

Senator NELSON. I am glad to hear that the Merck Co. is now co-operating in their advertising. But something puzzles me about it. This is from a letter of March 8, 1968, signed by you. Maybe you will want to look at it. But quoting from your letter, it says "Attitude of the firm. The poor attitude of Merck regarding the advertising regulations has persisted since their promulgation. This is clearly shown in the following pages from Attorney Colburn's letter." And then there are some quotes. Then you say, "In effect, Merck challenges all of the principles of fair balance provided in the existing regulations, and even challenges the Government's authority in respect to requiring ingredient information in advertisements except as specified in section 502(n)," and so forth and so on.

How does this letter dated March 8 conform to your present statement that they are cooperating in every way?

Dr. McCLEERY. It does seem contradictory, doesn't it?

Senator NELSON. A little bit.

Dr. McCLEERY. I hope that is not a letter, because I do not like to write letters.

Senator NELSON. I will show it to you.

Dr. McCLEERY. I am well aware of it, Senator. It is an internal memo.

Senator NELSON. Yes.

Dr. McCLEERY. What I said before—

Senator NELSON. Is the attitude internally different from what it is externally?

Dr. McCLEERY. No. I hope without looking at it I won't contradict what I said in that memo at least. What I said was, Senator, what Merck has done in reference to conforming to the law and the regulations—you did not ask, and I did not feel it necessary to say, what I think they think, why they are doing it, or what they think of our view of the law on proper advertising. So there is no contradiction.

Senator NELSON. I see. What you are saying is that they have made some changes in their advertising policy of which you approve, but they sharply contest FDA's position of authority to regulate and so forth.

Dr. McCLEERY. Right. I did not feel compelled, knowing that Merck would testify tomorrow, to say they disagreed, feeling they would probably get around to that themselves tomorrow.

Senator NELSON. All right. I think the two fit together.

Dr. McCLEERY. Thank you.

Soon after this episode, Merck began to show significant improvements in its advertising practices for prescription drugs but not before it ran, I would say inadvertently, because it is hard to stop a hard-running advertising campaign—in the November 1966 issue of the American Journal of Medicine, another ad which contained most of the faults of the original July ad, plus some additional new faults.

I will expand on this.

It represents a very serious kind of advertising practice that I would like for you to understand, and to be aware of what kind of bases we are criticizing ads on, for your own purposes.

You have heard me refer to the articles used in the July JAMA ad, by two Englishmen, Hart and Boardman in the 1963 issue of the British Medical Journal. While the authors had in fact published the