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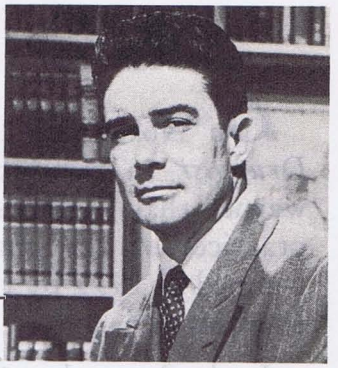

DAN SMOOT

KEFAUVER MEDICINE

The June 4, 1962, issue of this *Report* — "King-Anderson Medicine" — reviewed the plan to socialize the practice of medicine in the United States. This issue reviews the plan to socialize the drug industry.

Background

On June 30, 1906, President Theodore Roosevelt signed into law the Pure Food and Drug Act — intended *not* to give the federal government authority to set standards for, and exercise control over the drug industry, but merely to eliminate from interstate commerce unwholesome foods and drugs. The Act established federal controls over the *manufacture* of foods and drugs, only in federal territories and districts.[1] In short, the men who wrote and sponsored the Pure Food and Drug Act of 1906 recognized the constitutional limitations on the powers of the federal government.

The socialist upheaval symbolized by Franklin D. Roosevelt brought a different breed of men to the Congress of the United States.

In 1933 (the first year of F. D. Roosevelt's Administration), Senator Royal S. Copeland (Democrat, New York) introduced a Bill which ignored constitutional restraints and proposed to give an administrative agency of the federal government unconstitutional authority to establish and enforce standards of identity and quality for foods, drugs, and cosmetics produced anywhere in the United States. Congress rejected the Copeland Bill in 1933.[1]

Within five years, however, New Deal socialists had gained control of Congress. On June 25, 1938, Franklin D. Roosevelt signed into law the Federal Food, Drug, and Cosmetic Act — which was virtually identical with the Copeland Bill rejected by Congress in 1933.

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Kefauver's Investigation

On November 17, 1958, the *American Druggist* (a reputable professional journal) warned that "a full scale inquiry into pricing practices of the pharmaceutical industry is planned in 1959 by the Senate Antitrust Subcommittee."

In the September 5, 1959, issue of *Saturday Review*, John Lear (Science Editor of the *Review*) demanded a congressional investigation of drug marketing, alleging that "rich and powerful corporations" are "suddenly possessed of the results of new scientific research discoveries but inexperienced in the delicate ethics of physician-patient relationships." Mr. Lear recommended *Medical Letter* (a publication for doctors) as a competent authority in the field of drug marketing. At that time (September, 1959) Arthur Kallett (identified as a communist in 1944 by the Special Committee on Un-American Activities[2]) was Managing Director of *Medical Letter*.

On December 7, 1959, The Senate Judiciary Antitrust and Monopoly Subcommittee (under the Chairmanship of Estes Kefauver — Democrat, Tennessee) began public hearings into the United States drug industry.

When the Kefauver subcommittee hearings were televised (December, 1959), the subcommittee presented Dr. Louis Lasagna as a major witness against the drug industry. Dr. Lasagna was a member of the Advisory Board of the *Medical Letter* (of which Arthur Kallett was Managing Director). In 1942, Dr. Lasagna served as Special Medical Advisor for Consumers Union, a communist front (until 1954[3]) founded by Arthur Kallett.

Dr. John M. Blair acted as chief economist of the Kefauver subcommittee staff. Dr. Blair is the author of *Seeds of Destruction*, a book published in 1938, which claimed that private capitalism is doomed, because it contains fundamental weaknesses which are the seeds of its own destruction.[4]

On February 8, 1960, Senator John Marshall Butler (Republican, Maryland) said:

"In reviewing all of the hearings and reports by the [Kefauver] Subcommittee, I fail to find one iota of evidence that it has made any serious attempt to perfect the anti-trust laws. Instead, its direction has been dominated by the economic theories of its chief economist, Dr. John M. Blair."[4]

Senator Butler quoted Dr. J. D. Glover (of Harvard University) as saying that Dr. Blair's discussions were marked "by pettifoggery and efforts not to analyze the facts, but to handle the data in such a way as to 'make a case' against big business."[4]

The Drug Industry Act

On April 12, 1961, Senator Kefauver introduced Senate Bill 1552 which, he said, was designed to effect lower drug prices by infusing competition into the "monopolistic" drug industry. The Bill:

— Required federal licensing of all drug manufacturers by the Secretary of Health, Education, and Welfare; to get a license, a company must show that its plant meets standards established by the Secretary;

— Required the Secretary of HEW to establish generic names for new drugs, and to change, at will, generic names of existing drugs;

