lede explicitly groups financiers with the other “next big thing(s) in the nation’s technological heartland” that could bring forth the technological future, reading, “John Shoch, a Silicon Valley venture capitalist, scans the room at Bucks, a folksy cafe in this affluent bedroom community, and notes that he recognizes about half the financiers, hardware engineers and software hackers who are seated, eating breakfast.”⁶²⁶ Two years later, venture capitalist Tim Draper penned an editorial for the paper’s business section entitled, “Dot-Coms: A Way to Burn Money or to Fuel the Future? Venture Capital is Opening Doors.”⁶²⁷ In 2014, the paper’s business and technology focused column, “The Upshot,” published a charming, busy interactive graphic called “A Vision of the Future From Those Likely to Invent It,”

⁶²⁴ *Fortune Magazine*. Cover. 20 June 2000.

⁶²⁵ *WIRED Magazine*. Cover. May 2012.

⁶²⁶ Markoff, John. “Where the Future May Be A Table Away.” *The New York Times*. Sec. G, p 3. 23. September 1998.

⁶²⁷ Draper, Tim. “Dot-Coms: A Way to Burn Money or to Fuel the Future? Venture Capital is Opening Doors.” *The New York Times*. Sec. 3, p 9. 23 April 2000

featuring interviews from seven individuals “driving this transformation” to “provid[e] a glimpse into the not-too-distant future.”⁶²⁸ Three out of the seven⁶²⁹ were venture capitalists: Marc Andreessen, Reid Hoffman, and Peter Thiel. Finally, last year, a column on Japanese technology giant and venture investor SoftBank continued to echo this construction, reading “SoftBank Wants to Build the Future. Here Are Some New Bets It Could Make.”⁶³⁰

These may be a set of common, intuitive, and ready-at-hand characterizations and associations now. However, they were not common or intuitive when the Task Force was completing its work. The lack of a shared consensus regarding the practices of the venture capitalist in the 1970s has been discussed previously. Here, I would like to add that the public concept of the character and political history of venture capitalist was also unestablished at this time. Rather, the characterizations of venture capitalists as both men and professionals that underpinned the rationale for their proposed regulatory reforms was created and promoted by the Casey Task Force. This act of manifestation was performed most clearly in the documents that concern the reforms to SEC Rules 144 and 146. This is partially due to the fact that these reforms depend most strongly on a perception of the venture capitalist by the public and by regulators as having certain rare skills, capacities, and affinities as core attributes of his personality and profession. It is also due to the fact that Casey himself promoted the Rules 144 and 146 reforms in his own, independent publications outside of the Report itself. This additional material, primarily a law review article published at the same time as the Report, was not bound by the

⁶²⁸ Miller, Claire Cain and Chi Birmingham. “A Vision of the Future From Those Likely to Invent It.” *The New York Times*. 2 May 2014. Available online at <https://www.nytimes.com/interactive/2014/05/02/upshot/FUTURE.html>

⁶²⁹ While we’re keeping score, two were women, all were white.

⁶³⁰ de la Merced, Michael J. “SoftBank Wants to Build the Future. Here are Some New Bets It Could Make.” *The New York Times*. Sec B, p 4. 14 June 2018.

staid conventions of a commissioned government report. Casey was able to wax poetical and offer evocative descriptions of the venture capitalist and his profession.

For the remainder of this chapter, I will turn to the construction of the figure of the venture capitalist in these documents and others from the Casey archive, including Report drafts. This examination will show how the modern figure of the venture capitalist in form and function was developed by the Task Force in order to justify the regulatory agenda they promoted, and to guard that agenda from critique or later revision.

Historicizing Venture Capital From Pericles to Polaroid

The Casey Report—largely oriented around practical questions of law, economics, and policy—also presented various narratives of how the Task Force claimed high technology businesses could or should grow and operate. This was partially achieved through the Life Cycle Model, which was discussed in Chapter Three. In addition to the Model, the Task Force constructed a historical narrative centered on the figure of the venture capitalist in the United States. This was accomplished through the Report, Task Force testimony and public speeches, and other contemporaneous publications. This narrative focused on a new anachronistic figure: the venture capitalist, presented as a composite of explorer, entrepreneur, inventor and financier. The Task Force called this figure the “innovator.” Their “innovator” combined the creative prestige of the inventor, the classic American can-do productivity and patriotism of the small businessman, and the risk-taking zeal of the venture capitalist as market player and financial worker. This figuration of the innovator-venture capitalist spread through citation and invocation, proliferating

and appearing in texts on innovation, tax law, education, and government documents. Policymakers, businesspeople, and financiers took from the Model and the narrative of the innovator expectations and anticipations of how a business of this type was supposed to grow and succeed, and the centrality of the venture capitalist in that success. Those narrative anticipations engendered a popular conception of the venture capitalist as an almost mythic business character. This then contributed to the development of policies, deal structures, educational materials, and other aspects of the epistemic infrastructure of entrepreneurial high technology.

The Task Force's anachronistic figuring of the innovator-venture capitalist departed from other contemporaneous narratives of financialization, such as those promoted by the New York Stock Exchange (NYSE) in their "Own Your Share" campaign.⁶³¹ The NYSE and financial companies like Merrill Lynch emphasized the role of the small shareholder as an important democratic figure over that of professional financiers, but the Casey Task Force valorized the venture capitalist and his special role as a financial intermediary. The Task Force portrayed the venture capitalist as having a particular affinity and appetite for financial risk at a time when other major financial actors were concerned with promoting caution amongst small investors, out of a fear of attracting regulatory attention. Casey and the Task Force shared their anti-regulatory agenda, but sought to achieve it by painting the venture capitalist as, more or less, too special for regulation, by emphasizing his unique capabilities amongst financial actors. They painted the venture capitalist as an interpreter and digester of financial risk for individual investors, the financial markets, and the American economy in general. Part of the venture capitalist's affinity

⁶³¹ Traflet, Janice M. *A Nation of Small Shareholders: Marketing Wall Street After World War II*. The Johns Hopkins University Press. Baltimore, MD. 2013.

for risk was illustrated through a claim that the venture capitalist had a particular inclination towards the future that other financial actors did not possess, an affinity that was as much a part of the innovator-venture capitalist's personality as it was emblematic of the profession. Casey and the other Task Force members used this risk-future affinity to promote their anti-regulatory policy agenda, particularly the legitimacy of the venture capitalist as the manager of pension funds, and the need for self-regulation regarding the practices of the industry and the training of the next generation of venture capitalists.

In other ways, the Task Force's characterization of the innovator-venture capitalist was consistent with the self-promoting narratives of the NYSE and others. Like the NYSE, the Task Force emphasized the skill and labor that went into equity investing, strongly emphasizing the *work* performed by the financier and its productive potential by emphasizing the constructive role of these investments in the American economy. By asserting the ways in which equity investment was like or equal to more familiar types of paid labor, the Task Force and other financial actors sought to both legitimize financialized practices as *not gambling*, and argue for certain tax benefits, such as lower capital gains tax and the sheltering of rollover investments.

The innovator-venture capitalist as crafted by Casey and the Task Force was a charismatic clotheshorse upon which policy recommendations could be draped. Like the Life Cycle Model, the figure of the innovator-venture capitalist animated and dramatized the Task Force's claims and recommendations. At the same time, the figure was an optimistic blank. Other thinkers in the high technology innovation space projected their own interpretations of the actual and supposed impacts of the Task Force's recommendations onto it, and we will explore one

such example later. The figure was used as a tool by the Task Force and other with which to think through the policies the figure embodied.

This figure, centered in a constructed history of American business, helped make venture capital, or at least financial practices that resembled it, sensible and visible in a era when they were just beginning to coalesce. Recall, venture capital had not developed, at this juncture, into a coherent profession either in the eyes of the public or internally. A 1975 article in the *California Management Review* deemed venture capital an “unrecognized industry,” noting

When the concept that venture capital is an ‘industry’ is broached to many venture capitalists, it appears to be an alien idea. Many of them view themselves to be independent entities, more or less members of a club, with little or no competition between club members.⁶³²

Historian Martha Reiner quotes Stanley Ruble’s *SBIC/Venture Capital* journal in 1973: “All considered, the venture capital community is *beginning to take on the characteristics of an industry* for the first time in the 200-year history of the country.”⁶³³ As noted in Chapter Four, there was still substantial confusion as to whether venture capital only involved equity investment or whether it included loans or other funding strategies. While Casey and the Task Force were arguing for policy changes that would protect and regularize the profession for the first time, by promoting specific practices through regulatory grace and favor, they were also presenting a story of American business that portrayed the venture capitalist as a reliable, central actor of long standing and influence. The construction of this history allowed the Task Force to position their policy agenda as a return to successful economic and financial normality. This was

⁶³² Brickner, William H. “The Unrecognized Industry,” *California Management Review*. 1 October 1975.

⁶³³ Reiner, p 358

achieved by, as discussed in previous chapters, multiple Task Force members repeatedly emphasizing in their Congressional testimony the “unintended” and “accidental” impacts of well-meaning policy decisions in the past, which has disrupted the historical financial idyll the Task Force claimed to want to return to.

The “innovator” as a historic financial hero appears most notably in drafts and texts labeled in the archive as authored by William J. Casey. Two texts interest us specifically: a December 1976 Report section draft titled “Impediments to the Financing of New Ventures and Small Business,”⁶³⁴ labeled as authored by William J. Casey; and Casey’s solo-authored *Brooklyn Law Review* article, “SEC Rules 144 and 146 Revisited,” published around the same time the Report was released.⁶³⁵

These two texts have a more florid tone than the published Report. Allusions that appear in early drafts of the Report but not in the published version appear in “Revisited,” and some turns of phrase present in Casey’s Congressional testimony appear in “Revisited” but not in the Report itself. Overall, the two texts seem to reflect Casey’s personal, slightly bombastic communications style. Casey would lift whole sections from “Revisited” to serve as the basis for his Congressional testimony on multiple occasions. “Revisited” and its “Impediments” precursor also provide more personal windows into Casey’s views on venture capital, its role in the market, and the constraints laid upon it by federal regulations, and how these views evolved over time. As discussed earlier in this chapter, “Revisited” was a frequently cited text regarding SEC reform

⁶³⁴ Typescript of Casey Report draft section “Impediments to the Financing of New Ventures and Small Business,” 13 December 1976, William J Casey Papers, Box 193, Folder 2, Hoover Institution, Stanford University.

⁶³⁵ These texts are closely related. It appears that Casey composed “Impediments” to serve as the section of the Report focused on reforms to SEC Rules 144 and 146. While the Report’s recommendations regarding Rules 144 and 146 remained, the majority of this section was diverted into the full length “Revisited.”

at the time, and Casey habitually distributed copies of it when delivering Congressional testimony related to the Report. He clearly considered “Revisited” a supporting text to the Report’s aims.

