

You are not dealing with facts or realities.

We do not convict people in this country because they may have thought about committing a crime. They must do some sort of overt act before our system permits us to interfere in private relationships. You talked here in terms of tentative conclusions and you say, "The basis on which that trust is founded upon is suspect." And you are asking us, in essence, to take action on suspicion. Perhaps the function of this committee is to provide a record upon which the legislative process can operate. Therefore, I would feel much more comfortable if we could talk in terms of actual realities, if you can demonstrate to me and to this committee that, in fact, we have actual facts, actual activities that really do violate some known principle of our law or where we should create some sort of new concept of law that permits us to take action on these suspicions. I am not at all sure that you have convinced me. I think that to base action on what you have said here troubles me. And I think this troubles a lot of people.

I would like to hear what you think about that.

Mr. BRODKIN. Well, I can only say that it is not a matter of conjecture that we get gifts.

You are certainly convinced that we do.

Mr. DUFFY. That appears very obvious from the testimony here this morning.

Mr. BRODKIN. And it is not a matter of conjecture that much of the practice of prescribing in the United States is by brand names.

You are not troubled by that.

It gives me a great deal of trouble to figure out why that is so, why doctors prescribe by brand names.

Mr. SPIEGEL. Could I make a statement? I would just like to add that the letter that was sent to Eli Lilly was listed an example which I believe in law is considered wrong, and that is if a governmental official who is deciding for a project accepts a bid, he is considered guilty of conflict of interest regardless of whom he gives that contract to. And I believe that the situation we are in is exactly analogous to that.

Mr. GORDON. You may also add, I suppose, the problem of chloramphenicol where, according to our records, millions of people have received it for nonindicated purposes. Also, the question of Panalba as the Chairman mentioned before.

I think that an ample reading of our hearings—10 volumes are printed, and the 11th and 12th are coming up soon—would demonstrate the relationship that you discuss.

Mr. DUFFY. We still, though, get back to the basic question here, is this suspicion or circumstance of doubt something upon which we should act? You say drug companies advertise and you cite that to me as an example. You say they must be doing this for some reason.

A lot of companies advertise. And I submit that they are all doing it for some reason. I would like to know exactly what you are asking us to do?

Mr. BRODKIN. I think several of us would like to answer this point. Let me say that when an advertisement is other than the result of an experiment which shows a specific preparation to be specifically better than another existing preparation, then in the field of medicine and specifically in the field of prescribing drugs, I would say that this advertisement is suspect.