

Senator NELSON. Do I understand you to be saying that under the law the FDA has the authority to supervise or control the advertising done by an individual company, but no authority over an association of which individual companies are members?

Mr. GOODRICH. The law says "manufacturer, packer, or distributor," and refers to an advertisement either issued by him or caused to be issued. I left open the issue, or the question, whether or not this could be proven to be an advertisement caused to be issued by Parke, Davis. I have no idea that it could or could not. I just have no opinion on that based in the facts I now have. But I would not rule out the possibility of taking some action if it could be proved that the company caused this advertisement to be issued by an association.

Senator NELSON. Well, now, as a lawyer, we are looking at a situation in which we have a nonprofit association with which the members voluntarily associate themselves. The association is controlled by the membership, and supported by the membership.

Under any reasonable concept of law, it seems to me that you can constructively impute to the members the actions of the voluntary association.

Mr. GOODRICH. I think you do. But do you go from there to the next step, that the manufacturer caused this advertisement to be disseminated? Now, that is what we would have to prove, in any event, sir.

Senator NELSON. The reason I used the legal language, "constructively impute," is that you may not be able to prove that in a specific instance a company actually said to its association, "Will you run this ad on our drug?"

Mr. GOODRICH. That kind of case would be easy for us.

Senator NELSON. Yes. But it seems to me it should be just as easy the other way, when in fact this is a member, and these members do directly control the association, and if they cannot throw a cloak around themselves and separate themselves from the creature they control, you simply could proceed on the grounds that you constructively impute it to them. Now, if they were not a member of the association, and were controlling the association, and ran a story on a drug made by a nonmember company, I would think then you would have to go to the specific case and prove the specific company had a specific agreement. But it does seem to me it is just automatic—certainly you control this company, we impute this to you, and you are in violation of FDA regulations. At least that is part of the law that ought to be explored very carefully.

Mr. GOODRICH. It is entirely possible that we could prove that this was caused to be disseminated by Parke, Davis.

Senator NELSON. I am not talking about that. Just the very fact that they are members, you impute it to them. That is the legal question that I think is important here.

Mr. GOODRICH. I am sure I would have great difficulties with the Department of Justice in doing that, but we will explore that.

Senator NELSON. I do not think you ought to have any trouble with a real lawyer.

Dr. GODDARD. You are not suggesting the Department of Justice does not have real lawyers.

Senator NELSON. I am suggesting that you probably would not have any trouble because they do have real lawyers.