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The man who managed your marketing?

Estes Kefauver and the drug hearings on antitrust and monopoly

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Estes
Kefauver and
the drug
hearings

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Abstract

Purpose – The US Senate hearings on pricing in the market for drugs in 1959, and lasting ten months, was part of a series of wider senatorial hearings into a range of American industries including the markets for milk, bread, automobiles, and steel, undertaken by the Senate Subcommittee on Antitrust and Monopoly, chaired by Senator Estes Kefauver of Tennessee between 1957 and 1963. The study examines how a body that had the initial investigational remit to examine the subject of ‘administered prices’ in the drug industry, became instead largely a systematic critique of the marketing activities and techniques practiced by pharmaceutical firms of the day.

Design/methodology/approach – The study draws on the Senate Subcommittee hearings for prescription drugs.

Findings – Three objectionable marketing practices were identified by the Antitrust Subcommittee: the use of sales representatives and high-pressure sales techniques; industry promotional practices, expenditure and deceptiveness; and the role of drug branding to hold consumers captive to major brands.

Research limitations/implications – Rather than being an investigation that was perceived by some as out of tune with the major events of the day (most notably civil rights), it will be demonstrated that, far from being an anachronism, the hearings were an important precursor to the consumer rights movement, which peaked in the 1960s and 1970s, and a link will be established between antitrust issues and contemporary consumer politics.

Originality/value – The paper demonstrates the historical value of studying regulatory body appraisals of marketing practices.

Keywords Marketing history, Pharmaceuticals, Administered prices, Antitrust, Marketing practices

Paper type Research paper

Introduction

In December 1959, the US Subcommittee on Antitrust and Monopoly presided over a series of hearings into the American drug industry that lasted for 10 months chaired by Senator Estes Kefauver. The remit of the hearings was to examine the impact of administered prices on industry profits and the concentration of economic power of the major pharmaceutical firms. What transpired, however, to the surprise of many corporate witnesses and observers, was the systematic investigation of the marketing practices of the pharmaceutical industry. Although now largely forgotten by historians of antitrust law (Wells, 2002) and business historians (Scroop, 2007; Bud, 2005), the drug hearings represent a fascinating “interpretation of antimonopoly’s role in shaping the



politics, economy, and culture of the USA after 1945" (Scroop, 2007, p. 3), and that led to some to conclude that the marketing discipline itself was "under attack" and that "such unfair campaigns as those of Senator Kefauver" had linked the public consciousness with unfair marketing and pricing practices to the extent that "public confidence in pricing practices was set back 70 years" (Manischewitz and Stuart, 1962, p. 2). This study seeks to understand: Why were the marketing practices of the drug companies being investigated? What marketing practices did the Subcommittee find questionable? and How was the market regulated as a result of the drug hearings?

Kefauver's stance on corporate power and antitrust earned him an anti-business and marketing reputation from some commentators. In 1960, at the height of the antitrust drug hearings, *Sales Management* magazine published an article titled "The Man Who Would Manage Your Marketing" (Anonymous 1960), drawing parallels between Soviet-style market intervention and planning under communism and Kefauver's views on market(ing) regulation. "[Tr]y to imagine" the article urged, "how you would make out under *Komplete Kefauver Kontrols*", chastising Kefauver for the restraints he would place on marketing practices, something he had been keen to do in the pharmaceutical industry.

The drug hearings caused some historians to question Kefauver's quixotic crusade with the antitrust laws that was out-of-keeping with the important events of the day, such as civil rights, and that the post-war antitrust movement was "one of the faded passions of American reform" (Hofstadter, 1965, p. 188) in an era when Americans had resigned themselves to the belief that economic and social order lay firmly in the hands of large organizations in the wake of the New Deal and post-war reforms. An alternative assessment, however, is that the drug hearings represent a far-reaching assessment of marketing practices in post-war USA, an account of attempts to regulate deceptive marketing practices, and the advocacy of consumer safety that we normally attribute to the mid-1960s and individuals such as Ralph Nader (Mcmannon, 1997). Kefauver's championing of antitrust was at a time when the topic was viewed by the public as "complex, difficult, and boring" (Hofstadter, 1965, p. 189), but, far from being an anachronism, Kefauver was an advocate of consumer protection and safety that predates the subsequent 1960s and 1970s consumer movement – a link that is today either ignored or largely forgotten. But to what extent was Kefauver able to "manage our marketing" in the years that followed the drug hearings?

The rise of the pharmaceutical industry and its marketing practices

A history of drug marketing is effectively bifurcated by two classes, or types, of drug. The so-called "ethical drugs" refer to medicines derived based on scientifically produced evidence of therapeutic benefit, while "patent medicines" represent a class of drug promoted as of medicinal benefit that often were not. While the earliest known pharmacies and herbal remedies can be traced back many thousands of years, it was not until the late 1800s that the ethical drug market substantially evolved with improved scientific methods, further enhanced by the discovery of penicillin and insulin in the 1920s and 1930s, while the market for patent medicines can be traced back much earlier.

While the focus of the present paper is not concerned with patent medicines, it is worth briefly reflecting on the marketing practices adopted by their manufacturers as a history of ethical drugs is inescapably linked to patent drugs, and as a number of advertising techniques were popularised by marketers of patent medicines

(Conroy, 2009; Armstrong and Elizabeth, 1991; Holbrook, 1959), making them an interesting context in their own right. Patent drugs and medicines (sometimes referred to as “nostrums”) can be dated to the late 1600s – such as “Anderson’s Pills” in the 1630s, and Daffy’s Elixir in the 1640s – although they can actually be traced back to ancient times and pre-history; evidence points to most early civilisations making use of natural ingredients and spiritualistic healing in attempts to curb ill-health. In an early form of exclusive marketing rights, creators of potions and nostrums could seek royal approval and patronage through “letters patent”, which could then be used in some of the earliest forms of advertising. Patent medicines also represent neophyte (albeit often crude) forms of branding, used to differentiate various concoctions in a crowded marketplace, and as pharmacists would frequently replicate their often simple ingredients and composition for their local market at a lower price. Brands such as Angostura bitters, Coca-Cola, 7-Up, Dr Pepper, and Pepsi Cola, were initially marketed as providing therapeutic benefits, and are a modern legacy of the patent medicine market.

Ironically, few patent medicines were actually patented, as their dubious ingredients often meant that their producers did not wish to disclose them as part of the patent process (and as the patent process is predicated on providing evidence of having discovered something new – which many producers of patent medicines blatantly could not support). Ingredients such as opium, alcohol, cocaine, laudanum and turpentine were promoted as cures for epilepsy, cholera, paralysis and cancer, as well as soothing “female complaints” and proffering “male enhancements”. Even death was not beyond treatment; Dr Ebenezer Sibly’s Solar Tincture was advertised in *The Times of London* (1793) as a “estoration of life in cases of sudden death”. Although not all patent medicines were ineffectual, in one of the earliest novels in the English language, Henry Fielding, in *Tom Jones* (1749 [2009, p. 115]) reflected on the potency of patent medicines:

As to Squire Western, he was seldom out of the sick-room, unless when he was engaged either in the field or over his bottle. Nay, he would sometimes retire hither to take his beer, and it was not without difficulty that he was prevented from forcing Jones to take his beer too: for no quack ever held his nostrum to be a more general panacea than he did this; which, he said, had more virtue in it than was in all the physic in an apothecary’s shop.

