

Lloyd N. Cutler & Henry Rathbun Oral History Interview—6/22/1964
Administrative Information

Creator: Lloyd N. Cutler and Henry Rathbun

Interviewer: Francis J. Hunt DeRosa

Date of Interview: June 22, 1964

Location: Washington D.C.

Length: 23 pages

Biographical Note

Cutler, an adviser on Cuban prisoner exchange and counsel to the Pharmaceutical Association, and Rathbun, Cutler's partner at the law firm of Wilmer, Cutler & Pickering, discuss the pharmaceutical drug industry's role in the Cuban prisoner exchange, the motivations behind their drug contributions, and negotiating a letter of credit to Cuba from the Royal Bank of Canada, among other issues.

Access

Open.

Usage Restrictions

According to the deeds of gift signed April 12, 1971 by Lloyd N. Cutler, and on January 28, 1968 by Henry Rathbun, copyright of these materials has been assigned to the United States Government. Users of these materials are advised to determine the copyright status of any document from which they wish to publish.

Copyright

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excesses of "fair use," that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law. The copyright law extends its protection to unpublished works from the moment of creation in a tangible form. Direct your questions concerning copyright to the reference staff.

Transcript of Oral History Interview

These electronic documents were created from transcripts available in the research room of the John F. Kennedy Library. The transcripts were scanned using optical character recognition and the resulting text files were proofread against the original transcripts. Some formatting changes were made. Page numbers are noted where they would have occurred at the bottoms of the pages of the original transcripts. If researchers have any

concerns about accuracy, they are encouraged to visit the Library and consult the transcripts and the interview recordings.

Suggested Citation

Lloyd N. Cutler and Henry Rathbun, recorded interview by Francis J. Hunt DeRosa, June 22, 1964 (page number), John F. Kennedy Library Oral History Program.

AGREEMENT ON USE OF ORAL HISTORY INTERVIEW TRANSCRIPT

I, Lloyd N. Cutler (name), of Washington, D.C.
 (place), assign to the United States of America
for administration by the John F. Kennedy Library, Inc., all my rights, title
and interest in the tape recording and transcript of the interview conducted
with me at the offices of Wilmer, Cutler & Pickering (place)
by Francis J. Hunt DeRosa (interviewer) on behalf of
the John F. Kennedy Library, on June 22, 1964.

Subject to any conditions specified by me limiting access to those
materials and set forth in writing on the transcript prior to its being
forwarded for the Library, such transcript and recording may be made
available for research, dissemination, reproduction, publication and other
appropriate use, in whole or in part, as determined by the Director of
the Library.

(signed) Lloyd N. Cutler
(Date) Aug 6, 1964

Accepted:

(signed) Wayne L. Brown
(date) January 28, 1965

Oral History Interview Conducted by the

John F. Kennedy Library

with Lloyd N. Cutler

1. The interview transcript may be made available, on an unrestricted basis, to anyone applying to use the resources of the John F. Kennedy Library. (This includes journalists and students as well as professional historians, political scientists and other scholars.)
2. Copies of the interview transcript (or portions thereof) may be made and given, upon request, to all researchers.
3. Copies of the interview transcript may not be deposited for research use in other institutions, such as university libraries, public libraries and other presidential libraries, without my written permission.
4. The interview transcript may not be published (i.e. reproduced or printed for sale to the general public) in whole or in substantial part without my written permission until 25 years from the date of the interview.
5. Researchers may publish brief quotations from the interview transcript (but not the tape) and may paraphrase or cite the text without my permission.

Signed: _____

Lloyd N. Cutler

Date: _____

Apr 12, 1971

Lloyd N. Cutler & Henry Rathbun

Table of Contents

<u>Page</u>	<u>Topic</u>
1	Cuban prisoner exchange ransom
2	Prescription drug industry's role in ransom fulfillment
5	Drug industry's meeting with Robert F. Kennedy about concerns over drug contributions: December 7, 1962
11	Pharmaceutical Manufacturers Association Board of Director's meeting approving drug contributions: December 1962
12	Red Cross and drug distributions
14	Royal Bank of Canada's letter of credit to Cuba: December 13, 1962
18	Changes to Cuba's original drug list
19	Drug industry's motivations behind drug contributions
20	US's support of the drug industry's contributions

Oral History Interview

with

Lloyd N. Cutler and Henry Rathbun

June 22, 1964
Washington D.C.

