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Protecting Some and Policing Others:

Federal Pharmaceutical Regulation and the Foundations of the War on Drugs

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ABSTRACT

This dissertation demonstrates how related initiatives to reform narcotics laws and protect consumers from dangerous medicines – taking hold in the 1950s and institutionalized in the mid-1960s – created the foundation for a massive expansion of federal policing of illicit drugs. Centered on the history of the Food and Drug Administration and congressional use of its power to regulate commerce, the dissertation argues federal programs designed to protect consumers of legitimate pharmaceuticals ultimately constructed the authority to classify and police unapproved uses and users of all drugs.

Grounding a history of policy, policing, and regulation in the shifting social and cultural climate of the long 1960s, this dissertation recovers the legal underpinnings of the contemporary carceral state. Many still argue that President Richard Nixon launched the war on drugs in 1971 as a part of his "law and order" backlash politics. This work tells a different story in which the modern drug war emerged from mid-century consumer protection politics and the legal reforms they inspired. Charting the institutional and constitutional basis for the federal war on drugs also highlights how, in the past half century, the federal government has taken power intended to regulate corporations and reapplied it towards the policing of people. The consumer protection origins of the war on drugs illustrate and illuminate this process, revealing how and why U.S. laws now police some Americans with power originally intended to protect others. This history of the transfer of power from regulation to policing in turn promises new ways for analyzing how the contemporary war on drugs expanded in lockstep with the unchecked explosion in the misuse of prescription painkillers.

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Writing a dissertation can sometimes seem like a lonely endeavor, but the completion of a PhD only happens through the untold contributions of friends, teachers, mentors, and loved ones. Throughout my graduate career I have had the good fortune of meeting many such people who deserve my thanks. I am equally grateful for all those lifelong friends who stayed close through moves for school, long silences for research, and the secondhand stresses of writing. Freddie, Scott, Woods, Luke, Snyder, Swain, Chaz, Sarah, Lauren, Mr. and Mrs. Potts, and so many more – if I ever get in trouble, I trust you will be there to remind me to just stand up.

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The remainder of these acknowledgments would be much different (if they existed at all) without Professor Andrew Wiese at San Diego State University, who took a chance and helped me secure a spot in SDSU's history graduate program. As an advisor, teacher, and colleague, Andy has always been a model for the right way to be an historian and mentor. I am appreciative for all the professors at SDSU, including Ed Blum, Elizabeth Cobbs, Lawrence Baron, Ronnee

Schreiber, and many others, who graciously shared their knowledge, experience, and time. At SDSU I also first discovered the joys of being a part of an academic cohort. From arguments about American Empire to deep discussions in the TA offices to long rants during poker, it was a pleasure getting to know my fellow graduates – Elle, Chris, George, Jason, Joanna, Andrew, and many others. I also remember Ryan Wingerd, a courageous and caring student and teacher, who passed too soon. Finally, San Diego would have not have been the same without Rose, Steve, Will, and Elle Simon who became a second family to Sasha and me.

A wise man told me, when I was choosing my next destination, to go to Chicago, get my PhD at Northwestern University, and "make the best of a great situation." His assessment of the situation proved to be an understatement. In addition to the stellar resources, faculty, and undergraduates that came with attending Northwestern, I was lucky enough to meet another outstanding cohort of fellow graduates. To Kyle Burke, Mariah Hepworth, Samuel Kling, Lillian Hoodes, Beth Healy, Emma Goldsmith, Emilie Takayama, and everyone else, I will never forget our years together and the frothy mix of work and fun we had along the way. Our cohort was part of a larger graduate community that lived up to the hype of being close-knit and collegial, and it was a pleasure getting to know so many impressive scholars, including Andy Baer, Leigh Soares, Bonnie Ernst, Don Johnson, Matt Kahn, Aram Sarkisian, Amanda Kleintop, Rebecca Marchiel, Peter Thilly, Keith Rathbone, Lucy Reeder, Kevin Baker, Jessica Biddlestone, Wen-Qing Ngoei, Ian Saxine, Charlie Keenan, Zach Jacobson, and too many more to possibly list in this space.

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All across the country, I have been assisted by incredible researchers, librarians, and archivists. This project would have never taken flight without the treasure trove of sources provided by the fantastic history office at the Food and Drug Administration. Throughout this process, people have been amazed to learn that such an office still exists in our modern day federal government, and it is always a pleasure to point them towards its amazing resources and people dedicated to preserving this important history. A special thanks to Dr. John Swann who graciously shared his files and insights with me, first opening a window into the bureaucratic

history of the FDA and BDAC. John is a great researcher, has done a fantastic job organizing and maintaining important files, and is always willing to help scholars explore those resources. Over multiple visits, John and his assistant, Cindy Lachin, went above and beyond to be helpful and hospitable. I am also grateful to the many archivists at the National Archives and Records Administration II in College Park, MD; the Franklin D. Roosevelt Presidential Library in Hyde Park, NY; the John F. Kennedy Presidential Library in Boston, MA; the Richard M. Nixon Presidential Library in Yorba Linda, CA; and the Library of Congress in Washington, DC. Closer to home, Northwestern Library's Harriet Lightman has been an incredible resource for a generation of history graduates and, along with all of the other NU archivists and library staff, deserves our thanks and recognition.

Finally, a special thanks to the Lyndon Baines Johnson Library and Museum in Austin, TX, which generously supported this project through their Moody Research Grant. In addition to the financial support, I must thank all of the LBJ Library administrators and archivists, in particular Brian McNerney, for their assistance with this research, and for their dedication to maintaining a collaborative and open research environment that makes the LBJ Library, in my humble opinion, one of the finest archives in the country.

I love working in archives, feeling the paper, unearthing a forgotten document, and making sense of the haystack. But the passion for this work would have been forever fleeting if not for the students I have had the pleasure to learn from and teach at San Diego State, Northwestern, and, most recently, the Latin School of Chicago. Every single one of these young men and women has given purpose and inspiration to my work. There is tremendous pleasure to be found in the ability to explore the questions that drive us, to exist in a world of big ideas, and to discover new things, but I find the opportunity to share those insights a far greater gift. For my

final thoughts, at the end of every course, I remind my students to be brave, bold, and kind – take risks, be confident, and think of others. I hope all of my students – past, present, and future – also know that I regularly learn the same lessons from them.

Most important of all, I am grateful for my family, who has supported me through every step of this journey – I love each and every one of you. I come from a family of great teachers and mentors, including Nona, who shared with me a love of books, and Mica, who helped make all of this possible and continues to amaze me every single day. Dad and Jake, your kindness and humor always inspire me. And, to my Mom, who's love and patience had no bounds, I hope I have made you proud. Thank you for doing your best to give me the confidence to believe that I have. Finally, to my wife and daughter, Sasha and Madeline – I began this journey with questions and ultimately found far more important answers in the two if you. You are the lights of my life. Thank you for the daily inspiration.

For Mom

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PROLOGUE

The Palmer Problem

In the early 1960s, most people working for the Food and Drug Administration (FDA) knew the Palmer family. Their story was a microcosm of the challenges FDA inspectors faced as they sought to regulate a booming market in mood-altering prescription drugs that had grown exponentially since World War II. William "Tex" Palmer, Sr. and his son, Bill, Jr., gained quite a reputation for their involvement in the drug business. Tex and Bill, Jr. owned and operated Palmer & Company, a drug wholesaler based, predictably, in Houston. In 1961, the FDA charged the Palmers with distributing counterfeit pharmaceuticals, everything from blood pressure medication and eardrops to amphetamines, mild tranquilizers, and barbiturates. FDA inspectors seized 3,430 Dexedrine and Dexamyl tablets that a pharmacist in Decatur, Georgia allegedly purchased from Palmer & Co. Similar seizures occurred in pharmacies across the country, from Louisville to Chicago to Los Angeles. FDA officials discovered the counterfeit network after a nationwide survey and determined General Pharmacal Company in Hoboken, New Jersey manufactured all of the counterfeits that Palmer & Co. distributed to pharmacies.[1]

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[1] "Bogus Drugs Seized in Decatur, Athens," *The Atlanta Constitution*, May 19, 1961, p. 1. "Drive Against Counterfeits Continues," *Food and Drug Review* 45, no. 6 (June 1961), 127; "Dallas District" update, *Food and Drug Review* 45, no. 8 (August 1961), 181; "Cincinnati District" update, *Food and Drug Review* 46, no. 12 (December 1962), 285. *Food and Drug Review* published by the Food and Drug Administration (FDA), U.S. Department of Health, Education, and Welfare, Washington, D.C. Digitized copies of all issues, 1950-1966, in the possession of the author, courtesy of the FDA's History Office and Dr. John Swann, Historian at the FDA.

The Palmers' operation, counterfeiting some drugs and illegally distributing others without a prescription, undermined the sanctity of the legal market and its profits. When they undermined the FDA's attempts to control the safe manufacture and proper distribution of pharmaceuticals, the Palmers also endangered the American consumers who the FDA was created to protect. To make that argument, FDA officials could have cited any number of cases in their files, from drugs compounded with toxic chemicals to suboptimal or mislabeled dosages that made bacterial infections more resistant. For amphetamines and barbiturates – psychoactive drugs that either stimulated or depressed the central nervous system – FDA officials also suggested that the misuse of such drugs might presage any number of problems. Barbiturate sleeping pills were reported to be responsible for accidental overdoses and tragic suicides, while amphetamines were cited in everything from episodes of individual psychosis to fatal traffic accidents involving strung-out truck drivers.

While the Palmers were clearly implicated "in the distribution of counterfeit drugs," stopping them was complicated, to say the least. Even as the FDA celebrated its first conviction of the father and son, the Palmers both received suspended sentences and were placed on probation.[2] Tex and Bill, Jr. hit the streets again, but agents continued to unspool the web of their activities in the corners and shadows of the legal pharmaceutical trade. The early 1960s were a transitional moment for that industry.[3] Future industry giants such as Smith Kline & French,

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[2] Tex was sentenced to 6 months in jail and fined $1,000, but the fine was suspended for five years. Bill was sentenced to 1 year in jail and also fined $1,000. Like his father, Bill received a five year suspended sentence and "he too was placed on probation with strict supervision for 5 years." "Counterfeit Drug Prosecutions," *Food and Drug Review* 46, no. 4 (April 1962), 78.

[3] For a history of the "therapeutic revolution," see, for example, Dominique A. Tobbell, *Pills, Power, and Policy: The Struggle for Drug Reform in Cold War America and Its Consequences* (Berkeley: University of California Press, 2012), and Peter Temin, *Taking Your Medicine: Drug Regulation in the United States* (Cambridge, MA: Harvard University Press, 1980).

Hoffman-La Roche, and Merck & Co. were merging and modernizing, but they still competed with small-time operators, such as General Pharmacal and Palmer & Co., in a vast complex of drug compounders, wholesalers, and distributors all with equal access to the basic chemicals needed to produce the pills piling up in American medicine cabinets – amphetamines, barbiturates, Miltown and other minor tranquilizers. Thus, General Pharmacal could easily produce dextroamphetamine tablets that resembled Smith Kline & French's Benzedrine in appearance and effect. Without concern for quality and safety, the Palmers distributed those pills to pharmacists who either didn't notice the difference or didn't care. The Palmers also used their licensed wholesaling company to order hundreds of thousands of amphetamine tablets from legitimate manufacturers. If the duo sold those drugs to a pharmacist, who then sold them to customers with a prescription to have them, all was aboveboard. But things changed when Bill, Jr. emptied 50,000 pills from their original containers into the trunk of his red Corvette and peddled them at local truck stops.[4] While the unlicensed manufacture of amphetamines and barbiturates would become a federal crime after 1965, it was this failure to properly label the drugs that violated the FDA's laws in the early 1960s.

It took legwork and luck for the FDA to convict the Palmers in what seemed like another cut and dry case. To catch the Palmers red-handed, the FDA inspectors engaged in the usual

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[4] "The Palmers Again," *Food and Drug Review* 47, no. 5 (May 1963), 127; "Palmers Convicted Again in 'Bennie' Traffic," *Food and Drug Review* 47, no. 8 (August 1963), 211; Sam D. Fine, "Memorandum for the File," Dallas District, March 11, 1963, Folder: "511.09-.67 x ," Box 3574: "511.05 thru 511.09" (1963), Records of the Food and Drug Administration, Record Group 88, National Archives at College Park (NACP), College Park, MD [Hereafter, "FDA-NACP"]; William C. Hill, Director, San Francisco FDA District Office, interview by Fred L. Lofsvold, San Mateo, CA, June 15, 1982, "History of the U.S. Food and Drug Administration," transcript, 52-60. All cited FDA oral history interviews are in the possession of author and may still be available through the FDA History office, a https://www.fda.gov/AboutFDA/WhatWeDo/History/OralHistories/SelectedOralHistoryTranscripts/default.htm

tactics – using informants to set up buys, following the suspects to observe sales, making inspections of supplies. At one point, the inspector on the case lost Bill's Corvette in afternoon traffic and stopped at a grocery to phone his wife. Looking out of the store's front window, he noticed the young Palmer's car pulling in to sell his wares right outside. At the Palmer's warehouse, inspectors found a garbage can stuffed with scraped off labels from bottles of amphetamines that the men had purchased through legal channels and then dumped into the black market. FDA inspectors also discovered a shipment of 108,000 amphetamine pills waiting for Tex at Houston Airport, which they seized along with another "320,000 tablets and capsules in possession of Tex Palmer."[5] Thus, agents closed the book on another case in the Palmers' saga.

Or so they hoped. In fact, the FDA in the early 1960s struggled with a relatively toothless regulatory system that was short on manpower and resources, forcing it to rely on industry self-compliance. This might have worked with most professionals unwilling to lose a license or the major manufacturers reticent to tarnish their reputations. Dealing with those would have been a Herculean task on its own, as officials estimated at the start of the decade that between 5 and 6 billion amphetamine tablets were produced annually. To regulate that market – a small sliver of the FDA's overall responsibilities – officials had to parse out limited resources. At the start of 1961, the FDA had fewer than 2,500 people in its workforce and a budget under $20 million.[6]

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[5] "The Palmers Again," *Food and Drug Review* 47, no. 5 (May 1963), 127; "Palmers Convicted Again in 'Bennie' Traffic," *Food and Drug Review* 47, no. 8 (August 1963), 211; Sam D. Fine, "Memorandum for the File," Dallas District, March 11, 1963, Folder: "511.09-.67 x ," Box 3574: "511.05 thru 511.09" (1963), FDA-NACP Files; William C. Hill interview transcript, 52-60.
[6] "Last Meeting with Secretary Flemming," *Food and Drug Review* 45, no. 2 (February 1961), 41.

The mismatch between the booming industry and the meager enforcement agency left few resources for dealing with chiselers like Tex and Bill Palmer.

Compounding that problem, the FDA struggled against its own limited legal authority. FDA inspectors were not police. They could not make arrests or carry firearms, leaving them little recourse if things went bad during an investigation. They also were not enforcing narcotics or marijuana laws. After a 1956 amendment to the federal narcotics law, the Palmers could have been charged with the death penalty if caught selling heroin to a minor. As punishment for the distribution of bootleg pharmaceuticals; however, Tex and Bill faced a maximum of a thousand dollars in fines and a short prison stay. The Palmers were easy targets. In 1955, a *Saturday Evening Post* article first described Tex's exploits. The FDA first indicted him and his son in 1961. Still it took until 1964 to get them "in the pokey."[7] Undeterred, Tex started a new company, Crest Laboratories, while out on bond and began ordering more pills, including "a 100,000-capsule lot of dextroamphetamine sulfate," which the FDA intercepted at Delta Airlines in Houston.[8] Even in jail, Bill daydreamed about "re-entering the drug business again in a new section of town and running my new store as it should be."[9]

Even when Food & Drug inspectors identified a suspicious person and caught an illegal distributor, they still had to justify their right to charge him with a crime. Unlike today, there was no federal primacy in drug policing. Federal drug laws did not supersede state laws, and limited resources forced federal agencies to leave most of the work to state agencies or local police. With no authority to serve warrants, FDA officials were often left twiddling their thumbs or

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[7] William C. Hill interview transcript, 52-60.
[8] "Dallas District" update, *Food and Drug Review* 48, no. 2 (February 1964), 35.
[9] "Counterfeit Druggist Should Change Career," *Food and Drug Review* 48, no. 9 (September 1964), 222; Reprint of column by Cy Barrett, *Houston Post*, July 9, 1964, which included a letter to Barrett apparently written by William Palmer, Jr.

hopelessly watching a suspect flee as they waited for a U.S. Marshal to arrive and make the arrest.[10]

Most important, the authority that the FDA did possess was based on the power vested in Congress to regulate interstate commerce. Winning that power had been an early victory for federal regulators, but conservative opponents insisted on limits, ensuring federal laws only applied to activities that could be proven to have actually crossed state borders. With rap sheets on the Palmers a mile long and clear evidence of wrongdoing, federal officials nevertheless had to prove the duo's stocks of amphetamines were manufactured out of state. This was complicated with the presence of counterfeits, but a Texas Department of Health official testified, "no sources of amphetamine salts exist in the state." To charge the Palmers with distributing mislabeled prescription drugs, it thus took a ruling by the Fifth Circuit Court of Appeals to uphold the Food and Drug Administration's "method of establishing the interstate status."[11]

The saga of the Palmers opens a window into the long history of the federal government struggling to exert more control over pharmaceuticals – especially those affecting the central nervous system, which are also referred to as psychoactive drugs. By the 1950s, this group, especially barbiturates and amphetamines, became a discrete category of "dangerous drugs" in FDA parlance. A decade later, however, doctors, retail druggists, manufacturers, compounders, wholesalers, bureaucrats, and politicians were still debating the best means for controlling these substances. Each major group this history examines had its own motivations for supporting more

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[10] There are numerous examples of these situations in the FDA's oral history interviews, see, for example, the Ed Wilkens, Clifford Shane, and Douglas Hansen interview transcripts.

