causing the drug to be misbranded, in other words, that it is illegal under the Federal Food, Drug, and Cosmetic Act.

Mr. GORDON. I assume, then, that most of the problem respecting the misuse of drugs is left up to State medical societies, is that correct?

Mr. VODRA. And the civil law, malpractice law.

Senator NELSON. The reason we raise this is the testimony of Dr. Gellert from Suffolk County, the Town of Huntington, N.Y., population of 200,000, 250 doctors in a remarkable agreement of unanimity respected the wish that they would not prescribe amphetamines for obesity, and none of them do so.

There are two doctors who do not belong to the medical society in the town. There was one fat pill doctor before, and now they have two, and they average 800 to 1,200 patients per week.

I asked him what the fee charge was, he said he did not know.

I think it would be worth finding out, but a certain percent of these patients are of course ending up in the other physicians' offices with problems.

The lineup outside the clinic consists of all kinds of very thin people. Obviously you cannot have 800 a week who, if they are not obese, neither are they narcoleptic adults or hyperkinetic kids.

Now, what is the mechanism, or is there not any for dealing with a case in which these two doctors in that place are abusing the drugs? Their patients just come in, get a prescription, and go out.

Is there any mechanism for stopping that?

Mr. MERRILL. I read Dr. Gellert's testimony, and he suggested that the FDA consider doing what it attempted to do with methadone.

We tried to restrict its availability, and we were sued by the American Pharmaceutical Association, the association of pharmacists who viewed that as a threat to their access in drugs generally.

The district court and the court of appeals here in Washington struck down those regulations, so I guess my answer is the same answer I gave you before, the mechanism available to the FDA under the Federal Food, Drug, and Cosmetic Act is to eliminate the indication or the use of drugs altogether.

Mr. VODRA. I might add that I used to be at DEA, and while I was there and I am sure to this day, they do work on cases of physicians selling prescriptions or drugs to nonbona fide patients, where there is no doctor-patient relationship whatsoever. That is an exceedingly costly approach to use. DEA does not have the resources to police all of the physicians in this country, with all of the various drugs, not only the amphetamines, but narcotics, and so forth.

Senator NELSON. But in these two cases, I would gather from the testimony, that it is pretty clear they are in the business of making a lot of money prescribing addictive drugs to people who do not need them at all for obesity.

Mr. VODRA. If they can establish there is not a bona fide relationship, it is a criminal offense, a felony offense of the Controlled Substance Act, and they can obtain a conviction in the Federal courts.

The Supreme Court has upheld the conviction of a physician trafficking methadone, who in 1 day wrote 240 prescriptions for methadone. The Supreme Court said the physician was subject to the act. It is basically a resource question, not a legal one.