

MAILED 10/10/61

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Senators,

I appreciate this opportunity to discuss with you the high cost of prescription medicine.

Your inquiry has been a long time in coming.

The conspiracy of the drug manufacturers to keep prices high has been an open secret for almost a decade. I am intimately aware of at least two attempts by the Senate to bring this issue into the open. Each time the attempt was frustrated. Organized against these efforts were some of the most powerful financial and political forces in America.

Yet I have no intention of reviving these arguments.

(Paragraph continues)

I just want to say "thanks" to you, Senator Nelson, and to you, Senator Long, for putting principle above politics and for courageously bringing this issue into the open where all sides can be examined scientifically and fairly and a decision made once in for all on two questions: (1) are generically prescribed medicines as safe as those which bear the trade name, and (2) what is the cause for the high prices of prescription medicines?

You have the tools to change the situation if you believe, as we do, that generically prescribed drugs are as safe as trade name drugs. Senator Long's legislation which will, in effect, mandate the use of generic-named drugs in the Medicare program will bring down the drug manufacturers' house of cards. It will open the door to less expensive health care not only to the patients of Medicare, but to all Americans. It will also set the guidelines, by example, for municipal purchasing. The taxpayers will not only save on their own purchases, but save on the extraordinary prices many municipalities pay for their

medicines. Our purpose this morning is to give you ammunition for your arguments; to share with you our data.

Our testimony this morning is organized in a "seminar fashion."

We have with us to discuss the problem the following persons:

1. Dr. John L. S. Holloman is President of the National Medical Association and former chairman of the Medical Committee for Human Rights. He was the chairman of the medical group that conducted the drug prescription-buying programs which we will describe this morning. He will discuss the medical basis of the survey, the finding that the poor Negro pays more than the upper-income white for identical drugs and the relationship between the drug company's detailman and the doctor.
2. Mrs. Elmor Wolfert is a pharmacist who monitored the surveys. She will discuss how a prescription is filled

(paragraph continues)

and the relationship of the pharmacist to the drug companies.

3. Joseph Crangle, an attorney, is the Democratic County Leader in Erie County, New York. He will discuss the findings as they relate to municipal purchases. To clear up any possible misunderstandings, I would like to point out that the buying survey in Erie County was conducted under the guidance of a Republican doctor, a member of the school board who has disagreed with Mr. Crangle on other matters.

4. Dan Scanlon. Mr. Scanlon is an attorney in Watertown, New York and a Democratic County Leader. He will discuss the findings of the survey in his area where we were anxious to learn if the pricing pattern was the same for smaller and rural communities. It was. Mr. Scanlon had previously studied drug prices as an employee of the Bureau of the Budget.

5. Assemblyman Stanley Steingut is a distinguished legislator from Brooklyn. He has sponsored legislation to reduce drug prices to the consumer, and he has called for

and arranged for public hearings on this problem in New York State. He will discuss the consumer and legislative aspects of the problem and what might be done at the state level to augment the proposed Federal legislation.

When our joint testimony is completed, I would like to discuss the international price-fixing conspiracy which was uncovered when I worked as a reporter for the New York Herald Tribune. The objective of this conspiracy was twofold: (a) keep generic drugs from being used, and (b) a conscious and organized conspiracy to set prices for drugs.

as The chairman of the Senate Finance Committee has

never been a man to throw the taxpayers' money around,

and Louisiana's Sen. Rustell Long is no exception. The

minority whip, ^{Bayou} ~~Whip~~ ^{draw} takes on as a plaintive wince when he

thinks the government is being over-generous -- especially

when its largesse benefits the nation's drug manufacturers.

High prices for trade-name drugs have him reach for the

aspirin bottle. As Congress sprinted toward adjournment in

1966, he argued on the Senate floor against unlimited tax

~~deductions~~ ^{Federal exemption} for drugs under Medicare because too many people

would buy expensive trade-name products instead of the same

drugs under their generic names for a fraction of the

price.