The public, however, were becoming sceptical to the claims of the promoters of patent medicines; the term “snake oil salesman” was coined in the early 1900s to refer to purveyors of remedies with dubious therapeutic and medicinal properties, and became a term applied generally to the promoters of many patent medicines. This may have been inspired by Clark Stanley and his “Snake Oil Liniment”, which he sold from the late 1800s to around 1916, when the US Government fined Stanley for marketing a product of no real value, despite his bold advertising claims that the product was “A wonderful pain destroying compound. The strongest and best liniment known for the cure of all pain and lameness” in his newspaper advertising in the 1880s (Rau, 2012, p. 23). Other patent medicines at the time no doubt helped to link producers of numerous patent drugs with general quackery and limited medical efficacy in the minds of the American public, and made the enduring synonym linked with frauds and charlatans of all hues. It was against this background in the late 1800s that several pharmaceutical and chemical manufacturers in the USA and Europe separated themselves from such unruly practices in the patent medicines market and “restyled themselves as ‘ethical’ houses devoted to professional

therapeutics” (Greene and Herzberg, 2010, p. 794). These manufacturers marketed their products exclusively to medical professionals in line with the Code of Ethics produced by the American Medical Association (Liebenau, 1987).

In the USA, patent drugs were often sold through druggists, via mail order catalogues and through travelling shows (or “medicine shows”), a form of small-scale travelling circus that provided entertainment such as “muscle men” turns (Young, 1961; Tomes, 2005). Some patent medicines enjoyed significant success. For example, Brandreth’s Pills, promoted by Benjamin Brandreth, was one of the most widely recognised drug brands in the USA in the mid- to late-1800s (White, 1895). When Sears withdrew most patent medicines for sale in its catalogue in 1913, it significantly stymied their sale to a wider audience (Emmerson, 2013). The market for patent medicine declined rapidly in early part of twentieth century, owing to reports of addiction and, in some cases, death and increased federal regulation. A pioneer in this cause was Adams, (1905) who wrote “The Great American Fraud” in *Collier’s Weekly*, an exposé on deceptive patent medicines that paved the way for the passing of the Pure Food and Drug Act in 1906, which attempted to regulate misleading advertising concerning the efficacy of some drugs and required clear labelling and disclosure of ingredients, and the Sherley Amendment of 1912, which prohibited deceitful claims on drug labelling. Further legislation followed in the form of the Food, Drug and Cosmetic Act of 1938, which meant that only a doctor could prescribe many classes of drugs (Temin, 1980), and the Durham–Humphrey Amendment of 1951, as well as public concerns over drug safety, strongly curtailed the patent drugs market. Marketing would become a potent tool used by the drug companies in convincing physicians to prescribe certain branded drugs. Hence, marketing emphases and priorities switched from persuading pharmacists to stock certain drugs to convince physicians to prescribe certain branded drugs.

Prior to the 1950s, the emphasis of the drug companies was in persuading pharmacists to stock certain products rather than on physicians (Marks, 1995). Between the 1930s and 1950s, the growth of “wonder drugs” (beginning with sulfonamides, shortly followed by antibiotics, cortical steroids and tranquilizers) led to a series of “potent but dangerous drugs” on the US market (Bud, 2005, p. 330). Due to issues of consumer safety, prescription-only drugs became a pressing concern (Smith, 1997). Such developments were advantageous to the drug majors:

[b]y focusing the key site of consumer decision making to a well-bounded set of professionals, pharmaceutical consumption through prescription enabled the development of more efficient marketing strategies (Greene, 2007, p. 742).

As a result of these practices, as well as vertical integration and consolidation in the industry, a number of major pharmaceutical firms began to emerge in the USA in the post-war years.

The value of the ethical drug market increased substantially after World War II; in 1939, the domestic market was worth approximately \$150 million in sales; by 1947, this had increased to over \$500 million (Herzberg, 2009), and in excess of \$2 billion by 1959 (Rehder, 1965). Branded drug products were growing in popularity, as dosages were being produced in finished form rather than being prepared by pharmacists. Rather than simply the “suppliers of bulk chemicals” (Facchinetti and Dickson, 1982, p. 469), drug companies were:

[...] changed into vertically integrated corporations involved in research, development, production, and the full range of marketing functions, including promotion to physicians and distribution to wholesalers and retailers (Facchinetti and Dickson, 1982, p. 469).

With the marketing apparatus used by the drug majors growing in sophistication, there were also concerns that the high industry advertising expenditure was a barrier to new market entrants as well as the large profits they were making. In 1958, the *Fortune* magazine reporting on US industrial companies by profitability included three pharmaceutical organizations topping the list (Carter Products; American Home Products; and Smith, Kline & French), while 13 drug companies were in the top 50 (Morgan and Allison, 1964). The large revenues derived from oligopolistic power in the industry permitted the largest manufacturers to undertake significant spending on advertising in medical journals, publicity, field sales personnel (called “detail men”) and direct mail to physicians, which created and perpetuated strong market entry barriers, and further compounded the notion of consumer captivity. The high profit margins enjoyed by the manufacturers (on what were often extremely low production costs) provided further revenues to expend on marketing campaigns. It was against this background that Kefauver’s antitrust subcommittee targeted the pharmaceutical industry in one of its earliest investigations under his chairmanship.

Carey Estes Kefauver, “Big business” and the antitrust hearings on Administered prices (1957-1963)

Described as “[o]ne of the most admired and reviled politicians of his age [...] a loner with a melancholy streak and a liking for scotch” (Scroop, 2007, p. 3), Carey Estes Kefauver (who preferred being called by his second name) was born in 1903 in Madisonville, Tennessee, in a farming community, was a graduate of the University of Tennessee (Knoxville) and Yale Law School, and practiced corporate law in Chattanooga in the 1920s and 1930s (Fontenay, 1980 and Gorman, 1971 for a detailed personal and political background). He joined the US House of Representatives in 1939 as a Democrat, serving until his election to the USA Senate in 1948. He was the Democratic Party’s nominee for Vice-President in 1956 in an unsuccessful campaign with Presidential nominee and running-mate Adlai Stevenson.

Kefauver came to national prominence in the USA through a series of hearings on organized crime (popularly known as “the Kefauver Committee”) that probed vice and corruption in America’s major cities between 1950 and 1951. The crime hearings sensationalized the nation and were screened at movie theatres and watched by more than 20 million people (Scroop, 2007). Arguably Kefauver’s greatest influence and achievement however – and the focus of the present study – was as the chair of the Senate Subcommittee on Antitrust and Monopoly between 1957 until his death in office in 1963. This position saw Kefauver become synonymous with antitrust laws in post-World War II USA, to whom his detractors wryly observed: “in Kefauver we anti-trust” (Goldman, 1966, p. 8). During his tenure of chair of the Antitrust Subcommittee, Kefauver presided over numerous investigations of major industries including: pharmaceuticals, milk, bread, automobiles, steel and the heavy electrical equipment industry. “Adopting a dragnet approach” (Scroop, 2007, p. 11) to the industries investigated, the hearings resulted in 18,000 pages of witness transcripts in 29 volumes and led to the prosecution of some of the most powerful firms in the USA including General Electric and Westinghouse (Smith, 1961a, 1961b).