— Required that the generic name of a drug be as prominently displayed as the trade name, in labeling and advertising;

— Empowered HEW's Food and Drug Administration to check drugs for efficacy as well as safety;

— Amended the patent laws to provide that only during the first three years of a 17-year patent would the patent holder have exclusive rights to manufacture and sell its discovery. During the remaining 14 years, the patent holder would be required to sell its patented discovery to other licensed drug firms;

— Amended the patent laws to provide that drug modifications would be patented only

if HEW determined the change significantly enhanced the therapeutic effect;

— Made illegal the alloting and restricting of patents by private agreement among private firms.[5]

On July 5, 1961, Dr. Hugh H. Hussey, Jr., of the American Medical Association, said that the medical and pharmaceutical professions were better qualified than government employees to determine generic names and effectiveness of drugs.

On December 7, 1961, Mr. Eugene N. Beesley, Chairman of the Board of the Pharmaceutical Manufacturers Association, said the Kefauver Bill would virtually destroy the patent system, with respect to medicine.

On December 8, 1961, Dr. Vannevar Bush, Chairman of the Board of Merck and Company, Inc., said the patent provisions would cause a reduction of drug research.

Dr. Theodore Klumpp, President of Winthrop Laboratories, said the Bill would cause drug companies to eliminate expensive original research, by encouraging them simply to copy the products of other firms.

On April 10, 1962, President Kennedy urged favorable Senate action on the Kefauver Bill.[6]

On July 19, 1962, the Senate Judiciary Committee reported the Kefauver Bill favorably, having reduced its scope in only one major area: the Judiciary Committee had removed provisions to amend the patent laws.[6]

The timing of the bureaucracy is often brilliant. Note that the general, stated purpose of the Kefauver Bill, when it was introduced in April, 1961, was to protect the pocketbooks of the people, not their health. But, in the summer of 1962 — about the time the Senate Judiciary Committee reported the Kefauver Bill — the nation's newspapers and magazines were featuring stories about thalidomide, a German-made tranquilizing drug which allegedly had caused malformation of many European babies.

The case of a pregnant Arizona woman, who had taken thalidomide which her husband had bought in London, made front-page headlines for several days.

On August 1, 1962, President Kennedy, at his press conference, announced that, because of the thalidomide "disaster," he was recommending a 25 percent increase in the Food and Drug Administration staff. The President said:

"It is clear that to prevent even more serious disasters from occurring in this country in the future, additional legislative safeguards are necessary."[7]

For a pregnant woman to discover that she is bearing a malformed baby is, unquestionably, regrettable; but for the President of the United States to allude to it as a national disaster is a bit extreme. Moreover, since the drug which caused the sad affair was made in Germany and sold in England, it is difficult to see how an increase in the American bureaucracy can do anything about the situation.

On August 23, 1962, the Senate unanimously (by a roll-call vote of 78 to 0) passed Kefauver's Drug Industry Act.[8]

On September 27, 1962, the House passed a version of the same Bill. Differences between Senate Bill and House Bill were resolved in conference; and, on October 10, 1962, President Kennedy signed the Act into law.[9]

Consequences

There is no grant of power in our Constitution for the federal government to license drug manufacturers, to set standards of production, or to dictate the naming of drugs. Yet, the Drug Industry Act gives the Secretary of Health, Education, and Welfare almost limitless power to control the drug industry in

the United States. Under this law, the Secretary and his agents can:

— Invade the privacy of individuals and business firms, to seize and examine papers, records, and procedures, without warrants or any other due process of law — in violation of provisions of the Fourth Amendment;

— Write their own laws (that is, promulgate regulations which have the force of law) without even consulting or notifying the elected members of Congress who, under the Constitution, have the exclusive power to make federal laws;

— Administer and enforce their own laws, investigate alleged violations, and prescribe punishment;

— Destroy any drug-manufacturing business firm that the Secretary does not like (under the pretense that the firm is not meeting the standards which the Secretary sets);

— Reward private firms that the Secretary likes (by giving their products the blessings of the Department);

— Name new drugs, and re-name old ones.[9]

All of this was done for the purpose of *reducing drug prices.* In the rigged and slanted Kefauver Drug Industry Hearings, and in all the propaganda which followed, there was no proof of any specific instance of harm to the health of the people resulting from the absence of the kind of governmental controls which the Drug Industry Act provides.

Except for the President's ridiculous reference to the thalidomide "disaster" in his August 1 press conference, there was little effort to make a case for the Drug Industry Act as being necessary to protect the public from harmful drugs. The case for the Act rested on Kefauver's claim that the law was necessary to protect the public from high prices charged by the "monopolistic" drug industry.