It was just human nature, Long told the Senate heatedly.

to figure the more costly medicine must be better -- especially

if ~~somebody~~ ^{new} else was paying for it. The Senator ~~stated~~ ^{stated} that,

unforgivably he yawned, because his daddy Easy used to sell

two brands of potent medicine in identical bottles. One

bottle, labeled ^{High Triple-Corona} ~~Triple-Corona~~, sold for a few dollar and

People almost always bought the dollar bottle. Long elapsed.

even though the only difference between ~~the two~~ ^{these} ~~the two~~ was

was early replaced by an evergreen tree and

the saw this ~~from South of~~ pedlar's rack and also by
down the way

441 "Kendall was interviewed by Special Agent [redacted] on 11/10/1964.

UNCLASSIFIED FOR THE DEPARTMENT OF JUSTICE

Since Dr. James Goodard took over at the Food and Drug Administration, the ~~public~~ ^{main arena for} ~~public~~ ^{the public} ~~has~~ ^{has} ~~not~~ ^{not} ~~been~~ ^{been} ~~safe~~ ^{safe} ~~and~~ ^{and} ~~drug~~ ^{drug}

WCD ON 11TH FORTIDAY MAY 1948 PARDON MY OWN STUPIDITY

broodquarters a few blocks away. To give the F-4 the pulse

It needed for the job. However, Ingram took years of patient

labor by Sen. Estes Zeffewer. And the tuncelous Tennessee

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of the Kennedy Administration and Congressional leaders of

that figure was used, upon it, it is noted that

Approved by 1962.

In the spring of 1954, the crew lobby had every reason

I think the Kefauver drug reforms were safely contained and

3
ready for burial. The bill hadn't been killed outright,

of course; it had simply been amended to death on June 6

at a secret meeting in the office of ^(Mississippi's Democratic) Sen. James Eastland,

slow-spoken chairman of the Senate Judiciary Committee.

Eastland wasn't even at the meeting, and neither was the

committee's ranking Republican member, Minority Leader

Everett McKinley Dirksen. But the Illinois ~~Marlin~~ ^{Spillbinder}

^{at last} sent representatives a pair of drug industry lawyers

Mart Hornblower and Lloyd Cutler, who ~~presented a series~~ ^{presented a series}

amendments that left the Kefauver bill ~~unchanged~~ ^{unchanged}

^{as Health, Education and Welfare legislation which was presented to the Kennedy}

^{Senators, an Administration move at the meeting, was}

^{got a long look at} ^(the Kefauver bill) ^{by a copy of the drug lobby's proposals that the lawyers had left}

behind. Later, Dirksen offered precisely the same amendments,

word for word, to the Kefauver bill.

By August, however, the sanguinary temper of the nation

had changed drastically in favor of drug reform. Newspaper

stories and ^{unforgettable} pictures of ~~deformed~~ ^{deformed} babies whose mothers

had taken thalidomide during pregnancy broke through the

measured defenses of the drug lobby and aroused ~~the~~ ^{public}

insert
p. 34 35

As originally drafted, the bill put drug plants under Federal regulating supervision and sharply limited the claims drug manufacturers could make for their latest miracles until they had been through thoroughly tested. It also required the labeling of prescription drugs by generic name as well as trade name, so careful buyers could shop around for the best buy on a drug that might be sold by half a dozen manufacturers, each with a high trade name of his own devising.

President John Kennedy had written a strong letter urging adoption of the Kefauver bill and Eastland was supposed to be pushing it for the White House. But the Judiciary chairman said he didn't have the voice to report the bill intact to the Senate floor, and he was allowed to run out feelers to Dirksen on the possibility of compromise. Bonosky was asked to defend the Administration's position; Dirksen sent the drug industry's lawyers. Apparently it didn't occur to anybody to ask Kefauver, who had ^{spent more than} ~~waited~~ two years of a life that was to be cruelly shortening shortening maneuvering to get

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a strong drug reform bill on the Senate floor where the vote could plainly see how their representatives lined up on the issue.