The post-war US economy witnessed unparalleled levels of economic growth and consumption, with a trend towards the consolidation of large corporate entities through mergers and acquisitions; in the 1950s alone, the 500 largest manufacturers in the USA had acquired some 3,700 smaller firms (Goldman, 1966). While for many, this led to unequalled standards of living, there were concerns that “big business” was changing the cultural landscape for the poorer, and Kefauver spoke directly “[...] to the deepest fears of those Americans who were alarmed by the erosion of traditional small town values” (Griffith, 1972, p. 77). Further, corporate consolidation was resulting in the misuse of monopoly power; as Kefauver and Till (1966, p. 23) observed: “Every day in our lives monopoly takes its toll. Stealthily it reaches down into our pockets and takes a part of our earnings”. In Kefauver’s view, this was a society on the brink of losing its tradition of “fair” competition, and the antitrust laws served as the only adequate resistance against the powerful controls of large corporate entities:

With these mergers, competition has been lessening. The “big” in all facets of American business are becoming constantly more powerful. We have, today, the “big” in the automobile business, the “big” in the steel business, the “big” in the oil business, the “big” in the aluminum business, the “big” in the meat industry, as well as in many other industries too numerous to mention (Kefauver speech to the Senate, 1st May, 1957, in Scroop, 2007, p. 6).

Under his stewardship, the Subcommittee’s principal concern was investigating the practice of administered prices, a much-contested idea put forward by a group of New Deal economists, most notably Gardiner C. Means (1935, 1940), and supported by John K. Galbraith. Administered prices – as the name suggests – refers to the practice of the artificial setting of prices by businesses rather than leaving them subject to the normal forces of supply and demand – or “market prices” (Scroop, 2007), that had been popular in many industries after World War II. Kefauver’s contention, however, was that such pricing practices harmed consumers, damaged the economy and ceded too much power to large corporate interests (Kefauver and Till, 1966), a view that both Means and Galbraith shared to some extent. The Subcommittee’s investigation into administered prices in the drug industry began in 1959 and lasted 10 months, and called on some 150 witnesses to give evidence; afterwards Kefauver claimed that it uncovered a “[...] dramatic illustration of the effect of monopoly on the consumer [...]” beyond that of any of the other industries investigated by the Subcommittee (Kefauver and Till, 1966, p. 29).

While the terms of reference of the Subcommittee was to afford it powers to examine the practice of administered pricing in the drug industry, what actually transpired was a far-reaching inquiry into the marketing practices of the major pharmaceutical firms – an intellectual detour that was not uncharacteristic of Kefauver during most of the Subcommittee’s hearings, and that much annoyed his critics and detractors in industry and government (Gorman, 1971). Concerns over marketing practices in the drug industry were not unwarranted; however, in the 1950s, physicians in the USA were being increasingly saturated with promotional materials from the pharmaceutical companies and targeted with dubious product claims. By the end of the 1950s, it was estimated that collectively physicians in the USA were annually exposed to almost 4 million pages of advertising in medical journals, and were visited by industry sales personnel 20 million times (Harris, 1964). It was also claimed that drug companies were making baseless efficacy claims for drugs in promotional materials while often providing no mention of side effects (Donohue, 2006). So rife were such practices that some commentators claimed that physicians were unable to determine fact from fiction

in drug marketing (May, 1961). These practices were beginning to attract public attention; in 1958, the *Saturday Review* received a number of letters from concerned readers (including some physicians) over confusion in the market for antibiotics (Bud, 2005). *Saturday Review* columnist John Lear wrote a series of pieces in early 1959 critical of pharmaceutical company practices and the large profits being made in the industry (Lear, 1959a, 1959b, 1959c), and public confidence in drugs and the drug industry was at a very low ebb.

Against this background, the complex issues the Subcommittee sought to answer included the degree to which the high prices being charged by the industry were necessary, as they supported substantial R&D costs and offset other product failures, or were high prices being charged in order to support the huge amounts being expended on marketing promotions and sales, and were the drug companies abusing their power by spending huge sums on marketing to influence physicians to ensure that their brand of drug was prescribed? Kefauver had pursued organized crime in the USA; he would now turn his attentions to the ills of the capitalist system in the form of marketing practices in post-war USA.

Questionable marketing practices of the major pharmaceutical firms

The Subcommittee investigation with its remit of examining the effects of administered prices in the drug industry proved ultimately to be much broader in scope than merely the issue of monopoly pricing alone, but “for the first time [...] put the spotlight on the research and marketing practices of the drug industry” (Tobbell, 2012, p. 109). It is difficult to conceive of a key marketing activity that was not scrutinised by the Subcommittee or that failed to exercise Kefauver as the hearings progressed. Administered prices were merely a symptom of a deleterious pernicious marketing apparatus and oligopolistic industry structure, and can be viewed as Kefauver’s “Trojan horse” through which industry marketing practices could receive legal assessment (Scroop, 2007; Bud, 2005). Three themes are evident in the marketing practices brought into question by the hearings:

- (1) The use of sales representatives and high-pressure sales techniques (the “detail men”).
- (2) Industry promotional practices and the vast sums expended on advertising and direct mail, and the use of deceptive promotional practices.
- (3) The questionable employment of drug branding to hold consumers captive to major brands.

Through these mechanisms of manipulation, the Subcommittee charged the major pharmaceutical firms with the marketing machinery to ultimately artificially raise prices and create entry barriers for new firms. As we shall see, Kefauver was vexed by the peculiarities of industry practices in the drug market where “the man who orders does not pay, and the man who pays does not order” (Kefauver and Till, 1966, p. 29). His scathing assessment of marketing practices in the drug market in the USA – and what he saw as the “[...] price-fixing brigandry of the so-called ‘ethical’ drug trade [...]” (Kefauver and Till, 1966) – subsequently resulted in tighter regulatory control of the drug market that reshaped industry practices.

The role of “detail men” in pharmaceutical sales

The “detail men” were “[...] (usually men with pharmaceutical or other technical backgrounds) who act mainly as missionary salesmen” (Bauer, 1961, p. 548). It was the role of the detail men to visit doctor’s surgeries, clinics and hospitals and to “detail” medical staff – the practice of providing information concerning new drugs with the aim of persuading a doctor to prescribe them to his or her patients. Described by Greene (2004, p. 272) as “half sales pitch and half educational service”, the detail men would also provide market intelligence including information gleaned from targeting pharmacists to collate information on prescription sales and identifying high-prescribing physicians. When reported back to sales managers, these data “[...] generated a crude map of practice density and marketing receptivity that enabled more strategic deployment of salesmen” (Greene, 2007, p. 743). Although travelling salesmen (Spears, 1995), and travelling salesmen of patent medicines, had existed since the mid-nineteenth century in the USA (Young, 1961), it was not until the aftermath of World War II, however, that the major pharmaceutical companies began to deploy travelling salesmen in significant numbers as a pivotal marketing strategy. As the industry increased in value from \$300 million at the advent of World War II in 1939 to \$2.3 billion by 1959, the number of detail men increased from the low thousands in number in the 1920s to in excess of 15,000 across the USA by the end of the 1950s (Peterson, 1951; Gibson, 1959). This can be attributed, in part, to the introduction of a number of “miracle drugs” in the 1940s including tranquilizers, antihistamines, corticosteroids and antibiotics.

