

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled December 27, 1956, Sworn in on January 2, 1957

UNITED STATES OF AMERICA : Criminal No. 444-57
: :
v. : Grand Jury No. Orig.
: :
PARKE, DAVIS AND COMPANY, G. L., : Vio. 15 U.S.C. 1, 3
WALKER and S. M. DRIPPS :
: Filed: May 2, 1957

I N D I C T M E N T

The Grand Jury Charges:

FIRST COUNT

I

THE DEFENDANTS

1. Parke, Davis and Company (hereinafter referred to as Parke, Davis) is hereby indicted and made a defendant. It is a corporation organized and existing under the laws of the State of Michigan with its principal place of business at Detroit, Michigan.

2. The individuals whose names and addresses are set forth below are hereby indicted and made defendants herein. Each of these individuals is associated with or employed by defendant Parke, Davis and holds the official title or position shown below. Each individual defendant, within the period of time covered by this indictment and within the applicable period of the statute of limitations, has been actively engaged in the management, direction and control of the affairs, policies and acts of the defendant corporation and, in said period, has authorized, ordered or done some or all of the acts constituting the offense hereinafter charged.

<u>Defendant</u>	<u>Address</u>	<u>Title or Position</u>
G. L. Walker	Detroit, Michigan	Vice President
S. M. Dripps	Baltimore, Maryland	Branch Manager

3. The acts alleged in this indictment to have been done by the defendant corporation were authorized, ordered or done by the officers, agents or employees of said corporation, including any officer, agent or employee named as defendants herein.

II

CO-CONSPIRATORS

4. Various drug wholesaling corporations, not made defendants herein, participated as co-conspirators with the defendants in the offense hereinafter charged through their officers, agents and employees who performed acts and made statements in furtherance of said offense. These co-conspirators are sometimes hereinafter referred to collectively as wholesaler co-conspirators and include the following corporations engaged in the business of wholesaling pharmaceutical products in the District of Columbia:

- (a) District Wholesale Drug Corporation - Washington, D. C.
- (b) Washington Wholesale Drug Exchange, Inc. - Washington, D. C.
- (c) The Henry B. Gilpin Company, Inc. - Washington, D. C.

5. Various other persons, firms and corporations not made defendants herein have also participated as co-conspirators with the defendants and wholesaler co-conspirators in the offense hereinafter charged and have performed acts and made statements in furtherance thereof. These co-conspirators are sometimes hereinafter referred to as retailer co-conspirators, and include various retail druggists conducting business in the District of Columbia.

III

DEFINITIONS

6. Wherever any of the following terms shall be used in this indictment it shall be deemed to have the meaning hereinafter defined:

- (a) "Pharmaceutical products" means prescription and non-prescription drugs and medicines, and includes vitamins.
- (b) "Wholesaler" means a person, firm, or corporation purchasing pharmaceutical products for resale to retailers thereof.

(c) "Retailer" means a person, firm, or corporation purchasing pharmaceutical products for resale to ultimate consumers.

IV

NATURE OF TRADE AND COMMERCE

7. The defendant Parke, Davis is one of the country's principal manufacturers and distributors of pharmaceutical products. Parke, Davis has its principal plant for the manufacture of pharmaceutical products in the State of Michigan. It sells and distributes in interstate commerce from said principal plant large quantities of its products to wholesalers and retailers in the District of Columbia, in the State of Virginia, and in the other States of the United States.

8. The defendant has organized branch offices in various sections of the United States through which it sells and distributes its products to wholesalers and retailers. The Baltimore branch office, under the supervision of the home office in Detroit, sells and distributes the products of defendant Parke, Davis to wholesalers and retailers in the District of Columbia, in Virginia, and in other States within its territory.

9. There are two channels utilized by the defendant Parke, Davis to accomplish the sale and distribution of its products to the ultimate consumers in the District of Columbia and in Virginia. One channel leads from the defendant Parke, Davis, through wholesalers, to retailers and thence to consumers. When this channel is used the wholesaler places orders for and receives shipments of the defendant's products from the Baltimore branch office of the defendant or directly from its principal plant in Michigan.

10. The other channel leads from the defendant Parke, Davis directly to retailers, and thence to ultimate consumers. When this channel is used the retailer places orders for and receives shipments of the defendant's products direct from the defendant's Baltimore branch office, or directly from the defendant's principal plant in Michigan. Wholesalers neither

place any charge upon nor receive any profits from these direct sales to the retailers.

11. In selling its pharmaceutical products directly to retailers, defendant Parke, Davis is acting as a wholesaler and competing with wholesalers to whom it sells its pharmaceutical products for resale to retailers.