[11] Division of Case Supervision, Bureau of Regulatory Compliance memo to All Districts, "Subject: 18-256 V et al O-T-C Sales – Amphetamines," FDC 48577, Wm. L. Palmer, Sr. and Wm. L. Palmer, Jr. Houston, Texas (AF 2-518)," January 14, 1965, Folder: "600.3 Jan-May thru 604," Box 3795: "600.3 Jan-May thru 604" (1964-65), FDA-NACP.

stringent laws for dealing with pharmaceuticals, including counterfeit drugs; and this project explores those diverse impulses in tandem. Consumers - and the politicians seeking to represent them - wanted assurances they were buying authentic drugs that had been verified effective and made properly, and that access to such drugs was controlled to avoid misuse. Manufacturers wanted to protect their profits and intellectual property from counterfeiters, while pharmacists and physicians defended their respective professional prerogatives. And, the FDA just wanted more effective laws for dealing with both the black market and ethical manufacturers.

INTRODUCTION

Users and Abusers

"So great is the latitude of our liberty that only a subtle line divides use from abuse."

- Vice President Spiro Agnew, October 30, 1969
Address at Pennsylvania Republican Dinner

It began with a single chemist in President Abraham Lincoln's Department of Agriculture. From that inauspicious start through its present role as a massive regulatory arm of the federal government, the Food and Drug Administration (FDA) endeavored to protect American consumers from potentially dangerous food, drugs, cosmetics, pesticides, and many other items produced or sold in the United States. When Congress needed to tackle an apparent threat to American consumers – in 1908, 1938, and 1962 – it expanded the FDA's mandate and power to do the job.

In public memory and popular history, each of those moments corresponded with a specific threat, including the conditions detailed in Upton Sinclair's *The Jungle* and the deadly potential of sulfa drugs and thalidomide. However, popular ideas about who was a consumer worth protecting also defined each tragedy. The lethal sulfa drugs that ultimately extended the FDA's charge in 1938, for example, had many uses, treating everything from strep throat to venereal disease. But the promiscuous adults, particularly Black men, were not deemed worthy of concern or remembrance when FDA officials pressured Congress for more power to protect

consumers.[1] As much as shaping the history of the FDA, those conceptions of the legitimate consumer also defined who and what became the focus of the United States' modern war on drugs.

By the 1950s, Americans were consuming a lot of drugs, and the FDA was struggling to classify and control the legitimate uses and manufacture of pharmaceuticals. To accomplish that task, the FDA's attention increasingly focused on what officials deemed "dangerous drugs" – barbiturates, amphetamines, and hallucinogens. These psychoactive substances developed street names like "goof balls," "bennies," and "acid," but all were – and some continue to be – produced and marketed by legal pharmaceutical companies. Sold under trade names, such as Luminal and Benzedrine, for everything from sleeplessness to weight loss, barbiturates and amphetamines were popular, profitable, and prescribed often. Although far less fashionable than the others, even lysergic acid diethylamide (LSD) was distributed as Delysid by the respected Swiss company, Sandoz.

To regulate this commerce, the FDA followed its traditional practices of education, voluntary compliance, and record-keeping requirements. As the market for psychoactives grew, so too did the diversion of uppers and downers into unlicensed and illicit channels, where the FDA initially had no power. By 1960, manufacturers and compounders produced billions of doses of amphetamines and barbiturates each year. However, the FDA estimated half of all those

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[1] Distributed throughout the Upper South and largely prescribed by doctors in rural areas, that deadly batch of sulfa drugs killed or seriously harmed many, including numerous poor, African American men in 1937. However, FDA officials choose to build their narrative around a young white girl when pressing the Congress and public for stricter drug control laws. Daniel Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton: Princeton University Press, 2010), 97-9. See chapter one for more in-depth analysis of this incident and its significance for evincing and enhancing the boundaries of who would be accepted as a consumer worthy of protection.

pills were sold and used without a prescription, the marker of legality. Struggling to regulate a booming market for mind-altering pharmaceuticals and to keep consumers from misusing those drugs, the FDA and Congress constructed a new foundation for federal drug control that eventually became the basis for the Drug Enforcement Administration (DEA)'s policing of all drugs. These were the consumer protection origins of the war on drugs and their history will be the focus of this dissertation.

This dissertation explores a moment when cultural and legal boundaries between drugs and medicine blurred then reformed. It asks, how did those borders get made and re-made? And, what were the consequences of those classifications? Highlighting the multivalent meanings of use and abuse, user and abuser, the dissertation also analyzes the connections between legal and cultural understandings of substances and the consumers of such substances. Why did some people and substances end up on one side of the law or the other? How did the process of reshaping the borders between drugs and medicine also restructure limits on federal power to police those on the wrong side? Ultimately, this dissertation asks, how did the federal government achieve primacy over the states to lead an expansive war on drugs and drug users? And, what role did the FDA, acting in the name of consumer protection, play in that history?

Centered on the history of the Food and Drug Administration and its short-lived Bureau of Drug Abuse Control (BDAC), this dissertation examines the history of federal regulation of pharmaceuticals in the 1960s, when Congress and the FDA created a new legal framework for policing drug laws. As the FDA focused on bringing black markets to heel, it was the dangers of authentic medicines – both from defective drugs such as thalidomide and the misuse of popular psychoactives – that first drew attention to the issue and prompted public outcries for more

control. However, the need for more power to police counterfeit drugs ultimately provided the necessary political impetus to grant the FDA the authority that became the foundation for all federal drug control and policing. To protect consumers, police counterfeit medicines, and preserve the profits of the major pharmaceutical companies, the federal government thus claimed the authority and built the infrastructure undergirding all subsequent federal drug policing.

For a brief moment in the mid-1960s, a relatively small group of inspectors from the Food and Drug Administration became cops – federal cops with traditional law enforcement powers, charged with opening a new front in the nascent war on drugs and drug users. In the name of protecting consumers, the FDA launched the Bureau of Drug Abuse Control in 1966. Over the next two years, FDA Inspectors and others from the ranks of traditional police forces – all now BDAC Agents – cracked down on drug counterfeiters, black market distributors, and unauthorized users of psychoactive pharmaceuticals. However, police work came with its own problems and FDA officials feared BDAC would draw them away from their traditional mission. As "law and order" politics came back into vogue, the FDA happily jettisoned BDAC, and Congress, for the first time, transferred all drug policing responsibility to the Justice Department.

Borders matter in the drug business, as they affect prices, profits, and access. Boundaries – from the point of sale and location of a user's home to a pill's transit from a labeled bottle to a car trunk – also shape definitions of legal and illegal as well as pejorative understandings of drugs and medicine. Throughout its history, the FDA allowed doctors to serve as the ultimate gatekeepers for patients' access to medicine but nonetheless sought to control the bounds of this access. Ironically, the FDA's ability to do so had its own limits. National borders are perpetual sites of concern for federal drug police. Until the passage of the Drug Abuse Control

Amendments of 1965 (DACA), state borders also mattered for FDA inspectors as the tradition of federalism limited the FDA's power to enforce its drug laws.

In response to more public and political attention to the abuse of pharmaceuticals, the proliferation of counterfeits, and the black market traffic in pills, DACA established strict controls for amphetamines, barbiturates, and hallucinogens. Congress also granted the FDA power to regulate all violations of the law, even those that never directly touched interstate commerce. Thus, as metaphorical boundaries between illegal drugs and pharmaceuticals broke down, so did the literal bounds on federal power. After the taxing authority used to regulate narcotics and marijuana began to fall apart in the late 1960s, Congress rewrote all national drug laws using the more expansive intrastate commerce power. That effort became the Controlled Substances Act of 1970 (CSA), which remains the basis for federal drug regulation, from heroin and marijuana to Valium and cough medicine. Amid the functional aspects of its scheduling system, political decisions about corresponding punishments, and the DEA's resultant war on certain types of drug users, the CSA reinscribed clear boundaries between cultural understandings of substances such as heroin and oxycodone, and their respective users.

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This is a history of the FDA's efforts to classify and control accepted uses and users of pharmaceuticals, but it is also a history of expanding federal police power and the rise of mass incarceration in the United States.[2] The dissertation argues related initiatives to reform narcotics

[2] Heather Ann Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *Journal of American History* 97 (Dec. 2010): 703–34. For a recent survey of the many dimensions of the carceral state, see the special edition, "Constructing the Carceral State," *Journal of American History* 102, no. 1 (2015), 18-184. For a foundational history of mass incarceration in the United States, see Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York: Cambridge

laws and protect consumers from dangerous medicines created the foundation for a massive expansion of federal policing of illicit drugs. Ascendant in the mid-1960s, legislation to protect consumers from dangerous pharmaceuticals ultimately created the authority to classify and police unapproved uses and users of all drugs. In short, laws to protect "users" became the basis for policing "abusers." The abuses of the resultant federal war on drugs have been well trod, but this dissertation highlights an underexplored history of the sources of federal power to prosecute its war.[3]

The revision of drug laws, the expansion of mandatory minimum sentences, and the militarization of drug policing – all reflected in the legacy of BDAC – have helped to construct the carceral state.[4] In fact, the myriad punishments associated with drug laws, from life sentences

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University Press, 2006). For an expansive approach to the punitive turn that focuses on the militarization of domestic police as war-making came home after Vietnam, see Michael Sherry, *Go Directly to Jail: The Punitive Turn in American Life* (book manuscript in possession of author). For more on this cultural and political shift, see for example Philip Jenkins, *Decade of Nightmares: The End of the Sixties and the Making of Eighties America* (New York: Oxford University Press, 2006); Anne-Marie Cusac, *Cruel and Unusual: The Culture of Punishment in America* (New Haven: Yale University Press, 2009); and Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007). Prohibition also prompted the expansion of federal police power, for that growth's connection to the war on narcotics, see Lisa McGirr, *The War on Alcohol: Prohibition and the Rise of the American State* (New York: W. W. Norton & Company, 2016), esp. 211-221.

[3] Foundational works on federal drug policy include David Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), 247-57; and Musto and Pamela Korsmeyer, *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse* (New Haven: Yale University Press, 2002). For a brief summary of the past century of U.S. drug policy, see David T. Courtwright, "The Cycles of American Drug Policy," *The American Historian* (August 2015): 24-9. For the international dimensions of drug policy, see William B. McAllister, *Drug Diplomacy in the Twentieth Century: An International History* (New York: Routledge, 2000) and Daniel Weimer, *Seeing Drugs: Modernization, Counterinsurgency, and U.S. Narcotics Control in the Third World, 1969-1976* (Kent, OH: Kent State University Press, 2011).

[4] For studies of the War on Drugs and its connection to race and mass incarceration see Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York:

to denials of college financial aid, mirror the broader punitive turn in American life. Still, many have pointed to the relative size of drug arrest numbers and highlighted the shifting priorities of drug control policies, arguing for more important sources of the rise of mass incarceration, including racial backlash to the Civil Rights Movement and the domestication of military language and practices after Vietnam.[5] Compounding this prioritization, most studies of drugs and mass incarceration have maintained a narrow focus on traditionally "illegal drugs" – primarily marijuana, heroin, cocaine, and their derivatives.[6] Few scholars, however, have connected the rise of mass incarceration and expansion of the U.S. carceral state to the history of federal attempts to regulate the pharmaceutical industry and certain types of prescription drugs.[7]

The New Press, 2010); Doris Marie Provine, *Unequal Under the Law: Race in the War on Drugs* (Chicago: University of Chicago Press, 2007); Marc Mauer, *Race to Incarcerate,* rev. ed. (New York: The New Press, 2006); Deborah E. McDowell, Claudrena N. Harold, and Juan Battle, eds., *The Punitive Turn: New Approaches to Race and Incarceration* (Charlottesville: University of Virginia Press, 2013); and Julilly Kohler-Hausmann, *Getting Tough: Welfare and Imprisonment in 1970s America* (Princeton: Princeton University Press, 2017).

[5] Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015), esp. 126-130. To support this argument, Gottschalk cites John F. Pfaff, "The Empirics of Prison Growth: A Critical Review and Path Forward," *Criminology* 98, no. 2 (2008), 559.

[6] For histories of opiates and cocaine, see David Courtwright, *Dark Paradise: A History of Opiate Addiction in America*, 2nd ed. (1982; Cambridge, MA: Harvard University Press, 2001); Joseph Spillane, *Cocaine: From Medical Marvel to Modern Menace in the United States, 1884-1920* (Baltimore: The Johns Hopkins University Press, 2000); and Eric C. Schneider, *Smack: Heroin and the American City* (Philadelphia: University of Pennsylvania Press, 2008). For a brief history of marijuana legislation, see Kathleen Ferraiolo, "From Killer Weed to Popular Medicine: The Evolution of American Drug Control, 1937-2000," *Journal of Policy History* 19 (2007): 147-80; and, for a more comprehensive study of marijuana's shifting reputation, see Emily Dufton, *Grass Roots: The Rise and Fall and Rise of Marijuana in America* (New York: Basic Books, 2017). For LSD, see Stephen Siff, *Acid Hype: American News Media and the Psychedelic Experience* (Urbana: University of Illinois Press, 2015).

[7] One exception has been a study of the United States' international drug policy that also takes into account the growth of the pharmaceutical industry, see Suzanna Reiss, *We Sell Drugs: The Alchemy of US Empire* (Berkeley: University of California Press, 2014). Otherwise, most histories have either focused on individual classes of prescription drugs or the practice of pharmacy. See, for example, Nicolas Rasmussen, *On Speed: The Many Lives of Amphetamines*

In doing so, this study can shed new light on both the rise of mass incarceration and how the punitive turn is inextricable from broader trends toward privatization of government services and deregulation of business.

Although some have questioned the centrality of the war on drugs to the rise of mass incarceration, scholars have continued to explore multiple dimensions of this punitive project, including its origins. Many of the initial inquiries into this history explored the actions of the Nixon administration, and the idea that President Richard Nixon first declared a war on drugs remains ubiquitous in popular memory.[8] Additional works have focused on the federal level and the conservative backlash against everything from myths of addicted soldiers fighting in Vietnam to fears of marijuana peddlers terrorizing the suburbs.[9] Pointing to the size of state prison

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(New York: New York University Press, 2008); David Herzberg, *Happy Pills in America: From Miltown to Prozac* (Baltimore: The Johns Hopkins University Press, 2009); Andrea Tone, *The Age of Anxiety: A History of America's Turbulent Affair with Tranquilizers* (New York: Basic Books, 2009); Jeremy A. Greene and Elizabeth Siegel Watkins, eds., *Prescribed: Writing, Filling, Using, and Abusing the Prescription in Modern America* (Baltimore: The Johns Hopkins University Press, 2012).

[8] Edward Jay Epstein, *Agency of Fear: Opiates and Political Power in America*, revised edition (New York: Verso, 1990 [Originally published by Putnam in 1977]); Dan Baum *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (Boston: Back Bay Books, 1996); Michael Massing, *The Fix* (New York: Simon & Schuster, 1998); and Elaine B. Sharp, *The Dilemma of Drug Policy in the United States* (New York: Harper Collins College Publishers, 1994). For a history of the first phase of US drug policy under the FBN, see John C. McWilliams, *The Protectors: Harry J. Anslinger and the Federal Bureau of Narcotics, 1930-1962* (Newark: University of Delaware Press, 1990); and for an mid-century history of US drug policy that also counters the Nixon-centric narrative, see Rufus King, *The Drug Hang-up: America's Fifty-Year Folly* (New York: W. W. Norton & Company, 1972).