By Francis J. Hunt DeRosa

For the John F. Kennedy Library

CUTLER: My name is Lloyd Cutler, and the other gentleman you will hear is my partner, Henry Rathbun. Our firm [Wilmer, Cutler & Pickering] acts as counsel for the Pharmaceutical Manufacturers Association, which is the trade association of the drug manufacturers. In October or early November of 1962, Louis Oberdorfer [Louis F. Oberdorfer], Assistant Attorney General, Tax Division, Department of Justice, spoke to me at a dinner about the problem of the ransom. Mr. Oberdorfer and I had been former law partners before he entered

[-1-]

the Justice Department in 1961 and before we ourselves had been acting for the Pharmaceutical Manufacturers Association. Lou told me that negotiations were between Mr. Donovan [James B. Donovan], on behalf of the Cuban Families Committee, and the Castro government [Fidel Castro] for the release of the Bay of Pigs prisoners and that it appeared as the result of those negotiations to date that the release might be negotiated on the basis of contributions of medicines and food to the Castro government. The question Lou put to me was whether the prescription drug industry in our judgment would be willing to participate in the making of such contributions on the drug side. He indicated that any particular governmental problems involved in such contributions, such as tax rulings on the contributions themselves, resolution of antitrust problems, et cetera, could be worked out. He

said that the Attorney General [Robert F. Kennedy] had delegated to him the responsibility of coordinating the government efforts to be of assistance to any manufacturers that were willing to make such contributions,

I told Louis that I would check with our people and then come back. I did check with Dr. Austin Smith [Austin E. Smith], the President of the Pharmaceutical Manufacturers Association, and then with Mr. John Connor [John T. Connor], the President of Merck & Company, one of the principal manufacturers, because I knew that Mr. Connor and Mr. Donovan were friends and Mr. Connor had told me on an

[-2-]

earlier occasion that Mr. Donovan had directly raised the problem with him. I reviewed this earlier history with Mr. Connor and learned that the original approach from Mr. Donovan had been directly to Mr. McKeen [John E. McKeen] of Charles Pfizer & Company, another principal drug manufacturer, and then to Mr. Connor. Mr. Donovan and Mr. Connor had been long-time friends and associates in the Office of Scientific Research and Development as attorneys in World War II.

Mr. Connor told me that both Merck and Pfizer were willing in principle to take part in such a plan to make contributions but that they had felt, particularly in the light of the history of attacks by various governmental quarters on the drug industry during the preceding few years, that any effort of this kind would have to be handled on an industry basis. They thought it was up to Mr. Donovan to approach the industry directly, as an industry, and to make some arrangement to see to it that the various governmental problems involved could be resolved.

After my discussion with Dr. Smith and Mr. Connor, I also consulted Mr. Edward Foley, who had been acting as co-counsel with us, on the problems of the prescription drug industry in the legislative field particularly the long Kefauver-Harris legislative hearings [Estes Kefauver; Oren Harris] that led to the passage of the Drug Industry Amendments of 1962. We also consulted Mr. Eugene Beesley [Eugene N. Beesley], the president of Eli Lilly & Company, another of the principal

[-3-]

manufacturers. Mr. Beesley at that time was Chairman of the Pharmaceutical Manufacturers Association.

We concluded that the industry would be willing to consider a request that contributions of drugs be made, provided that several conditions were first met. First was that we had to be assured by responsible government officials that the proposed contributions for purposes of the ransom were regarded by the government as being in the national interest. We did not want to take upon this industry or the particular companies the burden of making that judgment. We had just gone through a couple of years of very heavy criticism of the industry because of its alleged high profits, because of its alleged misleading advertising and promotional material, and because of its alleged callousness in general to the public interest—criticism which we resented very deeply since most of the companies in this industry pride themselves on the contributions that they have made to the public good. Our

second condition was that while we as representatives of the industry trade association, if that first condition could be satisfied, would be willing to present the request to all of the companies in the industry, we felt that every company would have to make its own individual decision and that the Association could not decide that the entire industry would come forward with contributions. Third, we concluded that there were some tax and antitrust questions to be resolved and that we

[-4 -]

would need prior rulings covering these points. As a result of these discussions, Mr. Foley, Mr. Rathbun, Dr. Smith, and I had some preliminary meetings with Mr. Oberdorfer and some of his assistants. We were then asked to meet with the Attorney General.