In the published “Revisited” article and the “Impediments” draft, Casey invokes a set of historical personages to serve as the historical anchor for the “innovator” figure:

The need [to reevaluate Rules 144 and 146] is clear enough. From the time of Pericles through Elizabeth I down to Polaroid, the cutting edge of dynamic societies has been *the innovator*, risking his own savings and those of others having confidence in him, whether on the waves of the high seas and new horizons or those of high technology and new services. Almost every new technology that has given a lift to the American economy has come from a new company, struggling in a garage⁶³⁶ or venturing out to obtain needed capital from the public. For example, railroad car manufacturers did not pioneer the development of automobiles; neither did established automobile companies develop the first airplanes. This most dramatic recent example of this phenomenon has been the development of the semi-conductor industry. Again, the original innovations came from new companies, and not from the manufacturers of vacuum tubes. In the past fifteen years, the industry has passed through four relatively distinct generations of technology, and each successive phase has been led by a new entrepreneurial enterprise.⁶³⁷

Several aspects of this paragraph are worth considering. First, there is the historicizing work of Casey’s “Pericles through Elizabeth I down to Polaroid” line. Second, there is his deployment of the vague term “innovator,” which I will argue went counter to the dominant theories of innovation at the time. Third, in this paragraph Casey makes his “innovator” into a chimera or composite figure, gliding seamlessly between the entrepreneurial innovator as a

⁶³⁶ This is probably a reference to the Hewlett Packard founding myth. HP was founded in 1939, in a garage in Palo Alto, and in many ways set the template for the Silicon Valley “garage” entrepreneur figure.

⁶³⁷ “Revisited,” pp 572-573

charismatic individual, the technological impact of invention, and the economic impact of a successful corporation. Casey's innovator is a combination of corporate functions (economic, financial, managerial, and R&D) as well as creative and political functions.⁶³⁸

In this section, Casey constructs a historical legacy for the “innovator” that spans from “Pericles” to “Polaroid,” creating an exclusive group to praise for their bold risk-taking and beneficial impact on the economy. Pericles and Elizabeth I are cast as progenitors, with Polaroid acting as the modern day peer of the “innovator.” The inclusion of Polaroid in this history make sense in the context of the Report's composition and the contemporaneous discourse on innovation. Polaroid was one of the five “innovative companies,” along with IBM, Xerox, 3M, and Texas Instruments cited in a 1975 CTAB/MIT Development Foundation Study, which, as discussed in Chapter 2, positioned it, along with a suite of other “young high technology companies,” as uniquely constituted to grow quickly and aggressively.

Casey anchors his history of innovators in Pericles and Elizabeth I, two political actors who could best be described as patrons of technological innovation, exploration, empire, and the arts, rather than as entrepreneurs themselves.⁶³⁹ Casey's reference to “the waves of the high seas

⁶³⁸ While “Revisited” was cited in policy documents related to the reform of SEC Rules 144 and 146, this paragraph had its own citation path. Casey himself would repeat it in full in several speeches, including his 1978 testimony before the U.S. House Ways and Means Committee. Further, the paragraph was replicated in full in textbooks on innovation, including *Managing Innovation: The Social Dimensions of Creativity, Invention, and Technology*. U.S. House. Committee on Ways and Means. The President's 1978 Tax Reduction And Reform Proposals. Hearing. 30-31 January 1978. Testimony of William J. Casey.; Landau, Ralph. “The Innovation Milieu.” *Managing Innovation: The Social Dimensions of Creativity, Invention, and Technology*. Eds. Sven B. Lundstedt and E. William Coldgazier. Aspen Institute for Humanistic Studies. 1982. p 66.

⁶³⁹ Casey may have seen some of his venture investments as more akin to patronage than straight forward equity investments: Casey provided the inventor George Doundoulakis with free laboratory space, and paid him a yearly salary of \$50,000 with few expectations of an ultimate share of equity or patent ownership. Persico describes this relationship as Casey having “bought himself an inventor the way another man might buy a yacht.” (Persico, p 101) However, this type of business relationship was not typical of Casey's business dealings, and he amassed his personal fortune in large part due to early stage equity investment. It is not clear why Casey took such a generous and light-touch approach to Doundoulakis, though the fact that the inventor had worked with the OSS during WWII in Greece might have contributed to his decision.

and new horizons” invokes images of Pericles’ naval strategy during the Peloponnesian War and Elizabeth’s use of privateers to raid Spanish fleets and ports during her reign. Pericles and Elizabeth were the directors and funders of these military strategies. The major technological, architectural, and cultural projects that were undertaken while each was in power may have found in Pericles and Elizabeth generous patrons. But to claim them as technological creators themselves, however, would be a reach. Here, Casey attempts to associate the otherwise comparatively meagre figure of the technological innovator and financier with grander figures and trajectories of political and imperial power. Casey would return to this theme repeatedly in his public career. In speeches given during his tenures at the Export Import Bank and the CIA, Casey would consistently emphasize the role of American technology companies, and their funders, in promoting and maintaining American political and cultural hegemony on a global scale.⁶⁴⁰

Casey’s history gives the impression that “innovator” and “innovation” have had a stable meaning throughout their history. This is inaccurate. Historian of innovation Benoit Godin provides a thorough history of the term from the Ancient Greeks through the modern day, tracings dramatic shifts in its meaning and moral implications. Godin identified *kainotomia*, the Greek word that would become “innovation,” as human-induced “change to the established order and [it] is not accepted,” held in direct contrast to the preferred “slow, gradual, and continuous” natural or divine change. Godin describes the Ancient Greek understanding of “innovation” as negative and subversive, particularly in a political sense.⁶⁴¹ In the time of Elizabeth I, Godin

⁶⁴¹ Godin, Benoit. *Innovation Contested: The Idea of Innovation Over the Centuries*. Routledge. 2015. p 33

identifies “innovation” as holding a distinctly pejorative meaning, indicating the introduction of unwanted change, particularly in religious matters, or the fetishistic chasing after novelty for novelty’s sake.⁶⁴² Casey seeks to derive the innovator’s prestige from historical figures who, themselves, would have been unlikely to hold ‘innovation’ as a positive value. This suggests Casey’s motivation was less to chart and accurate history of innovation than to construct a concept serviceable to his own aims in the present day.

Casey’s use of the term “innovator” here is expanded from even its contemporaneous definition. In the 1970s, “innovation,” as primarily understood by policymakers, technocrats, and businessmen, was concerned primarily with *commercialization and successful commercial diffusion of inventions* rather than with invention itself. The concept placed little emphasis at the time on financialization or success in the financial markets over commercial success.⁶⁴³

In the “Impediments” draft, Casey uses the term “developments” to refer to cars, airplanes, and semiconductors. In the published “Revisited,” Casey uses the terms “pioneer” and “original innovations”: “For example, railroad car manufacturers did not *pioneer* the development of automobiles....the *original innovations* came from new companies.”⁶⁴⁴ This change is subtle, but important in that it gives these technological advancement a sheen of disruptive originality that the more pedestrian term “developments” lacks. It brings the word “innovation,” and by extension Casey’s concept of the “innovator,” closer to the novelty and technical ingenuity expressed by a word like “invention.” Casey here links the creative, constructive prestige of invention with the economic impacts of successful commercial diffusion

⁶⁴² Godin (2015). p 94

⁶⁴³ Godin (2015). p 264-270

⁶⁴⁴ “Revisited,” pp 572-573

and, in turn, to a growing national economy. Casey's innovator is a grab bag of historical and ideological figures: inventor, pioneer, military leader, hegemonic imperialist, and economic powerhouse for the nation.

This set of associations and personages centers the *funding* of high technology as it describes the potential *impact* of successful high technology firms. The practices it describes are closely aligned with the practices of venture capitalist. In both versions, the paragraph focuses on the potential impacts of technological invention, but the venture capitalist is present, embedded in the language used (“...*venturing* out to obtain needed *capital* from the public...”).

The reconstruction of innovation in a manner that associates it closely with the practices and needs of venture capital culminates in the published Report itself. The Report rhetorically melded the roles and impacts of small business, innovative high technology, and the needs and desires of the venture capitalist as a market actor. At the start of the published Report, the Task Force describes the role of small business in the US economy:

It is a matter of acute concern that, in the face of clearly emerging needs and the documented benefits to the United States economy, *a set of impediments have developed that are preventing smaller businesses from attracting the capital without which they cannot perform their traditional function of infusing innovation and new competition into the economy.* Unless these impediments are overcome, the ability of the economy to compete in the world and meet the needs of the American public will be seriously eroded.⁶⁴⁵

The Report then pivots from discussing “smaller businesses” to discussing venture capital, using financial market measures of health, specifically IPO underwriting:

It is alarming that venture and expansion capital for new and growing small businesses has become almost invisible in America

⁶⁴⁵ Published Report, Report of the SBA Task Force on Venture and Equity Capital for Small Business, U.S. Small Business Administration, January 1977, Box 194, Folder 4, Hoover Institution, Stanford University, California, p 1

today. In 1972 there were 418 underwritings for companies with a net worth of less than \$5,000,000. In 1975 there were four such underwritings. The 1972 offerings raised \$918 million. The 1975 offerings brought in \$16 million. Over that same period of time, smaller offerings under the Securities and Exchange Commission's Regulation A fell from \$256 million to \$49 million and many of them were unsuccessful. While this catastrophic decline was occurring, new money raised for all corporations in the public security markets increased almost 50% from \$28 billion to over \$41 billion.⁶⁴⁶

In this section, the Report presents underwriting as an indicator of an alleged paucity of 'venture and expansion capital for new and growing small businesses,' but this is comparing apples and oranges. Venture capital is invested itself at the outset of a business's development, while underwriting pertains at a point much later in the cycle, when a business has grown to the point of warranting an Initial Public Offering (IPO) of stock on the public markets (i.e., the point at which a venture capitalist might profit from his earlier investment). It is not clear how or why IPO underwriting are presented as an index of the availability of venture capital, other than as a sleight-of-hand to generate sympathy for improved conditions for venture capital investment.

Casey's Innovator and the Contemporaneous Innovation Studies Discourse

Casey's placement of technological "innovation" at the center of American economic growth is in step with contemporaneous conceptions of innovation. What made Casey's "innovator" figure different was its association with the financialized models of funding and success required by the venture capitalist. Godin identifies a suite of characteristics that became attached to the concept of innovation during the rise of the "Innovation Studies" frame after the Second World War.

