no barrier to private settlement of interferences by agreements among the parties themselves, involving concession of the patent to one firm in return for granting licensing rights and perhaps other privileges to the other firms. The patent office rather welcomes such private settlements in view of the pressure of work on its staff, but the antitrust division has been critical of the nature of many private interference settlements.[5]

Advertising abuses relate chiefly to drug nomenclature and to the quantity and quality of sales efforts. Four hundred or more new drugs are marketed each year in the United States. Each new drug should be given a generic name to identify it; individual firms marketing the drug may confer upon it their own brand names. If a physician prescribes a drug by generic name, the pharmacist may fill the prescription with any brand of the drug; if the prescription is by brand name, only that firm's brand may be dispensed. Evidence indicates that generic names are designed to minimize use (excessive length, complexity, and clumsiness) while brand names are brief and memorable. Regulations require that generic names be displayed in all advertisements, by they are often obscured by the use of microscopic type face, by being concealed in obscure places in the advertisements, and are sometime simply omitted.[6] Some drugs have no generic name; others have more than one. This deliverately cultivated confusion is evidently intended to suppress use of generic names in favor of brand names.[7] By this means, trademarks are made to supplement patents as monopolistic devices. The same patented drug may be sold by ten different licensees under ten different highly advertised brand names, and each licensee through sales efforts may succeed in differentiating in the mind of the physician this physically homogeneous drug. In those rare cases where there is no patent protection, generically-named products sold by small firms may be priced at ten per cent or less of the price of the major drug firms, but price competition is rendered impossible unless prescriptions are written generically. However, the detailmen have been very successful in their disparagement campaigns; surveys show that almost 90 per cent of drug prescriptions are written by use of brand names.[8] The quantity of drug advertisements is overwhelming in itself, including not only propaganda but also free drug samples, trinkets (toy urinals, chinese dolls, head cushions, etc.) and gifts such as golf balls engraved with the recipient's name. But the quality of advertising claims is the greatest obstacle to the enlightened practice of medicine. Dozens of examples of misrepresentation were unearthed at the Senate hearings; one example must suffice: a drug firm mailed to physicians advertising copy showing X-ray photos clearly designed to imply a dramatic recovery in a patient's condition before and after the use of the advertised drug. Upon inquiry to the firm's medical director, it developed that the two X-rays were of entirely different persons with qualitatively different disease conditions, and that neither had ever used the drug being advertised.[9]

III. INDICATED REFORMS

To an economist, the abuses in drugs seem amenable to relatively simple reforms. Drug product patents should be abolished; drug process patents should be subject to compulsory licensing at reasonable royalties. Generic names should be simplified, the use of brand names should be eliminated, and firms should be required to advertise and sell their products under labels giving the generic name of the drug, followed by the name of the firm, *e.g.*, chloramphenicol-Parke, Davis instead of "Chloromycetin." Food and Drug Administration drug plant inspection authority and funds should be increased in order to guarantee the safety of all drugs on the market, rendering specious all disparagement campaigns. Control of the quality of drug advertising should be made truly effective. If rigorously enforced, these reforms should suffice. Absence of patent protection and mandatory use of generic names would allow price competition between large and small firms; excessive profits would disappear, and with them would disappear the ability to carry out wasteful and duplicative "research" programs,

[5] *Ibid.*, p. 48.
[6] *Study of Administered Prices, op. cit.*, p. 234.
[7] Firms may, however, on occasion find generic names of use as when the necessity arises for sending out circulars to warm physicians about side effects. *Hearings on S. 1552*, Part 5, p. 2938.
[8] *Ibid.*, Part 18, pp. 10481–10482.
[9] Ibid., Part 7, pp. 3301–3310.