I don't recall the exact date, but I think it must have been around the 7th of December. The purpose of this meeting was to comply with my earlier suggestion that it would be necessary to have a responsible officer of the government assure us that the government regarded the contribution program as in the national interest. The meeting was attended by Mr. Beesley, Dr. Smith, and Mr. William Graham [William B. Graham] of Baxter Laboratories, Mr. S.B. Penick [Sydnor B. Penick, Jr.] of S.B. Penick & Company, Mr. Foley, myself, and Mr. Oberdorfer and some of his assistants. The Attorney General began by giving us a very frank and moving account of the Bay of Pigs expedition and its aftermath. He said that the decision had been the President's [John F. Kennedy] and the President was fully responsible for what had happened and that it was one of the mistakes of the Administration for which he took full responsibility, but that the point of immediate importance was that there were some 1,500 prisoners who themselves had acted in a completely gallant and heroic manner and for whom the President and he felt a responsibility. He described the individual heroism of many of the men who were in the camps. He indicated that he

[-5 -]

felt that it was not only a personal responsibility of the two Kennedys, but a responsibility of the government, the government having supported the invasion. He said that although the government felt this responsibility, it was difficult for the government as such to be in the position of paying a ransom for the prisoners, and that the practical solution appeared to be the one that Donovan was trying to negotiate—for voluntary contributions by individual American citizens in order to bring about the ransom. He said that in Mr. Donovan's negotiation the Cuban government had indicated a desire for medicines and foods and asked us as representatives of the prescription drug industry whether we would be willing to come forward to make the contributions. He offered the good offices of the government to do whatever was necessary to assist us by ways of rulings, legal interpretations, et cetera, to accomplish this.

We then said to the Attorney General that we would present this request to our members, but that if we were to go forward even on an individual basis, we felt sure our members would want to have some sort of public assurance that the government regarded the proposed contributions as in the national interest and also that both parties regarded the

contributions as in the national interest. We pointed out that we had just been through a bitter legislative struggle on the 1962 amendments in which our industry

[-6-]

had come under very serious attack and in which the Republican-Southern coalition of senators, the more conservative senators, had believed in the position we were taking and had stood by our industry and that we could hardly risk taking a step in this controversial Cuban area which might be opposed by the very group in the Congress which had fought our battle. Mr. Kennedy said that so far as the government itself was concerned, he felt confident that at the appropriate time the President would make a public statement making clear that he regarded the contributions as being in the national interest. He said that so far as the Republicans were concerned, the subject had been discussed both with former President Eisenhower [Dwight D. Eisenhower] and with Senator Dirksen [Everett M. Dirksen] and that both of them had agreed that the effort to ransom the prisoners through contribution of medicines and food should be made.

We then said that we would need the tax and antitrust rulings which we had earlier described and which Mr. Oberdorfer and we had discussed at previous meetings. We also told Mr. Kennedy that we were terribly concerned about the further problem of public criticism on which we would need some assistance by way of exposition and possibly later by way of defense from the government. This related to the possibility of a charge that the making of these gifts would amount to a windfall for the drug companies.

[-7-]

The problem stated briefly was this. During the legislative hearings of the preceding two years, our industry had been attacked for allegedly high prices and allegedly unreasonably high profits, allegations which we vigorously disputed. Efforts had been made to obtain a compulsory licensing law and to limit the issuance of drug patents for the stated purpose of driving down drug prices and profits, and we had just succeeded in defeating these measures. The making of the gifts under existing tax law would permit us to deduct from our income the value of the drugs that we were giving and to adjust our inventory only by the cost of these drugs. The tax result would be that the gifts would amount to a virtual standoff as far as the companies were concerned, that is, they could be made without out-of-pocket cash loss after taxes. If by so doing we encouraged a good deal of criticism on the ground that our ability to make the gifts without substantial loss showed our prices were too high in relationship to our costs, we would be injuring ourselves very seriously in the legislative fight that we expected to resume in the following year. The Attorney General was sympathetic to our position on this problem. He said that the government would do everything that it could to make clear that the type of tax ruling that we would receive was not a special favor for making the Cuban contributions but was the normal ruling issued to any company under

[-8-]

there circumstances. He also said that the government would preserve the normal confidentiality of the tax returns and the costs and other figures that would go into the returns. The Attorney General also emphasized that while he did feel the contributions were in the national interest, that he did not want us to think that the government was putting any pressure of any kind on the companies. He said that no company which decided after reflecting on the matter that it did not wish to participate had any need to be concerned about any reprisal of any kind either from the Department of Justice or any other part of the government.