[9] Jeremy Kuzmarov, *The Myth of the Addicted Army: Vietnam and the Modern War on Drugs* (Amherst: University of Massachusetts Press, 2009); Matthew D. Lassiter, "Impossible Criminals: The Suburban Imperatives of America's War on Drugs," *Journal of American History* 102 no. 1 (2015): 126-40; and Jenkins, *Decade of Nightmares*, 246-55. For this legal shift's connection to cultural shifts, see, for example, Bruce J. Schulman, *The Seventies: The Great Shift in American Culture, Society and Politics* (New York: Da Capo Press, 2002); and Jefferson Cowie, *Stayin' Alive: The 1970s and the Last Days of the Working Class* (New York: New Press, 2012).

numbers, others have concentrated on the state level and effects of policies like the passage of the Rockefeller drug laws in New York that expanded stop-and-frisk practices and harsh penalties, thereby flooding jail cells with poor and minority drug users.[10]

In many ways, this recent trend in the scholarship fits with the logic of federalism and the reality of state and local primacy in policing. However, since the 1960s, drug crimes have become the chief exception to the tradition of local crime enforcement. Despite their expansive policing resources, federal authorities have no jurisdiction, for example, as long as one does not cross state lines in the process of committing a murder. The same can be said of most other violent and property crimes. But smoking a joint, selling a small bit of crack, or shooting up heroin all could land a person in federal lock-up, even if using the drug does not violate state or local law. Federal primacy has, in turn, expanded the nation's drug wars in myriad ways, including overlapping sentencing practices that force more guilty pleas and ongoing resistance to states' legalization of medical and recreational marijuana.[11] More important, this dissertation argues that federal primacy resulted not from a national consensus demanding more policing of drug users but from the unintended consequences of laws originally passed to protect American consumers.

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[10] For a groundbreaking article on the history of the Rockefeller drug articles, see Julilly Kohler-Hausmann, "'The Attila the Hun Law': New York's Rockefeller Drug Laws and the Making of a Punitive State," *Journal of Social History*, 44 (Fall 2010), 71–95. See also Michael Javen Fortner, "The Carceral State and the Crucible of Black Politics: An Urban History of the Rockefeller Drug Laws," *Studies in American Political Development*, 27 (April 2013), 14–35; and Kohler-Hausmann, *Getting Tough*. For studies of states' prison policies, see Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007); and Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York: Picador, 2010).

[11] For more on the ways that the federal government has co-opted local and state police forces in its drug wars, see, for example, Alexander, *New Jim Crow*, 71-83. For a history of the expanding power of federal law enforcement, see Jeffrey B. Bumgarner, *Federal Agents: The Growth of Federal Law Enforcement in America* (Westport, CT: Praeger, 2006).

This is not, however, a legal teleology. It is a history of bureaucratic machinations and decisions, exploring the complex social, cultural, economic, and political constraints on the agency of federal bureaucrats. To understand how and why the federal government achieved primacy in drug policing, this dissertation looks to an earlier period when the lines between illegal drugs and pharmaceuticals, policing and regulation, crime and trade, blurred and then reformed. That is the story of the Food and Drug Administration's Bureau of Drug Abuse Control, a short-lived agency that nonetheless signaled a new era in the regulation of prescriptions and policing of black market drugs. By centralizing the regulation of the licit market and the policing of the black market of a few specific classes of drugs within a single Bureau, BDAC evinced how limits on budgets and manpower interacted with bureaucratic decisions to shape how those pursuits were prioritized. Of course, those decisions were not made in a bubble.[12] Many different groups, from congressional leaders and industry shareholders to local pharmacists and PTA presidents, all had a vested interest in the ranking of those priorities. Thus, the Food and Drug administration's short-lived experiment with BDAC functioned as an important step in the construction of the DEA's current policing power and foreshadowed how it might be influenced to use or abuse that power.[13]

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[12] For recent studies of the broader political history of this period, see, for example, Julian E. Zelizer, *The Fierce Urgency of Now: Lyndon Johnson, Congress, and the Battle for the Great Society* (New York: Penguin Books, 2015) and Robert O. Self, *All in the Family: The Realignment of American Democracy Since the 1960s* (New York: Hill & Wang, 2012). For two classic surveys of the era, see Todd Gitlin, *The Sixties: Years of Hope, Days of Rage* (New York: Bantam Books, 1987, 1993) and David Farber, ed., *The Sixties: From Memory to History* (Chapel Hill: The University of North Carolina Press, 1994).

[13] For contemporaneous examinations of BDAC and its initial replacement in the Department of Justice – the Bureau of Narcotics and Dangerous Drugs (BNDD), see John Finlator, *The Drugged Nation: A "Narc's" Story* (New York: Simon and Schuster, 1973) and James Q. Wilson, *The Investigators: Managing FBI and Narcotics Agents* (New York: Basic Books, 1978).

Those developing uses of federal power also shed new light on the complex connections between the supposedly discrete eras usually defined by the liberal New Deal or conservative Reagan Revolution. Although some consider the former era a "great exception" in an American political history more often defined by laissez-faire federal policy, this dissertation shows how the period's punitive power persisted, albeit in different forms.[14] As such, this project joins other recent scholarship in exploring the history of mass incarceration and the war on drugs as a bipartisan project.[15] In doing so, it builds upon recent books by Naomi Murakawa and Elizabeth Kai Hinton, who have explored how federal policies to combat racial violence and poverty, in turn, created the legal and institutional foundations for programs that in many ways perpetuated those problems.[16] Similarly, this dissertation recognizes how proclamations from presidents of both parties could spur federal policy, but it remains more concerned with the underlying bases of power that enabled such presidential and federal action.

Charting the institutional and constitutional basis for the federal war on drugs reveals a vital but often invisible development in our contemporary politics. Over the past decade,

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[14] Jefferson Cowie, *The Great Exception: The New Deal and the Limits of American Politics* (Princeton: Princeton University Press, 2016). My work joins other recent scholarship in exploring the persistence of such punitive power. For a study of the even longer-term persistence of federal policing power amidst shifting policy and political goals, see Leo Ribuffo's account of FDR's crackdown on right-wing Nazi-sympathizers that created the institutional basis for the post-war rise of McCarthyism in Ribuffo, *The Old Christian Right: The Protestant Far Right from the Great Depression to the Cold War* (Philadelphia: Temple University Press, 1983).

[15] Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2007); Christopher Lowen Agee, *The Streets of San Francisco: Policing and the Creation of a Cosmopolitan Liberal Politics, 1950-1972* (Chicago: University of Chicago Press, 2014); and Kathleen J. Frydl, *The Drug Wars in America, 1940-1973* (New York: Cambridge University Press, 2013).

[16] Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York: Oxford University Press, 2014); and Elizabeth Kai Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2016).

reformers have focused attention on the growing political influence of corporations – usually boiling the issue down to American jurisprudence, especially election laws, treating corporations like people. However, the inverse of this process has been even more significant. During the past four decades, the federal government has taken power intended to regulate corporations and reapplied it towards the policing of people. The consumer protection origins of the war on drugs evince that process, revealing how and why U.S. laws now police some people with power originally claimed in the name of protecting others.

Probing the institutional foundations of the modern federal drug war, this project has often relied on methodologies from the study of American Political Development (APD) – a subfield that emerged from the work of a group of historically-minded political scientists and has since inspired many new insights from political historians. Beginning with a call to "bring the state back in," these scholars have expanded understandings of state power, institutional growth, the making and unmaking of social policy, the shifting meanings of citizenship, and the multivalent causes of political change.[17] Still, many APD scholars focus on the multitude of

[17] Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., *Bringing the State Back In* (New York: Cambridge University Press, 1985). Foundational works in American Political Development include, Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (New York: Cambridge University Press, 1982); Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Harvard University Press, 1992); Karen Orren and Stephen Skowronek, *The Search for American Political Development* (New York: Cambridge University Press, 2004); Meg Jacobs, William J. Novak, and Julian Zelizer, eds., *The Democratic Experiment: New Directions in American Political History* (Princeton: Princeton University Press, 2003); and Ira Katznelson and Martin Shefter, eds., *Shaped by War and Trade: International Influences on American Political Development* (Princeton: Princeton University Press, 2002). Numerous historical monographs, inspired by APD, have also been included throughout this dissertation's notes and the bibliography. For a summary of the current state of the field and its influence on myriad historical scholars, see Suzanne Mettler and Richard M. Valelly, "Introduction: The Distinctiveness and Necessity of American Political Development," in *The Oxford Handbook of*

factors shaping "big legislative changes that lead to major institutional change," which has often meant a lack of attention to the actual behavior of bureaucracies, such as the FDA. While exploring consequential legislation like DACA and the CSA, this dissertation also follows a recent call for APD scholars to investigate "the ways that bureaucrats strategically use their power to administer the law to enhance the state's capacity."[18]

Narratives of the development of the FDA often concentrate on a few major legislative shifts and other watershed moments.[19] The publication of Upton Sinclair's *The Jungle*, dozens of children and adults dying after taking a poisonous elixir sulfanilamide, hundreds of European children living with birth defects after their mothers were prescribed thalidomide, and the overdose deaths of celebrities, such as Marilyn Monroe, from barbiturate sleeping pills – all dramatized the need to protect American consumers from dangerous food and drugs. Each of

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American Political Development ed. by Mettler, Valelly, and Robert C. Lieberman (New York: Oxford University Press, 2016), 1-23.

[18] Colin D. Moore, "Bureaucracy and the Administrative State," *Oxford Handbook of American Political Development*, 327-44; see also James Mahoney and Kathleen Thelen, eds., *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2010). For a recent study of bureaucratic reorganization and administrative law that shows the promise of this type of work, see Joanna L. Grisinger, *The Unwieldy American State: Administrative Politics Since the New Deal* (New York: Cambridge University Press, 2012).

[19] For histories of the FDA used primarily in this project, see Daniel Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton: Princeton University Press, 2010), Philip J. Hilts, *Protecting America's Health: The FDA, Business, and One Hundred Years of Regulation* (Chapel Hill: University of North Carolina Press, 2003); and Fran Hawthorne, *Inside the FDA: The Business and Politics Behind the Drugs We Take and the Food We Eat* (Hoboken, NJ: John Wiley & Sons, Inc., 2005). For histories of the FDA's response to the "therapeutic revolution," see, for example, Dominique A. Tobbell, *Pills, Power, and Policy: The Struggle for Drug Reform in Cold War America and Its Consequences* (Berkeley: University of California Press, 2012), and Peter Temin, *Taking Your Medicine: Drug Regulation in the United States* (Cambridge, MA: Harvard University Press, 1980). For significant studies of the FDA published contemporaneously with this history, see, Richard Harris, *The Real Voice* (New York: Macmillan, 1964); Margaret Kreig, *Black Market Medicine* (Englewood Cliffs, NJ: Prentice-Hall, 1967); Morton Mintz, *By Prescription Only*, rev. ed. (Boston: Beacon Press, 1967); and Harry Edward Neal, *The Protectors: The Story of the Food and Drug Administration* (New York: Julian Messner, 1968).

these events also resulted in the passage of new legislation and the extension of FDA's authority to accomplish their mission. However, the devil was in the details, and those details were sorted out through a complex array of bureaucratic decisions, administrative hearings, court rulings, budget changes, and political pressures from industry and the public.[20]

This dissertation will focus on those, often unseen, machinations. It will also evaluate the consequences of FDA's bureaucratic choices about how to use its power, and how those decisions helped draw the blueprints for carceral state. When the Food and Drug Administration's fledgling Bureau of Drug Abuse Control tackled the misuse of prescription drugs, administrative and budgetary considerations forced a choice between focusing limited resources on either regulating corporate activities in the legitimate supply chain or policing the illicit distribution and use of pharmaceuticals by individuals. Industry representatives played a role in shaping these decisions, and it extended far beyond the usual lobbying efforts. Smith Kline & French, for example, provided speakers and grants for schools and "published a manual on drug abuse for law enforcement officers, a guide for teachers and a general booklet on the subject." The manufacturer of Benzedrine and other popular amphetamines distributed 750,000 copies of its booklet, *Drug Abuse: The Empty Life*, free of charge across the country.[21] As the title indicates, it directed most of the reader's attention to the individual "drug abuser" who

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[20] Daniel Carpenter, also working with the methodologies of American Political Development, makes a similar argument, challenging other historians overt focus on these "tragic episodes" and writing, "The bureaucratic regulation of pharmaceuticals arrived not starkly in new laws, nor in scientific and medical upheavals, but continuously, haltingly, and ambiguously in regulatory practice," *Reputation and Power*, 118.

[21] "What SK&F's Doing About It" (Sidebar to "Drug Abuse: Wonderland or Wasteland?'), *Emphasis: The Smith Kline & French Magazine* 2, no. 4 (Fall 1968), 5.

misused otherwise beneficial medicines.[22] Propelled by such a focus, public concern about youth drug use further shaped the mission of BDAC. As a conservative backlash drove demands for a return to more punitive strategies, the authority originally vested in BDAC provided a firmer constitutional footing for launching a war against all those not classified as legitimate consumers of drugs.

The expansion of federal power to regulate pharmaceuticals emerged from, and evinces, the construction of the modern legislative and regulatory state. The growth of the FDA, its changing place within executive departments, and officials' central role in administrative reorganization debates all mirror the broader development of a strong national state during and after World War II.[23] As the FDA struggled to protect people it classified as "consumers," those

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[22] "What SK&F's Doing About It," 5. Photocopies of *Drug Abuse: The Empty Life* in possession of author, and booklet also available in Folder 1, "Drugs: Abuse," Box 1: "Drug Abuse Files," Files of John Swann, FDA History Office, U.S. Food and Drug Administration, Department of Health and Human Services, Silver Spring, MD [Hereafter, "FDA History Office Files"]. In the same annual report that apprised shareholders of details from another record setting year for sales – totaling $243,670,000 for 1966, SKF stated it "strongly supported" DACA and, explaining the rationale for the manual, wrote, "We hope this manual will help law enforcement personnel, legislators physicians, and other concerned persons to recognize and understand better this social problem," Smith Kline & French Laboratories, *Annual Report 1965*, 10, Available in bound collection of *Smith Kline & French Laboratories Annual Reports 1956, 1958-72* held at Northwestern University Library, Evanston, IL. NOTE: The voices of industry, including individual pharmacists, manufacturers, and their lobbyists appear throughout the dissertation, and the dialectical relationship between the FDA and this industry is a central part of my argument. However, much of the actions of industry that I trace come through their communications with the FDA, Congressional offices and committees, and the White House, because those were the sources bases for much of my original research. As I develop this dissertation into a manuscript, I plan to do more research into the available files of manufacturers and groups, such as the Pharmaceutical Manufacturers Association, the National Association of Retail Druggists, and the American Pharmaceutical Association. For more on the history of this industry, see, for example, Alfred D. Chandler, Jr., *Shaping the Industrial Century: The Remarkable Story of the Evolution of the Modern Chemical and Pharmaceutical Industries* (Cambridge, MA: Harvard University Press, 2005).

[23] James T. Sparrow, *Warfare State: World War II Americans and the Age of Big Government* (New York: Oxford University Press, 2011).

classifications were influenced by the diverse efforts of labor unions, government officials, business leaders, grassroots groups, and individual men and women to define the economic rights of Americans and the appropriate amount of government intervention needed to protect those rights.[24] Beyond the category of consumer, federal legislation shaped the nature and meaning of citizenship, based on race, gender, or sexuality – all with serious, sometimes grave, consequences for those left outside citizenship's protective boundaries.[25] Building upon those insights, this project will show how pocketbook politics were also instrumental in the growth of federal police power and the foundations of the war on drugs.

The value of this study, however, will not be found in another theory of state power. Instead of the "abstract, metaphysical question of what the state *is*," this dissertation follows the recent turn in scholarship and focuses "on the more practical, historical question of what it *does*."[26] What the federal government could do and how it did it, what William J. Novak calls its "tools of governance," changed over time. After the end of the Civil War, according to Novak, reconfigurations of the state, law, and society resulted in a transformation of American governance. In response to modernity and the rise of corporations, politicians and reformers

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[24] Lizabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (New York: Alfred A. Knopf, 2003) and Meg Jacobs, *Pocketbook Politics: Economic Citizenship in Twentieth Century America* (Princeton: Princeton University Press, 2005). For how these concerns about protecting the "nuclear family" were connected to broader fears of national decline, see Natasha Zaretsky, *No Direction Home: The American Family and the Fear of National Decline, 1968-1980* (Chapel Hill: The University of North Carolina Press, 2007).

