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Two Ex-U.S. Prosecutors' Roles in Case Against Searle Are Questioned in Probe by Andy Pasztor and Joe Davidson

WASHINGTON: Two government lawyers who decided against prosecuting the maker of NutraSweet for allegedly falsifying test results later joined the law firm that represented the company during the criminal investigation, Senate investigators charged.

Documents released yesterday by Sen. Howard Metzenbaum (D.,Ohio) show that Samuel Skinner and William Conlon, two senior Justice Department prosecutors in Chicago who investigated the allegations against G. D. Searle & Co., repeatedly balked at requests from the Food and Drug Administration to submit the matter to a federal grand jury during the late 1970's.

The documents also show that both men later joined the law firm of Sidley & Austin, which represented Searle during the lengthy criminal investigation.

Starting in April 1976, the documents show the FDA urged the Justice Department to begin a grand jury investigation to determine whether Searle submitted false or incomplete test results to the government.

In January 1977, the FDA urged that the investigation focus on NutraSweet, a popular sweetener, and Aldactone, a drug used to treat hypertension. Richard Merrill, then the FDA's chief counsel, sent a 33 page report to Mr. Skinner that included details about "SPECIFIC FALSE STATEMENTS OR CONCEALED FACTS" stemming from Searle's testing of aspartame, which is now marketed as NutraSweet. The report urged a grand jury investigation of the company and its officers for "WILLFUL AND KNOWING FAILURE" to make reports and for "CONCEALING MATERIAL FACTS."

A grand jury investigation was launched that August, and documents show that the grand jury only looked at evidence relating to the hypertension drug. The matter was dropped without any prosecution in early 1979.

Sen. Metzenbaum asserted the chain of events "raises serious questions" about the department's aggressiveness in pursuing the case, and he called for a full-fledged congressional investigation to determine whether the two former prosecutors acted improperly. The senator, who has repeatedly criticized the Justice Department for failing to prosecute white collar crimes, also urged additional independent safety tests of the artificial sweetener.

An FDA spokesman said there isn't any "new scientific information in the report" released by Senate investigators "that would indicate we have to take any action at this time."

Skokie, Ill. based Searle, a unit of Monsanto Co., St. Louis, said the investigation "raises no new or unresolved issues" and said Sen. Metzenbaum's assertions of possible improprieties are "without merit".

In a statement released by his office, Mr. Skinner said he withdrew from participating in the case "shortly" after his office received the formal FDA request for a grand jury, and he maintained his actions were "consistent" with the department's conflict-of-interest policies. Mr.

Conlon didn't return phone calls to his office.

In a March 1977 memo, Mr. Skinner, then the U.S. attorney in Chicago, advised other Justice Department lawyers in the office that he was withdrawing from all involvement in the Searle investigation because of "discussions about a possible job with the law firm representing the drug company."

The memo asked his subordinates to keep his job discussions confidential "to avoid any undue embarrassment" to the law firm. Sen. Metzenbaum wants to determine whether Mr. Skinner began discussing employment with Sidley & Austin before removing himself from the case, and whether the resulting delay helped the company avoid prosecution.

A successor for Mr. Skinner wasn't in place until four months later, and the statute of limitations for prosecuting alleged improprieties in NutraSweet tests expired soon after that.

Federal conflict-of-interest laws generally prohibit government officials from participating in official business involving a company with which they are discussing possible employment.

Justice Department officials from Washington had complained in April and August 1977 about the delays and urged that a grand jury be convened, the documents show.

In October 1977, the documents show that Mr. Conlon, the senior prosecutor then assigned to the case, decided to "reduce or end" his involvement with the Searle investigation because of pressures of other duties. Mr. Skinner joined Sidley & Austin in July 1977, and Mr. Conlon joined the firm in January 1979.

Around the time Mr. Conlon joined the firm, the U.S. Attorney's office notified the FDA that it declined to prosecute Searle because FDA regulations were ambiguous and didn't place a "clear and unequivocal" obligation on the company to submit certain adverse tests results to the government."

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