⁶⁴⁶ Published Report, p 1

During this period, academics and policy makers added to the common understanding of innovation “the idea of technological innovation contributing to economic growth.”⁶⁴⁷ Godin describes how, in the 1960s through the 1970s, a set of U.S. theorists and publications discussed innovation in “national” terms:

Technological innovation [in the Innovation Studies discourse] is good not only for individuals or groups (as studied by sociologists, for example) but also for the nation: It brings revolutionary changes to the national economy. Technological innovation is the source of national wealth: It is the source of productivity for firms and world leadership for nations. Such a national framework has been very influential as a *rationale* for the development of policy to stimulate technological innovation. In turn, policy has been influential in transforming the concept of innovation.⁶⁴⁸

In this framing, innovation (in the sense of the commercial success of a given product) is considered a valuable contribution to national economic growth. Financialized success, or success in the financial markets through IPOs or other mechanisms, was not yet considered a marker of or necessary condition for innovativeness. The Casey archive contains several reports, federally- and privately-commissioned, on the topic of “innovation” or “innovative companies,” including one study commissioned in 1967 by the Department of Commerce that Godin highlights as “influential but forgotten”⁶⁴⁹ in the Innovation Studies area. Given the presence of these reports, it is reasonable to assume that Casey and the other Task Force members were familiar with Innovation Studies theories and frameworks, and that Casey and the Task Force extending an existing line of thought. Technological innovation was already being discussed as

⁶⁴⁷ Godin (2015). p 255

⁶⁴⁸ Godin (2015). p 255

⁶⁴⁹ Godin (2015). p 254

key to building national wealth building and geopolitical dominance. The aim of the Casey Task Force was to associate technological innovation (and, by extension, the strength of the national economy) with a particular set of financial relationships and practices, upon which innovation supposedly depended. The venture capitalist was constructed as the figural representation of this strategy.

In “Impediments,” “Revisited,” and later speeches, Casey collapses the inventor, the entrepreneur, the financier, and the high technology corporation itself into one blurred but powerful “innovator” figure. This figure is intrinsically financialized, as are his actions. Casey’s brief mention of “savings,” in the reference to “risking his own savings and those of others having confidence in him,” is illustrative. The Task Force frequently acknowledged, throughout its correspondence and the published Report, the role of entrepreneurial bootstrapping, or the use of one’s *own* savings and support from family and friends to cover the initial expenses of a business. But the Task Force was directly advocating for venture capitalists to serve as stewards of the collectivized savings of individuals who may not have been financial market participants otherwise, through financialized vehicles like pension funds, as reviewed in the previous chapter. The reference here to “risking his own savings and those of others having confidence in him” doubles, and can be read as referring to the bootstrapping entrepreneur, inventor, or explorer, *and* as referring to the venture capitalist with all the privileges the Task Force would recommend for him regarding the management of other people’s money and investments.

Casey’s narrative emphasizes invention, entrepreneurship, and the acquisition of funds “from the public” as central to the American economy. However, the role of the “public” here is both under-defined and uncertain. Casey might be referring to the public financial markets, like

the New York Stock Exchange and other financial markets. At least one early, iconic venture capital firm, George Doriot's ARD, was publicly traded for a time. However, in the decades following the Great Crash of 1929, corporations had generally retreated from relying on the public financial markets to raise money. Traflet notes a survey conducted in 1950 that found that in the previous 5 years, only 13% of capital raised for corporate expansion came through the issuance of common stock on the public financial markets.⁶⁵⁰

Casey might be referring to elite individual investors and family offices, or even smaller individual investors. More likely, this reference was directed at the financialized assets of the middle and working class in the form of pension funds. In the last chapter, we saw Casey and the Task Force invoke the "public" and their "savings" as a way of involving these classes and *their* savings in financial markets and venture capital investing, through pension and insurance funds. Casey uses an ideologically-laden characterization of venture capital to present a new model of financing as historically central to the narrative of American small business. This apparently innocuous shift is then used to normalize the institutionally supported limited partnership firm structure, despite its relative novelty.

Casey's Innovator as Quintessential Outsider

Casey's characterizations were understood by some in his audience as a gesture to another quintessential American character, the maverick 'outsider.' In his contribution to the 1982

⁶⁵⁰ Traflet, p 70

Managing Innovation text,⁶⁵¹ chemical engineering entrepreneur and Stanford professor Ralph

Landau quotes the “from Pericles...to Polaroid” paragraph in full. He then goes on to write

What these examples and those of Mr. Casey are intended to emphasize is that it is the ‘outsider’ who is more often the key ‘breakthrough’ innovator in our society. They use their own money for risk-taking or persuade others to advance it to them on faith, all with the lure of making money on a *big scale* if successful. Frequently, too, it is the successors to these men who make the real profits, but so does society as a whole as the technology diffuses more widely. That has been the driving force for innovation in this country. As I mentioned in our own case histories, we discovered early on that as ‘outsiders’ we would face resistance from the American chemical industry, and this has always been true. My remarks should not be construed as bias against individuals versus large or small organizations. They can and do all innovate, albeit perhaps differently from case to case. There are certainly many large very innovative companies, and indeed, some innovations can only be handled by large organizations with enormous resources in capital and research. Our results, nonetheless, have confirmed that the ‘outsider’ position is one of real importance.⁶⁵²

Here, we can see traces of what would eventually become the dominant ideology of “disruptive innovation” in high technology venture capital investment. Landau positions the “outsider” as most capable of the types of innovation that will yield “money on a *big scale*.” Key to the financial success of “disruptive innovation” is the capital multiplier made possible by equity investment. “Money on a *big scale*,” as Landau puts it, is possible not because of the commercial success of a product but because an equity stake made at an early stage has the potential to be multiplied in the financial markets following a successful IPO. The “faith” Landau alludes to when he refers to money “advance[d]...to [the innovator] on faith” is not necessarily faith in the technological product *qua* product. Rather, it is faith that the corporate entity in which an equity

⁶⁵² Landau, p 66. Emphasis original.

stake is taken will be a *financial* success and that it will grow in ways that count to a financial market, and result in capital gains for early investors.

Casey's emphasis on "new companies" "struggling in a garage" as the source of transformative technologies can be read as investor pragmatism: established companies have no reason to pursue equity investment in amounts that would provide "big scale" financial rewards. With the established income streams that accompany mature products, they often have no reason to sell off portions of themselves for liquid capital. New technology companies faced with high research and development or production costs, and no established income stream, do. Casey, in his text, promotes a narrative that idolizes the independent, outsider entrepreneur who needs capital investment. His independence resonates in both his firm's corporate structure and the ways in which he raises his capital, through bootstrapping and "risking" cash raised from other individuals. In doing so, Casey ignores the significant roles of corporate venture funding and the housing of free-wheeling research and development labs within existing corporations, which was a common practice at the time. It is reasonable to assume that Casey was familiar with the economic and industrial significance of these corporately-housed venture funds and R&D labs, as the Task Force had commissioned its staff to produce a lengthy report on the subject when it was first convened.⁶⁵³ To take just one example, Fairchild Semiconductor, the corporate paterfamilias of the West Coast semiconductor industry, began life as a division of Fairchild Camera and Instrument in 1957. It was staffed by eight former employees of Shockley Semiconductor Laboratory⁶⁵⁴, which itself had started as a division of a larger, more established

⁶⁵³ Typescript, *Corporate Venture Capital Investing: Report to SBA Task Force on Venture and Equity Capital*. Stanley Rubel, S.M. Rubel and Company. 10 September 1976, Box 191, Folder 7, William J Casey Collection, Hoover Institution, Stanford University

⁶⁵⁴ aka The Traitorous Eight.

corporation, Beckman Instruments, in 1956.⁶⁵⁵ In insisting that the “outsider” is an innovative figure of “real importance,” Landau confirms the growing influence of Casey’s “independent innovator” figure.

In a market dominated by corporate research and development, there was little room for the private venture capitalist. Technology companies, banks, insurance companies, and others had begun operating their own venture capital divisions. Multiple members of the Task Force had either worked for these subsidiary divisions or were still doing so at the time of their service on the Task Force. Casey’s narrative attempts to give the venture capitalist roots when it might otherwise appear to be a mere novelty. In a late Report draft, Casey describes venture capitalists as “traditional” sources of “funds for small businesses,” a claim that would be repeated multiple times in testimony and media citation, despite the fact the Report itself describes venture capital as only existing for approximately fifteen years.⁶⁵⁶ The venture capitalist, conceived of by Casey as a distinct class of investor dedicated to a particular set of investment practices, strategies and norms, and meaningfully different from “securities brokers,” “fund managers,” or “management consultants,” had not existed professionally for long enough by 1977 to be considered a “traditional” financial actor in any meaningful way. The work of the innovator character was to establish a history for both the venture capitalist and his practices, through melding and enmeshing the venture capitalist with recognizable, ideologically laden narratives of business and American political hegemony.

⁶⁵⁵ Lecuyer, Christophe, and David C. Brock. *Makers of the Microchip: A Documentary History of Fairchild Semiconductor*. MIT Press. Cambridge, MA. 2010. p 12

⁶⁵⁶ Published Report, p 7.

When Landau first published his essay in 1982, it was several years after the most impactful of the Casey Report's recommendations, including ERISA reforms, had been enacted. The influx of capital from pension funds in 1979, discussed in the 1982 GAO report, was already in play. Landau's use of Casey's text to support his 'innovative outsider' hypothesis provides an example of how Casey's narrative of the innovator acted as a figurative basis through which others interpreted the potential and actual effects of the Task Force's recommended policy reforms. The Report's Life Cycle Model served an anticipatory function, forecasting financial success at a national, economic scale. The narrative figure of the innovator-venture capitalist serves a similar function. Like the Life Cycle Model, he is projected into the past and the future simultaneously. The Model claimed to represent a past economic ideal that had been unsettled by uninformed policy decisions. Similarly, Casey's figure of the innovator represents a collection of affective, ideological ideals, strapped to an anachronistic figure of financialization, presented as both the finest successes of the past and the best hope for the future.

Casey's Innovator and Contemporaneous Promotions of Finance

The emphasis on valorizing the venture capitalist in his capacity as a financial middle-man differentiated the work of Casey from the public relations efforts of contemporaneous, public-facing financial institutions like the New York Stock Exchange (NYSE). In a series of public relations campaigns of varying levels of sophistication and complexity, the NYSE attempted for decades to restore public faith in the financial markets after the Great Crash of 1929, encourage

popular stock ownership,⁶⁵⁷ and promote its anti-regulatory political agenda. The most notable of these campaigns was “Own Your Share of American Business” (OYS), which ran from 1953 through the 1960s.⁶⁵⁸ Financial historian Janice Traflet deconstructs the ideological construction of the campaign’s tagline: “...the idea of ‘own’ership of a ‘share’ of stock, a personal invitation (‘*your*’ share), and a sense of civic patriotism (‘*American*’ business), all rolled into six short words.”⁶⁵⁹

The OYS campaign emphasized the role of the small, individual shareholder in the American “shareholder democracy.”⁶⁶⁰ Ownership of common stock was a patriotic act that bound small shareholders together to the American economic project. Gifts of common stock to children were promoted with pamphlets entitled, “How To Make Young People PARTNERS IN PROGRESS.”⁶⁶¹ Workers were encouraged to invest in common stocks, directly and through new financialized vehicles like mutual funds and a fractional stock ownership purchasing program called the Monthly Investment Plan.⁶⁶² Stock ownership was a type of “important political” participation, which demonstrated support for US industry, and demonstrated an individual’s “intelligen[ce]” on “business subjects.”⁶⁶³ Financial historian Julia C. Ott notes that

⁶⁵⁷ Traflet quotes a Brookings study which reported that, in 1952, only 4% of Americans reported owning any common stock. 46% of those individuals only owned stock in one company, which was often acquired through an employee stock ownership plan. Traflet further notes that these “were largely buy-and-hold investors, not active traders.” (Traflet, p 5, 76)

⁶⁵⁸ Traflet, Janice. *A Nation of Small Share-Holders: Marketing Wall Street After World War II*. The Johns Hopkins University Press. Baltimore, MD. 2013. p 88.

