

March 20, 1974

SENATOR KELLY: He's an attorney here in Lincoln.

SENATOR FELLMAN: At whose request was this prepared?

SENATOR KELLY: My request.

SENATOR FELLMAN: And who does he represent?

SENATOR KELLY: I don't have any idea.

SENATOR FELLMAN: I mean, was he paid for this?

SENATOR KELLY: No, this is gratuitous.

SENATOR FELLMAN: He just did this as friend of yours?

SENATOR KELLY: Correct.

SENATOR FELLMAN: Not on behalf of a client that he represents?

SENATOR KELLY: No, this is a note from him to me.

SENATOR FELLMAN: Then all this is is a bunch of questions he's asking about the bill...in effect.

SENATOR KELLY: I would agree to that too.

SENATOR FELLMAN: Well, let's take number two. Joint advertising of prices by small businesses who do so to compete with big business advertising. The joint advertising of prices of necessity involves a price fixing agreement. To get into the area of an anti-trust violation, aren't there greater requirements than just this? I mean there has to be a certain share of the market, there has to be a monopoly aspect, isn't that correct?

SENATOR KELLY: This is continuing my question....is that

SENATOR FELLMAN: Well look, you and I....

SENATOR KELLY: In other words, we say conspiracy controls but then....

SENATOR FELLMAN: But now look....

SENATOR KELLY: Find conspiracy.

SENATOR FELLMAN: You and I each have a plumbing business and I've got 10% of the market and you've got 10% of the market and we jointly advertise and together we have 20% of the market. Now, there's nothing wrong with that. Now, I've got 45% of the market and you've got 45% of the market and we do the same thing, together we've got 90%. There's a difference. You agree?

SENATOR KELLY: I agree wholeheartedly.

SENATOR FELLMAN: Now, it seems to me paragraph 2 of your memo fails to make that essential distinction. Do you agree?

SENATOR KELLY: And I believe that the bill does not make that distinction.