

who were independent, I guess well known, science writers in their field. So it was their article in substance, and not that of Merck & Co., so far as we know.

Senator NELSON. But they had advance copies of it.

Dr. McCLEERY. Yes.

My office, the Division of Medical Advertising in the Bureau of Medicine, was asked to review the article for possible violation of the law, and to review also the advertising of this drug in medical journals to determine if the drug was being promoted to the medical profession on the basis of unapproved claims?

Our concern was that if the firm would make these data on unauthorized uses available to a free-lance team of writers, it might not be scrupulous in its advertising to the medical profession.

I would like to leave this now and go to the performance of the company—

Mr. GORDON. What did your Division do about this article?

Dr. McCLEERY. We responded to the internal inquiry from the office of Mr. Cron and gave our view of what the article in fact was, and we wrote a report of the deficiencies which we thought the Pageant article contained and what our opinion was of whether or not the law might be considered to have been violated by Merck & Co. as a consequence of this article.

Mr. GORDON. And what was your opinion about that? Did you think the law had been violated?

Dr. McCLEERY. Yes. Our opinion in the Division of Medical Advertising—which I would like to ask Mr. Goodrich to follow up on—our opinion of whether the law in fact had been violated, I have some apology for. But we thought that the law had been violated because the article, in the form it took, could be considered to have been caused to be issued by the company because of the turning over of documents to the writers which were built into the article and which would have come from no other source. And for this reason, the promotion of unauthorized, unapproved uses, which could be a consequence of the article, we thought should be laid to the door of the company.

Senator NELSON. Well, now, this article was published in the July 1966 issue of Pageant.

Dr. McCLEERY. Yes, sir.

Senator NELSON. I notice that in a letter dated March 8 of this year, 1968, you concur in the recommendation for prosecution of the company.

Dr. McCLEERY. That is true.

Senator NELSON. And that on March 11, 1968, Dr. Ley stated, "The Bureau of Medicine recommends that prosecution of the firm be instituted subject to approval by the Attorney General." What is the status of that recommendation now?

Dr. McCLEERY. I think Mr. Goodrich can speak better to that.

Mr. GOODRICH. The case is in my office.

Senator NELSON. But the recommendation has not left your office.

Mr. GOODRICH. It has not.

Senator NELSON. Is it correct that the prosecution involved not only the Pageant article, but also some other advertising materials?

Mr. GOODRICH. Yes, sir.