⁶⁵⁹ Traflet, p 89. Emphasis original.

⁶⁶⁰ Traflet, p 111

⁶⁶¹ Traflet, p 151. Emphasis original.

⁶⁶² Traflet, p 111

⁶⁶³ Ott, Julia C. (1) “‘The Free and Open People’s Market’: Political Ideology and Retail Brokerage at the New York Stock Exchange, 1913-1933.” *The Journal of American History*. June 2009. p 56

the NYSE “coded corporate shareholding as masculine initiative and responsibility, in marked contrast with the paternalistic nature of...the regulatory or welfare state, even corporate pensions.”⁶⁶⁴

Popular stock ownership had not always been associated with anti-regulatory politics. Ott notes that early instances of the “investor democracy” movement and “New Proprietorship” theory in the 1920s were strongly pro-regulation while embracing many of the same patriotic and masculinist themes. However, by the latter half of the 1920s and following the Great Depression, the NYSE appropriated the language and affective themes of “investor democracy,” doing away with the pro-regulatory stance, instead arguing for the NYSE’s continuation as a self-governed entity and that of finance as a self-regulating industry.⁶⁶⁵

The figure of the financialized innovator-venture capitalist promoted by Casey and the Task Force takes up these themes in published materials, in Congressional testimony, speeches, and in the Report itself. These materials characterize equity investment in young technology companies as patriotic, infused with masculine daring, intelligence, and pioneering risk-taking. However, while the NYSE promoted individual stock ownership and downplayed the importance of financial professionals, Casey and the Task Force promoted themselves as indispensable intermediaries: for less experienced financial professionals like pension fund fiduciaries and other institutional trustees; for entrepreneurs; and for individual investors. The NYSE had spun the affective characterizations of the “investor democrats”⁶⁶⁶ to support both the popularization

⁶⁶⁴ Ott, Julia C. (2) “When Wall Street Met Main Street: The Quest for an Investor’s Democracy and the Emergence of the Retail Investor in the United States.” *Enterprise & Society*. Vol. 9 No. 4. December 2008. p 625

⁶⁶⁵ Ott (2), p 624-625

⁶⁶⁶ Ott (2) p 624

of common stock ownership and their own anti-regulatory agenda. Casey and the Task Force continued the anti-regulatory spin, this time centering and valorizing the specialist venture capitalist as an intelligent, independent steward for the future success of American business and American technological hegemony.

Casey and the Task Force characterized the venture capitalist as particularly adept with and tolerant of risk, valorizing and rarifying the profession above other financial professionals and small investors. Where the NYSE portrayed fathers and husbands being good family providers with the help of their stock market investments,⁶⁶⁷ Casey and the Task Force used nostalgic, patriotic comparisons with iconic masculine American figures like soldiers, explorers, and pioneers to emphasize the risky derring-do they hoped to associate with venture investing. The NYSE was concerned with emphasizing the risk associated with market investment as a thing to be approached with caution, intelligence, and prudence. The concern of the NYSE was creating a “nation of sound investors,”⁶⁶⁸ who were “conservative rather than daring.”⁶⁶⁹ In pursuit of that aim, the NYSE supported public education campaigns in *Readers Digest* and other popular publications.⁶⁷⁰ In contrast, Casey and the Task Force placed risk at the center of the venture capitalist’s investment strategy. His willingness to take risks is positioned as vital to his contributions to the national economy. This was a sharp divergence from characterizations of financialization that sought to educate but ultimately downplay the dangers of market investment.

⁶⁶⁷ Traflet, p 154

⁶⁶⁸ Traflet, p 88

⁶⁶⁹ Traflet, p 97

⁶⁷⁰ Traflet, p 145

Nevertheless, Casey was in line with the NYSE in other ways, in particular in his descriptions of venture capital investment as a type of productive labor, both on the part of the venture capitalist and on the part of the money itself. Casey tied “risk capital” directly to American “economic progress,” “competitiveness in world markets,” and “opportunity” for “young people.”⁶⁷¹ The venture capitalist and his capital are collapsed together, both repeatedly described at various times as “building” the American economy. Similarly, both Casey and the NYSE were eager to avoid all associations with gambling, a similarity which will be described in more detail in a later section. Taken altogether, these policy moves, narratives, and characterizations create a situation where the venture capitalist is potentially able to avoid substantial amounts of personal financial risk while retaining the cultural and political prestige of the risk-taking pioneer figure, credited with building the future through the labor of his investment.

The risk shift discussed previously is of particular interest because the figure of the venture capitalist crafted by Casey and the Task Force touted his skill at handling of risk as his most salient and valuable professional characteristic. As previously discussed, Casey and the Task Force specifically targeted pension funds as sources of investment capital. Pension funds represented attractive blocks of institutional capital, and that might be sufficient reason for them to have been targeted by venture capitalists as favored sources of cash. As the deferred, financialized wages of workers, however, pension funds also represent a nexus of tensions regarding definitions of risk, labor, work, and masculinity. They focus the conflicts regarding the financial markets as sites of work, luck, patriotism, profiteering, and gambling that were coming

⁶⁷¹ “Revisited,” p 573

to a head in the 1970s. Historian of the period Melinda Cooper notes that the “stagflation” phenomenon that characterized the 1970s recession had explicitly exacerbated tensions between labor and finance:

For the investment class, the sense of crisis was exacerbated by the fact that the labor unions of the 1970s were able to hold their own against any attempt to push down wages in response to inflation....The growing political influence of organized labor was reflected in the fact that wages continued to rise against a background of high unemployment. This phenomenon, known as stagflation, confounded the predictions of postwar Keynesian economics....For the business and investment class, stagflation was a sign that the Keynesian consensus between labor and capital had outlived its political usefulness. Simply put, what had looked like a consensus solution to all parties in the wake of the Great Depression now appeared to be empowering the working class over investors.⁶⁷²

Given the context of stagflation, the Casey Task Force papers repeated emphasis on venture capital investment as skilled, special work that requires special rewards, and their focus on pension funds as a source of investment capital, seems to take on an almost retaliatory or usurpative sheen. The argument attempts to valorize the venture capitalist as a financial laborer while also confiscating the deferred rewards of the working class, i.e. their pensions, for the benefit of investors. Casey and the other Task Force members similarly emphasized that taking the risk of investment should be rewarded financially, almost like hazard pay. They argued repeatedly in multiple venues that the venture capitalist had a special appetite and skill for risk, and a particular affinity for the future. These characteristics were ascribed as much to an individual’s personality as they were to the profession, and made the venture capitalist a unique market actor. He was ideally suited to invest other people’s assets in new high technology

⁶⁷² Cooper, pp 28-29

companies, and the labor and skill involved in selecting and managing those investments entitled him to large rewards.

Casey's Innovator and the Future

Even as Casey used nostalgic narratives to frame the venture capitalist within an ideologically charged history of business and empire, he also cast the venture capitalist as future-oriented. This focus on the future, and the venture capitalist's unique knowledge and abilities, the claim goes, made the venture capitalist the market actor best positioned to not only operate at that "cutting edge" of business and technology, but also to push the innovative high technology sector forward, by identifying and lifting up innovative technologies and firms with his investments and mentorship.

The most explicit language regarding the venture capitalist's particular appetite for the future appears in the Casey-authored "Impediments" draft and is then diverted to the published "Revisited" article. The materials in these documents discuss, in the context of reforms to Rules 144 and 146, the information needed by a venture capitalist regarding a potential investment versus the needs of other types of investor. In this section, which appears in both the "Impediments" draft and the "Revisited" article, Casey argues that the disclosures required by Rule 146, and the registered "prospectus" it refers to, do not contain the types of information a "sophisticated" "venture" investor requires or could obtain:

From the standpoint of investor protection, it may be more desirable for new venture money to come not from people who invest a few thousand dollars on the basis of a prospectus cleared by the SEC, but from sophisticated individuals and institutions who have the knowledge, opportunity, and ability to dig more deeply and evaluate a new venture more effectively than can be done by

reading a printed prospectus. It may be better for venture money to come in larger chunks from investors having both the ability and the need and incentive to dig and analyze than from a lot of people who can read a prospectus but not get much out of it and who can't afford to take the high risk involved in new technology and other new ventures.⁶⁷³

A few pages later, Casey clarifies the particular ways in which a registered prospectus falls short of the needs of the venture investor who, due to his special abilities and appetites, needs a fundamentally different type of information than other investors whose dealings are more closely governed by the SEC:

The kind of information which experienced investors demand and get in a private placement is quite different than that normally found in a prospectus. The experienced investor wants to know not so much about the past as about expectations for the future and the basis for them. For years while the SEC was prohibiting estimates in registration statements, many if not most registered securities were being sold on the basis of estimates delivered on the telephone and those estimates tend to fluctuate widely. The typical private offering memorandum is likely to pin the offeror to a definite set of expectations.⁶⁷⁴

In the published "Revisited" article, Casey even goes so far as to claim that registration endangers unsophisticated investors by making risky investments available to them, and "turns off" investors who would be capable of properly assessing those investments:

Indeed, if we learned anything from the hot issue trauma⁶⁷⁵ of the late sixties, it was the realization that resort to the registration process for small issues may permit as many abuses as it prevents. When an unseasoned venture is registered, it becomes available and saleable to unsophisticated investors, with those least able to

⁶⁷³ "Impediments," pp 12-13; "Revisited," pp 586, footnote

⁶⁷⁴ "Impediments," p 18; "Revisited," p 576

⁶⁷⁵ By "hot issue trauma," Casey is referring to a series of hearings held by the SEC in the early 1970s to examine the problem of stock offerings, often IPOs from small companies, where the price of the stock rose sharply in the secondary market. It was considered that such "hot issues" were damaging to the stability of the markets as a whole, as they would often lose a substantial portion of their value in the aftermarket. For a closer examination of the "hot issue trauma," see Ibbotson, Roger G and Jeffrey F. Jaffe. "Hot Issue Markets." *The Journal of Finance* Vol 30, No. 4. September 1975.

afford it also least able to resist the combination of speculative fever and hard sell that may be respectively encouraged and insulated by the existence of an effective registration statement. Even with the additional disclosure requirements that came out of the hot issue study, registration alone is unlikely to protect small investors from salesmen ranging far and wide with optimistic forecasts in bullish phone calls. This hard sell is less likely where an issuer is trying to bring its offering within the intended "safe harbor" of rule 146. The registration process was not designed to provide the kind of information needed to evaluate new ventures and unseasoned businesses; resort to the process not only brings in the wrong kind of money, but turns off investors who can assess and afford this risk.⁶⁷⁶

Here, Casey is arguing that the disclosures the SEC required are too strictly focused on the past to be of use to the venture capitalist, who "wants to know" "about expectations for the future." He claims that the venture capitalist, subsumed under the category of the "experienced investor," has fundamentally different information needs than the SEC registration or disclosure process provides. Casey is careful to note that he is talking about the "experienced investor" who is participating in a "private placement," the type of placement that is the venture capitalist's bread and butter, and not of particular interest to other types of investors. Though Casey is talking in general terms about investor and market actors, his scope is actually quite narrow.