[25] See, for example, Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth Century America* (Princeton: Princeton University Press, 2009) and Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: W. W. Norton & Company, 2005). For an alternative narrative about legislation's potential, sometimes unexpectedly, to open those borders and allow more access, see, for example, Nancy Maclean, *Freedom is Not Enough: The Opening of the American Workplace* (Cambridge, MA: Harvard University Press, 2006).

[26] James T. Sparrow, William J. Novak, and Stephen W. Sawyer, *Boundaries of the State in US History* (Chicago: The University of Chicago Press, 2015), 5.

began pursuing "technologies of public action" to check corporate power. Tracing how the federal government accomplished that feat – its tools of governance – reveals the slow and steady accretion of federal police power. Before the commerce power, Novak argues, public utility law was at the center of legal attempts to regulate industry. Congress deemed all manner of businesses in the public interest and worthy of regulation to ensure affordability and non-discriminatory access. This claim to authority preceded the New Deal and presaged its own legal arguments, which were based on the commerce power and protecting consumers from the abuses of American industry without the need to still designate certain businesses as public enterprises.[27] The Food and Drug Administration's authority to regulate interstate commerce had its roots in "the new mechanisms of democratic control and corporate regulation that emerged in the late nineteenth and early twentieth centuries" as "the impulse to regulate corporations became even more historically thoroughgoing and transparent."[28] Congressional efforts to regulate food and drugs legally available to American consumers naturally flowed from the constitutional power to regulate interstate commerce.

The growth of the federal government, however, was not a simple or straight-forward process because national lawmakers had to overcome a core constitutional paradox. As Gary Gerstle notes, the Framers limited "the federal government's reach by carefully enumerating and fragmenting its powers" but, at the same time, granted almost unlimited powers to the states "to

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[27] William J. Novak, "The Public Utility Idea and the Origins of Modern American Business Regulation," Law in Motion Lecture, Center for Legal Studies, Northwestern University, May 22, 2017; see also Novak, "The Public Utility Idea and the Origins of Modern Business Regulation," in *Corporations and American Democracy*, ed. by Naomi R. Lamoreaux and William J. Novak (Cambridge, MA: Harvard University Press, 2017). Novak's theory of "tools of governance" seems inspired by Michel Foucault, see for example, Foucault, "Governmentality," in *The Foucault Effect: Studies in Governmentality*, ed. by Graham Burchell, Colin Gordon, and Peter Miller (Chicago: The University of Chicago Press, 1991), 87-104.
[28] Lamoreaux and Novak, "Introduction," *Corporations and American Democracy*, 23.

engage in precisely the kinds of coercion forbidden to the federal government."[29] As national politicians sought to act in all manner of areas where they believed the states lacked either the will or the resources to do the same, those lawmakers needed to work around these traditional limits. Legislators therefore adopted a number of strategies, including what Gerstle calls, "surrogacy" or "using power explicitly granted in the Constitution to expand its authority into forbidden legislative terrain." In practice, this meant using Congress' power to control the mail, levy taxes, and regulate interstate commerce, for example, "to circumvent formal limits" on the federal government's authority.[30]

Unlike efforts to police morality, which was originally a power the Constitution reserved for the states, federal attempts to regulate consumer products through the Food and Drug Administration had a clear basis in congressional authority to control interstate commerce. This dissertation begins in the earliest days of the FDA, a runt at birth that matured alongside the growing power of the central government. Beginning in the 1930s, in concert with New Deal legislation, popular legal interpretations shifted to a far more expansive understanding of the regulatory authority that the Constitution's Commerce Clause vested in Congress. Throughout the next few decades, Congress deployed this commerce power for everything from regulating wheat production to ending segregation in hotels and restaurants.[31] The FDA had a leading part in the legacy of the national government's surrogacy strategies. Less recognized is its role in constructing the federal government's even greater power to wage the war on drugs. A core

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[29] Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton: Princeton University Press, 2015), 1-2.
[30] Gerstle, *Liberty and Coercion*, 6.
[31] For a range of perspectives on this history see, "AHR Forum: The Debate Over the Constitutional Revolution of 1937," *The American Historical Review* 110, no. 4 (2005), 1046-1115.

bureaucracy in the growth of federal attempts to regulate commerce, the FDA also served as a vital transition point in the eventual use of this same power to regulate, protect, *and police* all drugs and drug users.

When federal officials began to pursue national laws to control narcotics – opiates and cocaine – in the early twentieth century, a successful strategy for those initiatives was far less certain. Over the next seventy years, debates about that proper foundation would continue, but three main options persisted in various forms. One was using the commerce power, another was based on the Supremacy Clause of the Constitution and the federal government's right to uphold its treaty obligations, and the third depended on the right to raise revenue. Throughout his tenure, Federal Bureau of Narcotics (FBN) Commissioner Harry Anslinger insisted that his bureau was necessary to uphold commitments the United States made in international narcotics agreements. Never more than rhetorical, Anslinger's dependence on the Supremacy clause was damaged inexorably when conservatives like John Bricker began to raise hackles about how treaties could undermine states' rights.[32] According to David Musto, "some elements of the pharmacy trade supported a regulatory antinarcotic law based on the interstate commerce clause." However, the first national law to police the illegal sale and possession of drugs, the Harrison Narcotics Act of 1914, instead "paralleled the widening possibilities open to Congress in the area of policing morals," and "proponents opted for basing it on government's revenue powers."[33]

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[32] Cathal J. Nolan "The Last Hurrah of Conservative Isolationism: Eisenhower, Congress, and the Bricker Amendment," *Presidential Studies Quarterly* 22, no. 2 (1992). The American Medical Association supported the Bricker Amendment, as it placed another check on federal power, see Rick Perlstein, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (New York: Hill and Wang, 2001), 184.
[33] Musto, *American Disease*, 10.

For reasons that will be explored in detail, the decision to use tax law to regulate drugs would hem in and eventually undo the Federal Bureau of Narcotics, hastening its transfer out of the Treasury Department. At the same time, the FDA and its pursuit of additional authority to police the illegal diversion of pharmaceuticals went hand-in-hand with the spread of commerce power in others areas, including anti-lynching legislation and civil rights. Mirroring broader developments in the construction of the modern regulatory state, the FDA and its backers adopted a tool of governance – the regulation of intrastate commerce – that could "sustain strict regulation of drug use without the need to portray a police function as a revenue measure."[34] David Musto and others have recognized that this shift in law happened but have not sufficiently explored how or why. The consumer protection origins of modern drug control highlight the reasons for this shift. They also unearth its consequences.

The use of the commerce power as a tool to control drugs has allowed the government's reach to extend deep into black markets, policing even the simple possession of controlled substances. However, the development of that power through the FDA's project to protect consumers, in turn, narrowed the scope of the state's focus even as its power grew stronger. As with most other progressive and New Deal programs, the Food and Drug Administration only existed to curb the worst excesses of American capitalism. In World War II, government administrators sought even closer relationships with industry.[35] After the war, plans for socialized medicine challenged the health industry's place in free market capitalism, but the American Medical Association (AMA) ensured that national health care remained a distant

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[34] Musto, *American Disease*, 10.

[35] Alan Brinkley, *End of Reform: New Deal Liberalism in Recession and War* (New York: Vintage Books, 1996). See also Kim Phillips-Fein and Julian E. Zelizer, eds., *What's Good for Business: Business and American Politics since World War II* (New York: Oxford University Press, 2012).

possibility.[36] Over the next five decades, the private footing of medicine became even more certain as Americans went from patients with rights to consumers worth protecting.[37] Well aware of that context, FDA officials sought direct cooperation with industry to police the margins of acceptable behavior. As the FDA pursued more power to police the diversion and misuse of dangerous drugs, manufacturers and pharmacists cooperated because the FDA primarily sought more authority to regulate illicit markets. In the long run, this focus ensured massive potential for policing illegal drug users. However, it also reified a myopic view that has since allowed the misuse of legally prescribed pharmaceuticals to grow unchecked with little offered other than more law enforcement solutions.

This was not the intent of the FDA or the broader mid-century movement to reform punitive drug laws and expand education, research, and treatment for drug users. In short, FDA officials and drug law reformers "wanted more law enforcement, but they didn't want *only* law enforcement." Much like African Americans seeking "a Marshall Plan for urban America," they understood that not just policing, but also education, rehabilitation, better physical and mental healthcare, job and housing programs, and myriad other tools were all needed to deal with drug abuse.[38] However, "at a time when Reaganism was ascendant, the Great Society was under

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[36] Paul Starr, *Remedy and Reaction: The Peculiar American Struggle over Health Care Reform*, rev. ed. (2011, New Haven: Yale University Press, 2013); Jill Quadagno, *One Nation, Uninsured: Why the U.S. Has No National Health Insurance* (New York: Oxford University Press, 2005).

[37] Nancy Tomes, *Remaking the American Patient: How Madison Avenue and Modern Medicine Turned Patients into Consumers* (Chapel Hill: University of North Carolina Press, 2016).

[38] James Forman, Jr., *Locking Up Our Own: Crime and Punishment in Black America* (New York: Farrar, Straus and Giroux, 2017), 12. Forman's conclusion that "racism shaped the political, economic, and legal context in which the black community and its elected representatives made their choices" and "the incremental and diffuse way the war on crime was waged made it difficult for some African American leaders to appreciate the impact of the choices they were making" directly challenges the argument that most African Americans

assault, and there was little national appetite for social programs," James Forman, Jr. notes, the only tactic left was "just the tough-on-crime laws."[39] Even if they didn't realize it at the time, when FDA officials gave up BDAC and handed their power over to the Justice Department – where the focus would be only on law enforcement – they also contributed to this process. As Forman demonstrates, "mass incarceration wasn't created overnight."[40] It was "the result of small, distinct steps, each of whose significance only becomes apparent over time [and] in light of later events."[41] Until now, few have recognized how a group of FDA bureaucrats and like-minded reformers in Congress and the White House helped build the foundation for a federal drug war that has thrived even in the ensuing era of conservative assaults on central state power.

Since Ronald Reagan, conservative Republicans have led a "forceful movement" to chip away at "big government," revealing how "the central state's vulnerability grew alongside its reach."[42] However, all but the most doctrinaire constitutionalists have supported the federal government's ongoing war against drugs and drug users. As Gerstle and others have noted, support for "the federalization of crime fighting and mass incarceration exposed the complexity

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actually supported the war on drugs; see Michael Javen Fortner, *Black Silent Majority: The Rockefeller Drug Laws and the Politics of Punishment* (Cambridge, MA: Harvard University Press, 2015).

[39] Forman, *Locking Up Our Own,* 13.

[40] As Forman notes, "those components are many. The police make arrests, pretrial service agencies recommend bond, prosecutors make charging decisions, defense lawyers defend (sometimes), juries adjudicate (in the rare case that doesn't plead), legislatures establish the sentence ranges, judges impose sentences within these ranges, corrections departments run prisons, probation and parole officers supervise released offenders, and so," *Locking Up Our Own,* 14.

[41] Forman, *Locking Up Our Own*, 45.

[42] Gerstle, *Liberty and Coercion*, 8. For more on the intellectual and legal dimensions of this project, see Daniel T. Rodgers, *Age of Fracture* (Cambridge: The Belknap Press of Harvard University Press, 2011) and Amanda Hollis-Brusky, *Ideas with Consequences: The Federalist Society and the Conservative Counterrevolution* (New York: Oxford University Press, 2015).

of popular thinking about government in America."[43] Less recognized is how much resistance the federalization of drug policing faced throughout the twentieth century – from both conservatives and liberals. In fact, when drug reformers sought to centralize the control of all drugs in the Justice Department, both Congress and the executive branch resisted, and the FDA served as an essential midpoint in finally achieving that goal. More important, in doing so, the FDA's focus on protecting particular types of consumers and cooperating with their preferred drug manufacturers, ultimately carved out a safe space for certain medicines and users that officials and legislators deemed worthy of protection from policing. Those arbitrary boundaries are another core paradox of this history, and their construction can only be understood through an examination of the consumer protection origins of the war on drugs.

A Note on Terminology

What's in a name? Drugs or medicine – each connotes something different with divergent implications.[44] Selling one gets you jail time, the other perhaps an end-of-year bonus. The vast

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[43] Gerstle, *Liberty and Coercion*, 329. Gerstle argues, "The national security state, militarization and federalization of crime fighting, and building of businesses and personal fortunes via central state contracts were forms of big government endorsed by conservative, antigovernment leaders and their followers." For the strict constitutionalist opposition to the use of the commerce power, see, for example, David F. Forte, "Commerce, Commerce, Everywhere: The Uses and Abuses of the Commerce Clause," *Heritage Foundation's First Principles Series* no. 5 (2011), and for opposition specifically to the use of intrastate commerce power to police drugs, see the dissenting opinion of Justice Clarence Thomas in Gonzales v. Raich, 545 U.S. 1 (2005).

[44] In regards to drug terminology, I generally avoid the medicine/drugs dichotomy and refer to all of these substances as drugs or designate the group of barbiturates, amphetamines, hallucinogens, tranquillizers and others the FDA considered "dangerous drugs" as psychoactive substances. Along with "psychotropic," psychoactive is the generally accepted term by historians to designate these classes of pharmaceuticals that affected the central nervous system. Beyond these generalizations, for the most part, I will try to be precise in either referring to a specific class of drugs or using the preferred nomenclature of a specific time period. In particular, it should be noted that "narcotics" was often used throughout the period covered in this study as a blanket term along with "dope" for heroin, cocaine, and marijuana – with the further Americanized spelling of "marihuana" used at the time.

social and legal implications of terminology about drugs are part of a long tradition that has already been explored, but this dissertation adds a new chapter.[45] In particular, it highlights the origins and importance of the concept of "drug abuse" – a term that was almost never used before 1962. As reflected in the name of Treasury Department's Bureau of Narcotics, all opiates as well as cocaine and even marijuana were considered "narcotics." Whether using the term narcotics or drugs, problematic users were considered "addicts" – a designation that carried its own cultural baggage and pejorative implications. At the same time, FDA Commissioner George Larrick often talked about the need to protect Americans from "dangerous food, drugs, and cosmetics." Eventually, when discussing amphetamines and barbiturates, FDA officials began to simply refer to "dangerous drugs," subtly narrowing the rhetorical implication from the scope of FDA's duties to a specific class of substances requiring more regulation. As separate categories, narcotics and dangerous drugs never bridged the divide between the FBN and the FDA, perpetuating the limited reach of federal drug control. However, reformers discovered a new path forward when the Kennedy administration began popularizing the concept of "drug abuse."

Officials in the Food and Drug Administration struggled to tighten regulation over "dangerous drugs" well before President John Kennedy made campaign promises to be the American consumer's chief lobbyist or to reform the nation's drug regime. With Larrick at the helm, the FDA steadily chipped away at an uneducated public, reticent Congress, and uncooperative Bureau of Narcotics. To check the spiraling use of these medicine cabinet marvels, policymakers could not just fall back on the political parlance of the times. Cracking down on the misuse of prescribed amphetamines and barbiturates, which threatened to impugn

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[45] There is an extensive historiography focused on the language of addiction, for a foundational text, Caroline Jean Acker, *Creating the American Junkie: Addiction Research in the Classic Era of Narcotic Control* (Baltimore: Johns Hopkins Press, 2002).

many white and middle-class constituents, was untenable for many politicians and unacceptable to many pharmacists.[46] The capacious new concept of "drug abuse" offered a way to overcome that tension, focusing on the proper distribution of prescription drugs and the medical rehabilitation of those who seemed to misuse either legal or illegal drugs.

Laws to control the "abuse" of pharmaceuticals also gained support from across the political spectrum, in part because the rhetorical distance between legitimate use and illegal abuse gave self-diagnosed *users* of such drugs no cause for concern. Therefore, legislation could appeal to those law and order voters who also regularly popped a pill to slim their waistline or ensure a restful night's sleep. Moreover, because users of licit prescription drugs were often classified as white and well-off – far from the apparent moral and cultural faults of the terrifying dope fiend – the medical treatment of those users went hand in hand with initiatives to protect hapless and otherwise moral consumers from ever falling victim to drug abuse.

Before 1962, no U.S. chief executive had ever used the phrase "drug abuse" or convened a national bi-partisan commission to study the issue. In 1962, however, Kennedy harnessed related movements to reform federal drug policing and to ensure pharmaceuticals were safe and effective, helped bind them together in the public imagination, and made the policing of pharmaceuticals into a national issue. That summer, public fears about Thalidomide and interest in Marilyn Monroe's death sparked demands for more control of pharmaceuticals. As such, plans to hold a White House Conference on Narcotics were adjusted in August to emphasize "drug

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[46] For more on the history of the pharmaceutical industry's attempts to distance conceptions of drugs and medicine from pejorative ideas about addiction, see John Parascandola, "The Drug Habit: The Association of the Word 'Drug' with Abuse in American History," in *Drugs and Narcotics in History*, ed. by Roy Porter and Mikulas Teich (New York: Cambridge University Press, 1995), 156-167.

abuse" more broadly.[47] Kennedy's focus on narcotics reform created the impetus for a new program, while the nascent consumer protection politics of drug abuse influenced the shape of that program.