The detail men took on an increasingly important role, particularly in honing sales techniques to improve efficiency and sales tactics and to identify and target physicians with a penchant for sales personnel and new drugs (McQuillan, 1963; Peterson, 1949). Such techniques were facilitated by the introduction of various educational sources, including a college course being offered on “detailing” physicians offered by Thomas H. Jones at Columbia University in 1941 (Greene, 2004); practical sales training texts (for example, Thomas H. Jones’ *Detailing the Physician: Sales Promotion by Personal Contact With the Medical and Allied Professions* published in 1940 and Arthur F. Peterson’s *Pharmaceutical Selling, “Detailing” and Sales Training* published in 1949); and journals, such as the launch of *Medical Marketing* in the early 1940s. Although these sources demonstrated variety in their scholarly approach and underlying scientific principles, they served to underscore the specialized role of the pharmaceutical sales agent compared to that of the general salesman. The detail men themselves were also developing their own techniques and vernacular based on their field experience. One former long-serving detail man – Rufus McQuillan – revealed that pharmaceutical salesmen of the 1940s began using physician caricatures during sales training, such as “Dr Snob”, “Dr Resistant,” and “The Backslapper”, to illustrate how different physicians would respond to various sales tactics, and what might be done to overcome potential resistance (McQuillan, 1963). Regardless of the pejorative characterisations proffered by the detail men, physicians were becoming swamped with sales visits by the end of the 1950s (Gibson, 1959) to the extent that many pointedly refused appointments to all cold-calling sales agents (Greene, 2004). For example, it is estimated that some 20 million sales calls were made to pharmacists and physicians by detail men in 1958 alone (Harris, 1964).

In his early course on pharmaceutical marketing and sales, Thomas H. Jones dispelled any disillusion his students might have harboured towards the singular

purpose of the role of the detail man as a hard-selling technique utilized by the drug companies: "Detailing is, in reality, sales promotion, and every detail man should keep that fact constantly in mind" (Jones, 1940, cited in Greene, 2004, p. 273). The power the detail men were perceived as holding over physicians was a particular concern, as Dr Walter Modell (Cornell University Medical College) testified before the drug hearings:

If one is to take the word of the detail man, then he will prescribe whatever the detail man provides. He will not, therefore, know what the best drug available is, but he will give what he has been instructed to give, so that he may be depriving his patient of the best medication. I consider that a danger (*Hearings*, Part 21, p. 11607).

In this vein, *The Hearings* took the role of the detail men to task, noting that, in addition to the large spend on advertising in medical journals, the chief marketing practice was the use of a "[...] mighty sales machinery" (Kefauver and Till, 1966, p. 29) comprising chiefly the detail men who saturated physicians with promotional materials and regular visits. Despite industry testimony that the detail men provided a valuable educational role supporting physicians, Kefauver's committee conceived the role as unnecessary, in agreement with expert testimony offered by physician Dr Harry F. Dowling:

When a drug is really new, information about it spreads with rapidity by word of mouth among the members of the [medical] profession and through articles in medical journals [...] Detail men are valuable for the purpose of getting information to physicians and pharmacists regarding the availability and prices of products distributed by their companies, but being salesmen, they cannot be expected to give unprejudiced advice (*Hearings*, 1959, p. 14172).

Similar, but perhaps more damning testimony was offered by Dr A. Dale Console, who warned:

There is a simple maxim, I learned from detail men, which is known to most if not all in the pharmaceutical industry. "If you can't convince them, confuse them." This is a valuable tool in the industry and I have seen it in operation as a guide to detailing [...] (*Hearings*, 1959, p. 10368).

There was clearly considerable divergence between some academic views of the professional detail man as:

[...] one of the most influential and highly respected individuals in the public health professions [...]. Upon him frequently depends the saving of life or relieving from suffering by virtue of his timely introduction of a therapeutic product and his intelligent discussion of it with a physician. His opportunity to render service of extraordinary value to physicians for the benefit of their patients is in itself a source of real satisfaction. He serves humanity well (Peterson, 1949, p. 2).

In contrast, the drug hearings accused the detail men of being essentially dishonest agents. One such extreme example cited by Kefauver was chloramphenicol. Introduced in 1949, chloramphenicol was an antibiotic marketed by Parke-Davis & Co., as the branded drug Chloromycetin – one of the largest selling prescription drugs on the market in the USA at the time. By the early 1950s, however, it was becoming clear that there were significant problems emerging with the drug and its potentially deleterious side-effects.

The Food and Drug Administration (FDA) undertook an investigation of the drug's potential side-effects in 1952, concluding that it could continue to be sold with the following caveat in its judgment:

[we had] weighed the value of the drug against its capabilities for causing harm and has decided that it should continue to be available for careful use by the medical profession in those serious and sometimes fatal diseases in which its use is necessary (*Hearings*, 1959, p. 15980); hardly a ringing endorsement by the regulatory body.

Kefauver and Till (1966, p. 86) questioned this decision, declaring that: "How does it happen that a drug with such limited uses and high potential of danger to the patient has such an impressive sales position?". The answer to the senator's question would appear to lie in the subsequent practices of the detail men representing Parke-Davis & Co.

Parke-Davis & Co., complied with the FDA, taking out full-page advertisements in the *American Medical Association Journal* warning of the potentially injurious side-effects of Chloromycetin and issuing a letter in mid-1952 to 200,000 physicians and pharmacists across the USA, followed by a further letter in late-1952 indicating that the results of ongoing studies would be published once they became available. Further, the potentially deleterious effects of the drug were required to be outlined on the drug's labelling. It must have appeared to most neutral industry observers at the end of 1952 that sales of Chloromycetin were destined to practicably decline to zero by 1953 and that the brand would likely be withdrawn. Enter the detail men to the scenario.

Kefauver's Subcommittee had issued subpoenas for company records, and amongst the information they received were a number of remarkable documents in the form of two letters (sent on 12th August and 16th September 1952) and a set of written sales instructions sent to the company's detail men (on 20th November 1952) issued from the offices of the President and Board of Directors of Parke-Davis & Co., (*Hearings*, 1959, pp. 15962-15977). The letters reassured the detail men that the FDA and NRC had cleared Chloromycetin "[...] with *no restrictions* [...]" (emphasis in original), and that their investigation and subsequent decision "[...]" was undoubtedly the highest compliment ever tendered the medical staff of our Company". The written instructions required the detail men not to raise the issue of Chloromycetin's toxicity in discussions with physicians and to memorize the following text and to relate this precisely to physicians:

[...] intensive investigation by the Food and Drug Administration, carried on with the assistance of a special committee of eminent specialists appointed by the National Research Council, resulted in unqualified sanction of continued use of Chloromycetin for all conditions in which it has previously been used.

On the issue of the potentially injurious nature of the drug and the requirement by the FDA to provide suitable warnings on the drug's labelling, the detail men were instructed to quote the following passage verbatim:

[the FDA decision is] A sensible caution against indiscriminate use, which we have incorporated into our advertising and labelling, is a welcome addition to our literature and to the label on Chloromycetin.

Based on such sales rhetoric, the detail men were able to provide reassurance to physicians of Chloromycetin's efficacy and encouraged them to prescribe it to an ever

higher extent. By the early 1960s, Chloromycetin was the leading drug by sales volume marketed by Parke-Davis & Co.