DEROSA: Was there much worry regarding disclosure of cost data? This was quite close to the time of the steel industry controversy with the Congress on submitting cost data to congressional committees.

CUTLER: Yes, but our problem was different. Our problem was that we had been very seriously attacked by Senator Kefauver and his committee on the ground that our prices and profits were allegedly so unreasonably high. We didn't think they were. We thought they were very fair and the drug industry return was not out of proportion to the risk that the industry took or the earnings being made by other research-oriented companies that were expanding rapidly. We felt the opportunity to achieve a satisfactory rate of

[-9-]

return had helped to stimulate the discovery of so many valuable new drugs in recent years and that the economic and social value to the public exceeded the prices paid. What concerned us was that the very fact that these gifts, since they could be made by a number of the companies on a standoff basis without any out-of-pocket loss, would be turned against us for the purpose of proving that our prices and our profits were too high. We, on our side, didn't ask the Attorney General for any particular consideration in any extraneous field other than political effect of the ransom contributions that we were discussing at that point. We did say to him we expected the Kefauver compulsory licensing issues to come up again in the future Congress, that the Assistant Attorney General in charge of the Antitrust Division had supported the compulsory licensing principle in the last Congress, and that we did hope to have a fair hearing on those issues within the Department of Justice before the Department took its position one way or the other upon the legislation in the next Congress. We felt that we would get the fair hearing whether or not we made the contributions, and we asked for no particular position by the Attorney General as to whether he would be for or against the legislation after such a hearing. That was the sum and substance of the meeting with the Attorney General, and his attitude and his request did make a favorable impression on the industry official who were present.

[-10-]

We were all deeply concerned with the public relations aspect of the problem and also with the time aspects because of the fact that everyone was trying to accomplish this whole

operation by Christmas. The sheer mechanical difficulties of selecting the drugs, organizing them for shipment, making delivery, et cetera, were enormous.

A meeting of the Board of Directors of the Pharmaceutical Manufacturers was scheduled for the following week in New York. This was a regular meeting, and we decided it would be helpful to have Mr. Oberdorfer and Mr. Donovan come up and make the same presentation there. They did so and the reaction was mixed, I would say. The drug industry is a very diverse industry. It consists of companies that have expanded very rapidly over the last generation or so, companies that are still largely in the control of the original family owners. We had members of the Board present who felt that ransom was immoral in principle, believing in "millions for defense, but not one cent for tribute." We had others who felt strongly that the Bay of Pigs invasion was a great mistake and those responsible for it ought to stew in their own juice. We had others who were deeply concerned that participation would be offensive to various

[-11-]

segments of the American public who might themselves share such feelings. There were a number of people present who just wished that the whole matter had never come up. Certainly, no one in this industry saw the episode as a heaven-sent opportunity either to gain goodwill or to make money for the industry. But after further discussion, influenced particularly, I think, by the Attorney General's statement that he and his brother felt the responsibility here, that whatever happened was not the fault of these prisoners who had acted so heroically, and that the only way to resolve the problem was for private American individuals and organizations to come forward, the presidents of several of the major companies said that they were prepared to contribute, particularly Mr. Beesley of Eli Lilly, Mr. Connor of Merck, Mr. McKeen of Pfizer, and a number of others. In the course of the next day or two, substantially every major company decided that it would participate, and the ranges of participation were roughly in accordance with size, the biggest companies committing in the order of a million to two million worth of drugs at wholesale price value and the others similar amounts in proportion down the line.