Chapter Summaries

The dissertation begins before the passage of the Food, Drug, and Cosmetic Act of 1938 – a significant piece of New Deal legislation that represented the essential vision of using the commerce power to regulate the worst impulses in American industry. The first chapter explores how the FDA's responsibilities continued to grow in the postwar period, as the therapeutic revolution was in full swing and the pharmaceutical industry boomed. Many classes of drugs were created or first commercialized during this period, but some became exceedingly popular with American consumers, especially amphetamines and barbiturates. As the policing of illegal drugs became more and more punitive, the Federal Bureau of Narcotics had no interest in policing prescription drugs. Charged with the duty to protect the American public from dangerous foods, cosmetics, and drugs, the Food and Drug Administration attempted to stem the growing illegal trade in "dangerous drugs" but struggled with limited authority and the lowest budgets in its history.

President John Kennedy played a significant role in pushing regulation of pharmaceuticals into the national spotlight; connecting the politics of consumer protection with a movement to reform drug control. Responding to the Thalidomide crisis in the summer of 1962,

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[47] "Meeting Minutes," Interdepartmental Committee on Narcotics, August 14, 1962; "Immediate Release," Office of the White House Press Secretary, The White House, August 6, 1962. Both available in Folder (2 of 7): "Narcotics, 1962: 12 February – 20 August," Papers of John F. Kennedy. Presidential Papers. White House Staff Files of Lee C. White. General File, 1954-1964. John F. Kennedy Presidential Library and Museum, Boston, MA. [Hereafter, "Lee White Files, JFKL"].

Kennedy bonded these two ideas together in the public imagination. His rhetorical support for a full-scale battle against "drug abuse" – a newly coined concept – culminated in the report of his Advisory Commission on Narcotic and Drug Abuse. Injecting their views into those deliberations, FDA officials used the opportunity to pursue their long sought after authority to more closely regulate what they considered dangerous drugs.

The second chapter examines the work of the Kennedy administration and the FDA to construct a new framework for federal drug policy, while the third chapter evinces the oft forgotten impact of this effort after Kennedy's assassination in November 1963. Kennedy's advisory commission completed its report only weeks before his death, leaving it to President Lyndon Johnson to institute the report's recommendations, many of which generated controversy even before their official publication. LBJ sought to avoid that controversy and the issue of reforming drug policy for as long as possible, but eventually acceded to the half-measure of providing for stricter control of pharmaceuticals. The resulting legislation finally granted FDA the authority to police the illegal manufacture and distribution of pharmaceuticals, particularly amphetamines and barbiturates. To enforce these new laws, the FDA created BDAC.

The first half of chapter four details the institutional construction of the Food and Drug Administration's fledgling Bureau of Drug Abuse Control. This portion of the chapter highlights the myriad ways that policymakers and FDA regulators grappled with the dual nature of their challenge, demonstrating how these decisions, in tandem with the changing political climate in which they were made, refocused federal power on the exclusive policing of drug abusers. Pushed and pulled by numerous political and cultural factors, BDAC agents soon found themselves doing the same work as any other police force. LBJ wanted more done to crack down on possession of illegal drugs, but FDA officials grew reluctant to use the policing powers they

already possessed. In the spring of 1968, less than two years after BDAC's creation, LBJ proposed to move the Bureau and its authority to the Justice Department and merge it with the Treasury Department's Bureau of Narcotics. After intense debate, the plan barely achieved Congressional approval.

The final chapter begins with the creation of the Bureau of Narcotics and Dangerous Drugs (BNDD) in 1968. Five years after Kennedy's commission recommended a similar merger – and thirty-five years after such a plan was first proposed – the main federal drug regime moved to the Justice Department, where it remains. However, Johnson and President Richard Nixon still sought to revamp federal drug laws. That project took on new impetus when the Supreme Court struck down the federal marijuana law. Amid intense Congressional debate, the administration was able to use the statutory authority invested in pharmaceutical legislation to now regulate all drugs – licit and illicit. The Controlled Substances Act was a complex hodge-podge of liberal reform initiatives and heightened federal authority to police even simple possession of illegal drugs. To get his drug laws, Nixon was forced to accede to many Congressional plans for rehabilitation funding and other medically oriented solutions. Despite these debates and mixed motivations, however, the CSA provided the legal basis for all future escalations of mandatory minimum sentences, asset forfeitures, and other definitive features of our modern war on drugs.

In 1973, New York passed the infamous Rockefeller Drug Laws. Nixon admired the plan and presented a similar federal policy in the spring of 1973.[48] Along with the creation of his Office of Drug Abuse Law Enforcement (ODALE), Nixon's stop-and-frisk fantasies were only imaginable because of the new statutory authority that had migrated from the protective

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[48] David Courtwright, *No Right Turn: Conservative Politics in a Liberal America* (Cambridge, MA: Harvard University Press, 2010), 83-4.

legislation of the FDA to the coercive control of the Justice Department. Shortly after the President's proposal, however, Watergate leaks overtook the administration and Nixon's plan never came to fruition. With Nixon's focus elsewhere, Justice Department officials took the opportunity to conglomerate the diffuse drug policing bureaucracies under its purview and convinced Congress to create the Drug Enforcement Administration (DEA). Much like BDAC, the DEA was designed to centralize the control of the licit and illicit trade of all drugs. And, on an even greater scale, its actions reveal the transfer of power from regulation to policing as the DEA's war on drugs has happened in lockstep with an unchecked explosion in the misuse of prescription painkillers.

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The drug business spans "production, consumption, and distribution," and this study explores how the FDA deployed BDAC in an attempt to regulate all three aspects.[49] At the same time, it recognizes each aspect had powerful constituencies and allies who shaped the FDA's decision-making and were, in turn, altered by the government's actions. Offering a model for other studies of state policies and power, this work focuses on connections between licit and illicit markets, the importance of bureaucratic choices, and the zero-sum game of regulatory and policing resources. Those finite resources inspired a cavalcade of competing demands from politicians, activists, industry representatives, and the bureaucracy itself. In turn, those demands shaped definitions of appropriate use and unacceptable abuse, sanctioned user and criminalized

[49] These "interlocking themes" are adopted from recent works in food history, another broad-based industry with similar issues. For a summary of that work, see Matt Garcia, "Setting the Table: Historians, Popular Writers, and Food History," *Journal of American History* 103, no. 3 (December 2016), 659.

abuser. More important, those demands and definitions inspired any number of uses and abuses of government power, all justified in the name of protecting some and policing others.

Until we understand how the FDA, sympathetic administrators in the White House, and supporters in Congress together faced down the challenge of an unregulated market in dangerous pharmaceuticals – where they succeeded, failed, and compromised – neither historians nor contemporary activists will have a full understanding of how we got to our current situation or potential paths forward. If it accomplishes anything else, this dissertation seeks to instill a new recognition of the malleability of state power and to elevate debates about the relative values of government and privatization. For too long, we have acceded to the terms many politicians want to set – a wholesale acceptance or rejection of government and regulation. Unless we can better appreciate and evaluate how an agency like BDAC or the DEA has both used and abused its power, we will continue to make the same mistakes.

CHAPTER ONE

To Protect and Serve
The Consumer Protection Origins of the FDA's Police Power

Its procedures were antiquated and if the intention was to protect consumers, it wasn't protecting consumers. The Food and Drug Administration was active enough but they weren't getting anywhere. So I said I felt we ought to organize an investigation and produce a new bill. That we went on to do.

- Rexford Tugwell, Assistant Secretary of Agriculture, 1933[1]

The first time I ever had occasion to call in a doctor for [Joan] and she was given Elixir of Sulfanilamide. All that is left to us is the caring for her little grave. Even the memory of her is mixed with sorrow for we can see her little body tossing to and fro and hear that little voice screaming with pain and it seems as though it would drive me insane... It is my plea that you will take steps to prevent such sales of drugs that will take little lives and leave such suffering behind and such a bleak outlook on the future as I have tonight.

- Letter from Mrs. Maise Nidifer to President Franklin D. Roosevelt, 1937[2]

In June 1937, a salesman for S.E. Massengill Company reported to the home office that he was hearing a new request when peddling the companies' medicines across the southern part of the United States.[3] Widely considered one of the first modern "miracle drugs," sulfanilamide had recently been discovered to be an effective antibiotic and was already showing remarkable

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[1] Rexford Guy Tugwell, Assistant Secretary and Undersecretary of Agriculture, 1934-1937, interview by Charles O. Jackson, Santa Barbara, CA, June 7, 1968, "History of the U.S. Food and Drug Administration," transcript, 7.

[2] Quoted in Carol Ballentine, "Taste of Raspberries, Taste of Death: The 1937 Elixir Sulfanilamide Incident," *FDA Consumer Magazine* (June 1981) [Reprint available: https://www.fda.gov/downloads/AboutFDA/WhatWeDo/History/Origin/ucm125604.doc]; for an analysis of this episode and the Food and Drug Administration's role in publicizing Joan's death, see Daniel Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton: Princeton University Press, 2010), 97-8.

[3] Ballentine, "Taste of Raspberries, Taste of Death." For a full analysis of the elixir sulfanilamide incident and its affect on the power of the FDA, see Carpenter, *Reputation and Power*, 85-112.

results in treating all manner of previously incurable illnesses – from strep throat to pneumonia to gonorrhea. First marketed in 1935, under the trade name Prontosil, sulfa drugs "marked a turning point in the history of medicine."[4] With sulfa selling well in tablet and powder forms, Massengill was happy to indulge consumers' demands "for the drug in liquid form." Massengill's chief chemist and pharmacist began experimenting and found that diethylene glycol could dissolve the sulfanilamide, creating a mixture that passed the company's tests for flavor, smell, and appearance. The company's chemist might have known diethylene glycol was the primary ingredient in anti-freeze and highly toxic even in small doses, but Massengill was not legally required to make sure the drug was safe. So they did not test it and, in September 1937, began sending shipments of Elixir Sulfanilamide-Massengill – 633 in total – across the country. By early October, physicians were contacting the American Medical Association (AMA) and the Food and Drug Administration (FDA) to report, "an unfamiliar sulfanilamide compound was responsible for a number of deaths."

Before this episode's end, the FDA was able to confirm 73 deaths directly attributable to the use of the elixir, another 20 deaths were suspected to be related to consumption of the drug, and overall estimates ranged as high as 107 total dead.[5] Having identified the culprit, the Food and Drug Administration deployed all of its resources to recover the product, and "practically the entire field force of 239 inspectors and chemists was assigned to the task." Despite the size of the

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[4] John E. Lesch, *The First Miracle Drugs: How the Sulfa Drug Transformed Modern Medicine* (New York: Oxford University Press, 2006). According to Lesch, "Within a few years, feared diseases such as streptococcal infections (including childhood fever and septicemia), pneumonia, meningitis, dysentery, gonorrhea, and urinary tract infections, were brought under a substantial measure of control by chemotherapy," Lesch, 3.

[5] Carpenter, *Reputation and Power,* 87. For the estimate of 107 total dead, see Philip J. Hilts, *Protecting America's Health: The FDA, Business, and One Years of Regulation* (Chapel Hill: University of North Carolina Press, 2003), 92.

job and their limited manpower, FDA inspectors, with the assistance of state and local authorities as well as the AMA and the news media, eventually recovered over 234 of the 240 gallons Massengill manufactured and distributed. That effort, because Massengill refused to take any responsibility, required 25 seizures of the product under current federal laws against misbranding. "Elixir," according to the FDA, "implied the product was an alcoholic solution" but diethylene glycol "contained no alcohol."[6] In other words, the FDA could not simply remove a poisonous drug – killing adults and children whose doctors had recommended its use – from the market. Ironically, only four years after the end of national prohibition, Massengill's product only violated federal law because it was labeled to contain alcohol but did not.

Under the leadership of Commissioner Walter Campbell, FDA officials used the incident to reenergize their efforts to secure new food and drug legislation, which had been proposed at the start of the New Deal and had lately been faltering in Congress. Officials repeatedly insisted that "the inadequacy of the law had contributed to the disaster," and Campbell emphasized, "how essential it is to public welfare that the distribution of highly potent drugs should be controlled by an adequate Federal Food and Drug law."[7] Ultimately, the elixir sulfanilamide incident and FDA's response helped to secure passage of the 1938 Federal Food, Drug, and Cosmetic (FD&C) Act. Thus, to protect consumers – especially children like little Joan Nidifer – Congress granted the FDA new authority to ensure that all drugs were not only properly labeled but also proven safe before they could be sold to consumers. As the "first substantial regulatory

[6] Ballentine, "Taste of Raspberries, Taste of Death."
[7] Ballentine, "Taste of Raspberries, Taste of Death."

legislation since the Progressive Era," the FD&C Act "marked another way the state moved beyond the level of concern for consumer interests it had demonstrated in the Progressive Era."[8]

The FDA's power to police drugs thus emerged directly from the politics of consumer protection. That authority grew in parallel with the modernization of the pharmaceutical industry and was equally dependent on the broader development of national power to regulate commerce. However, in 1938, the establishment of the FDA's authority and its resources to deploy that power was still far from complete. Over the next two decades, the FDA sought to formalize its rules that certain drugs could be sold only with the prescription of a doctor, and it took a Supreme Court ruling to uphold the agency's right to enforce this requirement in local retail drug stores. As psychoactive pharmaceuticals, especially barbiturates and amphetamines, became far more popular after World War II, FDA officials struggled to both prevent diversion from licit channels and police the growing illicit markets for such drugs.

Over time, the FDA attempted to pass off this responsibility to other federal police agencies before pursuing its own power to police illegal drugs. As such, the FDA's mission to protect American consumers from dangerous food, drugs, and cosmetics developed into a project to police a discrete category of "dangerous drugs" – barbiturates, amphetamines, and, eventually, hallucinogens. To accomplish this task, the FDA had to overcome competition from other federal bureaucracies, opposition from sectors of the drug industry, and a tradition of local and state primacy in policing and regulation that had persisted since the country's founding. Through it all, however, the FD&C Act and the FDA's mandate to protect consumers provided the foundation

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[8] Lizabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (New York: Random House Books, 2003), 31.

for each subsequent development of the Food and Drug Administration's authority and the federal government's power to police drugs.

From Wiley to *Sullivan*

In 1883, the Department of Agriculture tapped Dr. Harvey W. Wiley, a chemistry professor at Purdue University, to run its fledgling Bureau of Chemistry. The patron saint of the FDA, Wiley came to Washington and began "investigating some of the patent medicines and suspicious foodstuffs that were flooding the country." Shocked by his findings, "Wiley threw himself into the cause of food and drug safety: He went on the lecture circuit, issued reports to Congress, organized meetings, investigated more products, and campaigned for food and drug laws."[9] Despite Wiley's best efforts, Congress did nothing substantial until Upton Sinclair published his novel, *The Jungle*, about the appalling conditions for workers in Chicago's slaughterhouses. Suddenly, this book, intended to publicize the plight of American workers, instead sparked consumer demands for safer food and drugs, prompting Congress to pass the Food and Drug Act of 1906 – "the first wide-ranging, national legislation on food and drug safety."[10]

While this simple narrative has become well known, it should minimize neither Wiley's substantial efforts before the 1906 Act nor the amount of administrative work required after the law's passage to carry out even its basic strictures. As one Congressional study noted, "Limitations in the scope of public protection provided by the 1906 Act soon became readily apparent." That Act was made even more toothless when a 1911 Supreme Court ruling held that

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[9] Fran Hawthorne, *Inside the FDA: The Business and Politics Behind the Drugs We Take and the Food We Eat* (Hoboken, NJ: John Wiley & Sons, Inc., 2005), 39.
[10] Hawthorne, *Inside the FDA*, 40. These details are covered in a number of histories of the FDA and most of Hawthorne's account depends on the work of Hilts, *Protecting America's Health*.

the law only applied to false labeling but not false therapeutic claims. So a company could not legally sell a bottle of water and claim it was alcohol, but they could sell a bottle of water and claim it cured cancer. To rectify that situation, officials pressured for an additional amendment to close this loophole, which Congress finally passed in 1913.[11] Even after the passage of the Sherley Amendment, however, the Bureau of Chemistry still had to verify a manufacturer's fraudulent claims were intended to defraud the consumer – a "difficult to prove" standard requiring serious administrative work.[12] Daniel Carpenter, a scholar who has written extensively on the history of the Food and Drug Administration, thus argues, "The bureaucratic regulation of pharmaceuticals arrived not starkly in new laws, nor in scientific and medical upheavals, but continuously, haltingly, and ambiguously in regulatory practice."[13] As this dissertation demonstrates, the FDA did not just materialize in response to a series of sudden tragic events. Like its power to control drugs, the Food and Drug Administration accumulated more authority over time as it pursued a variety of avenues – regulatory and legislative, educational and punitive – all to better achieve its mission of protecting American consumers from dangerous food, drugs, and cosmetics.

