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MISCONDUCT IN FOOD AND DRUG ADMINISTRATION

Mr. LONG of Missouri. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a remarkable article published in the New York Times of this morning, April 30, 1965.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SENATOR SCORES FDA INQUIRIES—BUT AGENCY AID SAYS PANEL LISTENED TO CRACKPOTS

WASHINGTON, April 29.—The chairman of a Senate subcommittee accused the Food and Drug Administration today of wholesale misconduct in the performance of its duties.

Concluding 3 days of public hearings into the agency's use of electronic eavesdropping equipment, Senator Edward V. Long, Democrat of Missouri, who is chairman of the Judiciary Subcommittee on Administrative Practice and Procedure, charged:

"The hearings have revealed police-state tactics ranging from perjured testimony to gain a conviction to abusive law enforcement practices, including intimidation and gross disregard for the constitutional rights guaranteed to all American citizens."

The agency's Commissioner, George P. Larrick, declined to comment, but other agency officials complained that the committee had not sought a balanced picture.

"QUACKS" TESTIFIED

"The committee let well-known quacks and crackpots fill the record with their charges," one agency official said, "but made no effort to test the truth or falsity of what they said."

This official noted that all of those who had testified against the agency were persons or representatives of corporations against whom the agency had taken legal action under the pure food and drug laws—some of them repeatedly over a number of years.

At today's hearing of Dr. Carlton Fredericks, of New York, writer and radio commentator on nutrition, told the inquiry that he had had a running battle with Government regulatory agencies for more than a dozen years, and that the FDA had made a relentless and unabated effort to "suppress" his broadcasts.

Dr. Fredericks said he holds a Ph. D. from New York University but was not a doctor of medicine.

PROSECUTED IN NEW YORK

In 1945, he was convicted in New York City of practicing medicine without a license.

He told the committee today that he had pleaded guilty rather than stand trial and risk the loss of his radio clients.

The record indicates that he also has been involved with two companies prosecuted on charges of misbranding health products.

A part, at least, of Senator Long's ire springs from what he regards a lack of cooperation by the agency in the inquiry.

He is known to have been irritated that some of his letters of inquiry to Anthony J. Celebrezze, Secretary of Health, Education, and Welfare, had been answered by other persons in the Department; that three agency employees in Kansas City, whom the committee wanted to question, had to be subpoenaed, and that the agency had been in supplying the committee with a copy of its agents' manual.

(At this point Mrs. NEUBERGER took the chair as Presiding Officer.)

Mr. LONG of Missouri. This article outlines briefly the last 3 days of hearings we have had before the Subcommittee on Administrative Practice and Procedure with respect to possible invasions of privacy by the Food and Drug Administration.

I am correctly quoted as saying:

The hearings have revealed police-state tactics ranging from perjured testimony to gain a conviction, to abusive law enforcement practices including intimidation and gross disregard for the constitutional rights guaranteed to all American citizens.

The article goes on to state that the agency's Commissioner, George P. Larrick, declined to comment, "but other agency officials complained that the committee had not sought a balanced picture."

Then, we get these statements:

"The committee let well-known quacks and crackpots fill the record with their charges," one agency official said, "but made no effort to test the truth or falsity of what they said."

I think that this performance by the FDA is typical; they whine to the press behind a wall of self-imposed secrecy. They decline official comment to the press, but there seems to be no control over unofficial comment.

This is just the type of thing that so many of our witnesses complained of. I will now take up their charges one by one.

As to a balanced picture, we invited as our opening witness or witnesses Secretary Celebrezze and any FDA officials that he saw fit to send. He saw fit to send Commissioner George P. Larrick, Mr. Winton B. Rankin, Assistant Commissioner, and Mr. Allen E. Rayfield of the Bureau of Field Administration.

After their testimony on the first day, they were invited to stay for the remainder of the 3 days' hearings and, in fact, Messrs. Rankin and Rayfield were present during almost the entire hearings. On a number of occasions they were invited to comment on testimony and did so. On other occasions, they were asked to supply information with respect to testimony, but, unfortunately, were unable to do so on a number of occasions. They were asked to supply material for the record. Certainly, they had every conceivable opportunity to reply to any testimony with which they disagreed. In fact, I think the record will show that Mr. Rankin was the last witness to testify at the hearings.

Now, as to the question of "quacks and crackpots", let me make these comments. The following is a list of all of the non-FDA witnesses.

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of Georgia, Ellis Arnall. My distinguished colleague from Georgia [Mr.

TALMADGE] made the following comments upon introducing Governor Arnall:

Mr. Chairman, I am honored to have the privilege of appearing before you and your distinguished subcommittee this morning to present a distinguished Georgian, the former Governor of my State. I have known Governor Arnall now for some 30 years. At that time, I was a student in the University of Georgia. He was then a member of the Georgia General Assembly and served as speaker pro tem of the house of representatives. Subsequent thereto he was elected attorney general of the State, also served as Governor of the State. He held both offices with distinction.