But note the following paragraph from an article entitled "The Truth About Drug Prices," in the March 21, 1960, issue of *U.S. News & World Report:*

"The Kefauver Subcommittee made headlines, early in its investigation by noting that there were price markups of as much as 7,000 per cent between the cost of some drugs and the price the buyer paid at the retail store. These figures, however, were based on the cost of the raw materials and did not take into account the normal business expense of developing, manufacturing or marketing the products.... wholesale prices of drugs as measured by the Bureau of Labor Statistics advanced 3 per cent between 1948 and 1958, at a time when wholesale prices of all industrial products went up 22 per cent."

There is truth in Kefauver's contention that drug companies could charge less and still make a reasonable profit. But only competition in a free market — producers trying to sell, and consumers making free choice about what product they will buy — can sensibly set prices and profits. When government gets a monopolistic stranglehold on the drug industry, prices are more likely to go up than down. Quality and progress will inevitably decline.

When a governmental agency can make or break a company (by giving or withholding its blessing) we will have drug companies directing their primary effort not toward research and development intended to outpace competitors, but toward currying favor with the all-powerful bureaucracy. We will have in the drug industry, the same situation we now have in the agricultural industry: waste, stupidity, graft, corruption — a vast breeding ground for promoters like Billie Sol Estes.

Indeed, the behavior of some leaders in the drug industry in 1962 indicate that they may have been anticipating deals with the ruling bureaucracy.

How else can you account for the fact that many leaders of the drug industry in 1962 kept a stony silence about the Drug Industry Act while it was being debated in Congress — as if indifferent, or afraid to speak a word in defense of their own?

Kefauver said he wanted to "infuse" competition into the drug industry; but Kefauver's

Bill can eliminate most of the meaningful competition that did exist. When the full effect of the Kefauver law is felt, the drug industry in the United States will be in the hands of a few major favorites of the Washington bureaucracy. None will be struggling to outpace the others, in research or in price-reduction — because all will be operating exactly alike, under "standards" set by the Secretary of HEW.

Kefauver is right in saying that advertising gives most of the drug business to the big firms, because only large firms can afford the expensive nationwide advertising and promotion programs which create mass sales; but there is nothing illegal or unethical or harmful about this condition.

The national advertising by drug companies no doubt creates more market than it captures: that is, while advertising does make massive sales for drugs of specific brand names, it also creates wider demand for products of the same general type — thus bringing a gratuitous benefit to small producers who cannot advertise their own brands nationally.

The fact that small companies do not sell as much as large companies, does not mean that the small companies are oppressed or illegally handicapped, or even damaged. Small companies, in competition with a score of big companies who get most of the national business, are much better off than they would be if all big drug companies were broken up into a multitude of little ones, because then there would be no big ones to pioneer in expensive research or to conduct great advertising programs which stimulate sales for products of the whole industry.

Kefauver is right in saying that the expensive advertising of the drug industry is added to the cost of drugs and is, thus, charged to consumers. That is true of all advertising. But Kefauver reveals profound ignorance of American business when he implies that advertising unnecessarily inflates the cost of consumer goods.

Communists and socialists generally regard advertising as a parasitic and wasteful activity which increases the cost of consumer goods without giving consumers commensurate benefits. The fact is that advertising is one of the major reasons for the miracle of American production: by creating mass markets for a product, it makes the economy of mass production possible, thus drastically reducing the cost of consumer goods.

If, for example, there were no mass market for drugs (which advertising has created), all drugs would be made in shops too small to use the money-saving techniques of mass production. And the price of all drugs (though not "burdened" with advertising costs) would be much higher than now.

The Drug Industry Act requires drug companies, in advertising and labeling, to feature prominently the *generic* name of drugs.

For example, *Miltown* (produced by Wallace Laboratories) and *Equanil* (Wyety Laboratories) are the *trade* names of a tranquilizing drug whose *generic* name is *meprobamate*. There could be small companies making *meprobamate* under a trade name quite unknown to the general public.

A general intent of the law is to encourage doctors to use the *generic* name instead of the *trade* name in prescribing such drugs. This would help small companies making drugs under little known *trade* names. But the end result could be considerable damage to the industry at large, and to the public.

A company could spend millions of dollars on research to produce a new drug; but, when it is ready to market, the Department of Health, Education, and Welfare could assign the new drug a *generic* name which all companies could use. If all doctors used the *generic* name in writing prescriptions, pharmacists could buy the new drug from the company

offering the best price. This could very well be a company which had no research costs at all in the drug. Thus, the company developing the new drug could suffer — and be discouraged from investing in further costly research.

