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DETROIT

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WM. JOHN SPICER

November 14, 1942

Mr. Louis G. Koch,
Koch Laboratories, Inc.,
8181 East Jefferson Avenue,
Detroit, Michigan

Dear Mr. Koch:

In accordance with your request, we will state the nature of the proceedings taken against Dr. Koch, Koch Laboratories, Inc. and yourself by the United States Government's two Bureaus, The Food and Drug Administration and the Federal Trade Commission.

The first inkling we had that trouble was brewing was when Dr. Koch was asked to go to Washington to discuss the matter with the Food and Drug Administration. We believe prior to that there had been some investigation at your office by various representations of the Bureau. Mr. Ryan of this firm attended the meeting at Washington with Dr. Koch. Officials of the Bureau announced their conviction that Glyoxylide, 1:4 Benzoquinone and Malonide have no therapeutic value, and their intention to take some legal action which would result in a court determination of whether their contention or Dr. Koch's was correct. Dr. Koch offered to cooperate in any scientific tests which the officials desired to make and to show records, patients and hospital data demonstrating beneficial effects as a result of his treatments. The officials in effect said that this would have to be presented in judicial proceedings.

The next step was the return of indictments by a grand jury at Detroit. Of course the presentation of evidence to the grand jury was without notice to you, and whatever was presented, which we have no way of knowing, must have been only the Government's side. It seems to us that the methods pursued thereafter were rather highhanded. Both you and Dr. Koch were taken into custody at a time when it seemed unlikely that you could obtain bonds to be released. Dr. Koch was arrested in Florida on a Friday night, and you were arrested late Saturday morning. Both of you, however, were able to arrange bail and avoid being held in jail over Easter Sunday. It does not seem to us that it was necessary for the Government to time its action in this way. Furthermore, the District Attorney petitioned the court to suppress the indictment until Dr. Koch could be arrested, alleging that he was about to flee to Brazil. There was no occasion for this statement. While Dr. Koch had intended to return to Brazil to carry on work which he had started there, he had given ample evidence to the Bureau of his good faith and willingness to meet any charges it might make.

The indictment charges that you have violated the Food and Drug Law in that your labels are false and misleading. They allege that your preparations have no therapeutic value, therefore the language on the labels for Glyoxylide "Koch's Synthetic Antitoxins ★ ★ ★ For allergy, cancer, infection" is false, also that the language on labels for 1:4 Benzoquinone "Koch's Synthetic Antitoxins ★ ★ ★ For the infections and their sequelae" is false.

Several days later another indictment was returned charging falsity in the statement on the label of Malonide "Koch's Synthetic Antitoxins ★ ★ ★ Anti-allergic."

These indictments were returned during the month of April this year.

The following month the Federal Trade Commission applied to the court for a temporary injunction to prevent you from disseminating any advertising concerning your preparations representing that they had therapeutic values. It alleged that it was about to institute a complaint charging unfair advertising. A date was set for hearing on the application for injunction. Many affidavits were submitted, both by the Federal Trade Commission and by yourselves. Numerous physicians stated in plaintiff's affidavits their opinions that your preparations are of no value, but none of them stated that they had ever tried your preparation on patients. On your side Dr. Koch presented a very full affidavit setting forth his scientific theories, and his experience. Many affidavits of other physicians and of patients were submitted, all of which demonstrated that many physicians and patients had confidence in the preparations because of actual experiences.

In a hearing on an application for a temporary injunction there is no opportunity to present evidence other than by affidavit. We think that your affidavits were quite convincing and that under the well established rule which forbids the court to order issuance of a temporary injunction where the allegations of the complaint are denied, and such denial is supported by ample counter-affidavits, the application should have been denied. The hearing was held in July, but it was not until November 6 that the court entered his order. In this he stated his reasons as follows:

"It appearing to the court from the showing made by the plaintiff and the showing made by the defendants that there exists between the parties hereto an honest controversy, the determination of which will require a full presentation of all of the facts with reference thereto, which full presentation is contemplated by the Federal Trade Commission Act to be made to said Commission, and not to the court upon application for preliminary injunction.

"It appearing to the court that if the claim of the plaintiff is true, there is a possibility of greater damage arising from failure to issue an injunction pend-

ing the full hearing before the Federal Trade Commission than if the claim of the defendants is true and if an injunction should be denied."

You have authorized us to take an appeal from this order, and we are preparing such appeal. We believe that the court was in error in granting plaintiff's application, inasmuch as he was not convinced that the evidence supported plaintiff's claims. As a rule a temporary injunction should not be issued where there is a bona fide dispute which requires a full presentation of the evidence, especially where the injunction changes the status quo.

In the meantime the Commission filed its complaint. This is an administrative proceeding in which the Commission is both the prosecutor and judge. The complaint charges that numerous statements contained in your literature are untrue, all of which you have denied in your sworn answer. An examiner was appointed who has been hearing witnesses for the Commission. The testimony so far taken is that of physicians who give their opinions either that your preparations in their judgment have no therapeutic value or that the consensus of medical opinion does not recognize them as having such value. None of these experts place their opinions on any actual experience in the administration of your preparations. Numerous criticisms of theories presented by Dr. Koch are made. The time has not yet arrived for the presentation of your evidence.