In these sections we can identify three moves. First there is the inclusion of the venture capitalist under the category heading "experienced investor," which generalizes the venture capitalist, whose practices might otherwise appear too novel in a field of the SEC's traditional subjects. By cloaking the venture capitalist under the "experienced investor" label, Casey can fold their new investment practices in amongst those of other, more familiar investors. It also allows Casey to argue that the interests of the venture capitalists are the interests of all "experienced investors." Two categories of people are defined in these texts: "investors having both the ability and the need and incentive to dig and analyze" and "a lot of people who can read a prospectus but not get much out of it." Essentially, the distinction here is between intelligent market actors and people who need others to act in the market for them. This distinction between

⁶⁷⁶ "Revisited," p 576

intelligent market actors and non-intelligent actors will be a key, if artfully muddled, step in the Task Force's rendering of the venture capitalist as a special and unique type of investor.

Second, the "experienced investor" participating in a private placement deal, that is to say, the venture capitalist, is oriented to the future, and is able to forecast and judge in a way that other investors or actors are not able to. He is able to "dig" and "analyze" and "wants to know" in ways that other actors do not or cannot. Where the venture capitalist reads beyond the prospectus required by the SEC, analyzing other types of information to glimpse the future, and thus reducing the risk of their investments, these other market actors do "not get much out of" the information the SEC requires and "can't afford to take the high risk involved in new technology and other new ventures."

Third, Casey argues that the venture capitalist plays a special role for the market in general, a role hampered by the disclosure and registration requirement of Rules 146 and the quantitative limitations on secondary sales imposed by Rule 144. He claims that venture capitalists serves an important filtering, developing, and amplification function, selecting and fostering young companies on the basis of the venture capitalist's special experience, knowledge, and orientation, and then releasing the securities of those companies into the market as they mature:

But Rule 146 is so cumbersome and uncertain that it creates an incentive to take a relatively small, if time-consuming, step and register. The premium on getting away from the quantitative restrictions of 144 tend to make this increasingly irresistible and, given the right economic climate, we have the ingredients of another hot market in expensively registered little companies. *Greater investor protection and better public policy lies in encouraging experienced and more substantial investors to take the risk inherent in new and young companies and opening the way for them to turn over their risk money [by] selling, without heavy sales effort, their interest to more conservative investors as the company matures and can be judged on the basis of public information on their performance regularly filed with the SEC as Rule 144 requires.*⁶⁷⁷

⁶⁷⁷ "Impediments," pp 18-19

Casey's conclusion is, again, that while the SEC was well-meaning in its deployment of Rule 144 and 146, their effect has been to impose costly registration and disclosure processes on what had previously been "man to man dealings between small groups all over America,"⁶⁷⁸ consistent with the essential and historical Americanness of practice of the modern venture capitalist. Rather than preserve this valuable and effective business norm, the SEC has overcomplicated the venture process by misunderstanding it, and insisting on protections and disclosures that the venture capitalist doesn't need and which other market actors don't understand. With his capacity to forecast and his special abilities to assume and manage risk, the venture capitalist is only hampered by these regulations and prevented from performing his market function of both *intellectually predicting* and *financially effecting* the future through their involvement with high technology companies.

Casey's Innovator and Risk

For Casey, the venture capitalist's relationship to *risk* was a defining feature of both the profession and the men who undertook it. We can first see this emphasis of risk beginning in Casey's 1974 NVCA address, which has been discussed in Chapter 2. In this address, Casey aligned the practicing venture capitalist with the romantic, dashing figure of the World War II fighter pilot or other warfighter, stating, "[T]he venture capitalist is the cutting edge. He is in the front line. He can get there first or he can get shot down first. If you were not prepared to face that you wouldn't be here."⁶⁷⁹ In this description, Casey compares the practice of early stage

⁶⁷⁸ "Impediments," p 18; "Revisited," p 593

⁶⁷⁹ Typescript of Address by the Honorable William J. Casey, Chairman and President Export-Import Bank of the United States Before the National Venture Capital Association, as released by the Export-Import Bank, 15 May 1974, Box 172, Folder 1, William J Casey Collection, Hoover Institution, Stanford University

investment with a border-crossing soldier, making daring, patriotic forays into enemy territory. The fighter pilot risks life and limb, getting ‘shot down’ for the advancement of national goals, and we can see here how Casey draws an equivalence between the patriotic nature of financial risk and the risk inherent in military action. Casey would make this comparison again and again throughout his involvement with venture capital.

Casey’s narratives of risk and risk-taking are notably romantic and nostalgic. In some cases the nostalgia is direct and personal, as in his invocations of the “front line” fighter. Casey and the other Task Force members as well as other venture capitalists of his generation could be assumed to have had direct experience with this patriotic, dashing figure with during their service in World War II. Casey considered his World War II service in the OSS to be a highpoint of his career, and would spend virtually the rest of his life attempting to re-enter the national intelligence field. However, he was repeatedly diverted to financial posts. His term at the head of the Task Force was his last government appointment devoted to financial matters before being appointing the Director of Central Intelligence by President Ronald Reagan. Casey considered the role of a wartime intelligence agency to be active and dynamic, doing what needed to be done in order to achieve the mission. Casey’s reference during his NVCA speech could be invoking, not just of a front line infantryman or pilot in combat, but an OSS agent or scout, airdropped behind enemy lines, whose contributions to the war effort rest in his access to special knowledge, his special skills, and his daring, not simply his capacity for brute force. During his time with the OSS, Casey arranged multiple such airdrops for OSS agents.⁶⁸⁰ Just as Casey draws a personal connection with the venture capitalists in the room during the NVCA speech,

⁶⁸⁰ Persico, p 73

saying, “[b]efore I took the cloth and joined the government I was a practicing venture capitalist who both won and lost,”⁶⁸¹ Casey’s invocation of the experience at the “front lines,” the risk and the potential and skills required was also personal.

Similarly, his nostalgic patriotism combines themes of imperial expansion through business and industry, the role of intelligence gathering as central to the national project, and what we might call economic or financial patriotism, which centers the role of business and financial markets in the American project. Casey presents an intriguing combination of neoliberal economic policy and neoconservative political and social ideology that emphasizes American imperialism, strident anticommunism,⁶⁸² and the unique role of America in the international economic and political world order.⁶⁸³ Casey’s conception of American empire included central roles for American industry. Throughout his public service career, in his public speeches Casey emphasized the role of American industry in maintaining its imperial dominance, saying in one speech in 1984, “The businesses in which you will work will be our first line of defense⁶⁸⁴ [against attacks from hostile nations].” He continued, calling “...our innovations and brain power...” “...our nation’s most valuable commodity,”⁶⁸⁵ and ultimately concluding, “I believe American business is one of our greatest international assets.”⁶⁸⁶ As Casey deploys these touchstones, references, and allusions, his personal political imaginary becomes clearer, as one

⁶⁸¹ NVCA typescript, p 1

⁶⁸² Cooper, p 232

⁶⁸³ Vaisse, Justin. *Neoconservatism: The Biography of a Movement*. Harvard University Press. 2010. p 18

⁶⁸⁴ Casey, William. *Scouting the Future: The Public Speeches of William J. Casey*. Gateway Books. 1989. p 132

⁶⁸⁵ *ibid*, p 132

⁶⁸⁶ *ibid*, p 134

that combines neoliberal financialization and a political and social neoconservatism. Casey enrolls financialization into the neoconservative worldview by connecting it with war, patriotism, and the virtues of the Protestant work ethic.

In “Impediments” and “Revisited,” Casey clarified and reinforced his position that venture capitalists are specially prepared by profession, regulation, and temperament, to evaluate and manage risk in a manner superior to the average individual or institutional investor. Because of this special sophistication, Casey argued, regulations like Rules 144 and 146, put in place to protect investors from hard sell or deceptive tactics, and the prudence standards of ERISA, were unnecessarily constraining to the venture capitalist. Casey repeatedly deployed the familiar framing of “unintended side effects of well-intentioned public policies” in “Impediments” and in his Congressional testimonies. This frame further emphasizes the advanced nature of the venture capitalist as a financial actor. This logic was spelled out explicitly in the “Impediments” draft:

Most of the factors which have impeded the flow of capital to small and young businesses have come from unintended side effects of well-intentioned public policies. Inflation has increased capital requirements and, together with other forces, has pushed public savings into banks and large institutions. ERISA, in imposing undefined quality standards on investments, is pushing these funds toward established and proven investments.⁶⁸⁷

At the end of the “Revisited” article, Casey doubles down on the venture capitalist’s special relationship to risk. Here, Casey makes clear what he sees as the government’s role in discouraging, through policy and regulation, the financial risk-taking he believed was both the venture capitalists’ special skill and special contribution to the US economy:

The experience of the last ten years—first with the registered young companies in the hot issue market, creating wide

⁶⁸⁷ “Impediments,” pp 3-4

disenchantment among investors, and then with the judicial and administrative narrowing of statutory exemptions with restrictions for which the need and justification remains questionable, *having significantly discouraged both professional investors and those geared to taking a “businessman’s” risk from providing equity capital for young companies—has created both a challenge and an opportunity for the [SEC] and its new leadership.*⁶⁸⁸

In the previous chapter I argued that the ERISA prudence reforms constituted a risk shift in the vein of those described by political scientist Jacob Hacker. That risk shift was accomplished while the venture capitalist retained a public image as a risk-hungry investor in the national interest. Casey’s use of the term “businessman’s risk” is the key to understanding how this sleight of hand was accomplished. Casey and the Task Force claim that venture capital investing is a high risk financial activity, one which requires special knowledge and experience. At the same time, that risk is normalized under terms like “experienced investor” and “a businessman’s risk.” Through these apparently contradictory claims, Casey and the Task Force model a business environment that elevates the venture capitalist a special market actor who is uniquely qualified to manage the capital of *others*, particularly the capital of those institutional investors who are risk-averse, or whose fiduciaries had recently *become* risk averse due to the passage of ERISA.

