COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY

TUESDAY, SEPTEMBER 17, 1968

U.S. SENATE,
MONOPOLY SUBCOMMITTEE OF THE
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:40 a.m., in room 318, Old Senate Office Building, Senator Gaylord, P. Nelson (chairman of the subcommittee) presiding.

Present: Senator Nelson.

Also present: Benjamin Gordon, staff economist; James H. Grossman, minority counsel; Elaine C. Dye, research assistant; and William B. Cherkasky, legislative director, staff of Senator Nelson.

Senator NELSON. Today the Monopoly Subcommitee of the Senate Small Business Committee resumes hearings first begun in May 1967 as part of its study of the pharmaceutical industry.

Our primary concern, during the next 4 days of hearings,[1] will be to explore the impact of the drug manufacturers' salesmen, commonly called detail men, upon the prescribing practices of the physician.

A study which appeared in the Canadian Medical Journal in April 1968, the American Medical Association's study conducted some years ago, and testimony before our subcommittee indicated that oral statements by drug manufacturers' detail men, who contact physicians directly, are the most potent force in promoting the use of drugs. Mr. William Goodrich, FDA's Chief Counsel, feels that the FDA has authority over the claims made by detail men under the labeling provisions of the Food, Drug, and Cosmetic Act. The American Law Division of the Library of Congress has a different opinion which I shall insert at the appropriate place in the written proceedings of these hearings.[2]

While section 502 of the act (21 U.S.C. 352) gives the FDA authority over written advertisements, it is not clear whether or not FDA has authority over oral representations. In any case, it would be extremely difficult, if not impractical, to monitor what thousands of detail men say to physicians.

Hence, it is difficult to avoid the conclusion that the representations of the detail men, the most important source of information for the physician, are outside the practical application of our food and drug laws.

How, then, is the public to be protected?

Can salesmen, representing commercial drug interests, be expected to act in the interests of the public?

[1] Testimony for September 18, 19, and 25, 1968, appears in Competitive Problems in the Drug Industry, Part 9.
[2] See p. 3517, infra.