

Suppose the President told you to do it? Would you have authority to do it under the law?

Dr. GODDARD. I would have to ask Mr. Goodrich, my general counsel. Senator JAVITS. What about asking him, then?

Mr. GOODRICH. The recently passed Freedom of Information Act which you are, of course thoroughly familiar with, continues the exemption for commercial and business information from public disclosure. This is the policy that we have followed over the years and we propose to follow it from here in, up until the time that Congress changes the law.

If the President directed us to make commercial and business information available, this is an exemption from the disclosure which could be waived by Executive direction at that level.

Senator JAVITS. Well, I have been kind of browsing through your statement. You indicate that you would recommend that where firms are marketing the same compound, that is page 14; that is correct, is it not?

Dr. GODDARD. Yes.

Senator JAVITS. FDA would recommend that this be done and that is one of the things that can be recorded if we choose to espouse it as a recommendation of these hearings. Is that correct?

Mr. GOODRICH. We are recommending that that issue of policy be examined by the Congress and according to our position in the testimony, we believe that it might be very worthwhile to shift from an individual licensing situation to a rulemaking situation.

Senator JAVITS. One other thing you said that finds an echo in my mind. You said something about your authority with respect to advertising, a subject which we have heard a good deal at these hearings dealing with the alleged overwhelming volume and intensity of advertising as very much boosting costs. Yet I see you claim to be pretty powerless in this regard. Your statement says at the top of page 12:

To say that our Agency has had some difficulty with claims made by many companies in drug advertising is to understate our experience of the past year or so.

Do you wish us to believe that you do not have enough authority? If so, where are you deficient in authority?

Dr. GODDARD. I was not raising the question of authority there, simply trying to cite the problems we have had with firms exceeding the permitted labeling and the difficulties we have had to get them to adopt the basic concept that drug advertising is educational and thus should be truthful, that it differs from advertising of motor vehicles and other items in our economy, that there is a special significance here. That is what I was trying to get at, Senator Javits.

Senator JAVITS. Well, do you have authority to enforce that?

Dr. GODDARD. Yes, and we are enforcing it now. We have proposed for adoption new regulations on drug advertising. September 1 is the final date for receipt of comments. These regulations are being studied by the pharmaceutical industry at the present time.

Senator JAVITS. Well, one would get the impression that you are being run by events and that you are not running them. You have the authority and yet you sort of give the feeling that your hands are tied. What are we to conclude?