Nonetheless, tipping points matter, and tragic episodes – especially public perceptions of such events – have been vital in securing new powers for the Food and Drug Administration and

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[11] *Federal Food, Drug, and Cosmetic Act: A Legislative History* (Washington, DC: Congressional Research Service, 1989), 411-2.

[12] The predecessor to the FDA, the Bureau of Chemistry existed in the Department of Agriculture until 1927 when its regulatory functions were transferred to the new Food, Drug, and Insecticide Administration in the Department of Agriculture. An agricultural appropriations bill in 1930 shortened the name to the Food and Drug Administration. For information on the Sherley Amendment and these other developments, see U.S. Food and Drug Administration, "Significant Dates in U.S. Food and Drug Law History," last modified December 19, 2014, accessed May 10, 2017, https://www.fda.gov/aboutfda/whatwedo/history/milestones/ucm128305.htm.

[13] Carpenter, *Reputation and Power*, 118.

formalizing its internal expansions of authority. Much as *The Jungle* helped to inspire the nation's first food and drug law, the elixir sulfanilamide episode prompted the passage of the FD&C Act during Roosevelt's New Deal. As Fran Hawthorne argues, "It took a political upheaval, a scientific upheaval, and a health crisis to add some muscle to [the FDA's] skeleton."[14] The same would be true of the events in 1962 that spurred the administration of President John Kennedy to first address the problem of "drug abuse." As subsequent chapters will reveal, the summer of 1962 began amid reports of children born with birth defects across Europe after their mothers had been prescribed Thalidomide, and that summer ended with the death of Marilyn Monroe from an overdose of barbiturates. Especially in the case of thalidomide, the need to protect innocent American children and their families from such a terrible plight prompted demands for more federal power to ensure drugs were properly labeled, safe, and effective. The expanding power of the FDA, in turn, allowed for more direct policing of all prescription drugs, but especially barbiturates and amphetamines. Thus, another tragedy – with the public again focused on young and/or innocent victims – led to more consumer protection, which created more police power for the FDA.

The consumer protection origins of modern federal drug control can be found at the intersection of these processes – the accumulation of regulatory power and practices built first through internal bureaucratic decisions and machinations before being solidified and advanced further through new legislation passed in response to a singular event that demonstrated the inadequacies of the current law's power to protect consumers. Moreover, those developments are inextricable from the rapidly changing landscape of products available to American consumers. At the outset of President Franklin D. Roosevelt's New Deal in 1933, "the United States was

[14] Hawthorne, *Inside the FDA*, 41.

awash in all sorts of products, from cosmetics to pesticides, that had not been envisioned in 1906," and "mysterious miracle cures and phony drug products were still being peddled." With a new administration in office and a new era in the politics of consumer protection brewing, Wiley's replacement, Commissioner Walter Campbell "decided this was the time to propose a regulatory overhaul." Until the publicity surrounding the elixir sulfanilamide incident, however, "the bill flopped weakly around the Capitol for four years like a fish on the deck of a sailboat."[15]

Nonetheless, the Food and Drug Administration found a new ally in the Roosevelt administration and New Deal administrators saw a clear connection between the FDA's mission and the broader politics of the New Deal's response to the Great Depression. In fact, Rexford Tugwell claimed, the "basic concepts" in the first draft of the FDA's new bill "were all ours." A Columbia University economics professor and member of FDA's original Brain Trust, Tugwell served as Assistant Secretary and Undersecretary of the Department of Agriculture and, perhaps most famously, created and ran the New Deal's Resettlement Administration. According to Tugwell, FDR's advisors "knew exactly what we wanted to do. We wanted to put the Food and Drug Administration in such a situation that they could protect the consumer." Tugwell's personal focus was primarily on regulating pesticides, but he thought the overall impetus "was very simple" to understand. "Adulterated foods ought not to be allowed to be sold and people ought not to be allowed to make cosmetics and other things dangerous to health," he explained.[16] Although Tugwell remembered much of this as emanating from the politics of the New Deal, he

[15] Hawthorne, *Inside the FDA*, 41-2.
[16] Rexford Tugwell interview transcript, 8-9.

did recall working "together wonderfully well" with FDA Commissioner Walter Campbell, who "had long experience with this kind of thing."[17]

Campbell, who also had more experience dealing with representatives of American industries, anticipated the "trouble that was going to come from various interests." Secretary of Agriculture Henry Wallace saw his job as protecting the farmers and had no interest in new pesticide regulations. Ethical drug manufacturers also opposed new regulations and used representatives of their home districts to pressure the White House. Even as Campbell and Tugwell were forced to account for "the Vicks VapoRub senator and the Listerine senator and the Maybelline congressman and so on and so on," they also had to overcome ongoing doubts "that a new drug law was a necessary reform."[18] The first bill, which became known as the "Tugwell Bill," quickly got into trouble and FDR handed the task over to Senator Royal Copeland, who held hearings and eventually drafted the bill that became the FD&C Act. Trained as a doctor, Copeland "consulted all the industries," and, Tugwell believed, "tried to conciliate every interest opposed" to new legislation. As with most FDA bills, the end result was "the minimum that those interests thought they could live with."[19]

Despite this willingness to appease and cooperate with industry, the Food and Drug Administration continued to both assert its existing authority and publicize the need for new laws, and FDA officials focused on one particular sector of the drug industry to make that latter point. In the second half of the twentieth century, pharmaceuticals have generally been divided into two categories – prescription and over-the-counter. Until 1940, however, there were no prescription requirements for nonnarcotic drugs. Instead, there existed "a parallel, but older

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[17] Rexford Tugwell interview transcript, 12 & 21.
[18] Rexford Tugwell interview transcript, 3, 12 & 14.
[19] Rexford Tugwell interview transcript, 17 & 20.

distinction" between "ethical and proprietary drugs." Ethical drug manufacturers, including some of the mom and pop progenitors of current pharmaceutical giants, were so-called because of their adherence to the 1847 American Medical Association code of ethics, which required that companies only advertise to doctors and "excluded advertising to the public from ethical medical practice." On the other hand, proprietary medicine makers advertised directly to the public, and one group of those products became a special subject of scorn for the FDA and other food and drug reformers. Called "patent medicines" to signify "that the ingredients of the medicines were secret, not that they were patented," these products had a long history in American medicine.[20] Snake-oil salesmen distributed them across the west, and muckrakers denounced them in their yellow papers, but the promise of any easy cure kept the patent medicines in business.[21]

While these products all made big claims, their ingredients ranged from harmless tap water to powerful laxatives to a baby's cough medicine full of morphine and alcohol. Thus, when Campbell set out to find the worst examples of industry's abuses, the FDA's lead inspectors, including George Larrick, focused on the patent medicines. Larrick and others began exhibiting these drugs for Congress, First Lady Eleanor Roosevelt, and consumer groups nationwide. To the FDA's delight, journalists dubbed the traveling exhibit, "The Chamber of Horrors." The drug industry and their congressional allies eventually used the ban on a bureau lobbying for legislation to stop the FDA's roadshow, but nongovernmental groups were also

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[20] Peter Temin, *Taking Your Medicine: Drug Regulation in the United States* (Cambridge, MA: Harvard University Press, 1980), 3.

[21] For context on the longer history of proprietary drugs and patent medicines, including attempts to regulate the patent medicines during the Progressive Era, see Paul Starr, *The Social Transformation of American Medicine* (New York: Basic Books, 1982), esp. 127-34. According to Fran Hawthorne, "By 1849 there were some 600 of these so-called patent medicines; by the late 1800s, you buy Kick-a-poo Indian Sagwa and Wheeler's Nerve Vitalizer and Mrs. Winslow's Soothing Syrup and Lydia Pinkham's Vegetable Compound to cure—well, to cure almost anything, according to the labels," *Inside the FDA*, 36.

pressing the issue. The Consumers Research group, founded in 1929, published *100,000,000 Guinea Pigs* in 1933 and had its membership expand "rapidly" as the book "went through twenty-seven printings in its first year and continued to sell well for several more years."[22] All of this prepared the way for the elixir sulfanilamide incident and eventual passage of the Food, Drug, and Cosmetic Act in 1938.

Summarizing the processes that led to the passage of the 1938 Food, Drug, and Cosmetic Act, Philip J. Hilts described the importance of bureaucratic actions and even failed previous attempts at writing passable legislation, which nonetheless raised the issue in the public's mind. "What seems to be required to make a new law," Philip J. Hilts argues, "is the presence of two circumstances when a crisis occurs—a bill must *already be present* in Congress, and legislators and significant elements of the public must already be *educated and paying attention* when the crisis hits." Emphasizing the symbolic value of protecting innocent consumers, Hilts concluded, "Some say the crisis must also involve children."[23] In other words, the FDA had to till some serious ground before another tragedy rained down and allowed new legislative power to bloom. The history of the FDA and federal drug control is thus a story of slow buildup punctuated by defining moments of tragedy. The latter half of this chapter will be focused on how the FDA's attempts to better control the distribution of barbiturates and amphetamines prepared the ground for a new era of federal drug control to take root in the 1960s.

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[22] Hilts, *Protecting America's Health*, 82-3.
[23] Hilts, *Protecting America's Health*, 89. For more analysis of how Joan Nidifer was not the typical victim of elixir sulfanilamide – most were African American men being treated for venereal disease – but became the FDA's most effective publicity tool as non-sexualized, white innocent, see Carpenter, *Reputation and Power*, 97-9.

That history cannot be fully appreciated without understanding its connections to the growth of the pharmaceutical industry during this same period, because, ultimately, this is a story of the FDA, the American public, and the federal government learning to grapple with the modern era in pharmaceuticals and the regulation of that industry. As noted above, the medicines available to American consumers by the 1930s could still be divided into two basic groups – patent medicines and a growing range of drugs manufactured and sold by the so-called "ethical" companies. Focusing just on the latter, this period also reflected a transitory moment in that field. At the risk of overgeneralization, medical substances can be divided into two basic categories – those that simply ameliorate the symptoms of disease and those that actually cure disease. For example, scholars have noted that the tradition of opium smoking took hold most strongly in locales that had high rates of dysentery or large populations of hungry workers – both plights that carry symptoms which opium can ease. The same could be said of morphine and other opium derivatives, which can mask pain but not end the cause of that problem. On the other hand, the new sulfa drugs and their more famous cousin, penicillin, were just two examples of new chemotherapeutic drugs that could actually cure the causes of illness. As drug manufacturers had more success isolating and perfecting the substances in the former category, they developed practices and procedures that would propel the latter.

Early pharmaceutical manufacturers in the 19th century, many based in Germany, began their laboratory work extracting the active ingredients from biological products that had already been known to ameliorate symptoms, sometimes for millennia. The anti-malarial drug, quinine, for example, was isolated from the bark of a cinchona tree, which had long been in use among the indigenous of South America. Cocaine, derived from the coca leaf, and morphine, made from opium, were also part of this pattern of discovery. Many of these developments came from

increasing chemical experimentation that often produced unexpected results, as when a chemist working for Bayer in the 1890s produced a highly potent opiate, diamorphine, while intending to isolate codeine from the opium poppy. Beginning in 1898, Bayer marketed diamorphine as a painkiller and cough suppressant under the trade name Heroin.[24]

Similarly, German chemist Adolf von Baeyer was experimenting with derivatives of uric acid in the 1860s when he discovered a new compound that he named after St. Barbara – barbituric acid.[25] In the early 1900s, the Bayer Company introduced the first barbiturate, barbital. As this new class of drugs became a preferred sedative and hypnotic, profits spurred more innovation and experimentation, prompting the synthesis, by 1947, of "over 1500 different derivatives of barbituric acid; thirty of these were on the market." While medical experts insisted, "only a handful of these were really necessary," FDA historian John Swann argues, "industry's eagerness to modify the molecular structure of a proven drug and thereby gain a foothold in the market certainly was borne out in the case of barbiturates."[26] This trend also followed a general profit motive for moving from isolating biologics to synthesizing new chemical substances – new drugs "would not be patentable if they were simply natural

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[24] For a global history of humanities' never-ending quest for more potent psychoactive substances, see David Courtwright, *Forces of Habit: Drugs and the Making of the Modern World* (Cambridge, MA: Harvard University Press, 2001). For histories of opiates and cocaine, see Courtwright, *Dark Paradise: A History of Opiate Addiction in America*, 2nd ed. (1982; Cambridge, MA: Harvard University Press, 2001); Joseph Spillane, *Cocaine: From Medical Marvel to Modern Menace in the United States, 1884-1920* (Baltimore: The Johns Hopkins University Press, 2000); and Eric C. Schneider, *Smack: Heroin and the American City* (Philadelphia: University of Pennsylvania Press, 2008).

[25] Leo Levi, "The barbituric acids, their chemical structure, synthesis and nomenclature," *Bulletin on Narcotics* no. 1 (1957), available thru United Nations Office on Drugs and Crime, accessed June 7, 2017, https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1957-01-01_1.html.

[26] John Swann, "FDA and the Practice of Pharmacy: Prescription Drug Regulation Before the Durham-Humphrey Amendment of 1951," *Pharmacy in History* 36, no. 2 (1994), 61.

substances."[27] In the long run, the value of exclusive rights to produce a drug propelled both pharmaceutical innovation and the industry's willingness to give the FDA more power to police counterfeiters and other threats to their profits.

All of this innovation, including the development of "narcotics" and "dangerous drugs," eventually built to what Peter Temin and others have categorized as a "therapeutic revolution."[28] According to Temin, in the late 1930s, the drug industry – once "a fairly typical manufacturing industry" – began a transformation marked by "the development of new technology, the growth a new industry structure, and the marked intensification of certain older marketing practices."[29] Historians agree, "the development of the sulfa drugs and penicillin launched" this revolution, and they also note the importance of government intervention in shaping its outcomes.[30] Responding to the early products of the "therapeutic revolution," the FDA's regulations, in turn, added more grease to the wheels of that revolution. Developing into their contemporary form, manufacturing firms began "vertically integrating," adding marketing teams and research departments.[31] After passage of the 1938 FD&C Act and "the law's new drug safety provisions," Dominique Tobbell argues, "rigorous clinical testing of drugs became an integral component of corporate drug development."[32] Over time, the law's requirements that manufacturers provide evidence of a drug's safety before sending it to market created a demand for more "specialized

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[27] Temin, *Taking Your Medicine,* 67.
[28] Temin, *Taking Your Medicine*, see esp. 58-87.
[29] Temin, *Taking Your Medicine*, 66.
[30] Dominique A. Tobbell, *Pills, Power, and Policy: The Struggle for Drug Reform in Cold War America and Its Consequences* (Berkeley: University of California Press, 2012), 17. Tobbell, Temin, and others have noted that it was not just government regulation, but also the massive influx of federal dollars into penicillin research during World War II, which helped spurn the "therapeutic revolution," see Temin, *Taking Your Medicine*, 64-6.
[31] Tobbell, *Pills, Power, and Policy*, 61.
[32] Tobbell, *Pills, Power, and Policy*, 34.

researchers" in clinical pharmacology, "skilled in the study of drug actions, metabolism, and interactions in humans."[33] That research prompted the discovery of a vastly expanding pharmacopeia of new drugs for all manner of symptoms – real or imagined.

The therapeutic revolution not only altered the structure of the pharmaceutical industry, but it also changed the types of symptoms doctors saw and the illnesses they treated. As this sea change launched a tidal wave of new "miracle" drugs, it coincided with a dramatic increase in life expectancy. By 1960, "the infectious diseases that had been the top three killers of humankind had been erased as primary causes of death." Tuberculosis, dysentery, whooping cough, and measles, even flu and pneumonia, no longer inspired the same fears they once did. Instead, doctors were now treating and prescribing medicines for "the diseases of long-lived people: heart disease, cancer, and stroke."[34] Unsurprisingly, this inspired even more confidence in the ethical pharmaceutical company, which prompted more prescribing and more profits to drive more innovation. As noted above, however, chemical experimentation did not always occur with specific symptoms in mind, and "small changes in molecular structure could produce large changes in effects," which "paved the way for the development of countless new medications, many with psychoactive properties." Those psychoactive substances could affect the central nervous system to produce a range of reactions from sleep to stimulation to appetite loss to hallucinations and everything in between. As such, some of these products were clearly valuable substances if they could only find a symptom. First marketed as a decongestant, amphetamine, by the end of World War II, "had 39 indications, including such disparate conditions as low

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[33] Tobbell, *Pills, Power, and Policy*, 54.