V

OFFENSE CHARGED

12. Beginning in or about July 1956, the exact date being to the Grand Jury unknown, and continuing thereafter up to and including the date of the return of this indictment, the defendants, the co-conspirators herein named, and others to the Grand Jury unknown, have engaged in an unlawful combination and conspiracy to establish, maintain, enhance, and fix the wholesale and retail prices on pharmaceutical products manufactured by defendant Parke, Davis, in unreasonable restraint of the hereinbefore described trade and commerce within the District of Columbia and between the District of Columbia and the several States, and in violation of Section 3 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. Sec. 3) commonly known as the Sherman Act.

13. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants, co-conspirators and others to the Grand Jury unknown, the substantial terms of which have been and are that they agree:

(a) That on sales of pharmaceutical products manufactured by defendant Parke, Davis the wholesaler co-conspirators and retailer co-conspirators will adhere to resale prices fixed by defendant Parke, Davis;

(b) That the defendants and the wholesaler co-conspirators will refuse to sell pharmaceutical products manufactured by defendant Parke, Davis to retailers who do not agree to adhere to resale prices fixed by defendant Parke, Davis;

(c) That the retailer co-conspirators will not advertise pharmaceutical products manufactured by defendant Parke, Davis at prices lower than the resale prices fixed by defendant Parke, Davis;

(d) That the defendants and the wholesaler co-conspirators will refuse to sell pharmaceutical products manufactured by defendant Parke, Davis to retailers who advertise such products at prices lower than the resale prices fixed by defendant Parke, Davis;

(e) That the defendants will induce, coerce and compel wholesalers not to sell pharmaceutical products manufactured by defendant Parke, Davis to retailers who sell or advertise such products at prices lower than the resale prices fixed by defendant Parke, Davis; and

(f) That defendants and the wholesaler co-conspirators will sell pharmaceutical products manufactured by defendant Parke, Davis only to retailers licensed to fill or dispense prescriptions.

14. During the period of time covered by this indictment and for the purpose of effectuating the aforesaid combination and conspiracy, the defendants and the co-conspirators, by agreement, understanding and concert of action, have done the things which, as hereinbefore alleged, they combined and conspired to do,

VI

EFFECTS

15. The aforesaid combination and conspiracy has had the effects, among others, of:

(a) Forcing consumers to pay high, arbitrary and non-competitive prices for pharmaceutical products manufactured by defendant Parke, Davis; and

(b) Preventing retailers from filling prescriptions for pharmaceutical products manufactured by defendant Parke, Davis.

VII

JURISDICTION AND VENUE

16. The combination and conspiracy hereinbefore alleged has been

entered into and carried out in part within the District of Columbia and within the jurisdiction of this Court. The defendants within the past five years have performed within the said district illegal acts necessary to effectuate and carry out the aforesaid combination and conspiracy.

SECOND COUNT

I

THE DEFENDANTS

17. Each and every allegation contained in paragraph 1 of this indictment is here realleged.

18. S. M. Dripps is hereby indicted and made a defendant herein. This defendant is the manager of the defendant Parke, Davis's Baltimore branch office. Within the period of time covered by this indictment and within the applicable period of the statute of limitations, he has been actively engaged in the management, direction and control of the affairs, policies and acts of the defendant Parke, Davis, and has authorized, ordered or done some or all of the acts constituting the offense hereinafter charged.

19. Each and every allegation contained in paragraph 3 of this indictment is here realleged.

II

THE CO-CONSPIRATOR

20. The Washington Wholesale Drug Exchange, Inc., not made a defendant herein, participated as a co-conspirator in the offense hereinafter charged through its officers, agents and employees who performed acts and made statements in furtherance of said offense.

III

DEFINITIONS: TRADE AND COMMERCE

21. Each and every allegation contained in paragraphs 6, 7, 8, 9, 10, and 11 is here realleged.

IV

OFFENSE CHARGED

22. Beginning in or about October 1955, the exact date being to the Grand Jury unknown, and continuing to and including the date of the

return of this indictment, the defendants and the co-conspirator, together with other persons to the Grand Jury unknown, have engaged in an unlawful combination and conspiracy in unreasonable restraint of the hereinbefore described trade and commerce within the District of Columbia and between the District of Columbia and the several States, and in violation of Section 3 of the Act of Congress of July 2, 1890, as amended (15 U.S.C., Sec. 3) commonly known as the Sherman Act.

23. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and the co-conspirator, the substantial term of which has been and is that they agree that the granting of discounts or dividends to retailers on their purchases from the co-conspirator of pharmaceutical products manufactured by defendant Parke, Davis be discontinued.

24. During the period of time covered by this indictment and for the purpose of effectuating the aforesaid combination and conspiracy, the defendants and the co-conspirator, by agreement, understanding and concert of action, have done the things which, as hereinbefore alleged, they combined and conspired to do.

V

EFFECTS

25. The aforesaid combination and conspiracy has had the effects, among others, of:

(a) Eliminating price competition between defendant Parke, Davis and the co-conspirator.