Excessive promotional spend

At the beginning of the twentieth century, advertisement revenues for the newspapers carrying patent medicine adverts were estimated to account for as much as half of their advertising income (Young, 1961), and many early journals, almanacs and publications owed their existence to the revenues accrued from drug advertising. The market for ethical drugs had been the recipient of criticisms of its promotional practices for some time from the early 1900s onwards. Simmons (1908) – president of the American Medical Association (AMA) – wrote an inflammatory piece in the *Journal of the American Medical Association* charging the pharmaceutical firms with deluging medical journals with advertising posing as factual articles. Simmons observed:

The fact that the Abbot Alkaloidal Company spends thousands of dollars in advertising its products in the various journals that carry these “original articles” and “testimonials” might explain why they were published (Rodwin, 2010, p. 807) and claiming that the *American Journal of Clinical Medicine* (published by Abbott) was a purely promotional vehicle.

By the 1950s, physicians in the USA were being overwhelmed with a promotional copy from the pharmaceutical companies. For example, in 1958 alone, the drug industry estimated that it had published in excess of 3,700,000,000 pages of advertising in medical journals, and mailed more than 740,000,000 items of direct mail to pharmacists and physicians (Harris, 1964). In their paper “Factors Influencing the Selection of Pharmaceutical Products”, published in the *Journal of Marketing*, Caplow and Raymond (1954) reported the results of a survey of physicians and pharmaceutical companies’ marketing practices. They found that doctors received approximately 9.9 items of direct mail each day, had been visited by 3.4 detail men in the previous week and received an average of 7.2 medical journals carrying large amounts of drug advertising. The pharmaceutical industry and the AMA maintained that drug advertising served an educational role at a time when there was limited post-residency training for physicians, until this improved in the 1940s (Rodwin, 2010).

The *Hearings* investigated the large sums of money spent on promotional materials by the major pharmaceutical companies, frequently leaving Kefauver and his committee astounded at the high promotional costs in the industry. For example, as Kefauver (1965, p. 37) noted “For every dollar of sales, Schering spent 32.5 cents for advertising and promotion [...] Advertising costs of this magnitude tend to be a reflection of the prices charged”, and, as a consequence:

Schering was in the enviable position of being able to spend lavish sums on promotion because of its high profits, and then to perpetuate these high profits because its heavy promotional campaigns.

The promotional practices in the drug firms had created a vicious cycle that could not be broken.

These were not isolated practices, but a rather feature of the industry. In some instances, the Subcommittee struggled to comprehend the vast sums expended on promotions. The Subcommittee produced a corporate memorandum from one company, Bristol, who marketing the drug tetracycline. The internal communique revealed that

the amount spent by Bristol promoting tetracycline actually *exceeded* the cost of manufacturing the drug in 1956 (*Hearings*, Part 4, p. 2404).

“Problematic” advertising hence occupied a substantial proportion of the antitrust hearings for drugs, and the issue of non-price competition and higher prices charged as a result of excessive amounts of advertising and promotion. Despite industry claims that drug promotion was educational, the Drug Hearings – and Kefauver – believe it to be excessive. Kefauver’s researchers and subpoenas uncovered industry practices and statistics that were shocking to the public. Of the 22 largest pharmaceutical companies reporting to the Subcommittee, costs of production averaged 32 per cent and research and development costs averaged 6 per cent, while advertising costs averaged 25 per cent. Eight companies under investigation reported that the costs of advertising were greater even than the costs of manufacturing the products sold (Kefauver and Till, 1966, p. 68). Kefauver’s contention with “The Problem of Advertising” was with the “truly staggering” (Kefauver and Till, 1966, p. 68) amount of promotional material being targeted at physicians that maintained artificially high prices, increased industry costs and raised entry barriers for new competitors. There was also the issue of the perceived wastefulness of the volume of material that was being produced and discarded by medical practitioners. In one colourful example, Dr James E. Bowes, a physician reporting to the Subcommittee, weighed the promotional material and direct mail he received over a two month period calculating that:

It would take two railroad mail cars, 110 large mail trucks, and 800 postmen to deliver the daily load of drug circulars and samples to doctors if mailed to one single city. Then after being delivered, it would take over 25 trash trucks to haul it away, to be burned on a dump pile whose blaze would be seen for 50 miles around (*Hearings*, Part 18, p. 10453).

These promotional materials frequently incentivised physicians to prescribe certain brands; Pfizer produced a catalogue which contained various consumer goods that could be acquired by earning “bonus points” through making prescriptions to certain drugs (Hertzberg, 2009, p. 49). In a similar vein, one industry insider – Dr Dale A. Console who was formerly medical director at Squibb – lamented:

[...] the weekly mailings, the regular visits of the detail man, the two-page spreads, and the ads which appear six times in the same journal, not to mention the added inducement of the free cocktail party and the golf outing complete with three golf balls stamped with the name of the doctor and the company in contrasting colors (*Hearings*, Part 18, p. 10375).

The issue of waste, however, was secondary to the justification of expenditure and charges of professional confusion caused. The associated industry promotional costs were staggering. Seymour Blackman (executive secretary, Premo Pharmaceutical Laboratories) reported to the hearings:

Spending three quarters of a billion dollars in advertising, to produce 2.5 billion dollars in sales, seems to me to be excessive, especially since the products being propagandized are absolutely necessary and an artificial demand need not be created. It is my personal opinion that at least one half of the sum spent on advertising and promotion is totally wasted (*Hearings*, Part 14, p. 8205).

The saturation marketing of new drugs over a relatively short period (often only a few months) was important for companies to recoup investment costs before competing products were introduced. This was a market, that one witness – Dr William Bean

(professor of the School of Medicine, Iowa State University) – noted could be fairly described as “[...] the quick kill with the quick pill” (*Hearings*, Part 18, p. 10335). The “[...] heaping up of communications” (Bauer, 1961, p. 547) in the drug industry was regarded as a major source of physician confusion with “[...] advertising excesses [that] confuses physicians” (Dr Louis Lasagna, head of the clinical pharmacology division, Johns Hopkins, *Hearings*, Part 14, p. 8140). Further, the *Hearings* questioned the extent to which promotional materials could ever be trusted. As Dr Fritz Freyhan (director of research, Delaware State Hospital) commented:

While it may, even for psychiatrists, be difficult to keep up with the literature, psychiatric drugs are now prescribed for many reasons by every doctor; the family physician who is not a psychiatrist depends that much more on the accuracy of information which comes from the promotional literature (*Hearings*, Part 16, p. 9037).

The reliability of promotional materials provided by the various drug houses was seen to vary considerably “[...] with the quality of the personnel in that drug house, and also with the integrity of the individuals in these drug houses” (Dr Maxwell Finland, associate professor, Harvard Medical School, *Hearings*, Part 24, p. 13944). The drug industry was criticised for failing physicians in not holding itself to a higher standard of promotional integrity given the products they sold given that “[...] misinformation and mistakes about drugs can affect health and life, advertising of drugs cannot be allowed to fall to the level of other advertising” (Professor Harry F. Dowling, head of department, University of Illinois College of Medicine, *Hearings*, Part 24, p. 14172).