The compromise bill that came out of the June meeting in Eastland's office left nobody entirely satisfied. The drug people wanted no bill at all, of course. Sonosky wanted a ~~28~~ stronger one and refused a firm endorsement for the one he was able to get. Eastland warned privately that anything stronger would never get out of his committee. Kefauver ~~who has finally found out about them~~ himself was appalled by the amendments. He told White House aide Mike Feldman he would rather have let the committee bottle up the bill and then take the issue to the voters in the

March November election.

END INSERT

outcry rarely paralleled in legislative history. Dirksen, ~~who was up for re-election that November, back-pedaled~~ furiously from his covert two-year campaign against drug reform. Eastland started telling critics he, not Dirksen, was responsible for it; inviting Hornblower and Cutler to the secret June meeting, and when the Judiciary Committee met Dirksen sat with folded hands and it left the drug industry's defense to Sens. John McClellan, the Arkansas Democrat, and Roman Hruska, the Nebraska Republican. They didn't have to go before the voters that fall.

Still the drug industry wasn't ready to give up. When the fight over the Kefauver bill was carried to the House, ~~its passage was a foregone conclusion. But the lobbyists were ready with an amendment that would have~~ sapied the government's power to regulate drug advertising.

The House Committee on Interstate and Foreign Commerce had accepted the amendment on the recommendation of Rep. J.

~~Arthur Younger, an elected California Republican. Younger hadn't written the amendment, though; it had been handed to him by a pretense Republican Congressman~~ ~~from New Jersey, Harry~~

Towe, who had stayed in Washington to lobby for the drug industry after leaving Capitol Hill. ^{An} ~~Spokane~~ industry bulletin called the Pink Sheet rejoiced over the committee's acceptance of the amendment on Sept. 21 and thumped Towe and on the back editorially: "The biggest job of all was done by former Rep. Harry E. Towe, a ^{W.J.} ~~W.J.~~ GOP-er, who represented Medical Economics a trade journal that derives ^{most of its} ~~income~~ from drug advertising and was credited with the house committee language taking Rx drug advertising off the Senate hook."

When the bill reached the House floor on Sept. 26, Towe was ~~there~~ there to help keep his troops in line. So was another ex-Congressman, Joseph O'Hara, although former members are specifically barred from the House floor when they have an interest in ^{the matter under consideration, by} ~~pending legislation~~, under a rule dating back to the Civil War. ~~Under~~ Rep. Charles Dingell, a liberal Democrat from Michigan's automobile belt, ~~shook~~ chuckled ^{tolerantly} ~~when he saw them~~. Nudging a colleague next to him, he said: "Look at those two. They're covering this place like a carpet."

Ordinarily ~~Harold~~ Towe and O'Hara could have stayed home and congratulated themselves, for the House rarely overrules its committees' decisions. But this was no ordinary bill, and Towe's hand-tailored amendment quickly came under attack from Kefauver's allies. When Younger was named as the amendment's sponsor, he disowned it on the floor. With ~~supporters~~ ^{supporters} like that, Towe might have wondered, who needs opponents? The industry's scurrilous language was rejected and Kefauver got his bill.

The drug manufacturers took their loss gracefully.

However, so far as Ev Dirksen was concerned. Although he hadn't been able to save him from the FDA, they realized ~~he did the best he could~~ ^{had done} -- and they showed their appreciation at campaign time. In his 1962 campaign against Illinois Rep.