(b) Denying discounts and dividends to retailers on their purchases from the co-conspirator of pharmaceutical products manufactured by defendant Parke, Davis.

(c) Preventing retailers from passing on to consumers the benefits of discounts on pharmaceutical products manufactured by defendant Parke, Davis.

VI

JURISDICTION AND VENUE

26. Each and every allegation contained in paragraph 16 of this indictment is here realleged.

THIRD COUNT

I

THE DEFENDANTS

27. Each and every allegation contained in this indictment in paragraph number 1 is here realleged.

28. S. M. Dripps is hereby indicted and made a defendant herein. This defendant is the manager of the defendant Parke, Davis's Baltimore branch office. Within the period of time covered by this indictment and within the applicable period of the statute of limitations, he has been actively engaged in the management, direction and control of the affairs, policies and acts of the defendant Parke, Davis, and has authorized, ordered or done some or all of the acts constituting the offense hereinafter charged.

29. Each and every allegation contained in this indictment in paragraph number 3 is here realleged.

II

CO-CONSPIRATORS

30. Various drug wholesaling corporations, not made defendants herein, participated as co-conspirators with the defendants in the offense hereinafter charged through their officers, agents and employees who performed acts and made statements in furtherance of said offense. These co-conspirators are sometimes hereinafter referred to collectively as wholesaler co-conspirators and include the following corporations engaged in the business of wholesaling pharmaceutical products:

- (a) District Wholesale Drug Corporation - Washington, D. C.
- (b) Murray Wholesale Drug Company - Norfolk, Virginia
- (c) Powers-Taylor Drug Company - Richmond, Virginia

31. Various other persons, firms and corporations not made defendants herein, have also participated as co-conspirators with the defendants and wholesaler co-conspirators in the offense hereinafter charged and have performed acts and made statements in furtherance thereof. These co-conspirators are sometimes hereinafter referred to as retailer co-conspirators, and include various retail druggists conducting business in the Richmond, Virginia area.

III

DEFINITIONS: TRADE AND COMMERCE

32. Each and every allegation contained in paragraphs 6 through 11 of this indictment is here realleged.

IV

OFFENSE CHARGED

33. Beginning in or about July 1956, the exact date being to the Grand Jury unknown, and continuing thereafter up to and including the date of the return of this indictment, the defendants, the co-conspirators herein named, and others to the Grand Jury unknown, have been engaged in an unlawful combination and conspiracy to establish, maintain, enhance and fix the wholesale and retail prices on pharmaceutical products manufactured by defendant Parke, Davis, in unreasonable restraint of the hereinbefore described trade and commerce among the several States in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C., Sec. 1) commonly known as the Sherman Act.

34. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants, co-conspirators and others to the Grand Jury unknown, the substantial terms of which have been and are that they agree:

(a) That the sales of pharmaceutical products manufactured by defendant Parke, Davis the wholesaler co-conspirators and retailer co-conspirators will adhere to resale prices fixed by defendant Parke, Davis;

(b) That the defendants and the wholesaler co-conspirators

will refuse to sell pharmaceutical products manufactured by defendant Parke, Davis to retailers who do not agree to adhere to resale prices fixed by defendant Parke, Davis;

(c) That the retailer co-conspirators will not advertise pharmaceutical products manufactured by defendant Parke, Davis at prices lower than the resale prices fixed by defendant Parke, Davis;

(d) That the defendants and the wholesaler co-conspirators will refuse to sell pharmaceutical products manufactured by defendant Parke, Davis to retailers who advertise such products at prices lower than the resale prices fixed by defendant Parke, Davis;

(e) That the defendants will induce, coerce and compel wholesalers not to sell pharmaceutical products manufactured by defendant Parke, Davis to retailers who sell or advertise such products at prices lower than the resale prices fixed by defendant Parke, Davis; and

(f) That defendants and the wholesaler co-conspirators will sell pharmaceutical products manufactured by defendant Parke, Davis only to retailers licensed to fill or dispense prescriptions.

35. Each and every allegation contained in paragraphs 14 through 16 of this indictment is here realleged.

A TRUE BILL.

/s/ D. W. HARBOUR
Foreman

/s/ EDWARD R. KENNEY
EDWARD R. KENNEY

/s/ VICTOR R. HANSEN
VICTOR R. HANSEN
Assistant Attorney General

/s/ HERBERT F. PETERS, JR.
HERBERT F. PETERS, JR.

/s/ WORTH ROWLEY
WORTH ROWLEY
Attorney, Department of Justice

/s/ MARSHALL C. GARDNER
MARSHALL C. GARDNER

/s/ OLIVER GASCH
OLIVER GASCH
United States Attorney

/s/ RICHARD C. SHADYAC
RICHARD C. SHADYAC
Attorneys, Department of Justice