In their defence, on being questioned about the abnormally high profits enjoyed by the industry, industry spokesmen frequently pointed to the costs associated with discovering new life-saving drugs and the high costs of R&D (Hertzberg, 2009). The pharmaceutical industry representatives also maintained that advertising expenditure was necessary, and in sharp contrast to many industries, as it served as a “scientific treatise” (*Hearings*, 1959, p. 10702) by providing important product information (such as drawing attention to any deleterious side-effects of certain drugs), rather than merely creating promotional copy in a conventional sense in other consumer goods markets. Hence, they fulfilled an important educational role through “Marketing campaigns [that] would ensure that every physician knew about the brand-name wonder drugs produced by the postwar pharmaceutical system” (Hertzberg, 2009, p. 49). Indeed, the marketing director for Smith, Kline & French, Tobias Warner, testified that “pharmaceutical promotion differs from consumer promotion to the laity [because it] [...] is dedicated almost as much to educating and imparting essential information as it is to selling” (Rodwin, 2010, p. 807).

The views of the Hearings and its independent witnesses were critical of the efficacy of promotional practices and did not accept the view that they provided an important educational function, but rather that the advertising agencies working on behalf of the drug companies were selling the medical profession “[...] a whole bushel basketful of sows’ ears for silk purses each year” (Dr Louis Lasagna, head of the clinical pharmacology division, Johns Hopkins, *Hearings*, Part 14, p. 8140). Customers were captive to the major brands that physicians prescribed, and the drug market clearly did not operate along the lines of other markets where the best products prevailed but rather the most powerful brands. Further, it was clear to the committee that the normal apparatus of free market capitalism had been suspended in the drug industry, as one

witness (Seymour Blackman, executive secretary, Premo Pharmaceutical Laboratories) observed:

The basic and only reason for this continuous spiral of heavy advertising and profit taking [...] is the fact that the consumer, in this field, cannot exercise his normal, economic prerogative of shopping or pricing before he purchases. The normal laws of supply and demand have no application here (*Hearings*, Part 14, p. 8205).

Branding in pharmaceutical markets

In the late nineteenth century, a number of American and European drug manufacturers remodelled themselves as “ethical” pharmaceutical houses to draw a distinction between their creation of legitimate therapeutics and the patent medicine manufacturers who frequently concealed their ingredients and “[...] touted expansive therapeutic claims to consumers via popular advertisements in magazines, newspapers, and traveling medicine shows” (Greene and Herzberg, 2010, p. 794), essentially branding themselves as the pharmaceutical houses that we recognise today. This ultimately paved the way for individual product branding which appeared as a practice in pharmaceutical markets to a significant extent in the 1940s (Greene, 2004), such as Merck’s branding of Cortone (cortisone), its first branded product, in 1949 (Marks, 1992). Prior to this time, many drugs were marketed as chemical formulations, but the ethical drug houses adhered to the AMA’s code of ethics by promoting their goods only to medical practitioners. In truth, however, some firms straddled the patent-ethical drug divide in producing and marketing both simultaneously, evidenced by companies such as Smith Kline & French (Greene and Herzberg, 2010), and also engaged in “shadow” marketing practices in the early 1950s, where they flouted the AMA ethical code of physician-only marketing by employing various techniques to promote certain drugs to the public (Herzberg, 2009).

As an early form of direct-to-consumer advertising beginning during the 1920s and 1930s, the exercise of branding institutions to the general public was pioneered by companies such as Parke, Davis & Company and E.R. Squibb & Sons who promoted the reliability and efficacy of their drugs rather than specific products in popular publications of the day (Greene and Herzberg, 2010), a practice that became an industry standard by the mid-twentieth century. Indeed, by the late 1940s, many of the major pharmaceuticals were operating with distinct and differentiated branded product lines “[...] grounded in laboratory innovation” (Greene, 2004, p. 274).

The value of the ethical drug market increased substantially after World War II; in 1939, the domestic market was worth approximately \$150 million in sales; by 1947, this had increased to over \$500 million (Herzberg, 2009), and in excess of \$2 billion by 1959 (Rehder, 1965). While the average return for manufacturers in the late 1950s was around 10 per cent, the average rate of return for the drug companies in the USA was around 20 per cent and even higher for some individual firms (Herzberg, 2009). Competition in one of the most lucrative industries in the USA and attempts to enter it by firms were growing fierce – techniques that the pharmaceutical companies could use to afford them a competitive edge were being eagerly sought, and branding, as a widespread practice, was likely just such a competitive response. Hence, with “[...] growing competition from similar or virtually identical products manufactured by different companies” (Rehder, 1965, p. 287), the role of the detail men and latterly branding was increasingly relied upon within the industry.

Under Kefauver's chairmanship, the Subcommittee was critical of branding practices that to the proliferation of trade names, an uncompetitive means of non-price competition that resulted in artificially high prices and market entry barriers. In addition to the common benefits that brands provide companies of any goods, in pharmaceutical markets where a physician prescribes a specific drug and pharmacists must dispense only that company's drug by law, thus providing a further incentive to maintain a powerful brand image. As fellow Subcommittee member Senator John A. Carroll observed, the consumer was not only "[...] purchasing the commodity, but he is also paying for the expansion of an industry" (*Hearings*, Part 9, p. 4776). A source of contention was that the drug companies were engaged in branding practices that even most consumer goods companies would refrain from in the attempt to confuse customers. Dr Solomon Garb, who testified before the Subcommittee, imagined what the market for baked beans might look like if the pharmaceutical firms were in charge of its marketing activities:

They would all stop using the word "beans", and each would give the product a new, coined name. Some might use anagrams of beans, like "Sneabs" or "Nabes", and others might call them "Lo Cals" or "Hi Pros". Picture the confusion in the grocery store if beans were no longer named "beans", but if each maker gave a completely new name to his product. Further, try to imagine what would happen if there were 300 to 500 additional new names of this type in the grocery store every year (*Hearings*, 1959, Part 18, p. 10481).

Fears were raised that consumers were not the only casualties of this brand confusion; Dr Walter Modell warned the Subcommittee that "Only a name that conveys meaning lends itself to instructive communication. We could never teach pharmacology if we attempted to cope with the confusion created by proprietary nomenclature" (*Hearings*, Part 21, p. 11602). Hence the efficacy of pharmacists was also in jeopardy with the dramatic rise in branded drugs being introduced to the USA market annually. Rather than engage in a costly escalation of branding trade name drugs, the Subcommittee asked why the industry did not simply lower its prices instead as its basis for competition. This resulted in the following exchange between Francis Brown (president of Schering Corporation) and Kefauver:

Senator Kefauver: [...] How is it, if you want to be really competitive, you don't lower your price to get more of the business?

Mr Brown: You mean to get more from a competitor?

Senator Kefauver: I mean to get more business for yourself.

Mr Brown: Senator, we can't, as I pointed out this morning, we can't put two people in every bed when there is only one person sick. (*Hearings*, Part 14, p. 7888).