Since that time he has represented this country in various important positions—as Director of the Office of Price Administration. He serves now, I believe, on the Committee of UNESCO for the United Nations.

He is engaged in the private practice of law at the present time.

He is one of my State's most outstanding lawyers.

I am honored to present him to you and to this distinguished committee.

I do not know who the unnamed FDA official in the New York Times report is, and I will probably never find out, but it would be interesting to know into which category, "quack" or "crackpot," he places this distinguished citizen.

The next non-Government witness was Mr. Kirkpatrick W. Dilling, well-known Chicago attorney. As he is not a medical man, it would seem that FDA would brand him a "crackpot." It seems to be a habit of FDA to so brand those who might oppose its official dogma and Mr. Dilling might well fit into this category because, as defense attorney in a number of FDA cases, he has vigorously opposed FDA on behalf of his clients. This is a cardinal sin.

The next witnesses were Messrs. Oscar H. Brinkman and Wayne Rohrer on behalf of the Church of Scientology.

I ask unanimous consent to have printed in the RECORD at this point a full biography of Mr. Brinkman, who has had a distinguished legal career in Washington for over 40 years.

There being no objection, the biography was ordered to be printed in the RECORD, as follows:

BIOGRAPHY OF OSCAR H. BRINKMAN, ATTORNEY FOR FOUNDING CHURCH OF SCIENTOLOGY, WASHINGTON, D.C.

Engaged in the general practice of the law with office in the Warner Building, suite 957, 501 13th Street, NW., Washington, D.C.

Legal education (after public schools): Kansas City School of Law, Kansas City, Mo. (LL.B. 1920), and previously attended Georgetown University College of Law, Washington, D.C., (Kansas City School of Law was merged with University of Kansas City and is now part of the University of Missouri in Kansas City.)

Admitted to bar in Missouri in 1920 and practiced law there, and later admitted to the State bar in Massachusetts, and the Federal bar in Massachusetts and the District of Columbia, also a member of the bar of the U.S. Supreme Court. Practiced

law over a period of 45 years in Kansas City, Boston, and Washington, D.C. Counsel to the Founding Church of Scientology, as attorney in its organization and incorporation. (Not a member of the church.)

Served as counsel to three committees of the U.S. Senate in various investigations relating to the sale of securities, the rental situation in the District of Columbia, the fraudulent practices in real estate mortgages and foreclosures, and unfair labor practices by employers. Drafted bill for the regulation of security sales in the District of Columbia (passed by the Senate), and also assisted in obtaining legislation to regulate foreclosures on homes in the District of Columbia.

Served as regional attorney for the Interstate Commerce Commission in the six New England States, prosecuting cases under the Motor Carriers Act.

Served as trial and appeals attorney for the National Labor Relations Board.

Other activities: Editor of Babson's Washington Forecast (weekly business newsletter), 1944-52; editor, Business Digest & Forecast (business newsletter), 1954 to present time.

Author: "America's Choice: Freedom or Slavery" (1965); also numerous magazine and newspaper articles on business and political subjects.

Married 50 years; wife and two married daughters.

Homes: Arlington, Va., and Wellesley, Mass.

Mr. LONG of Missouri. Mr. Rohrer is an ordained minister in the Church of Scientology, which is specifically licensed as a church by the government of the District of Columbia.

The next witness was Mr. Irwin L. Hubbard, president, American Dietetics Co., Inc., New York City. His "sin" was to find a hidden tape recorder in the brief case of an FDA agent who was, without color of law, attempting to entrap Mr. Hubbard into possibly incriminating statements. As a result of the Hubbard case, FDA "outlawed" the use of tape recorders in factory inspections. As I said, Mr. Hubbard's "sin" was discovering their use which made outlawing them necessary.

I might add parenthetically that there is sworn testimony in our record to indicate that the practice has continued after the "outlawing," even though some of the FDA witnesses testified to the contrary.

The last witness was Dr. Carlton Fredericks, a well-known health lecturer and nutritionist. He holds a Ph. D. in Public Health Education from New York University. He also taught this subject at New York University and has been a nationwide broadcaster on health subjects for 25 years. I would guess that the unnamed FDA official would brand him both a "quack" and a "crackpot," as he has long fought in favor of food supplements—vitamins and nutrients—which FDA has branded as unnecessary and which it has vigorously tried to take off the market.

There are complaints by the same faceless FDA official that we did not attempt to "test the truth or falsity of what they said." In this regard, I might say that each witness was sworn before testifying. Each witness was asked to supply documents and other evidence to substantiate their charges; each did supply the subcommittee with such evidence.

Although I did not have much difficulty with the validity of statements by non-Government witnesses, I certainly had difficulty with a number of statements by Government witnesses. The most remarkable of these was that from Mr. Rayfield when asked about tape recording of "spiels" of drug company salesmen, he said that it was unnecessary and—

As far as I have been able to learn—and we have not run across a single employee of a drug company who has made representations for his firm's products that were exorbitant or exaggerated.