Further, these materials treat high risk of venture investing as normal, traditional, expected, and moral, which departed from other narratives of financialization and risk in circulation at the time, such as those deployed by the NYSE. The Task Force had built a descriptive narrative that painted fiduciary liability and the risk-aversion instilled in institutional investors as a damaging anomaly, with the venture capitalist then presented as the solution. In the decade following the publication of the Casey Report, institutional investors, including those pension and insurance funds governed under ERISA, would make up a significant percentage of the limited partners investing in venture capital funds, and would aid in the rise and dominance of the limited partnership firm structure. As reviewed in the previous chapter, after the 1979 Department of Labor’s restatement of ERISA’s prudence standard explicitly allowed pension

⁶⁸⁸ “Revisited,” p 599

funds to invest up to 10% of their assets in high risk venture investments, pension fund investments in venture capital rose from \$32.7 million in 1978, or 15% of capital raised by dedicated venture capital firms, to \$1.38 billion in 1988, or 46% of capital raised by dedicated venture capital channels.⁶⁸⁹ This rise in pension investment, framed by the Task Force as a way to allowed these institutional investors to transfer the risk of these investments to “sophisticated” risk savvy venture capitalists, allowed the independent limited partnership firm structure to rise from managing 35% of the venture capital pool in 1977 to 75% in 1987.⁶⁹⁰

Casey’s Innovator, Contemporaneous Finance, Gambling, and Labor

Like the NYSE and other financial actors, the Task Force took special care to emphasize that those rewards were acquired through work, intelligence, and skill, not luck.⁶⁹¹ Differentiating investments from gambling had not only moral and regulatory implications, but tax implications as well. Two types of work were emphasized in this discourse: first, there was the work of investment itself, which involved training, skill, and effort, as well as the use of the investor’s resources; second, there was the work the invested capital is performing, both in the markets and, theoretically, within the businesses it is invested in. This merger of the professional work of the investor and the impacts of the capital itself is similar to the merging of the functions of the inventor, entrepreneur, and high technology corporation we saw in our analysis of Casey’s innovator-venture capitalist figure.

⁶⁸⁹ Gompers, p 13

⁶⁹⁰ Reiner, p 399

⁶⁹¹ The public’s perception of the similarities between trading stocks and gambling has a long history dating back to before the Great Depression. In the nineteenth century, the average person had no experience with the trading floor of a stock market, but they did have experience with “bucket shops,” where they could place bets on the the performance of a stock. (Ott (2011) p 17, 46) The public further viewed capital gains as suspicious income, without any connection to labor or having been meaningfully earned. (Traflet, p 153) (Ott (2011), p 201)

The NYSE's OYS campaign and others frequently repeated themes of money in the financial markets as "working" in this period. Traflet describes one print advertisement, featuring "people from different professions all 'Working 9 to 5' while keeping their 'surplus dollars on the job 24 hours a day.'" ⁶⁹² An animated film, "Working Dollars," commissioned by the NYSE in 1957 from John Sutherland Productions, portrayed a similar story. It depicted a white collar family man wondering what to do with a sixty dollar raise. The genial narrator explains that he could "bury it in a tin can in the yard, for instance" where it would lose value as "idle money," or he could "put [his] money to work" in the NYSE, investing in established companies that "have helped to build our rising standard of living by constantly creating new jobs, services, and products." ⁶⁹³

Several years before, the US Chamber of Commerce and DuPont had commissioned a similar film, also from John Sutherland Productions, entitled "It's Everybody's Business." Taking a strong anti-regulation and anti-taxation position, "It's Everybody's Business" promoted participation in the public equity markets by explaining that the American "way of life...depends on millions of thrifty Americans who send a portion of their savings to work in our business system each year" through stock and bond purchases. Dollar bills are shown boarding a train labeled the "Savings Special," waving goodbye to the "people from all walks of life" who earned them, and entering the "Business System." There, they join a "constant stream of savings" that "flow into big and small business each year," ⁶⁹⁴ where whirlwinds of savings dollars "buy the

⁶⁹² Traflet, p 60

⁶⁹³ *Working Dollars*. John Sutherland Productions. 1957. Available at <https://www.youtube.com/watch?v=GmCjfpwAfss&t=>

land, buildings, tools, and equipment, and create new job opportunities for our expanding population.” The viewing public is cautioned that, though regulations and taxes are necessary in moderation, “[w]e shouldn’t allow taxes to rise to a point where they destroy our ability to save and invest, for...our rising standard of living relies on a constant flow of savings dollars into our business system each year.”⁶⁹⁵

The NYSE’s OYS campaign emphasized the work of capital in the financial markets over the work of the stockbroker. In “Working Dollars,” the broker downplays his role, saying, “As members of the New York Stock Exchange, we are prepared to be of service to you...” He explains that his role is primarily that of connector between those who wish to buy securities and those who wish to sell, like “a doctor in Atlanta” and a “farmer in Spokane.” When the family man main character asks what *he* is going to try to sell him, the broker warmly replies, “Not a thing, Mr. Finchly.” Finchly is expected to do his *own* research and direct his own investments intelligently.

In contrast, Casey and the Task Force elevated the work of the venture capitalist himself. He is the vital, central character, managing the financial contributions of others. The other campaigns discussed here that promoted participation in the financial markets de-emphasized the roles of the intermediaries of financialization. They did this in part by encouraging investment in established companies with stable earnings records and which had a history of “build[ing] our rising standard of living.”⁶⁹⁶ Both Sutherland films emphasize the potential of earning regular, relatively small dividends on stock in reliable, blue chip companies. Neither film mentions the

⁶⁹⁵ *It’s Everybody’s Business*. John Sutherland Productions. 1954. Available at <https://www.youtube.com/watch?v=nHDyE954l4U>

⁶⁹⁶ *It’s Everybody’s Business*.

type of large capital gains venture capitalists would later rely on as their primary profit vehicle.

Both the Task Force and the OYS campaign promoted enrolling the public's "savings" in the financial markets. However, OYS and films like "It's Everybody's Business" clearly described a different type of investing than Casey and the Task Force did.

The Task Force used characterizations of labor to separate venture capital from gambling or speculation. Casey and the other Task Force members strongly, repeatedly, and sometimes dramatically denied that venture capital investment bore any resemblance to gambling, and defended the national utility of their personal capital gains. In one incident, Casey screamed at his personal secretary in a Georgetown restaurant after she compared venture capital investing to gambling, "How dare you call risking capital to start new industries and creating more jobs gambling! How dare you put building this country in the same class with betting on the horses!"⁶⁹⁷ The Report itself created a dramatic dichotomy between venture investing and gambling early on, stating

A public policy that discourages the public from investing approximately \$1 billion a year of its savings in economic innovation, growth, and the creation of jobs while it *encourages the public to risk* \$17 billion a year in Government-sponsored lotteries, requires close and serious reexamination.⁶⁹⁸

Casey himself seems to have been concerned with gambling associations during the composition of the Report. In a short memo written during the Report's drafting stages, Casey wrote to an SBA staffer regarding a potential comparison between a report on "Gambling in America" and the financial markets:

⁶⁹⁷ Persico, p 143. This anecdote is described in greater detail in Chapter 1.

⁶⁹⁸ Published Report, p 1. Emphasis added.

There is a report issued in 1976 by the Commission on the Review of National Policy on Gambling. It is titled “Gambling in America.” Will you get a copy of that report and see if there is any information in it that we want to use in our Task Force report. Will you also call the SEC, or the Chicago Board of Trade if necessary, for information on the amount of money that goes into the Option Market during the course of the year.⁶⁹⁹

The OYS campaign emphasized long-term investment as a way to differentiate shareownership from gambling, speculation, or other financial dealings through to be immoral or exploitative. A long-term investment in American business was presented as an intelligent, patriotic act. Not participating in the market was moralized as foolish or lazy, with “Working Money” referring to savings not placed in the markets as “idle money.” Certainly not the characterization of a responsible participant in American Business. The Task Force dealt with the potential association of venture capital with gambling and speculation in similar ways. Casey and the Task Force moralized investment in the financial markets as a positive, productive, and constructive use of capital, while casting gambling, lotteries, profligacy, and demands for immediate gratification through spending and living on credit as non-productive, immoral alternatives.

The Task Force papers contain a memo by Task Force member Don Steffes,⁷⁰⁰ focused on what he perceived as the general problem of an ethic of “delayed gratification” being thrown over for the “immediate gratification afforded by living on credit.”⁷⁰¹ The desire for “immediate gratification” leads to overspending on the part of the public, leaving little surplus for savings

⁶⁹⁹ Memo re “Gambling in America” report, Casey, William to Richard Ranco, 1976 November 30, Hoover Institution/Stanford University, Box 191 Folder 1

⁷⁰⁰ Steffes’s memo is also discussed in Chapter 2.

⁷⁰¹ Steffes, “A View of the Beginning and Smaller Entrepreneur.”

and investment. Steffes blamed “[b]oth federal and local units of government” for this societal shift, as they had “shown voters and consumers how painless it is to live on future income, earnings, or taxes.” This demonstration had “eliminate[d] the desire to save and therefore, further compounded the problem of capital formation.”⁷⁰² Steffes goes on to write that this is reflective of a disunity among Americans:

Finally and probably of greatest signification, there now seems to be a major shift in the goal of our society in progress. For several centuries, all shades of opinion seemed to agree on the common goal of ‘Economic Progress’ and differed only on the methods of achieving it. Now this is in question and we are experiencing a period of extreme distrust. Fortunately, the phrase ‘Quality of Life’⁷⁰³ offers a new goal which can be a unifying influence. This may account for the growth of environmentalists, ecologists, consumerism, and the rash of books and articles extolling the virtues of smallness. This may be the one prevailing asset of overriding significance in the preservation of small business and the creation and location of capital.⁷⁰⁴

Here, Steffes describes the economic environment as fragmented, a manifestation of a malaise of “distrust” which hampers the ability of the nation to move forward through capitalistic progress. Steffes conflates a set of actors and influences he sees as anti-industry or anti-growth who stand in the way of the intrepid American small businessman: “environmentalists” and “ecologists,” which here should be read as catch-all terms for the pro-regulatory environmental movement that Task Force members and others perceived to be anti-business; “consumerism” which encourages immediate gratification and spending on credit; and popular texts “extolling the virtues of smallness,” that is, *not* the virtues of growth and expansion. To Steffes, these are *symptoms* of the

⁷⁰² *ibid.*

⁷⁰³ Steffes use of “Quality of Life” as an anchor concept for American economic unity is reminiscent of the use of the phrase “standard of living” in the “It’s Everybody’s Business” film.

⁷⁰⁴ *ibid.*, p 5.

economic downturn, the effects manifest in the body politic of the illness in the (overregulated) economy.