The drug manufacturers attempted to counter these accusations. For example, Schering's Francis Brown noted that "Marketing medicine is a far cry from marketing soft drinks or automobiles" (*Hearings*, Part 14, p. 7854), owing to an industry-wide inability to expand markets through price leadership activities. Mr Brown further argued that any perceived problems of sections of the public not being able to afford medicine was not linked to industry marketing costs or even the price of drugs themselves but "[...] a matter of inadequate income rather than excessive prices or even 'administered prices', whatever this may mean" (*Hearings*, Part 14, p. 7855). Other

industry players were publicly defending the drug industry's branding practices. In a speech delivered at the University of Chattanooga in June 1960 during the drug hearings (no doubt in an attempt to embarrass Kefauver in his home state of Tennessee), Theodore G. Klumpp (president of Winthrop Laboratories) reminded his audience of the importance of branding in the drug industry:

Our entire system of free enterprise is, in fact, based on brand names [...]. Brand names enable the consumer to reward the product which is proved good [...] through repurchases of the product. If a product proves unsatisfactory, the consumer has the means of punishing it – by refusing to buy it again [...] brand names facilitate reward or punishment [as they are] a prime factor in stimulating reputable manufacturers to produce the best product (Tobbell, 2012, p. 112).

Without recourse to branding, Klumpp maintained that physicians would not have the same levels of trust that they would have in generic drugs that were not clearly linked to a particular company and that a drug market devoid of brands would afford the manufacturers little incentive to innovate and invest in drug development. Hence, the twin issues of safety and innovation that were important to Kefauver were in jeopardy. The Subcommittee, however, predictably remained sceptical and unconvinced.

Discussion and conclusions: did Kefauver manage our marketing?

Kefauver fell ill after giving a speech in the Senate on 8 August 1963 trying to prevent the Communications Satellite Corporation's private corporate monopoly power in the US telecommunications industry – an entity created by the Kennedy administration and controlled chiefly by AT&T (Griffith, 1972) – and died two days later. On his death, the Subcommittee had demonstrated the problems of administered prices and corporate power in the USA to the American public across a range of industries including drugs, “[...] but was a long way from framing the comprehensive legislation needed to deal with the monopolistic practices it had uncovered” (Gorman, 1971, p. 304). A question of importance to the present study is why should we reflect on the outcomes of the drug hearings after more than half a century has transpired, particularly as several historians and other observers have derided the investigations?

The drug hearings and Kefauver himself were not without their detractors, with some commentators viewing the hearings “[...] as the last gasp of a moribund form of consumer politics based solely on ‘prices’ and ‘income distribution’” (Scroop, 2007, p. 13). Several historians have criticised Kefauver's investigation of monopoly practices as an imprudent exercise that ultimately “went nowhere” (Jacobs, 2003, p. 267) and was “dead end” in its impact (Jacobs, 2003, p. 258), a view shared by others (Cohen, 2003; Hofstadter, 1965). Other observers at the time concurred with this view; summarising the period of the Hearings, Professor George J. Stigler commented that the “[...] entire performance of the Kefauver committee [...] has been a highly unsatisfactory one” (Adams and Lanzillotti, 1963, p. 117), that amounted to little more than a “fishing expedition” (Adams and Lanzillotti, 1963). If, however, Kefauver's investigation of the drug industry is to be judged as quixotic in nature, then why was it so widely reported by the press, including *The New York Times* which was urging the Kennedy administration to provide more support for Kefauver and new legislation in 1962 (*The New York Times*, 1962)? Marketing scholars were also concerned with the impact of Kefauver's hearings; writing in the *Journal of Marketing*, Manischewitz and Stuart (1962, p. 2), referring to the negative impact on public opinion resulting from the hearings, lamented that “[b]y the end of 1960 it was difficult indeed to believe that anything worse could happen in the field of marketing to provide its critics with a stronger case”.

An examination of Kefauver's FBI file demonstrates that his investigation of the drug industry was not without its risks to his political career. The file contains a piece published in *The Washington Post and Times Herald* – “Drug Firm Money vs Kefauver” – in 1960, which reports approximately at the mid-point of the drug hearings how the drug companies were conspiring to end his political career:

[...] the big drug and chemical lobby which has been working behind the scenes to defeat Kefauver because of his investigation of the drug industry. This is one of the most powerful groups in the country (Pearson, 1960).

The article goes on to provide an account of a representative of Dow Chemical who had visited Tennessee with the purpose of defeating Kefauver in the upcoming elections. The representative apparently remarked: “Now that we've got rid of Soapy Williams (Governor of Michigan) we're going to get rid of Kefauver”. The article also reveals that some druggists in Tennessee had been given funds from sources out of state, “[...] to use against Kefauver” (Pearson, 1960) and went on to conclude that:

If a Senator is subjected to this kind of opposition when he attempts to bring down the price of medicine for the benefit of poorer people, then other Senators will think twice before they start similar investigations (Pearson, 1960).

The article was published in August, three months before the general election in November 1960, which saw Kefauver beat his Republican rival (A. Bradley Frazier) by 594,460 votes to 234,053, obtaining 72 per cent of the vote (*Our Campaigns*, 2015).

Across his political career, Kefauver displayed little reluctance in making powerful enemies. Indeed, if politicians can be judged by the enemies they make, then Kefauver antagonised some of the most powerful and influential figures of the day. In addition to the drug and chemical manufacturers and their lobbyists, press clippings in Kefauver's FBI file note that he made enemies of the Mafia “and leaders of the underworld”, including former members of Al Capone's Chicago mob (including Paul de Lucia and Louis Campagna) through his investigation of organized crime (Pearson, 1960), John Kasper (Ku Klux Klan member and far-right activist who supported segregation and received nationwide publicity), Justin “Jet” Potter (a powerful Tennessean businessman and one of the richest men in the Southern USA by the 1950s), as well Joe McCarthy, who Kefauver spoke out against in 1954 and believed to be a negative force in America (Anderson, 1963).

We may also have misjudged Kefauver as a figure out of keeping with the major issues of the 1950s and 1960s, who:

[...] at times sounded like a nineteenth-century populist, attacking railroad mergers and the basing point system as if these, not the Cold War or civil rights, were the great issues of the day (Scroop, 2007, p. 5).

Kefauver's FBI file reveals the variety of topics he was interested in including: youth delinquency, organized crime, the spread of communism in Tennessee and the USA, corruption by government officials, segregation in the south and integration in schools, morality in society (pornography, violence in comics, increased violence in television shows), the interstate trafficking of babies and details of a trip he undertook to Russia in 1955 subsequently condemning the Soviet system (FBI, 1955). It also provides evidence that Kefauver voted against the McCarran Internal Security Act (which required active communists to register their affiliation) on the advice of J. Edgar Hoover in the belief that it would drive communists underground in the USA and make it more challenging for

the FBI to track them (FBI, 1950), making him unpopular with his colleagues in the Senate. This was a political figure whose interests were more far-reaching than the topic of economic concentration in the USA.

The outcomes of the drug hearings were significant for a number of reasons. Initially, the drug hearings served to create a shift in thinking by bringing to the attention of the public the deleterious actions of some of the most powerful drug companies operating in the USA, transforming the image of the industry from one of life-saving “researchers in white coats” to one of greedy “reps in cars” (Froud *et al.*, 2006). Kefauver portrayed the market for drugs as “a marketing-driven industry” that provided a picture of the industry “far different than the one offered by the industry itself” (Gagnon and Lexchin, 2008). This publicity caused the American public to reflect on the emergence of the powerful new drugs on offer and their prices in the post-war period, and encouraging “debates [...] that would endure for a generation” around attitudes to the USA drug market (Bud, 2005, p. 331).