Sid Yates, Dirksen all listed contributions of \$92,004.11

from all sources in his report filed with the Secretary of

the Senate. Well over five per cent of that came ~~from nine~~ ^{from nine} ~~fat cats with vital interests in the drug industry~~ ^{fat cats with vital interests in the drug industry} ~~Dirksen's~~ ^{Dirksen's} ~~campaign donor rolls~~ ^{campaign donor rolls} ~~\$1,000 each from J.K. Olin and Spencer T.~~ ^{\$250,000 more}

Olin, whose Olin Kathiesen Chemical Corp. controls E.R. Squibb & Sons, and another \$1,000 from D. Reid Johnson of Reid Johnson & Co.; \$500 ^(each) from Alfred M. Driscoll, former Republican Governor

of New Jersey and president of Warner-Lambert Pharmaceutical Research Corporation, and from John O. Searle; \$400 each from three other members of the G.D. Searle & Co. Searle,

William L. Searle, Daniel G. Searle and ^(Mrs.) Suzanne Searle Dixon; and his comparatively stingy \$750 from E. Clifford Upjohn

of the Upjohn Co. Total from nine contributors: \$5,450.

Not bad for an off-year election, but the drug companies were used to spending their money where it would do them the most good. In the Presidential election year 1956, Senate investigators discovered, Olin Kathiesen spent executives alone channeled \$100,750 into the 1956 campaign chests of GOP candidates from President Eisenhower down to the lowest rider on Ike's coalition. J.M. Olin and his wife put up \$14,950 of that between them, but Spencer Olin topped them easily when all the reports were tallied. His pharmaceutical share of the 1956 campaign rose to \$34,600.

Express the weight of a fat cat contributor on this scale.

that it will not even occur to him the conflict of interest

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before election day. One of IV Dicksen's Kidventern helpers,

Senator's Son-in-Law, Richard Roudsush, has Involved Lord

apart from the fact that the evidence is not in the hands of the police.

we need to find a method for getting into "young

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WASHINGTON, D.C. 20535

are to know whether American drug executives have

care, I care much, and he doesn't care much.

"- There is that possibility," he conceded, but to his

and a finding there, no conflict of interest in that it

of patients with congestive heart failure.

[illegible]

“*It is a pleasure to have you here, and I hope you will find the trip well worth the effort.*”

THESE RESULTS ARE IN ACCORD WITH THE CONCLUSIONS OF THE PREVIOUS STUDIES.

It is noted that the increase from 11 might be 1232

• **DO NOT TAKE ANY MEDICATIONS WITHOUT YOUR DOCTOR'S PERMISSION**

Butterfield is the Congressman whose voting convictions
have to match those of a fat cat contributor on this scale.
Butterfield doesn't even occur to him that conflict of interest
may have the money that comes in ~~influx~~ during the few weeks
before election day. One of Ev Dirksen's Midwestern neighbors,
William W. Roudebush Rep. Richard Roudebush, has inveighed loud
and long against the purchase of ~~cheap foreign~~ drugs made
abroad, even though the foreign product is just as good as
the American-made stuff and usually much cheaper. Roudebush
says he doesn't know whether American drug executives have
contributed to his campaign or not, and he doesn't care much.
"I suppose there is that possibility," he concedes, but to his
way of thinking there's no conflict of interest in taking it.
Conflict arises only if a legislator gets involved in
promotion or casting of a vote on legislation that would
benefit him individually." Roudebush says he owns no
any company stock, which might be a potential source
of ~~contribution~~ ^{be there?} ~~income~~ ^{income} from it might be ~~large~~
smaller than any one big-league campaign contribution.

stalwart and a Presidential crony, would help preserve the status quo. And just in case, however, the Phillip Morris Co. -- one of the industry's six biggest cigarette makers -- didn't retain the prestigious Washington law firm of Arnold, Fortas & Porter. Abe Fortas, who got second billing in the firm until the President installed him on the ^{Supreme} Court bench, had never been a Congressman, but he was one of the LBJ's most trusted personal advisers, and the tobacco industry doesn't believe in taking chances -- except with smokers' health.