I think the biggest gift was in the order of two or three million. We were shooting for a goal, as I recall, in the range of say \$25,000,000 worth of prescription drugs, which we were

[-12-]

able to cover in the next week or so. We then got to the hard problems of the tax and antitrust rulings which I don't think are worth going into here, but all of those were handled to the satisfaction of the industry. It then occurred to some of the industry people that it might be particularly helpful both in the mechanics of delivering the drugs and in the general public relations aspect of the entire matter if arrangements could be made for the contributing drug companies to make their contributions to the American Red Cross and for the Red Cross then to take on the burden of making similar arrangements with the Cuban Red Cross or whatever other entity might be selected in Cuba.

DEROSA: Who thought of this?

CUTLER: I think it was Fred Bartenstein, Vice President of Merck, who was the first to suggest this. All of the companies were accustomed to making contributions of drugs for the purpose of solving various disaster problems such as earthquakes and floods, as they occurred; and these were usually made to the Red Cross so that it was traditional and much more understandable both to the companies and, we thought, to the public itself if these contributions were made sure in the same manner. I mentioned this to Mr. Oberdorfer, and he and Mr. Katzenbach talked about it and thought it was a good idea, and they made the arrangements with Mr. Harriman [E. Roland Harriman] of the Red Cross.

[-13-]

CUTLER: From there on in we were concerned primarily with the mechanics of organizing the deliveries, getting the rulings, and solving various other legal and physical problems as they arose.

RATHBUN: By the afternoon of Thursday, December 13, Mr. Donovan had concluded that for the drugs which were not to be delivered in the first installment at the time the prisoners were to be released, Mr. Castro would require some acceptable form of guarantee of delivery of the remaining \$42,000,000 of drugs and foods and that a letter of credit should be arranged to furnish this sort of guarantee. It was thought that such a letter of credit would have to be backed up by formal pledges from the drug and food companies to complete deliveries of specific amounts within specific times. The following morning there was a meeting at the Department of Justice in Mr. Oberdorfer's office, attended by Mr. Oberdorfer and a number of his assistants. Mr. Katzenbach [Nicholas deB. Katzenbach] was there; and Henry Harfield, a member of the New York firm of Shearman & Sterling, arrived with drafts of appropriate documents for the purposes of completing the transaction. At that meeting, it was recognized that a letter of credit from an American bank would be unacceptable to Castro for political reasons, and it was suggested that an approach be made to the Royal Bank of Canada in Montreal. An appointment was made for Mr. Katzenbach and others to meet with the principle officers of the Royal Bank of Canada, and that afternoon

[-14-]

Mr. Katzenbach, Mr. Bob Edson [Robert N. Edson] of the Red Cross, Mr. Harfield, and I boarded an Air Force Jet Star at Andrews Field, leaving at approximately twenty minutes of three and arriving in Montreal at 4:00.

We were met there by Mr. McLaughlin [W. Earle McLaughlin], the president of the bank, and two of his senior officers. Mr. Katzenbach undertook to explain the relatively complicated problem with which we were faced and explained in particular the need for a letter of credit from a Canadian bank, hopefully the Royal Bank, to the Cuban government in the amount of approximately \$42,000,000. Mr. McLaughlin grasped the situation very

quickly. He indicated his awareness of the need for the letter of credit to come from a Canadian bank rather than an American bank, but pointed out to us that the basic problem was primarily an American one as opposed to a Canadian one and wondered what we had done with American banking institutions to back up the Royal Bank of Canada on this letter of credit. Mr. Katzenbach and Mr. Harfield advised Mr. McLaughlin that because of the pressures of time we had made the appointment and the trip to see him in Montreal that afternoon, and it then being approximately 6:30 on a Friday afternoon we would be unable to reach any New York banks to discuss the possibility of a back up letter of credit.

[-15-]

It was Mr. McLaughlin's idea that the banks in California were still open and that he would be glad to place a call to a friend of his who was the president of the Bank of America in San Francisco, and Mr. Katzenbach and Mr. Harfield agreed that this was a worthwhile cause to make. It turned out that the president of the Bank of America was unavailable. The call was shifted about to several individuals and wound up with a vice president who was a good personal friend of Henry Harfield. Mr. Harfield, who is an expert on international banking transactions, explained the situation to this vice president of the Bank of America, whose name escapes me, and got considerable encouragement. This vice president stated that, although his bank probably could not undertake all of this backup commitment, he thought that they could take a substantial part and that perhaps some New York banks or bank would be willing to participate with them.