It is inconceivable to me that with all of the trouble we have had with the side effects of such dangerous drugs as Chloromycetin, MER-29, and Thalidomide—to name just a few—that not a single doctor in the United States would have ever sent one complaint to FDA about an exaggerated claim by a single one of the 15,000 drug salesmen. I believe if Mr. Rayfield will check FDA's own files, he will find many, many such letters.

And, speaking of validity of testimony, and truth and falsity, let me read to you what a Federal judge said of one of our FDA witnesses when he testified in a recent case before the judge:

I am greatly concerned about the method of enforcement used by Agent Schreiber, coupled with his testimony on the stand wherein he did without qualification volunteer the evidence that a factory inspection of February 19, 1964, was a routine inspection, that he did not know of any contemplated criminal proceeding. In his written memo directed to make the inspection it expressly stated that criminal proceedings were contemplated, and he was to make further investigation in aid thereto, which poses the pointed question of whether or not the court should overlook any perjury by a Government agent hired to enforce the law.

Now that is a question I think that is going to have to be submitted to a Federal grand jury. That cannot go unchallenged. I do not like to get any young fellow in trouble. But, on the other hand, the public is entitled to be protected against the overzeal of any agent, and the desire of an agent to make a case, even perjuring to the extent that he can make a case. That is the way the matter is presented at this juncture of this hearing.

Now you have been all through the hearing, Dr. Kramer. Do you disagree with that Statement?

Dr. Kramer was another of the FDA representatives.

Dr. KRAMER. No, I cannot disagree with the statement because I think you are calling it exactly as it occurred.

Madam President, I should like to repeat what I said at the close of these hearings.

We have had startling and shocking disclosures during these last 3 days of hearings. The hearings have revealed police-state tactics ranging from perjured testimony to gain a conviction, to abusive law enforcement practices including intimidation and gross disregard for the constitutional rights guaranteed to all American citizens by the first, fourth, fifth, and sixth amendments. In short, an agency of the Federal Government has been accused of attempting to gain convictions at any cost.

Prior to the commencement of these hearings, this same agency saw fit to be uncooperative, misleading, and evasive with this subcommittee.

The unfortunate ramifications of such conduct on the part of a Federal agency are overwhelming. The Food and Drug Administration is charged with an onerous responsibility—that of protecting this Nation's health. Instead of shouldering this heavy responsibility, we find the agency engaged in bizarre and juvenile games of cops and robbers. Instead of a guardian of the national health, we find an agency which is police-oriented, which is bent on prosecutions and convictions, totally indifferent to individuals' rights, and bent on using snooping gear to pry and invade the citizen's right of privacy.

I sincerely regret having to make these remarks. I am sure there are responsible employees working for the Food and Drug Administration who deplore such practices. Such employees know, as do others, including the Senate, the necessity for strong, vigorous, and intelligent enforcement of the laws concerning the food we eat and the drugs we take. Bugging schoolteachers, raiding churches, harassing honest and loyal businessmen, and generally spending the time of Government employees and the money of the taxpayers on such silly and juvenile investigations is an unconscionable waste. Using the awesome power of the Federal Government against the defenseless or hard-pressed private citizen without regard for his reputation, feelings, or ideas is affront to the inveterate and sacred principles of this country.

We have learned that, according to the Food and Drug Administration gospel, only quacks prescribe and only dupes take vitamin and nutrient pills.

The Food and Drug Administration notwithstanding, millions of Americans, including me, think we feel better and have more pep when we take One-a-Day vitamin pills.

Maybe we and our doctors are wrong I do not think so; but, even if we are the pills at worst are admittedly harmless.

In my view, Congress never intended the Food and Drug Administration to arrogate to itself the power to tell Americans what foods to eat or whether or not they should take vitamin or nutrient supplements.

Nor did the Congress intend to give the Food and Drug Administration power to tell people what kind of religion to practice, or what church to attend, or what money they should pay to any church or in what form. I do not know much about Scientology, but if it helps its believers lead better lives, I am for it.

In any event, it is no business of the Food and Drug Administration to interfere with any religion.

These are invasions of privacy of the worst sort.

If the Food and Drug Administration would spend a little less time and effort on religions, small manufacturers of vitamins, and milk substitutes, and a little more on the large manufacturers of such dangerous drugs as chloromycetin, Mer-29, and thalidomide, the public would be better served.

This subcommittee has no desire to hinder effective law enforcement; but it does mean to assure that law enforcement complies not only with the letter of the Constitution, but also with the spirit of the Constitution so that the promise and opportunity granted by that great document is available to all Americans.

I shall do all in my power to see to it that the abuses we have learned of in the past few days do not recur in the future. It must also be stated that it is the immediate and urgent duty of the Food and Drug officials to acquaint themselves with, as well as to instruct their employees on, the rights of the individual and to learn that in America, the statement that a man is innocent until proven guilty is a credo by which we live and not a worn and tired cliché.