To those who are interested in the progress of science and academic freedom this case presents questions of utmost importance, and if the implications of what the Federal Trade Commission is striving to accomplish here were fully understood by the medical profession generally and the public, its sinister effect would be recognized. Everyone engaged in scientific pursuits must appreciate that there are still many scientific phenomena that are unexplained, and that until more exact knowledge is acquired there must be differences of opinion. Officials in Washington are no more competent to determine what opinions should be held and given support than any other group of individuals. There can be no progress toward the solution of baffling scientific problems without free discussion and debate. One can readily realize that we could not now have smallpox vaccines if the British courts had enjoined Jenner from advertising his beliefs. Jenner, Pasteur and all the great figures in medicine for the last 150 years were obliged to combat the consensus of medical opinion of their time.

Having confined your literature to books, pamphlets and circulars written by Dr. Koch and others who share his belief, and having sent them only to persons having special knowledge, we think it is impossible to find that anyone could be deceived thereby. All who can understandingly read this literature must be competent to realize that the writers are presenting opinions and beliefs on scientific subjects, which they have deduced from known facts and accepted theories. No attempt is made to induce anyone to purchase these preparations by the misstatement of any determinable facts. Readers are left to decide for themselves whether they agree or disagree with the opinions presented.

If the Federal Trade Commission succeeds in this litigation, a precedent will be established which will be found extremely harmful in all scientific fields, and particularly in medicine. We can then foresee similar proceedings to prevent the dissemination of ideas of healing, held by the homoeopathic branch of the medical profession, by physiotherapists and all divisions of those engaged in ministrations to human ills. In the end we will have the medical profession regulated by Washington and not by state governments. Do the members of this great profession desire this type of regulation ?

The criminal indictments do not cover as broad a ground as the Federal Trade Commission case. Here the issue is merely whether Glyoxylide has any effect in the treatment, mitigation or alleviation of cancer, infection and allergies, whether 1:4 Benzoquinone has any effect in the treatment, mitigation or alleviation of infections and their sequelae, and whether Malonide is (an) anti-allergic. We expect that the same kind of evidence will be offered in support of the Government's case as has been offered in the Federal Trade proceedings, i.e., opinions without any foundation of experience. The quality of the evidence, both against you and in your behalf, will have to be judged by a jury, and not by the same administrative body which makes the charge. We are preparing our proofs along the lines which we believe will be most convincing to the jury, and expect to show actual experiences in the use of the preparations. Although no one can foresee the outcome of a law suit, we are proceeding on the assumption that when we have shown that many patients have been cured or helped materially after they received these preparations, the jury should be convinced of the merit of Dr. Koch's opinions. In order that there may be no quibbling about errors in diagnosis, and the effectiveness of other treatments, we are preparing to present only the more outstanding cases, where diagnoses were established by careful clinical and laboratory work, and where other forms of treatment either were not given or were disclosed to be ineffective. We have received good cooperation from your many professional friends and your patients. Difficulties are encountered in obtaining access to laboratory and hospital records, where this work was done by physicians who previously treated the patients. We also are encountering difficulties in reaching some physicians, both those who are friendly and averse, because some have died or become incapacitated, some have moved to other locations, and some are in the army medical service. We are ironing these difficulties out as best we can. Sometimes we are blocked by inability to get competent evidence, although there is no doubt that the case under consideration was helped by one of the preparations. As you know, technical rules of evidence keep out many items of evidence which are acted upon in the ordinary affairs of life. The following is a constantly recurring situation. A physician who uses your treatment reports a cured cancer case. When the patient came to him the clinical evidence clearly indicated cancer. The patient tells the physician that some other physician had also diagnosed it as cancer. Physician No. 2 gets in touch with physician No. 1, who informs him of what has been done, and that some well known pathologist has examined the tissues and found it malignant. It takes years before the patient can be regarded as cured. The physician who has succeeded has full notes of what he did and what he learned, but he cannot testify because of the

rule against hearsay evidence, of what either the patient told him or what physician No. 1 told him. We are thus limited to the cases where we can get the proof from the pathologist himself, either from his memory or his records or written opinion. Physician No. 2 is subject to no criticism. He was intent on helping the patient and not upon building up a case for himself or Dr. Koch. He would not subject the patient to a needless second biopsy, and was justified in relying on the truth of what the patient and the former physician told him.

Although there are many such cases which cannot be presented, nevertheless there are many in which we have the good fortune of finding a direct line of proof in all directions.

We have not completed our work in assembling these proofs but it is proceeding satisfactorily.

We are unable to determine what interests caused these two Bureaus to commence these actions. We can all indulge in inferences, but so far there is no disclosure of who has complained against you, and we doubt whether this will ever be disclosed, as in all these proceedings the two Bureaus keep these facts to themselves. We feel justified in inferring that neither patients nor physicians who have used the preparations have complained, as we could be sure that their affidavits would have been presented. On the contrary, we found in several cases where an affidavit was obtained from a physician to prove receipt of a package containing Glyoxylide, etc., that if anything was said by the physician in the affidavit expressing his satisfaction the affidavit was not used.

In our preparation of your defense the writer has interviewed hundreds of physicians who have used these preparations and patients who have been treated. We naturally did not expect that all experiences would be favorable. Many times they were used when conditions were desperate and sometimes disappointing results could only be explained by some unaccountable failure of the patient to respond. No one has ever said that he was misled or deceived. All regard it as no different from any other therapeutic agent, applied with a hope, but with no certainty of beneficial results.

Very truly yours,

(Signed) Voorhies, Long, Ryan and McNair

IL.T.