It was left with Mr. McLaughlin that if we could obtain back-to-back letters of credit, he would recommend to his board that an irrevocable letter of credit be issued to the Cuban government against which would be credited to the amounts of drugs shipped as shown on invoices to be furnished by the American Red Cross. As required under the terms of any letter of credit, this was an entirely mechanical operation. As soon as copies of invoices

[-16-]

were received by the Royal Bank of Canada, a credit for the amount of the invoice would be made against the total amount of the letter of credit, and the balance of the letter of credit would be reduced accordingly. The thought was that as the drugs and foods were shipped, the balance of the letter of credit would be reduced to zero and that there would be no further obligation of the Royal Bank on the letter of credit.

At the meeting Mr. McLaughlin, in referring to the problems he would have without a back-to-back letter of credit from an American bank or banks in presenting the matter to his board of directors, mentioned the situation that would develop in the event that for one reason or another the drugs to be guaranteed should not be shipped. He pointed out that his bank would be in a position of having to decide whether from a public relations point of view they would possibly sue such a worthy organization as the American Red Cross. He quickly added that for \$42,000,000 they would. Commencing the following day, Nick Katzenbach and Henry Harfield pursued the matter with the result that Bank of America and Morgan

Guaranty put up the back-to-back letters of credit, which resulted in the issuance by the Royal Bank of Canada of the letter of credit to the Cuban government.

[-17-]

DEROSA: Actually, after the shipments were made, Premier Castro did allege that he had not received enough and claimed to be at least \$10,000,000 short.

CUTLER: The remaining role of the drug manufacturers was first to arrange for the physical delivery. This was really a remarkable operation by Lou Oberdorfer and his fellows, the Air Force, and the airlines. It was also necessary to break through the normal business routines of some twenty-five drug companies to see that particular drugs were selected, taken out of inventory, physically turned over to the carrier with accurate records, and physically delivered to Cuba. It was really remarkable; it was an extraordinary effort done just before Christmas and, I am sure, caused considerable extra out-of-pocket costs to the companies. In addition to that, at Mr. Oberdorfer's request, we provided the services of Dr. Leonard Scheele [Leonard A. Scheele], former Surgeon General of the United States, who was an officer of the Warner Lambert Pharmaceutical Company, to go with Mr. Donovan to Cuba to meet with the Cuban health officials and Mr. Castro and to explain to them why the particular drugs had been selected even though they were not precisely what the Cubans themselves had insisted on and why in our judgment they were suited to the needs of the Cubans.

[-18-]

I should have mentioned earlier that the original Cuban shopping list was an extremely complicated and outmoded list. It included a number of products that no longer were being marketed by American companies, and it had failed to take advantage of a number of recent developments. It looked as if the Cuban doctors that had prepared it had just been cut off from the outside world for a couple of years, and it was very important to persuade the Cubans to accept substitutes. We couldn't have filled the shopping list that they had. We had to make the judgments as to what to provide and then have Doctor Scheele go along to persuade the Cubans that what we did provide adequate and even better suited for their needs.

I would like to cover just one other point and that is the motivations of the drug companies, which I touched on a bit earlier. One of the books that has been written on this subject, *The Bay of Pigs* by Haynes Johnson, appears to imply that as far as drug companies were concerned, while there was a humanitarian motive, the companies felt (1) that some money could be made out of this because of the alleged windfalls and (2) that it would be good politics to help the government. These were not basic motivations. As I said earlier, the companies would have much preferred that the whole subject had never arisen. So far

[-19-]

as the tax aspects were concerned, we took a very serious risk in exposing ourselves to further criticism from Senator Kefauver about prices and profits. Many of the companies probably didn't get any particular tax benefit. The companies are allowed to contribute only 5% of their taxable income per year on a deductible basis; and this being in the middle of December, many of the companies had already made their contributions for the year. While there is a carry forward of two years on such contributions, many companies are fully committed to use their 5% for other worthwhile causes. They would have difficulty in stopping such contributions just because they were making this large contribution to the Cubans. Furthermore, for most companies the best result that could have been expected was a standstill because the amount of the deduction in most cases, we think, probably did not exceed the out-of-pocket costs of producing the additional drugs or replacing the inventory of drugs that were given. One company, Merck & Company, which did find that it ended up with some cash benefit, elected to give that benefit to charity and publicly announced that it was so doing.