[34] Hilts, *Protecting America's Health*, 106. Hilts joins other scholars in noting the uncertain causative relationship between the therapeutic revolution and decline in infectious diseases, as some researchers believe that the decline actually came before the revolution, with both stemming from a growing acceptance of the germ theory of disease.

blood pressure, seasickness, chronic hiccups, and caffeine dependence."[35] Scholars have tracked the myriad causes of a spike in the nonmedical use of what the FDA would come to categorize as "dangerous drugs" – especially, barbiturates and amphetamines.[36] However, in his description of an amphetamine manufacturer, David Courtwright helps explain the growing illicit market for dangerous drugs, noting, Smith Kline & French "promoted the drug so aggressively for so many conditions that leakage was bound to occur."[37] Thus, even as the FDA secured a new foundation for its regulation of pharmaceuticals, the structure of that regulation contributed to a vast new world of problems for the Food and Drug Administration.

The Food and Drug Administration and the modern pharmaceutical industry thus matured together, with each at times moving – or dragging – the other forward. However, the FDA's budding police power was equally connected with the development of congressional authority to regulate any and all commerce. With a new law on the books, the FDA tested that authority through its administrative actions, in particular its attempts to restrict access to certain "dangerous" drugs through the prescription of a physician, dentist, or veterinarian. That group included "sulfa drugs, aminopyrine and related products," which the FDA thought unsafe for "'indiscriminate' use by the general public."[38] The FDA also sought to restrict the use of barbiturates, which it had listed by name in the FD&C Act as a potentially "habit forming" drug

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[35] Courtwright, *Forces of Habit*, 77-8.
[36] Nicolas Rasmussen, *On Speed: The Many Lives of Amphetamines* (New York: New York University Press, 2008); David Herzberg, *Happy Pills in America: From Miltown to Prozac* (Baltimore: The Johns Hopkins University Press, 2009); Andrea Tone, *The Age of Anxiety: A History of America's Turbulent Affair with Tranquilizers* (New York: Basic Books, 2009); Jeremy A. Greene and Elizabeth Siegel Watkins, eds., *Prescribed: Writing, Filling, Using, and Abusing the Prescription in Modern America* (Baltimore: The Johns Hopkins University Press, 2012).
[37] Courtwright, *Forces of Habit*, 80.
[38] John Swann, "FDA and the Practice of Pharmacy: Prescription Drug Regulation Before the Durham-Humphrey Amendment of 1951," *Pharmacy in History* 36, no. 2 (1994), 59-60.

alongside popular hypnotics and the substances defined at the time as "narcotics" – including "coca, cocaine, codeine, heroin, marihuana, morphine, [and] opium."[39] In total, according to FDA historian John Swann, "by 1941 FDA identified over twenty drugs or drug groups that were too dangerous to sell other than on a physician's prescription."[40]

As inspectors set out to enforce the FDA's "quasi-authoritative" regulations on prescriptions and refills, which were not explicitly defined in 1938 act, officials still had to fight over how far their power reached. And they had to do all of this while still struggling with limited and finite resources to regulate a rapidly expanding market. To accomplish this task and persist within the reality of the 1938 act, FDA officials allowed manufacturers to determine which drugs should be labeled with the prescription-only, Rx legend and they continued to reify physicians' professional prerogative to prescribe drugs as they saw fit. To stop the unauthorized use of potentially dangerous drugs, therefore, FDA inspectors focused much of their attention on individual pharmacists and retail druggists. However, these actions also had to be somewhat circumspect with limited manpower to even visit the thousands of drugstores across the country. Even when an FDA inspector identified a disreputable druggist, "the inspector usually made more than one buy, dressing and acting like an ordinary customer" and trying "to document the fact that the pharmacist should have realized that such sales were illegal." Only after "executing a number of buys" would the inspector "identify himself and begin an inspection of the pharmacy records." Even if the inspector had ample evidence that the pharmacist knowingly broke the law, this record search was vital. To make a federal case, the FDA had to identify "the source of the drugs so as to establish interstate commerce," but questions still remained about

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[39] Federal Food, Drug, and Cosmetic Act, Pub. L. No. 75-717, 52 Stat. 1040 (1938).
[40] Swann, "FDA and the Practice of Pharmacy," 60.

how far interstate commerce – and the FDA's power to regulate it – actually extended.[41] If Congress could not provide a direct answer, the courts would.

In 1944, after the FDA had moved from the Department of Agriculture to the Federal Security Agency, inspectors received a report from Venereal Disease Control Officer at Fort Benning, Georgia "that soldiers were purchasing sulfa drugs directly from Columbus pharmacies for self-medication of gonorrhea." This was more than an issue of wartime morals, however, as the uncontrolled dosage could simply build up the disease's resistance, making it harder to cure and more dangerous, or at least uncomfortable, for the soldiers. The FDA often depended on these tips from local police, coroners, and other authorities to locate unscrupulous druggists. Dressed as customers, "inspectors purchased sulfathiazole tablets from Sullivan's Pharmacy" and charged Jordan James Sullivan with violating the FD&C Act for failing to sell the drugs with either a prescription or adequate directions for safe use. A district court convicted Sullivan, but the 5th Circuit Court of Appeals overturned that decision and prompted the FDA to appeal to the Supreme Court, which agreed to once again take up the question of the federal government's power to regulate commerce.[42]

In particular, the question of how far the constitution's commerce power could be extended into intrastate activity had been at the heart of legal challenges to the New Deal. With a series of famous cases, the Supreme Court had first limited this power's application to only activities that actually crossed state lines before reversing course and expanding the ability of

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[41] Swann, "FDA and the Practice of Pharmacy," 61.

[42] Swann, "FDA and the Practice of Pharmacy," 62. The history of the Sullivan decision is covered, at least briefly, in most histories of the FDA and prescription drugs. Some details in this account also came from the FDA's oral history program, "History of the U.S. Food and Drug Administration," and some of those transcripts may still be available through the FDA's website, https://www.fda.gov/AboutFDA/WhatWeDo/History/OralHistories/SelectedOralHistoryTranscripts/default.htm.

Congress to regulate any action that might have a direct effect on interstate commerce. Those earlier rulings had been a source of great frustration for President Roosevelt and, in part, inspired his doomed "court packing" scheme. However, by the end of World War II, the Supreme Court and Congress had established an expansive view of the government's commerce power that, despite regular legal challenges, would continue to grow throughout the 1960s.[43]

In this case, the government established that Sullivan had sold the undercover FDA inspectors sulfa drugs that he removed from larger, properly labeled bottles, which he had purchased in Atlanta. Interstate commerce was established because the consignee in Atlanta had acquired the bottles from a laboratory in Chicago, Illinois. The defense attorneys argued, and the circuit court agreed, that Sullivan had acquired the drugs after they left interstate commerce, negating the application of the FDA's laws to his actions. However, the growing contingent of liberal justices on the Supreme Court disagreed and maintained the newer, more expansive view of interstate power. In January 1948, the Supreme Court issued its 6-3 decision in favor of the federal government. The Court ruled that the Food and Drug Administration could enforce its laws with any product that had been engaged in interstate commerce and that those regulations

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[43] For the former group see Schechter Poultry Corporation v. United States, 295 U.S. 495 (1935) & NLRB v. Jones & Laughlin Steel Corp, 301 U.S. 1 (1937); for the latter, see Wickard v. Filburn, 317 U.S. 111 (1942). Finding that Roscoe Filburn's production of extra wheat for personal use still had the potential to affect interstate commerce, the Court ushered in "the longest period of clarity and stability in Commerce Clause doctrine concerning Congress's powers in the nation's history," Susan Low Bloch and Vicki C. Jackson, *Federalism: A Reference Guide to the United States Constitution* (Santa Barbara: Praeger, 2013), 119-21. For more on the history of legal challenges to the New Deal and FDR's attempts to best those challenges, see for example, Joseph Lash, *Dealers and Dreamers: A New Look at the New Deal* (New York: Doubleday, 1988).

applied to any point in a product's movement through licit channels – from the manufacturer to the ultimate consumer.[44]

Delivering the opinion of the court, Justice Hugo Black reiterated the consumer protection mission guiding the FDA's efforts to control drugs. Finding the FDA's retail-level regulations to be "thoroughly consistent" with the overall aims of the Food, Drug, and Cosmetic Act, Black argued, "the Act as a whole was designed primarily to protect consumers from dangerous products." He thus concluded, the FDA's power to police individual pharmacists was essential "to insure federal protection until the very moment the articles passed into the hands of the consumer."[45] With this majority opinion, Justice Black endorsed both the consumer protection mission of the FDA and the broader reformist vision that sought to expand the federal government's constitutional power to regulate all commerce, even local. In doing so, the Supreme Court also justified the FDA's power to police prescriptions, and "from that point forward the FDA pursued illegal sales of barbiturates and other dangerous drugs in pharmacies with a new zeal."[46]

Planting the Seeds of a Turf War

The judgment in *Sullivan* was a major victory for the Food and Drug Administration, even as it merely ensured the FDA's authority to regulate the entire chain of legitimate interstate commerce. However, problems arose when illegal behavior occurred wholly outside those licit channels. An unscrupulous pharmacist selling barbiturates or amphetamines without a prescription could be tracked and possibly prosecuted. It was much more difficult for the FDA to unearth illicit sales of counterfeit or diverted drugs by unauthorized persons. In short, the further

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[44] U.S. v. Sullivan, 332 U.S. 689 (1948).
[45] U.S. v. Sullivan, 332 U.S. 689 (1948).
[46] Swann, "FDA and the Practice of Pharmacy," 62.

the FDA moved from regulating industry into more traditional crime policing, the more officials ran into problems. Moreover, FDA officials saw themselves as a law enforcement bureau but had little interest in becoming like other police agencies. Instead, leaders such as George Larrick and Paul Dunbar recognized the growing illicit market for certain pharmaceuticals and sought the assistance of other federal agencies.

As with most issues that came to a head during the 1960s, the government's reckoning with the proliferation of pharmaceuticals had its roots in World War II and the immediate postwar period. Taking over as FDA Commissioner in 1944, Paul Dunbar continued the battles he and the FDA had been fighting since writing the FD&C Act of 1938. For drug control, the FDA continued to fight for the full authority that had been granted by the FD&C Act. As always, it did so in the name of protecting consumers. However, a series of congressional hearings in the early 1950s elevated concerns about narcotics, and related questions about the addiction potential of barbiturates brought new attention to the FDA's limited power to police the illegal distribution and misuse of barbiturates and other psychoactives, which officials increasingly codified under the specific category of "dangerous drugs."

Fears of criminality, addiction, and, increasingly, juvenile delinquency all were captured in the new postwar public concerns about narcotics. As always, the corruption of innocent youth seemed most pressing to newspapers and their readers, who learned "that addiction to worse weeds than marijuana—to heroin and cocaine especially—was far worse among high school pupils than [previously] imagined."[47] Launched in 1950 to investigate organized crime, the Senate Select Committee, chaired by Senator Estes Kefauver, held televised hearings that

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[47] Alistair Cooke, "Increase in Drug-Taking by American Youth: State Inquiry's Disquieting Facts," *The Manchester Guardian*, June 21, 1951, 5.

focused "on illicit traffic in narcotics on several occasions and were viewed by millions."[48] With so much attention focused on addictive narcotics, the FDA presented a strong argument to include barbiturates in the mix. According to FDA historian John Swann, "evidence of chronic and acute barbiturate abuse began to appear in the American medical literature in the 1920s," and reports of "acute barbiturate toxicity almost doubled" between the 1930s and the mid-1940s.[49] Even before hearing ample testimony, Kefauver saw the similarities between narcotics and barbiturates. Following the lead of other sensational stories with headlines such as "Lethal Lullaby," "Slaves of the Devil's Capsules," and "My Husband was a Sleeping Pill Addict," Kefauver published an article entitled, "Let's Stop Sleeping Pill Suicides." The article declared that barbiturates—popularly known as "goof balls" for their tendency to inspire anti-social behavior—were "more debilitating than morphine, more nerve-shattering than cocaine."[50]

As it would continue to do with some success and some serious failures, the FDA tried to ride this wave of public attention to secure more control over the drugs with which it was concerned. At the start of the 1950s, that concern was almost exclusively focused on barbiturates. While the FDA increasingly recognized the potential problems with amphetamines,

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[48] "Legislation on Narcotics, 1945-63," Advance Print from "Congress and the Nation" dated March 23, 1963, *Congressional Quarterly* (1963), available in Legislation Files, Frame 971-9, Reel 19, *The Papers of Dean F. Markham and the President's Advisory Commission on Narcotics, 1962-1963*, Compiled by LexisNexis from holdings of John F. Kennedy Presidential Library and Museum [Hereafter, "Dean Markham Papers"].

[49] Swann, "FDA and the Practice of Pharmacy," 61.

[50] Estes Kefauver, "Let's Stop Sleeping Pill Suicides," *The Week*, March 20, 1949; see also "Slaves of the Devil's Capsules," *American Weekly*, December 9, 1945; "My Husband was a Sleeping Pill Addict," *American Weekly*, October 17, 1948; Vera Connolly, "Lethal Lullaby," *Colliers*, October 19, 1946. These and other articles are available in the files of Dr. John Swann – "Box 2, Folder 2, DRUGS: Entities, Barbiturates," FDA History Office Files. For the press and public's response to the 1951 hearings and acceptance of the connections between barbiturates and narcotics, see Charles Grutzner, "Grave Peril Seen in Sleeping Pills: Medical Studies Show Effect of Excessive Use is Worse Than That of Narcotics," *New York Times*, December 16, 1951, 1.

including Smith Kline & French's wildly popular Benzedrine, "until the late 1960s, barbiturate abuse loomed much larger than amphetamine problems in popular and political discourse." Throughout this period, however, those concerns were always tempered by the widespread acceptance and use of these drugs. Annual production of barbiturates hit a peak in 1947 with 6.3 billion doses, dropped slightly to 4.8 billion in 1951, and "then gradually climbed back to about 6 billion by 1960." Amphetamines experienced an even greater explosion in popularity with "annual production rising from around the billion-dose mark in 1950 to an FDA-estimated 8 billion doses in the early 1960s."[51]

Monitoring these massive markets was a Herculean task, especially when the FDA repeatedly concluded that probably half of all those doses were never prescribed for medical use and often found their way into black markets, where the FDA had no power to police. Even as its inspectors had successes regulating "the practices of established small businessmen, mainly the retail pharmacists," the FDA had "inadequate means to control" an emergent "bootleg traffic" in dangerous drugs – barbiturates and amphetamines or "thrill pills" as George Larrick liked to describe them. Speaking in the mid-1960s, Larrick recalled, "With the increasing and obvious social evils resulting from the misuse of potent sleeping pills, principally the barbiturates, former Commissioner Paul B. Dunbar about 20 years ago saw the need for better control of these important drugs." Dunbar equated many of the consequences associated with the misuse of these drugs – both for individual users and potential criminal operations – to the issues associated with narcotic drugs and policing. As such, Dunbar and other FDA officials, "recognized that the type

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[51] Nicolas Rasmussen, "Goofball Panic: Barbiturates, 'Dangerous' and Addictive Drugs, and the Regulation of Medicine in Postwar America," in *Prescribed*, ed. Jeremy Greene and Elizabeth Siegel Watkins (Baltimore: The Johns Hopkins University Press, 2012), 42. For analysis of the sources of the manufacturing numbers, see Rasmussen, "Goofball Panic," 268n38.

of staff in the Food and Drug Administration, consisting of college graduates, trained in physical sciences and the techniques of food and drug inspection, did not have the experience or training to deal with clandestine criminal acts."[52]

Instead of restructuring the Food and Drug Administration to meet that challenge, Dunbar proposed a move that "might seem strange coming from an old-time 'bureaucrat.'" Authority and responsibility are the lifeblood of all federal bureaucracies – ensuring their survival and helping to secure more resources from congressional budgets. However, Dunbar insisted that all control of barbiturates "should be administered not by the Food and Drug Administration, but by the Bureau of Narcotics of the Treasury Department."[53] Others supported this move. Lamenting the fact that "there has never been adequate provision for Federal enforcement," the New York City Department of Health had "sought for many years to have barbiturate control vested in the Federal Bureau of Narcotics."[54]

Responding to growing public concern about the misuse of goofballs, in January 1951 Congresswoman Edith Nourse Rogers proposed a bill to accomplish Dunbar's proposal. Nourse Rogers' bill simply added "barbiturates" to the list of drugs covered by federal narcotics laws – opiates, cocaine, and marijuana.[55] In effect, this move would shift responsibility for controlling barbiturates while also altering how that control was achieved. Instead of the FDA's

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[52] George Larrick, "Luncheon Speech," Princeton University, Princeton, NJ, February 23, 1965, *Speeches and Papers of George P. Larrick*, Vol. 7, all volumes available in the FDA Library, U.S. Food and Drug Administration, Department of Health and Human Services, Silver Spring, MD. For more on Larrick's use of the term "thrill pills," see Rasmussen, "Goofball Panic," 41.
[53] Larrick, "Luncheon Speech," Princeton University, *Speeches and Papers of George P. Larrick*, Vol. 7.
[54] Charles Grutzner, "Grave Peril Seen in Sleeping Pills: Medical Studies Show Effect of Excessive Use Is Worse Than That of Narcotics," *New York Times*, December 16, 1951, 1.
[55] "A Bill to provide for the coverage of barbiturates under the federal narcotics laws," H.R. 348, 82nd Cong. (1951).

recordkeeping requirements and regulation of interstate commerce, the Bureau of Narcotics used taxes and strict limitations on manufacturing to achieve their purposes.