Benevolent neutrality was all the industry wanted from

the President, but from Congress it ^{asked} wanted something more

negative: a flat prohibition on ^{FTC} regulation of cigarette ^{advertising.} ~~a bill pre-empting for Congress the right to regulate~~

~~cigarette-advertising~~ ^{the} ~~targeting~~ ^{the} tobacco companies

were ^(even) willing to put a warning label on their cigarette packs

-- the smaller the better, of course -- if that would buy

them immunity from FTC supervision. What they were not willing

prepared to accept, under any ^{circumstances} ~~circumstances~~, was a warning in

^(even if Congress should it with the FTC) ~~By meddling with that act,~~ ^{By meddling with that act,} ~~the chairman~~ ^{the chairman} of the N.J. Reynolds Tobacco Co., Congress and the FCC would

the right to ~~advertise~~ ^{advertise} -- an essential

constitutional right." Like freedom of the press, apparently.

The industry had a lot going for it so far as Congress

was concerned. In the House, the whole regulatory question

fell under the jurisdiction of the ~~Interstate~~ ^{Interstate} and Foreign

Commerce Committee, headed by Arkansas's Rep. Cren Harris.

Sen. Warren Magnuson's Commerce Committee would deal

with it in the Senate. ~~These committees~~ ^{These committees} often seem to regard the

independent regulatory agencies as a necessary evil -- an

irritant shared by any Congressman who ever tried to apply

a little pressure to one for a constituent. And since every

member of Congress has to get a bill through one of

those committees from time to time, their recommendations on

legislation are ~~often reversed~~ ^{rarely reversed} on the floor of either house.

Not of all, the ~~most~~ ^{most} Southerners and conservatives behind

Harris' ~~committee~~ ^{committee} could probably be counted on to ~~block~~ ^{block}

it ~~even~~ ^{at} the line with the ~~industry's position~~ ^{industry's position} that the FTC should be barred forever from

~~issuing~~ ^{issuing} health warnings in cigarette ads.

In Magnuson's Senate committee, however, the matters were

tobacco touchier. Two of the most determined consumer protectionists in Congress sat at the committee table with

the Washington Democrat, ~~Democratic Sen. Maurine Neuberger of~~ ^{Democratic Sen. Maurine}

Oregon and Philip Hart of Michigan. And Mrs. Neuberger's

husband, a heavy smoker, had died of lung cancer four years.

earlier, leaving a Senate vacancy that his wife was quickly elected to fill.

Against this, however, the industry could muster count as all six of the Republicans on the 18-member committee.

Sen. Tarleton Horton, who used to head the Republican National Committee, ^{would protect} ~~and~~ his tobacco-curing Kentucky constituents.

and as chairman of the GOP's Senate campaign committee he didn't even have to remind the other Republicans that he

controlled thousands of these dollars they needed would need when they ran for re-election. ^{And one of the committee's} ~~Chairman~~

^{12 Democrats, Sen. Ross Bess} ~~Democrats~~ of Tennessee, had his own tobacco growers ~~for~~ looking over his shoulder.

Unexpectedly, Sen. Vance Hartke of Indiana not only lined up with Ross Bess and the Republicans but took the lead in

the counterattack on the FTC. It had nothing to do with his old friend Earle Clements, according to his staff, or him with the 1944 campaign money Hartke had received from the Senate's Democratic campaign committee when Clements was its chairman. Hartke just didn't think the committee hearings, coming on top of the Surgeon General's damning report, had proved any connection between smoking and cancer.

Whatever his reasons, it was Hartke who offered the hard-line amendment that would have barred ^{forever} regulation of cigarette advertising either by the FTC or by the states and localities which already impose a crazy-quilt pattern of taxes on cigarettes. Mrs. Neuberger wanted to do just the opposite, but the committee had already skewered her bill specifically empowering the FTC to require a health warning in ads. ^{(whose names Washington voters were} ~~Washington, D.C. XXXXXXXXXXXXXXXXXXXXXXX~~ ^{also} a long way from the tobacco country, wouldn't go along with Hartke on a permanent suspension of the FTC's regulatory power, but he offered a three-year moratorium. Dan countered with a plan to send keep the commission out for five years.