Task Force members were not alone in moralizing the economic malaise and lack of market participation as leading to a lack of thrift, work ethic, and the loss of a unifying American way of life. The idea that social morality or virtue would spring from market forces was not uncommon at the time. The historical sociologist Melinda Cooper describes the conception of virtue held by neoliberal theorists of the 1970s in this way: “It was not that neoliberals completely rejects the idea of virtue...but rather that they expect the strictest of virtue ethics to arise spontaneously from the immanent action of market forces.”⁷⁰⁵ The moral considerations and concerns of Casey’s contemporaries in neoliberal academic, economic, and policy spaces derived from the market, and solutions were anticipated to flow from the market as well. Of particular concern at the time was the rampant inflation which had plagued the US economy for nearly a decade. Multiple thinkers associated with the Chicago and Virginia schools of neoliberal theory advocated a framing of monetary inflation as linked to “moral crisis.”⁷⁰⁶ In a book published in 1977, the year the Casey Report was published, neoliberal economists James Buchanan and Richard Wagner argued that inflation created a “desire for speculative indulgence” in the general society, a preference for living on credit, and a “general breakdown in public morality”.⁷⁰⁷ Describing the “spirit” of the 1960s and 1970s, Buchanan and Wagner wrote:

Such a spirit...is evidenced by what appears as a generalized erosion in public and private manners, increasingly liberated

⁷⁰⁵ Cooper, Melinda. *Between Neoliberalism and the New Social Conservatives*. Zone Books. Brooklyn, New York. 2017.

⁷⁰⁶ *ibid* p 30.

⁷⁰⁷ *ibid*, p 30

attitudes toward sexual activities, a declining vitality of the Puritan work ethic, deterioration in product quality, explosion of the welfare rolls, widespread corruption in both the private and the governmental section, and, finally, observed increases in the alienation of voters from the political process....Who can deny that inflation...plays some role in reinforcing several of the observed behavior patterns. Inflation destroys expectations, and creates uncertainty. It prompts behavioral responses that reflect a generalized shortening of time horizons. “Enjoy, enjoy” —the imperative of our time—becomes a rational response in a setting where tomorrow remains insecure and where the plans made yesterday seem to have been made in folly.⁷⁰⁸

By joining in the pathologization of the economic recession as the cause of a sickness in the American spirit, Casey and the Task Force were able to cast themselves as the cure to that broad disease. They crafted an alternate history of American business that centered the venture capitalist as the dynamic, risk-taking, all-American innovator. This narrative aligned with other public portrayals of financialization by other powerful actors, but was unique in its centering of a creature of financialization, the venture capitalist, as essential and heroic. Even when films like “It’s Everybody’s Business” featured equity investment, as in its depictions of a young milliner’s neighbors investing in his new hat shop, the small businessman was centered, not the financier. In contrast, the morality the Task Force invokes throughout these materials, draft, and speeches is a patriotic morality that heavily ties risk-taking via the mechanisms of a financialized market economy specifically to the virtues of patriotism, business, and the American project itself.

Casey’s historicized narratives and figurative comparisons are presented and cited in multiple documents, through which he and others reposition past expectations of the role of finance in American business, and thus reworks assumptions of how venture capital might work

⁷⁰⁸ Buchanan, James, and Richard Wagner. *Democracy Deficit: The Political Legacy of Lord Keynes*. Academic Press. New York. 1977. pp 64-65. Quoted in Cooper, pp 30-31

in the contemporary era. These comparisons converge multiple business, market, and state actors, represented by historical personages and mythopoetic invocations, into one figure of the “innovator,” who Casey then elides between the small businessman, the entrepreneur, and the venture capitalist himself. The “independent” entrepreneur is blurred with the “independent” venture capitalist, who operates outside of the corporate structure of a bank or established financial brokerage firm. Elevating the work of funding businesses into something heroic then supports the policy and regulatory shifts for which Casey and the Task Force advocate, as they argue that the venture capitalist must be favored and protected due to his central and historical role at the center of innovative industry growth.

CONCLUSION

FORTY YEARS OF LIMITED IMAGINATION

The naturalization of venture capital within the high technology sector is the forerunner to the naturalization of financialization within the US economy at large. The goal of this dissertation has been to illustrate the moment when limited partnership venture capital becomes possible, in terms of regulation, policy and in the public imagination. By unraveling that moment, identifying its central actors, their actions, and motivations, I hope to direct critical attention to the relationship between high finance and high technology. The history laid out in this project shows that this relationship was not originally integral to the high technology sector. Rather, it was an intentional addition, added primarily at the direction of experienced financiers rather than engineers and technologists. In the writings of Casey and the SBA Task Force, and the citations derived from them, we see the incursions of high finance into high technology through a specific set of vectors. Through policy, regulation, and popular and professional media, Casey and the Task Force contributed heavily to today's popular understanding of both the figure of the venture capitalist and the role of the high technology firm in the American economy.

Taking advantage of the economic anxieties triggered by the the 1973-1975 recession, the venture capitalists and financiers on the Task Force held out themselves out as saviors not just of small business, but of American technological innovation and American exceptionalism on the world stage. The Task Force assembled a policy agenda that primarily used the soft power of regulatory reinterpretation to roll back then-recent key advancements in labor and investor protection. To support these rollbacks, the Task Force created a narrative of not only the lifecycle of a high technology firm, but also mythologized the central role of the venture capitalist in high

technology and the American empire. This economic imaginary supported and legitimized the epistemic infrastructure created when the Task Force's proposed reforms were put in place. This epistemic infrastructure protected and supported venture capital investment as practiced by members of the Task Force, regularizing it throughout the developing venture capital industry at a time when the industry was still disorganized.

By taking the investor logic of the venture capitalist as an economic given, a logic that relies foremost on exponential returns on a handful of investments to make up for anticipated losses elsewhere in the portfolio, the possible developmental directions of the high technology sector were constrained. This epistemic infrastructure, coupled with the compelling business narratives and economic imaginary put forward by the Task Force set the conditions of possibility for the high technology sector going into the 1980s. Regulatory and narrative deference to venture capital encouraged an artificial restriction in the types of funding, firm structures, and growth patterns that were conceivable within the sector. As only certain types of products and market approaches had the potential to produce the 'disruptive' exponential returns required to satisfy the venture capital model, the types of products and technologies developed by high technology firms were also constrained.

The assumptions, figures, narratives, and business life cycles put forward by the Task Force remain influential today, circulating through popular and business cultures that take the shotgun marriage of high finance and high technology as natural and indispensable. In the forty years since the Task Force released its report, the high technology sector has become a crown jewel in the American economy and an aspirational model for other sectors and regions.

Fostering a local "innovation economy" has become an oft-repeated goal for countries, regions,

and cities across the globe. However, the core assumptions and operating principles of the high technology sector's epistemic infrastructure and economic imaginary have not changed as it has transformed into what is popularly understood as the innovation economy. The operating logics of the high technology remain those of high finance, wearing a branded hoodie.

Rather than shifting or mellowing over the four decade interim, these assumptions, logics, narratives, and infrastructures have leaked into other sectors, with the Task Force's financial logics replicated themselves throughout the American economy. The narrative of a high technology business reaching great heights through venture capital investment was genericized into the story of successful American business. This may be partially ascribed to the Barnesian performativity of the Life Cycle Model, which purported to describe economic reality but in fact shaped it in its own image. The apparent success of the venture capital model, in this reading, is due to the ways the economic landscape has been shaped by the model itself through the mechanisms of policy and professional practice to guarantee its success.

The continued influence of the high technology sector, and thus venture capital, throughout the economy may also be explained using technology scholar Christo Sims's articulations of "disruptive fixation" and "rendering technical." The logics of high technology and venture capital have spread seemingly regardless of their success or the usefulness of those logics to other regions and sectors. If so many tech-informed, venture-backed attempts to "disrupt" other sectors fail, why does the model persist and spread? In Sims's analysis, "disruptive fixation" describes the cycle of repeated reforms attempted through technophilanthropic interventions in underfunded areas like public school reform. These cycles begin optimistically but often end by returning to the regressive structures which reformers had hoped

to innovate away. At the same time, faith is paradoxically renewed in the the potential of technologically-enhanced philanthropic reformation despite the fact of its repeated failures.⁷⁰⁹ In an accompanying concept, Sims describes “rendering technical” as the manner in which reform-minded experts conceive of worlds and articulate problems in ways that are most intelligible to and “seemingly fixable” by those experts’ own professional repertoire. This is similar to Murphy’s “regimes of perceptibility,” discussed in Chapter Two.⁷¹⁰ In our case, we can see this unfolding in how venture capitalists are treated as appropriate experts in a range of fields, many outside their own realms of experience. With each high technology bubble, handfuls of charismatic venture capitalists rise to public prominence, buoyed in part by the patriotic economic imaginary spun by the Task Force. Through this rise, successful venture capitalists verify their special relationship with the future and with business success that is assumed to be a hallmark of the profession. It is this special capacity that qualifies them to re-create or, let’s say, “render financial” other sectors or regions that are grasping for Silicon Valley-levels of success.

Sims describes a major education reform project undertaken by a group of technological elites eager to apply the latest innovations to the challenges of public education. The entrepreneurial techno-optimist tunnel vision that drove this project is recognizable in other places, in the ways struggling industries, like media and higher education among others, and depressed regions turn to the high technology sector for repeatable models of innovation and economic success. As they focus on the seductive logic of disruption and innovation to raise them out of the economic doldrums, these sectors and regions are themselves transformed. As

⁷⁰⁹ Sims, Christo. *Disruptive Fixation*. Princeton University Press. 2017. p 11

⁷¹⁰ Sims, p 13

venture capital is inextricably intertwined with high technology, they are re-rendered into a structure that is both more amenable to venture capital and also more potentially profitable to venture capital.

As an example of the spread of these ideas, let us take a short, final detour.

In 2014, Alex Blumberg launched a podcast called *StartUp*. Blumberg was a veteran financial reporter and radio producer with a history of producing compelling audio stories on complex financial topics. He was a frequent contributor to Chicago Public Radio juggernaut *This American Life*, sharing a George Polk Award and a Peabody Award for their “Giant Pool of Money” episode on the 2008 financial crisis, and was a co-creator of the National Public Radio podcast *Planet Money*, dedicated to financial and economic reporting. He was a sophisticated traveller in the worlds of business and finance.

StartUp was different than his previous projects. Rather than reporting on other people’s businesses or the abstract machinations of the economy, *StartUp* was the real time chronicle of Blumberg’s *own* startup, a podcast production company so new it didn’t even get its name, Gimlet Media, until the fifth episode. Blumberg describes the podcast this way in the introduction to most episodes in the first season.

I’m Alex Blumberg, and you’re listening to *StartUp*, the podcast miniseries documenting the launch of my podcast company. Meta, I know. It’s the business origin story you never actually hear, set down before the facts can fade into ‘this is the garage where it all started’ mythology. It’s the most honest and transparent account I can make about something that happens every day in this country but we hardly ever see first hand: starting a business.⁷¹¹

⁷¹¹ Blumberg, Alex. “Gimlet 2: Is Podcasting the Future or the Past?” *StartUp*. Gimlet Media. 2 September 2014.