I am completely satisfied myself, and I think I took part in the heart-to-heart internal debates of the industry on this subject that the decisive factor was really a patriotic factor, that we had been asked by our government to do something that the government was not in a position to do itself and which the government

[-20-]

felt was in the national interest. We were told that the men involved who were to be ransomed were worth ransoming and that it would be a credit to the United States government and its people if we did bring them out rather than leave them in the predicament in which they had found themselves with our help. This more than any other factor is what led the companies to make the extraordinary effort they made. I think that this judgment is supported by the fact that our action broke the logjam and led other industries to follow suit. The baby food industry and other industries which were not subject to any particular government or legislative pressure at the time felt that same patriotic motivation to follow our example and help the United States out of a difficult position.

I should also add that I think the attitude of all the government people was entirely praiseworthy throughout. Not only did they work long hard hours and act quickly to resolve any problem that we could throw up at them, but they never exerted governmental pressure to force companies to do what they were not willing to do. This was true despite the natural temptation in a government position to use your government weight in persuading companies which were on the borderline. I don't know of any indication that this was done. I think all of them leaned over backwards not to bring the government's great persuasive force to bear unfairly on the actual decision being made by each company.

[-21-]

I should have mentioned that after the New York meeting at which we had reported our conversations with the Attorney General, one of our board members took steps to check with General Eisenhower, and I am told that this member was advised by General Eisenhower that he thought the contributions would be in the national interest. Another of

our members took steps to check directly with Senator Dirksen and received the same advice, and this information was circulated among the members of the industry. I should add that subsequently the President did make a statement that the Attorney General predicted he would make, that he personally regarded the making of these contributions as in the national interest. He made the statement just before the first shipment, but we were assured even earlier that the statement would be made.

A final footnote on this exercise is that while the idea of the ransom was criticized eventually by a Republican policy committee in the House and by a Republican Party newsletter, our industry was never criticized for these actions either by the Republicans or by Senator Kefauver or any of the other Democrats of his persuasion who had supported him in his efforts to reduce prices and profits in this industry. There is, however, at this date a proposal by the Senate Antitrust Subcommittee that steps be taken to eliminate the tax deduction available to every industry on gifts of

[-22-]

inventory for charitable purposes. The argument on this is somehow or other that it gives the large company which is in a position to make substantial gifts against its income an unfair advantage over the small company. Thus, one small fear of ours has come to pass.

Also, so far as I know, the action of the drug industry in responding to the Attorney General's request was not followed by any visible change in the attitude or policies of any division in the Department of Justice vis-à-vis the drug industry in general. Both antitrust and criminal prosecutions have been just as vigorous, and their legislative attitude is essentially the same and not entirely what we ourselves would think was the correct government policy.

[END OF INTERVIEW]

[-23-]

Lloyd N. Cutler and Henry Rathbun Oral History Transcript
Name Index

B

Bartenstein, Fred, 13
Beesley, Eugene N., 3, 4, 5, 12

C

Castro, Fidel, 2, 14, 18
Connor, John T., 2, 3, 12

D

Dirksen, Everett M., 7, 22
Donovan, James B., 2, 3, 6, 11, 14, 18

E

Edson, Robert C., 15
Eisenhower, Dwight D., 7, 22

F

Foley, Edward, 3, 5

G

Graham, William B., 5

H

Harfield, Henry, 14, 15, 16, 17
Harriman, E. Roland, 13,
Harris, Oren, 3

J

Johnson, Haynes, 19

K

Katzenbach, Nicholas deB., 13, 14, 15, 16, 17
Kefauver, Estes, 3, 9, 10, 20, 22
Kennedy, John F., 5, 6, 7, 12, 22
Kennedy, Robert F., 2, 5, 6, 7, 8, 9, 10, 12, 22, 23

M

McKeen, John E., 3, 12

McLaughlin, W. Earle, 15, 16, 17

O

Oberdorfer, Louis F., 1, 2, 5, 7, 11, 13, 14, 18

P

Penick, Sydnor B., Jr., 5

R

Rathbun, Henry, 1, 5

S

Scheele, Leonard A., 18
Smith, Austin E., 2, 3, 5