Rhode Island's Mild John Pastore moved to table Bass's anti
 "compromise."

On this key vote, Kentucky's Norton held the promise of
 all five of his Republican colleagues on the committee. Lined
 up along with him were Bass and Hartke and a third Democrat,
 Alaska's Sen. Bob Bartlett. That made nine votes against
 tabling and only eight -- in the absence of Ohio's Sen. Frank
 Lausche -- in favor. Clearly the tobacco bloc had the votes
 to suspend FTC regulation of the industry for at least five
 years. But for tactical reasons Norton and the cigarette
 companies didn't want to flout again the chairman's wishes
 openly.

"Maggie, we don't want to go to the floor divided,"
 Norton coaxed. But "We'll give you four years." The Washington
 Democrat was adamant. But "All right," sighed Bass. "We'll
 give you three years."

That was enough for Magnuson. He got up, walked out of
 the committee room and informed reporters his amendment had
 been "unanimously" adopted. On the Senate floor, Mr.

Neuberger tried again to get the moratorium reduced, but her amendment was beaten back and the Senate passed the bill with only five dissenting votes.

On the House side of the Capitol, the tobacco industry had industry's campaign was running even more smoothly. Orrin Harris's Commerce Committee had pre-empted cigarette advertising from the FTC's jurisdiction permanently, over the loud objections of California's Democratic Rep. John E. Moss.

Normally on controversial bills the House leadership gives opponents an opportunity to make their case for the record,

and as one of his party's assistant whips Moss expected that

to be granted that courtesy. But the bill was called up for

a vote with no ^{advance} prior notice one afternoon when Moss was out

of the country, having been assured by the leadership

that ^{the bill} it wouldn't be introduced put to a vote before he got back.

He was still half an hour from touchdown at Dulles International

Airport when the bill passed on a voice vote, ^{but the lobbyists} ~~without a dissenting vote~~

and the lobbyists who maneuvered the bill through Congress were in

the gallery to make watch the fun.

When the Senate and House conferees finally got together to work out the differences between their bills, Magnuson held firm on all but two points. Harris refused to accept the Senate's requirement that the warning label must be on the front of the cigarette pack. And the House insisted that the three-year suspension of FTC regulatory power must be extended another six months. That will give Congress time to consider another possible extension after the 1968 elections rather than before then.

In the long run, however, ~~taxpayers~~ ^{the anti-public health} ~~taxpayers~~ ^{lobbies} are fighting a losing battle, and no one knows it better than the American Medical Association, which won every Medicare battle except the last. To get around the law against political activity by tax-exempt organizations, the AMA took a leaf from organized labor's book and organized the American Medical Political Action Committee along the lines of the AFL-CIO-backed Committee on Political Education -- but with different ends in view. AMPAC's nonpolitical veneer cracked badly as the start when the AMA picked five Republican doctors to run it.

then hastily added five ~~hundred~~ conservative Democrats. In 1962 ACPAC XXXX squeezed an estimated \$3 million out of the nation's affluent healers to support candidates who could be counted on to vote against Medicare where it counted. In the House, that meant the Ways and Means Committee, ^{and} ~~a dozen~~ members of it who had either demonstrated their animosity toward Medicare now or stayed on the fence were handsomely rewarded. Committee Chairman Wilbur Mills didn't take the money, perhaps because he had no opposition in the general election.

Altogether the ACPAC's money went to about ~~thirty~~ 50 House candidates and four Senatorial races, and similar state committees ~~summed~~ gave transfusions to such favorite ^{Indiana's Republican} ~~senators~~ as Sen. Homer Cayrehart, who was toppled that November by Democrat Birch Bayh. Some of the other ACPAC contributions went to lost causes because the doctors couldn't resist helping the opponents of ^{Connecticut Democrat} Abraham Ribicoff, who had promoted Medicare discreetly as Secretary of Health, Education and Welfare, and California's Democratic Rep. Cecil King, whose name was on