

I assure this subcommittee that we will be constantly alert to improve the quality, safety, and therapeutic effectiveness of drug products and to expend the Federal dollars entrusted to the Veterans' Administration in a prudent and thrifty manner.

Mr. Chairman, this concludes my statement.

Senator NELSON. Thank you.

Mr. JOHNSON. I will answer any questions you might have. Thank you.

Senator NELSON. Let us go back to the question about competitive bidding and sole-source purchasing. The three exceptions that you cite—that you purchase sole source when it is the only drug available, or when there are others available but which do not meet your standards, or based upon the physician's preference. Do I understand the law correctly, that any Federal agency may purchase a drug any place in the world, that is, even though there is a patent or an exclusive license for a drug to be sold in this country. Although it has to be a sole source for any private hospital or any private physician to prescribe from, that nevertheless, under the law, a Federal agency is not required to observe, is not forced to observe a patent or exclusive licensing arrangement and may buy the same drug in the world market?

Is that the law? Does that law apply to the Veterans' Administration?

Dr. WELLS. We are at liberty to purchase in the world market under the limitations of the Buy American Act; yes, we could. We are also allowed to use patents for the exclusive use of the agency, if there were someone who would manufacture for VA alone. We could use this, the eminent domain principle over the patent, if this were manufactured and used solely within the VA.

Mr. CORCORAN. By way of clarification, recovery against the United States for the unlicensed use of a domestic patent is limited to that authorized by the provisions of section 1498 of title 28 of the United States Code. By the terms of this section, recovery against the Government cannot be had on any claim arising in a foreign country. Hence, where the American manufacturer is a licensee under a foreign patent, the United States can procure from foreign sources without subjecting itself to liability for patent infringement. In the case of domestic patents, however, although the United States is free to utilize the patent for its own use, if it does so, it subjects itself to possible liability under section 1498 of title 28. Ordinarily, but not in all cases, the Government protects itself by the use of a patent indemnity clause in the contract by which the contractor indemnifies the Government against any liability which might attach because of patent infringement.

Senator NELSON. Now, in doing your purchasing and looking at the prices—when you are not able to accept competitive bids because there is only one manufacturer in this country, or for some other reason—do you compare the price, the sale price offered by the American sole source versus the price available in the world market as a matter of regular practice?

Dr. WELLS. These prices are available, and I will ask Mr. Whitworth to what degree this is done.