The drug hearing was the only investigation led by Kefauver that resulted in the creation of meaningful new legislation – the Kefauver–Harris Act of 1962 – which he co-sponsored along with Oren Harrison. While the remit of the drug hearings was to examine the impact of administered prices on the public, the legislation that ultimately passed had a number of important new features not contained in the earlier Food, Drug and Cosmetic Act of 1938, but that had little to do with the issue of administered prices: it afforded the FDA responsibility for regulating the advertising of prescription goods by drug companies, the requirement of companies to provide evidence of not just drug safety but also drug efficacy, ensured the FDA would monitor clinical trials more thoroughly, and also gave the FDA greater access to manufacturers records. The impact of the new law and the drug market was therefore far from inconsequential, and stands as one of the most significant laws regulating consumer safety of the twentieth century (Scroop, 2007). The bill that Kefauver initially introduced, however, received insufficient political support, including that of the Kennedy administration, which had only narrowly won in the 1960 election and lacked the appetite to be allied to such contentious legislation (Tobbell, 2012). The issue of drug efficacy and interest in new legislation was, however, resurrected in the wake of the thalidomide scandal that came to light in July 1962 (Tobbell, 2012; Scroop, 2007). Kefauver was highly critical of the final Act in its failure to lower prices by encouraging physicians to prescribe generic drugs concluding that “[i]n terms of protection of the public’s pocketbook, this constitutes a serious gap in the law” (Kefauver and Till, 1966, p. 98). Although new legislation in the drug market did not reach the standards that Kefauver anticipated on the culmination of the drug hearings, it set the tone for reform in the drug industry that continued in the 1960s and 1970s. Despite this, Kefauver’s legacy has been overlooked entirely by some; for example, in a major history of US antitrust by Wyatt Wells (2002), he makes no mention of Kefauver or his role in post-war market reform in the USA.

Kefauver’s failure to influence drug prices may be due in large part to the Cold War rhetoric used by the major pharmaceutical firms, which maintained that efforts to reform the drug market represented an attack on free enterprise akin to the socialisation of medicine. Drug manufacturers claimed that drugs and the drug industry were an important component in defeating communism by persuading the citizens of underdeveloped countries to adopt capitalism and its superior ability to support public healthcare, against fears that Russia would use medicine and technology to promote

communism to people from underdeveloped countries, chiefly South America, Asia and Africa (Tobbell, 2012). Although Russia actually lagged behind the USA in terms of major new drug development – “Russia has no medical sputnik up its sleeve” (Tobbell, 2012, p. 95), noted one analyst in late 1957 – it could draw on a large number of biomedical personnel (including physicians) who could be deployed to underdeveloped countries to advance the cause of communism. Further, the drug industry argued that reform would undermine the successful system in the USA that was innovative in drug development, whereas the Soviet Union merely cloned drugs and had seen limited development in major breakthroughs, a line supported by the Republican members of the Senate subcommittee.

Far from being an anachronism and out of touch with the important issues of the day (Hofstadter, 1965), such as civil rights, Kefauver’s drug hearings and subsequent legislation ushered in new interest in consumer politics focused on “safety and health issues” (Jacobs, 2003, p. 259). Hence, we can legitimately establish a link between the outcomes of Kefauver’s drug hearings and the nascent consumer rights movement that we normally attribute to the mid-1960s and individuals such as Ralph Nader and a shift from concern over prices to issues such as consumer safety (McMannon, 1997); as Daniel Scroop (2007, p. 13) observed: “it would be a mistake to neglect the connections between Kefauver’s consumer politics and the ‘new’ consumer politics of the 1960s and 1970s [...]”. We can, therefore, situate Kefauver’s contribution against the emerging public debate of the value of marketing and its power to manipulate, as well as the issue of consumer safety, with the growth in consumer rights books emerging in the 1950s with writers such as John Kenneth Galbraith’s (1958) *The Affluent Society*; Vance Packard’s (1957) *The Hidden Persuaders* and (1959) *The Status Seekers*; David Potter’s (1954) *People of Plenty*; and, of course, Nader’s (1965) books, chiefly *Unsafe at any Speed*, (Nader and Green, 1973) *Corporate Power in America* and (Nader et al., 1976) *Taming the Giant Corporation*. Interestingly, when Nader and colleagues such as Sidney Wolfe were advocates for change in the drug reform movement in the 1970s, many of their key concerns paralleled those explored during Kefauver’s investigation; this included the role of detail men in influencing physicians, and the high costs of branded drugs, which through large-scale promotional campaigns by drug companies (and aided by anti-substitution laws in drug prescription), Nader and Wolfe believed had ultimately resulted in over-priced drugs and the daily gouging of millions of dollars from the American public. Hence, Kefauver helped pave the way for figures such as Nader who would later champion public causes.

Kefauver’s credentials as an early actor in the new consumer politics movement can be further demonstrated with his unsuccessful attempts to create a “Department of Consumers”, through a bill he introduced in 1959 and again in 1963 (Forte, 1967). Kefauver saw this “as a natural extension of the work of his subcommittee” (Scroop, 2007, p. 15) that would afford powers to an independent agency to oversee the treatment of consumers and act “as an advocate of the consumers’ interest at all levels and stages of government” (Kefauver, 1959, p. 44). This was no doubt influenced by the changes in society evident in Kefauver’s lifetime, culminating with his chairmanship of the Antitrust Subcommittee. Towards the end of his life, Kefauver reflected back on his childhood: “I found myself”, he noted, “contrasting life today with the kind of life with which I was familiar as a boy in Madisonville, Tennessee”, where the modern “truly pecuniary economy” did not yet exist (Kefauver and Till, 1966, p. 178). This new body would respond to consumer complaints and

coordinate with other Federal agencies on issues of consumer interests. Despite being viewed as “an intriguing and apparently unique concept” (Forte, 1967, p. 972), both bills would remain in committee stage during Kefauver’s lifetime. His idea for a dedicated consumer agency did, however, influence thinking in other levels of the government about the treatment and protection of consumers; in 1960, the chairman of the Federal Trade Commission observed: “I think that while our primary purpose may be the protection of honest businessmen, certainly, we have an ancillary assignment of protecting the public generally and consumers” (Forte, 1967, p. 976).

In conclusion, to what extent was Kefauver able to reform the marketing practices of US pharmaceutical manufacturers and “manage their marketing”? The Kefauver–Harris Act afforded the FDA significant powers to hold the drug manufacturers to greater account in terms of their marketing practices; drug advertisements to physicians had to contain the generic name of the drug in each instance the brand name was mentioned, the government were afforded powers to designate a generic name for a drug in instances where it was felt a generic name was unpronounceable to ensure its simplicity and clarity; manufacturers had to provide proof of a new drug’s safety and efficacy to receive marketing approval; and manufacturers were required to disclose side-effects in all advertisements, a measure which Kefauver believed would help curb excessive advertising and certain promotional claims. Although the new legislation did not directly deal with the issues related to the economic concentration of power and high prices in the industry, it did, as Kefauver and Till (1966, p. 97) reflected, represent an attack “[...] upon existing hazards in the manufacture and marketing of these drugs”. The drug hearings – as well as Kefauver’s passionate investigations of monopoly practices in a variety of US industries and their impact on consumers in the late 1950s and early 1960s – also represent a significant chapter in contemporary consumer politics – and deserve greater scrutiny by marketing historians.

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