

gainsaid. This fact was more than sufficiently brought out by the distinguished experts who have testified previously before this subcommittee. The reasons behind this overuse and misuse pose a complex problem. I believe the blame falls on both the physicians and the pharmaceutical company involved—namely, Parke, Davis & Co., the holder of a patent on this drug until recently. This allegation of dual responsibility does not constitute a contradiction in terms, for the attribution of fault to one party need not exculpate the other. That may be a little inartistically put, but I think all I am basically saying is the fact that it is a prescription drug and that the physician makes the final decision as to whether to dispense it, does not create a mantle to protect the drug company completely. I think the rest of the statement elucidates that concept to some degree.

Even though a drug is available only on a physician's prescription, a drug house may be guilty of overpromotion of the product to the point of misleading the members of the medical profession as to both the indications for, and the restrictions on, its use. At the same time the ordering physicians may be aware to some degree of the potential untoward effects of the drug and yet prescribe it inappropriately, in disregard of that knowledge. In the California case of *Love v. Wolfe* and in our recent Philadelphia case of *Incollingo v. Ewing*, both the prescribing physicians and Parke, Davis & Co. were found liable for the negligent administration of Chloromycetin to patients who subsequently died of aplastic anemia. That is from the effect of the drug on the bone marrow of these patients.

Senator NELSON. These were cases in which the prescription of the drug was not indicated.

Dr. HEWSON. That is correct. In both cases its use was for quite minor conditions.

Senator NELSON. What were the dates of the prescription of the drug—not the trial of the case—but when was the drug prescribed for the patient? In what years?

Dr. HEWSON. In Philadelphia it was prescribed in October of 1958, in July of 1959, and in January of 1960 for a little girl who was 4 years old in January of 1960. Then, there were additional prescriptions by phone, upon which I elaborate more later, during the months of February, March, and April of 1960. Then she came down with full-blown aplastic anemia in May 1960.

Senator NELSON. And in the *Love* case?

Dr. HEWSON. I believe that goes back to 1958, Senator.

Senator NELSON. Both of these cases were several years after knowledge was available as to the serious side effects of this drug.

Dr. HEWSON. Yes, sir. They both came well after the 1952 publicity and subsequent warning and they both came before the 1961 warning was placed on the literature accompanying the drug.

In the *Love* case the physician ordered courses of Chloromycetin for the plaintiff, Carney Love, for two conditions, first for infected gums and then for bronchitis.

Senator NELSON. Was there anything definite in the case to demonstrate that the drug was indicated for these cases because of the seriousness of the infection?

Dr. HEWSON. Senator, I do not have all the trial testimony of this