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AIR MAIL  
SPECIAL DELIVERY

TO: Janet Brown  
Donald J. Cohn  
Edward J. Cooke, Jr.  
Edwin J. Jacob

I enclose herewith a draft of a letter which I propose to send to Senator Brewster at the direction of General Counsel. If you have any comments or suggestions, I would appreciate your calling me at the Madison Hotel or the Tobacco Institute in Washington as quickly as you have been able to look at it.

Sincerely,



David R. Hardy

DRH/v

Enc.

Hon. Daniel B. Brewster  
United States Senator  
United States Senate  
Washington, D. C.

Dear Senator Brewster:

Your letter of August 3, 1967 with the enclosed questionnaire addressed to at least some of the doctors and scientific witnesses who testified or filed statements in the Senate Commerce Committee Cigarette Labeling and Advertising Hearings in 1965 has come to my attention.

You may recall that I had lunch at the Capitol with you and several other Senators in 1965 before the Hearings had begun. I was introduced to you by Senator Earle C. Clements as a lawyer representing the cigarette industry who had responsibility in arranging for the statements and testimony before the Commerce Committee of some of the outstanding doctors and scientists who did not believe that cigarette smoking had been scientifically proved to cause lung cancer or other diseases. The purpose of my being invited to the luncheon was to briefly outline the substance of the testimony we expected would be given and to tell you of the prominence and quality of the witnesses that we had asked to testify. Although you left the luncheon early to keep another engagement, I am sure that you did know the reason for my being there, since you expressed regret at having to leave before I had the chance to speak. For this reason, it seems most probable to me that if you were genuinely seeking information as to any "arrangements" between representatives of cigarette manufacturers and medical or scientific witnesses, you would have directed your inquiry to me either directly or through Senator Clements.

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Thus, your letter and questionnaire directed to individual witnesses could well be interpreted as only harrassment since they clearly imply that you suspect these outstanding professional men of having done something improper. This seems even more likely when it is noted that you sent your letter and questionnaire to some doctors whose statements and testimony to the Committee were that they were not being compensated. Could you have thought that they were testifying falsely? I cannot help but wonder whether you have made similar inquiry of witnesses who testified that cigarettes are hazardous to health, or whether you just limited your inquiry to those who declined to join the emotional, anti-cigarette crusade?

Although you have not asked information from me or anyone else connected with the cigarette industry, I would like to give you some facts. I am a practicing lawyer in Kansas City, Missouri, and for a number of years have represented several cigarette companies in litigation and in other matters. Other lawyers who are members of law firms in New York City have been similarly engaged, and we have worked together from time to time. When the cigarette industry came under direct attack in Congress, we were asked by our clients <sup>confer with</sup> to ~~contact~~ outstanding doctors, statisticians and scientists who <sup>did not believe</sup> ~~recognized~~ that cigarette smoking had ~~not~~ been proved to be a cause of lung cancer and other diseases, and to ask some of them to prepare statements, and if possible, to appear in person and express their views to the Commerce Committee at its Hearings. It was my responsibility to coordinate the efforts of these lawyers to the end that the witnesses would not be excessive in number so as to impose upon the valuable time of members of the Commerce Committee; would be of

high caliber with unimpeachable integrity; and would be balanced in number among the various disciplines or specialties which are concerned with disease causation. We carried out our responsibility to the best of our ability and in accordance with the highest standards of professional ethics. We, of course, could not, would not, and did not rely on the charity of expert witnesses to come forth voluntarily and at a substantial loss of time and money to help an industry under attack in which they had no personal interest. We knew, as I am sure that you know, both as a Senator and as a lawyer, that it was perfectly ethical and proper to engage experts and to offer or expect to pay their usual professional charges for necessary time expended at our request. This is the procedure we followed. We had ~~first~~ <sup>first</sup> to learn a doctor's views before deciding whether to ask him to prepare a statement or testify, and of course, this alone would remove any possibility of his views being influenced by promises of reward as you seem to imply. Secondly, we did not discuss the amount of compensation to be received with any of them. However, whether expressed by us or not, we did expect to compensate these doctors for their professional time spent at our request on the basis of their usual rates and to reimburse them for their necessary expenses. Such procedure is universal in matters of this kind, and I am sure you must have followed it many times in your law practice in legislative, administrative and judicial proceedings. Some of the experts did submit statements for their services and expenses while others declined to do so. All of them are doctors and scientists of unimpeachable reputation, qualifications and integrity. They are also professional men of independent thought and commendable courage who took the position in which they believed even though it was contrary to the currently popular thesis that cigarettes cause nearly

every disease known to man.

I sincerely regret that you did not find it possible or convenient to be present personally at the Hearings when these doctors testified, because I am sure that hearing and observing them would have earned for them your respect and admiration, and kept you from sending them a questionnaire which by implication impugns their professional integrity. Neither my clients nor I would have any objection to your knowing all of the detailed facts concerning our dealings with any or all of these witnesses because I assure you there is nothing we wish to hide. I do question the propriety under these circumstances of a member of the United States Senate making inquiry of a doctor or scientist concerning his charges for his professional time. I, therefore, will not divulge such information regarding any one of them unless he or she requests that I do so. I ~~would hope~~ <sup>trust</sup> that, upon serious reflection, you ~~would~~ realize that your questionnaire was at least to that extent unwarranted.

I am sure you must realize that there are many doctors and scientists in the United States who do not subscribe to the theory that smoking has been proved to cause disease, but who themselves receive or who are connected with institutions that receive large financial grants from the Public Health Service and other agencies that are violently anti-cigarettes; and who, therefore, do not feel free to express their views publicly for fear of retaliation. I consider it most regrettable that those who were sufficiently courageous to express their honest views in such a climate have been ~~frustrated by reports and then~~ <sup>subjected to the humiliation</sup> of your letter and questionnaire. Apparently it is difficult for some to believe ~~that~~ anyone could oppose the position of the

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"establishment" except for the promise of financial gain. Fortunately, there still are some men of science who demand proof instead of propaganda in determining the causes of disease.

I hope that your letter and questionnaire were not <sup>very</sup> ~~consciously~~ <sup>deliberately</sup> designed to discourage the fine doctors to whom they went from expressing their views at such future Hearings on this subject as may be held, and were not consciously intended to discourage still others who might otherwise be willing to stand up and be counted in the future. While I am sure that such will be the result to some extent, I sincerely do want to feel that it was not intentional on your part. I hope that you will see your way clear to rectify ~~the~~ <sup>the</sup> situation as much as possible by assuring qualified doctors that they may present their views in your Committee without fear of later harrassment or reprisals.

I am sending a copy of this letter to each of the doctors and scientists who were requested by industry representatives to participate in the Hearings so that they will know of the cigarette industry's regret for any inconvenience or embarrassment that has been brought about as a result of their public demonstration of independence, forthrightness, and scientific integrity.

Yours very truly,

David R. Hardy

DRE/v

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