Gimlet Media was, from the start, a media company focused on the production of content. However, we can already see in this introduction how Blumberg sees starting his company, as well as “starting a business” more generically, through a mythic lens more commonly associated with technology companies. “This is the garage where it all started” is reference to the humble beginnings of the Palo Alto technology juggernaut Hewlett Packard, a mythos referenced by many, including Casey in his Task Force writings.⁷¹² Blumberg’s unacknowledged habit of viewing his business through technology-colored glasses persists across the whole first season of the show.

In *StartUp*’s first episode, Blumberg flies from New York to Los Angeles to make a disastrous pitch to storied venture capitalist Chris Sacca, whom he describes as a “huge kingpin” of the venture capital world. “Not a murderous criminal underworld kingpin, a universally admired really friendly billionaire kingpin that pretty much everybody with a startup idea wants as an investor.”⁷¹³ Sacca’s fund, Lowercase Capital, has made investments in Twitter, Instagram, Uber, Facebook, Bit.ly, Medium, Kickstarter, Docker, Blue Bottle Coffee, Heroku, and Automaticc, among scores of other (mostly technology) companies.

Blumberg stumbles over his words, unprepared and unpracticed. He doesn’t know what to wear. His wife, Emmy-nominated television producer Nazanin Rafsanjani, asks gently, “Are you meeting someone with money?” on seeing his outfit as he walks out the door. She doesn’t like his shoes. “They’re fine. They’re just—there’d be a higher chance that he’s going to give you money if you’re not wearing running shoes.”

⁷¹² see p 323

⁷¹³ Blumberg, Alex. “Gimlet 1: How Not To Pitch A Billionaire.” *StartUp*. Gimlet Media. 5 April 2014.

After the meeting, Blumberg has a realization about his business and the types of businesses a venture capitalist like Chris Sacca wants to invest in:

I came out here thinking I could built a nice profitable business. But Chris isn't looking for profitable. He's looking for Twitter. Something huge. Or if not Twitter, then at least a company he could sell to Twitter. He asked me this question: what would the exit be? And by that he means what large company will buy your company in three to five year so investors like me can get our money back at ten to a hundred times the amount we put in? I hadn't really thought about that question. I don't know if I want anyone to buy me. This experience with Chris makes me realize this simple vision I have, it's not a vision that people like him are looking to invest in.⁷¹⁴

Realizing the types of returns a venture investor like Sacca wants does not dissuade Blumberg entirely, however. A month later, he returns to LA to pitch Sacca's partner, Matt Mazzeo. The disconnect between the type of business he wants to build and the type of business the venture capitalists he's talking to want to invest in becomes clearer, as Mazzeo pressures Blumberg to change the fundamental nature of the business in order to provide the necessary returns.

Matt Mazzeo: There's not a lot of innovation here in terms of technology you're going out and executing against. I feel like you've made an assumption that podcasting is the best platform for these incredible shows you're creating, and I'm not convinced that if you went out and did it through an app-based ecosystem that it might not be more successful.

Alex Blumberg: Matt says you're missing the truly big opportunity here, to make your own app, to take podcasting out of the dark ages, reinvent the way we listen....In other words, the way I interpret what he's saying, he wants us to become the Instagram of

⁷¹⁴ *ibid*

audio...Essentially I'd go from being the podcast company that I was pitching to a tech company, which Matt thinks I should be.⁷¹⁵

Despite the misgivings on both sides, Lowercase Capital did eventually make an equity investment in Gimlet Media: \$100,000 at a \$10 million valuation, for a 1% equity stake.

Lowercase was not the only venture capital firm Blumberg pitched. Six out of the first seven episodes of *StartUp*'s initial 14 episode run were focused on the process of finding equity investment from venture capital funds, culminating in an appeal for equity investment from the podcast's growing audience.⁷¹⁶

Over the next three years, Gimlet Media would raise \$28.5 million in venture funding over six rounds, with a total of 14 venture funds participating.⁷¹⁷ In 2019 Blumberg announced, on a new episode of *StartUp*, that Gimlet had been acquired by the Swedish music streaming service Spotify for \$200 million.⁷¹⁸ Chris Sacca's original \$100,000 investment was now worth \$2 million, a twenty-fold increase.

The story of Gimlet Media as Blumberg tells it is one that shows how the myths and models of the high technology sector, including its relationship with venture capital, have become the dominant business narrative today across all sectors, providing the epistemic infrastructure of the American economy in general. Gimlet Media is a media company, its product is podcasts, radio shows you can listen to on demand on your phone or computer. But the

⁷¹⁵ Blumberg, Alex. "Gimlet 4: Startups are a Risky Business." *StartUp*. Gimlet Media. 24 September 2014.

⁷¹⁶ This crowd investment was made possible by the JOBS Act, passed in 2012, which weakened reporting and oversight requirements for "emerging growth companies," expanded the private offering exception under Regulation A, and opened private offering venture capital investment opportunities to retail investors through crowdfunding mechanisms.

⁷¹⁷ Gimlet Media profile. *Crunchbase*. Available at <https://www.crunchbase.com/organization/gimlet-media>. Last accessed 5 May 2020.

⁷¹⁸ Blumberg, Alex. "Thanksgiving in Stockholm" *StartUp*. Gimlet Media. 11 October 2019.

images Bloomberg reaches for are drawn from high technology, not broadcast journalism, as are the business practices he adopts. Bloomberg's story, "a story I'm telling not just to my investors but to my wife, and myself,"⁷¹⁹ centers many contemporary high technology business tropes. At one point he says, "I'm the guy in the garage with the great idea. I am Steve Jobs...the Steve Jobs of twenty to forty minute weekly podcasts."⁷²⁰ Bloomberg doesn't think he is founding a technology company, but he seems incapable of separating the story of starting his business from the dominant narrative of starting a technology company. To him, the technology narrative *is* the generic business narrative, applicable across all sectors, from "the Steve Jobs of HVAC repair" to "the Steve Jobs of farm-to-table gastropubs."⁷²¹

If Bloomberg is following a business narrative derived from the high technology sector, it makes sense that he does something that otherwise makes no sense at all for a media company: he pursues equity investment from a Silicon Valley venture capitalist. *StartUp* does not cover any other financing plan. Though Gimlet did go through two rounds of debt financing, we don't listen to Bloomberg negotiating for a bank loan. We don't hear him securing advertisement or sponsorship deals in the first season. We don't hear him applying for grants or arts funding. What we get instead is a great deal of content about securing venture capital investment. Nearly half the first season is dedicated to it.

The venture capitalists Bloomberg pitches are following a familiar script. The "nice profitable business" that Bloomberg wants to built won't provide the ten to 100 times return they look for in investments. "I think it's difficult to think of this as a venture scale business based on

⁷¹⁹ Bloomberg, Alex. "Gimlet 1: How Not To Pitch A Billionaire." *StartUp*. Gimlet Media. 5 April 2014.

⁷²⁰ *ibid*

⁷²¹ *ibid*

what you guys have said,” one says.⁷²² But Mark Mazzeo sees the potential for “innovation...the truly big opportunity here, to make your own app....”⁷²³ Mazzeo is interested in a disruptive “platform” or “app-based ecosystem” with the capacity “to take podcasting out of the dark ages, reinvent the way we listen.”⁷²⁴

There are differences in the business narrative being enacted by Blumberg and the venture capitalists he talks to, and that promoted by Casey and the Task Force. The biggest one is what form the exit takes. Casey and the other Task Force members were strong believers in IPOs as the ideal resolution for their investments, a stance in keeping with their neoliberal faith in the power of financial markets as arbiters of value and generators of wealth. Today’s venture capitalists, however, prefer the certainty and relative speed of an acquisition to the risk and delay of a public stock offering. Beyond that, however, little has changed between how the Task Force envisioned and promoted venture capital investment in high technology companies forty years ago and how this present-day entrepreneur and these present-day venture capitalists talk about investment in this non-technological company. Blumberg as the entrepreneur has unknowingly adopted the central argument of the Task Force, made through the Life Cycle Model and other materials, that venture funding is central to the success of a business. The venture capitalists have, in their turn, adopted the practices promoted by the Task Force, investment logics that necessitates high returns, and a persistent belief that disruptive technological innovations are the fastest path to exponential profit.

⁷²² Blumberg, Alex. “Gimlet 4: Startups are a Risky Business.” *StartUp*. Gimlet Media. 24 September 2014.

⁷²³ *ibid*

⁷²⁴ *ibid*

Venture capital funding rose to public prominence and influence at the expense of other business models and programs. Some of these alternative models and programs were in existence at the time the Task Force was doing its work, while the mere possibility of others was smothered as venture capital grew. As discussed in Chapter Two, Task Force members were aware that entrepreneurs often preferred to take on debt rather than sell equity in a growing business, but overruled this preference in their policy recommendations. The beleaguered SBIC program, discussed in Chapter One, which was intended to distribute government investment to small businesses through the middleman of private lending corporations, was laid out by the Task Force and their contemporaries as a sacrificial straw man. The SBIC program had been hamstrung from the start by legislative fear of being seen as promoting socialism through direct government investment in industry, and the Task Force and others held out its scandals and failings as proof that investment in small business could not be left to government or to bank loans and debt vehicles. This despite the remarkable success of government investment during the Space Race, which had taken myriad forms including research and development grants, direct procurement and subcontracting, and tax breaks, and which quietly continued until the present day.

Potentially more equitable, sustainable, or local investment practices were not the only things constrained by the rise of venture capital. The returns required by the venture capital model are high. Only certain types of businesses, those with the ability to scale quickly or disrupt an existing market have the potential to provide those returns. We can see this play out in the story of *Startup*, as different venture investors point out that Bloomberg's proposed podcast network is not "venture scale" or attempt to persuade him to pivot to tech.

The equity investment, limited partnership venture capital model that dominates today was not inevitable. Its success can seem all-consuming and its apparent logics at work in the high technology sector can be appealing to regions struggling to stay above water in a faltering economic landscape, or to industries already knocked down by successive waves of disruptive innovation. However, venture capital logics dissuade small businesses from growing in a sustainable way. The exponential returns beloved of these particular financiers have foreclosed the American imagination. While a field is a rich ground for fast-growing weeds, it does not support complexity over a long period. Perhaps what is needed going forward is a new economic imaginary, and a new epistemic framework with it: a model where it is okay to be not explosive, but profitable, to grow not at the expense of others but in support of other, more just and sustainable economic relationships.

The promise of the high technology sector since the launch of the Space Race through the rise of the internet has been one of human expansiveness, of expansion through exploration and interconnection and sheer potential. The installation of venture capital at the core of the high technology sector dragged that promise back to earth, limiting that potential to that which would power the financial markets. Since the publication of the Casey Report, we have lost nearly half a century to venture capital.

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