It seems safe to conclude that on the basis of the recent record, the role of the AMA in contributing to high standards of drug advertising has steadily diminished. The adoption of the joint AMA-drug industry program outlined by Dr. Hussey would provide at best a questionable safeguard for the drug consumer.

2. Witnesses Testifying on Patent Provisions

The great majority of the testimony on the proposed patent reforms revealed the presence of a tropismic conservative reaction against any modification of the patent system, and the absence of any great evidence that the witnesses had studied the concrete operation of the patent system in the framework of the drug industry.[20a] The presentation given by Joseph Jackson, the chairman of the patent, trademark, and copyright law section of the American Bar Association, may serve as an illustration. Speaking for the American Bar Association (ABA), Jackson reported that the ABA Board of Governors had adopted five resolutions in regard to S. 1552: (1) disapproval of the antitrust provisions limiting private patent interference settlements; (2) disapproval of the requirement of "non-obviousness" regarding the patentability of a drug product; (3) disapproval of the requirement of proof of significantly greater therapeutic effect in order to qualify molecular modifications for drug patents; (4) disapproval of the distinctive treatment of drug patents with regard to the date of effective patent protection; (5) disapproval of compulsory licensing for drug patents.[21]

When Mr. Jackson was examined on his testimony, it developed that these resolutions, purporting to speak for the ABA, a body with a membership of some 102,000, had been drafted in Saint Louis, about ten days before the Hearings, by a group of 150 to 200 patent lawyers, with orders to "act with great acceleration" because of the "emergency." [22] These resolutions were then submitted to the Board of Governors of the ABA (no member of which is a patent lawyer) and were promulgated by them more or less over the head of the House of Delegates, the representative deliberative body of the ABA. (This is an extraordinary procedure which is nevertheless permitted by the constitution of the ABA.) Furthermore, members of the ABA were apparently not given notice of this action by their Board of Governors, as evidenced by the surprise of several members of the Subcommittee staff belonging to ABA. It further developed that the ABA group required less than an hour and a half to reach conclusions on matters which the Subcommittee and its staff had been studying for over two years. Jackson admitted that there had been no discussion of the economics of the drug industry and its relation to patents, no study of costs, no systematic consideration of profits, no attention to concentration or to the interdependence of major firms, no concern with entry conditions, no inquiry into price policies, and not even any consideration of the nature of incentives and the quality of research effort in drugs. Jackson explained that none of these matters had been considered, since "If we had discussed all these subjects you are presenting, we would still be in Saint Louis. We would not be here with any resolutions at all." [23] But that is precisely the point. It may be inferred that the only aim of the ABA action was to go on record as condemning S. 1552 in time for the Hearings, regardless of the factual merits of the bill.

The patent provisions stand or fall depending upon their application to the specific circumstances of the drug industry; the entire patent system is not at stake. But patent attorneys in testifying almost universally took the position that any amendment to the patent laws in respect of a particular industry would necessarily imperil the patent laws with regard to all other industries. Jackson no doubt faithfully reported this attitude on the part of the ABA group when, in response to an observation by the Subcommittee counsel that S. 1552 was limited in its application to the drug industry alone, "We were afraid we would be faced with a special antitrust law and a special patent law for butter and eggs, and another one for milk and beer, and so on in different areas." [24] One gets

[20a] There is no evidence of any articulate "grass roots" support for the opponents of the patent provisions of S. 1552. Symptomatic of the testimony in behalf of the patent *status quo* is a communication from an individual styled "Clair V. Johnson, Newfane, Vermont, Patent Lawyer," who roundly condemns the bill. It appears that Mr. Johnson is also a director of U.S. Vitamin and Pharmaceutical Corporation. (Part 3, p. 1601).

[21] *Ibid.*, Part 3, p. 1473.

[22] *Ibid.*, Part 3, p. 1472.

[23] *Ibid.*, Part 3, p. 1481.

[24] *Ibid.*, Part 3, p. 1480.