Mass Immunization

On January 11, 1962, the President, in his State of the Union Message, said:

"To take advantage of modern vaccination achievements, I am proposing a *mass immunization program,* aimed at the virtual elimination of such ancient enemies of our children as polio, diphtheria, whooping cough and tetanus."[10]

Congress obliged with an Act (HR 10541, signed into law on October 23, 1962), providing 36 million tax dollars for the U. S. Surgeon General to use in a massive program of vaccinating Americans (with government-purchased serums). The Constitution does not authorize agents of the federal government to practice medicine on the people.

Administrative Law and Health Foods

On June 19, 1962, the Department of Health, Education, and Welfare made one more dangerous addition to the unconstitutional body of "administrative laws" — federal regulations which are not enacted as laws by our elected representatives but are merely proclaimed as laws by appointed bureaucrats.

In essence, this HEW regulation prohibits the makers of products generally known as "health foods," "vitamins," and "dietary supplements" from putting on their labels any nutrients not "recognized by competent authorities as essential and of significant dietary-supplement value in human nutrition."

The regulation lists 12 vitamins and minerals which the "competent authorities" consider essential.[11]

The "competent authorities" are, of course, bureaucrats in the Department of Health, Education, and Welfare.

The science of nutrition is still in its infancy. New discoveries may at any time expand the number of vitamins and nutrients considered necessary to good health. But, under this ukase of the Department of Health, Education, and Welfare, no progress in the development of health foods and vitamins is encouraged, except as authorized by the federal bureaucrats. In fact, the new regulation is so vague and broad that the clerks in Washington could outlaw many health food products already on the market.

Energetic enforcement of this regulation would halt progress in this field. There simply can be no progress when the creative and productive efforts of men are controlled by bureaucrats whose decisions can be influenced by politics, by personal laziness, and by personal inclination to stay perpetually in well-worn ruts that are safe and easy.

Freedom versus Socialism

There must be controls on an industry which vitally affects the health and welfare of the whole people; but when *government* controls, it makes matters worse, because it gives the power of decision to politicians and bureaucrats who *cannot* have as keen a sense of personal responsibility as industry leaders *must* have.

If the head of a drug firm makes a wrong decision about the production, labeling, or marketing of a drug, he could incur lawsuits, and loss of reputation that might bankrupt his firm and destroy something that he spent a lifetime in building. If a Washington bureaucrat makes the same mistake, there is a good possibility that the whole bureaucracy will, in the interest of protecting itself, congeal and conspire to hide the error. If the mistake can-

not be hidden, the most that usually happens to the bureaucrat is an official reprimand which may delay his next pay raise. In extreme cases, he may be fired.

The only safe and effective control over industry is the control of rigorous competition in an economic system free of governmental harassment and regulations. Competition for the dollars of the buying public compels private industry to strive relentlessly for better products and lower prices. Bureaucratic and political controls stifle initiative and remove incentive for progress — resulting, inevitably, in shoddy products and higher prices.

Look at the record. Because it has been freer than the drug industry anywhere else in the world (despite confiscatory taxation and the restrictions of the unconstitutional Federal Food, Drug, and Cosmetic Act of 1938) the American drug industry has produced more new drugs than the drug industries of all other countries of the world put together.[12]

In the Soviet Union, the drug industry is in precisely the status that liberals are preparing for the American industry: it is totally controlled by government. And the drug industry in the Soviet Union has not developed one new drug product of consequence in 43 years of total governmental control.[12]

Approximately two-thirds of all new drugs prescribed by British doctors, since socialized medicine came to England, were developed by American drug companies. Prior to the "nationalization" of medical care in England, the English made outstanding contributions in the fields of biochemistry and physiology, generally, and in the development of "miracle drugs" particularly (penicillin, for example).

Drug Control and Fluoridation

One danger of the drug-control laws is related to the senseless drive for fluoridation of public water systems.

Mental-control drugs have already been developed — drugs which increase the susceptibility of the mind to suggestions; drugs which pacify and make human beings tractable and amenable to discipline.[13]

If power-hungry men who rule the nation politically have the power to determine what drugs the people should have, how those drugs shall be named and labeled, and how they shall be distributed and administered; and can even have certain drugs administered to the whole population by force, through use of public water systems as a medium — who can fail to foresee the potential consequences? A party or a clique could keep the public docile and maintain themselves in power perpetually — by ordering the right kind of dosage of the right kind of drugs.

Drugs and Dishonesty

News accounts of the Cuban prisoner exchange deal at Christmas time, 1962, revealed that it was Robert F. Kennedy, Attorney General, who "persuaded" American drug companies to contribute the drugs, which constituted a substantial portion of the 53 million dollars in ransom to Castro for release of prisoners whom President Kennedy had betrayed into Castro's hands at the Bay of Pigs in 1961 (Robert Kennedy referred to this betrayal as a "mistake" which his brother had made.).[14]

Robert Kennedy's persuasion included assurance that the drug companies would get tax deductions for the drugs they contributed to the cause of communism — deductions big enough, in many cases, to pay much of the cost of the drugs contributed.[15]

Yet, President Kennedy and Robert F. Kennedy emphatically deny that the U.S. government had anything to do with the Cuban exchange deal.

What to Do

The Pure Food and Drug Act of 1906 went as far as the federal government can legally go "to regulate Commerce" in the food and drug industries; and that Act is all that is necessary: it gives the public as much effective legal protection as possible against the movement of unwholesome food and drugs in interstate commerce.

The public should put enough pressure on Congress to repeal the unconstitutional and harmful laws in this field — specifically the Federal Food, Drug, and Cosmetic Act of 1938; the Drug Industry Act of 1962; and the 1962 law "authorizing" the President's Mass Immunization Program.

But the only way to prevent such legislation from being enacted again, is to repeal the income tax amendment and thus deny Washington plunderers the unlimited tax revenues which finance the drive to socialize every segment of our economy.

The quickest way for the public to effect repeal of the income tax is to support legislation (like HR 11492, introduced last year by U. S. Representative Bruce Alger) to eliminate the withholding tax.

Once withholding is eliminated, the American people will come to an abrupt realization of the crushing tax burden they are carrying. The income tax would be repealed shortly thereafter.

FOOTNOTES

(1) *The Encyclopedia Americana,* Vol. XI, 1961, p. 82

(2) *House Report 1311, Special Committee on Un-American Activities,* United States House of Representatives, Government Printing Office, March 29, 1944, p. 153

(3) Consumers Union was cited as a communist front in 1944 (see Footnote 2). This communist front citation was removed in 1954 by the House Committee on Un-American Activities after reorganization of Consumers Union; *see Annual Report for 1953,* House Committee on Un-American Activities, Government Printing Office, 1954.

(4) *U.S.A.,* April 8, 1960, pp. 1 ff.

(5) *Congressional Quarterly Almanac,* 1961, p. 291

(6) *Congressional Quarterly Weekly Report,* July 27, 1962, pp. 1257 ff.

(7) *Congressional Quarterly Weekly Report,* August 3, 1962, p. 1310

(8) *Congressional Quarterly Weekly Report,* August 24, 1962, p. 1395

(9) *Congressional Quarterly Weekly Report,* October 12, 1962, pp. 1899 ff.

(10) *Congressional Quarterly Weekly Report,* January 12, 1962, p. 55

(11) *Federal Register,* June 20, 1962, p. 5817

(12) "Prescription Drug Industry Story," booklet, Baxter Laboratories, Inc., 1961

(13) "Scientist Finds Drug To Alter Substances Controlling Emotions; Swede Suggests Chemical Could be Used in Mental Illness Or to Control Minds of Men," article, *Wall Street Journal,* 1960

(14) *The Dallas Morning News,* December 25, 1962, p. 1

(15) *U.S. News & World Report,* December 31, 1962, p. 32

WHO IS DAN SMOOT?

Dan Smoot was born in Missouri. Reared in Texas, he attended SMU in Dallas, taking BA and MA degrees from that university in 1938 and 1940.

In 1941, he joined the faculty at Harvard as a Teaching Fellow in English, doing graduate work for the degree of Doctor of Philosophy in the field of American Civilization.

In 1942, he took leave of absence from Harvard in order to join the FBI. At the close of the war, he stayed in the FBI, rather than return to Harvard.

He worked as an FBI Agent in all parts of the nation, handling all kinds of assignments. But for three and a half years, he worked exclusively on communist investigations in the industrial midwest. For two years following that, he was on FBI headquarters staff in Washington, as an Administrative Assistant to J. Edgar Hoover.

After nine and a half years in the FBI, Smoot resigned to help start the Facts Forum movement in Dallas. As the radio and television commentator for Facts Forum, Smoot, for almost four years spoke to a national audience giving both sides of great controversial issues.

In July, 1955, he resigned and started his own independent program, in order to give only one side — the side that uses fundamental American principles as a yardstick for measuring all important issues.

If you believe that Dan Smoot is providing effective tools for those who want to think and talk and write on the side of freedom, you can help immensely by subscribing, and encouraging others to subscribe, to *The Dan Smoot Report.*