Outlining the terms of a debate that raged on for the two decades, FBN Commissioner Harry Anslinger had no interest in controlling barbiturates or any other pharmaceuticals that were produced in the US with relatively widespread popularity and acceptance. During a hearing on the Roger's bill and another act to strengthen the penalties for violations of narcotics laws, Congressman Hale Boggs asked Harry Anslinger for his thoughts about the Nourse Rogers' bill. As the Commissioner of the Treasury Department's Bureau of Narcotics since that Bureau's founding in 1930, Anslinger had plenty of experience protecting his bureaucratic turf. As such, Commissioner Anslinger outlined a variety of reasons why the Bureau of Narcotics could not assume the responsibility for regulating barbiturates. Recognizing the rarity of the arguments from Dunbar and Anslinger, Boggs was "encourag[ed] in one way to find an agency of the Federal Government that does not want any additional power."[56] Anslinger and Dunbar seemed be violating the first rule of bureaucratic leadership – always be expanding. However, the two men's thinking was actually quite shrewd and their goals remained focused on protecting the reputations and responsibilities of their respective agencies.

Often overshadowed by the tenure of J. Edgar Hoover at the FBI, Anslinger's long history as the head of the Bureau of Narcotics was no less replete with tales of his maneuvering to maintain power.[57] Whether detailing the horrors of a marijuana smoking ax murderer or

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[56] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 205 (1951) (Statement of Harry J. Anslinger, Commissioner of Narcotics, Treasury Department).

[57] For more on the history of Anslinger and the FBN, see John C. McWilliams, *The Protectors: Harry J. Anslinger and the Federal Bureau of Narcotics* (Newark: University of Delaware Press, 1990), Douglas Valentine, *The Strength of the Wolf: The Secret History of the America's War on*

exposing Communist China's plot to undermine freedom with heroin, Anslinger knew how to use public fears of drugs to keep the Bureau of Narcotics relevant. However, the Bureau also existed within a long tradition of state primacy in policing and remained relatively small. In fact, a 1954 Senate report described the FBN as "one of the few Federal agencies whose personnel and funds have not been increased to reflect population growth and greater responsibility." Since the FBN's founding in 1930, the Bureau had continued to do its job with a budget of less than $2 million for approximately 225 agents, which was a group not much larger than the 200 New York City police officers assigned specifically to narcotics enforcement.[58] With some agents stationed abroad, Anslinger estimated "our force is less than 200 men in the whole United States." Thus, when asked about taking control of barbiturates, Anslinger complained, "we do not have enough men right now to do the job we are expected to do." Representative Nourse Rogers' bill did provide an additional $1 million to fund the endeavor, but Anslinger insisted controlling barbiturates would cost at least "$5,000,000 and take five times as many men as we have."[59] Over time, Congressmen became increasingly frustrated with this stance, and eventually Boggs scolded an FBN lawyer, "It seems to me that what you people in the Bureau are saying, to

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Drugs (New York: Verso, 2004); and Kathleen Frydl, *The Drug Wars in America, 1940-1973* (New York: Cambridge University Press, 2013). For the international dimensions of the FBN's activities, see Suzanna Reiss, *We Sell Drugs: The Alchemy of US Empire* (Berkeley: University of California Press, 2014); and, for a brief history of Anslinger's tactics in securing federal marijuana legislation see Kathleen Ferraiolo, "From Killer Weed to Popular Medicine: The Evolution of American Drug Control, 1937-2000," *Journal of Policy History* 19 (2007): 147-80.

[58] Subcommittee on Narcotics, *Illicit Traffic in Narcotics, Barbiturates, and Amphetamines in the United States*, H. R. Rep. to House Comm. on Ways and Means, at 11 (1954).

[59] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 206-10 (1951) (Statement of Harry J. Anslinger, Commissioner of Narcotics, Treasury Department).

be very frank with you, is that there is a problem here and it is a tough one, and you would just rather not have it."[60]

Even if Anslinger could have secured that additional money and manpower, Boggs was correct in the assumption that he might have still refused and the Treasury Department would have supported that decision. The Bureau of Narcotics' authority depended on the revenue-raising power that the Constitution granted to Congress. Licensing and taxation were the means by which the FBN controlled the import, manufacture, and distribution of the drugs it deemed "narcotics" – natural and synthetic opiates, cocaine, and marijuana. The FBN limited the manufacture of these drugs to just a few firms and then required a tax to be paid on each package they distributed. Thus, it was not illegal to produce or distribute cocaine, for example, but it was illegal to do so without a federal license to manufacture and evidence that a special tax had been paid on all shipments. On the other hand, between 50 and 100 companies manufactured the material for barbiturates and over a thousand more compounded those drugs into various forms. In response, Anslinger exclaimed, "you can imagine the terrific problem we would have today with the thousands of pounds of non-tax-paid barbiturates" moving through "the channels of legal trade." This legal trade concerned Anslinger and not just because of its scope. Cracking down on a legal substance used and enjoyed by many Americans who hardly considered themselves criminals, Anslinger feared, "would be worse than prohibition," and the FBN "would become a very unpopular bureau in this country."[61]

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[60] *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 22 (1952).

[61] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 204-5 (1951) (Statement of Harry J. Anslinger, Commissioner of Narcotics, Treasury Department).

Anslinger started his government career working for the Treasury Department's Prohibition Bureau and knew the problems with enforcing an unpopular law. He also understood the powerful language of addiction and all its pejorative implications. By the turn of the century, the United States developed "a fear of addiction and addicting drugs" as well as drug addicts – primarily "identified with foreign groups and internal minorities who were already actively feared and the objects of elaborate and massive social and legal restraints." Nonetheless, David Musto argues, "this fear had certain elements which have been powerful enough to permit the most profoundly punitive methods to be employed in the fight against addicts and suppliers."[62]

Anslinger understood those fears because he had stoked and shaped them to support the FBN's fights and to justify its punitive focus. Ironically, his repeated attacks on opiates had also helped to encourage many "respectable" female users of opium to seek relief instead from barbiturates. As the industry's production numbers revealed, millions of other Americans also sought relief from barbiturates and most of those people – from movie stars to mid-level executives to suburban housewives – wanted protection from dangerous drugs and criminals, not to be policed like them. Even as the science of addiction revealed the relative similarities between barbiturates, alcohol, and opiates, pejorative associations of addicts with personality defects persisted. Dr. Harris Isbell, who worked at the Public Health Service's narcotics hospital in Lexington, Kentucky, studied the effects of barbiturates and other drugs on his patients and sought to publicize his findings. In doing so, Dr. Isbell still insisted, "addiction is caused by

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[62] David Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed., (New York: Oxford University Press, 1999), 5. See also, Timothy Hickman, "The Double Meaning of Addiction: Habitual Narcotic Use and the Logic of Professionalizing Medical Authority in the United States, 1900-1920," in *Altering American Consciousness: The History of Alcohol and Drug Use in the United States, 1800-2000*, ed. Sarah W. Tracy and Caroline Jean Acker (Amherst: University of Massachusetts Press, 2004), 182-202.

human weakness and is a symptom of a personality maladjustment," meaning most addicts were "either hedonistic, pleasure-seeking individuals (psychopaths) or are psychoneurotics."[63] With this view of addiction still dominant even among leading researchers, there was no way that the Federal Bureau of Narcotics could take on the policing of a popular pharmaceutical like barbiturates. The FBN policed addicts, it did not protect users, and this move would have impugned and angered a large number of Americans, most of whom otherwise supported the work of the FBN.

Critical public attention might have also threatened the Bureau of Narcotics entire enforcement structure and position in the federal bureaucracy. With some additions and revisions, the Harrison Narcotics Act of 1914 and the Marihuana Tax Act of 1937 remained the primary laws enforced by the Bureau of Narcotics and each was based on Congressional power to raise taxes. As such, the Bureau of Narcotics was founded in 1930 and located in the Treasury Department alongside other agencies charged with enforcing tax laws – including the Prohibition Bureau. However, the Harrison and Marihuana Tax acts faced a number of constitutional challenges.[64] An unpopular new "tax" from the Bureau of Narcotics might also raise unwanted questions about the Bureau's entire basis for being. The Internal Revenue Service also "was against any new tax measures that were primarily regulatory in nature." Internal Revenue officials argued, "they had such a big job to do… that they couldn't very well undertake" any

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[63] Harris Isbell, "Meeting a Growing Menace – DRUG ADDICTION," Reprinted from *The Merck Report*, July 1951, reprint available in "Biographical Material on Consultants and Advisers," Advisory Commission on Drug Abuse, Reel 6, Dean Markham Papers.

[64] David Musto argues, "the Harrison Act of 1914 had to survive a number of unfavorable or close court decisions until its broad police powers were upheld in 1919. And as late as 1937 the Marihuana Tax Act was carefully kept separate from the Harrison Acct in order to discourage more court attacks," Musto, *The American Disease*, 10.

more drug regulations masquerading as tax statutes.[65] Even the American Medical Association (AMA) saw the potential constitutional challenge to further extending the narcotics laws to include barbiturates. The AMA reminded the House Ways and Means Committee that the "Harrison Narcotic Act has been held constitutional on the ground that it is a tax measure" and complained that the Nourse Rogers bill did "not impose any taxes but on the contrary would authorize an appropriation of $1,000,000 to enforce its provision."[66]

The reality and appearance of this divide between the Bureau of Narcotics' work and the other duties of the Treasury Department had already disinterred threats to the Bureau's future. In 1933, after the end of Prohibition and the Treasury Department's responsibility for enforcing that "noble experiment," the Bureau of the Budget recommended taking the Bureau of Narcotics and moving it to the Justice Department. At the time and since, Anslinger had insisted that the Bureau of Narcotics must remain a separate policing agency to honor the United States international treaty agreements. According to the FBN, President Franklin Roosevelt supported

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[65] The IRS also saw reason to use the FDA's model, as officials insisted "they didn't want to do it unless there were clear constitutional reasons why the taxing power had to be used instead of the interstate commerce power." *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 2 (1952) (statement of William W. Goodrich, Assistant General Counsel, Food and Drug Administration). For more on the history of Treasury and the IRS's issues with excise taxes during this period, see for example, Kathleen Frydl, *Drugs Wars in America*. Regarding the growing job of the Treasury Department, a 1949 report noted: "Some 46,000,000 individuals pay personal income taxes annually… In addition to this, there are corporation and innumerable direct and indirect taxes levied on nearly every resident of the country… The enormous expansion and far-reaching implications of government finance make it imperative that the Treasury Department be thoroughly reorganized." See *Letter from the Chairman, Commission on Organization of the Executive Branch of the Government transmitting A Report on the Treasury Department*, H.R. Doc. No. 81-105, at 1 (1949).

[66] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 211-2 (1951) (Letter from George F. Lull, American Medical Association).

that contention and dismissed the Bureau of the Budget's plan, arguing, "There is no intention of abolishing or merging the Bureau of Narcotics. We must respect our treaties."[67]

Despite Roosevelt's apparent confidence in the future of the Bureau of Narcotics, others continued to question its placement in the Treasury Department. After the exponential growth of the federal government and its executive departments during the New Deal and World War II, the organization and output of the booming American administrative state came under fresh scrutiny. With a new Republican majority in 1947, Congress seized "their own opportunity to engage the administrative state" and created the Commission on Organization of the Executive Branch, with former President Herbert Hoover as its chairman. Congress organized the Hoover Commission "to address the apparent incoherence of the administrative state and to recommend ways to pull the federal government back from the big-government tendencies it had developed during the New Deal and World II."[68] Focused on efficiency and eliminating any "apparent incoherence," the Hoover Commission found those problems in the Bureau of Narcotics. As the Commission's final report on the Treasury Department noted, "The Bureau is much less concerned with collecting revenue than with the enforcement of regulations to prevent the illegal sale and use of narcotics." Additionally, it found, "The relation of the Bureau to the rest of the Treasury Department is largely confined to cooperation with the Customs Bureau in administering the prohibitive features of the Narcotic Drugs Import and Export Act at the ports."[69] Arguing that the Bureau of Narcotics spent its time policing "the illegal use of

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[67] Committee on Expenditures in the Executive Department, "Progress on Hoover Commission Recommendations," S. Rep. No. 81-1158, at 238 (1949).
[68] Joanna L. Grisinger, *The Unwieldy American State: Administrative Politics Since the New Deal* (New York: Cambridge University Press, 2012), 10.
[69] Chairman, Commission on Organization of the Executive Branch of the Government, "A Report on the Treasury Department," H.R. Doc. No. 81-105, at 8 (1949).

narcotics, and only incidentally with tax collecting," the Hoover Commission rationalized transferring the Bureau and all of its functions to the Department of Justice.[70]

The Treasury Department may not have wanted to expand the FBN's mandate, but it was also not willing to give up the Bureau and vigorously opposed the Hoover Commission's recommendation. First, the Department repeated the argument that connected the Bureau of Narcotics existence to the country's obligations "under the International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs (signed in 1931) to maintain a special organization to supervise the trade and suppress illicit traffic." As such, Treasury insisted the FBN "could not be merged with any existing bureau or division in the Department of Justice," even though the Hoover Commission never explicitly recommended a merger along with the Bureau's transfer.[71] The Hoover Commission reported that only "20 percent" of the Bureau's time was spent on regulating legal markets and "law enforcement, or the detection and apprehension of violators of the narcotic laws, accounts for about 80 percent of the work of the Bureau."[72] However, the Treasury Department admonished the Senate that the Bureau and its laws had been "held constitutional solely on the ground" that they were "revenue measure[s]." To protect this justification, Treasury "suggested that the Commission overemphasized the police work of the Bureau of Narcotics."[73]

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[70] This text attributed to Hoover Commission report is from "Proposed Reorganization of the Treasury Department – Federal Report of the U.S. Commission on the Organization of the Executive Branch (Hoover Commission)," January, 13, 1949, available in "Treasury Department – General," Federal Agency Files, Reel 14, Dean Markham Papers.
[71] Committee on Expenditures in the Executive Department, "Progress on Hoover Commission Recommendations," S. Rep. No. 81-1158, at 238 (1949).
[72] Chairman, Commission on Organization of the Executive Branch of the Government, "A Report on the Treasury Department," H.R. Doc. No. 81-105, at 8 (1949).
[73] Committee on Expenditures in the Executive Department, "Progress on Hoover Commission Recommendations," S. Rep. No. 81-1158, at 238 (1949).

Despite these protestations, Congressional concern with drug use had sparked public demands for action and the potential solution of moving federal drug policing to the Justice Department persisted. In early 1955, Republican Senator Frederick Payne introduced a resolution to finally affect the transfer of the Bureau of Narcotics from the Treasury Department to the Justice Department.[74] As would be expected, the FBN opposed this move for the usual reasons. However, Justice Department officials were also reticent about taking on responsibility for drug policing. Deputy Attorney General William Rogers argued the Bureau of Narcotics, because of its particular enforcement structure, "must necessarily work closely with the Internal Revenue Service in connection with registration of persons dealing in narcotic drugs and the assessment and collection of taxes and penalties."[75] After Payne introduced this resolution, it was referred to the Committee on Finance and then the Committee on the Judiciary, which received the Justice Department's statement in opposition to the move.[76] As both Departments stood in unity against the move, the Judiciary Committee did not pursue the matter further.

However, debates about the proper home for federal drug control remained far from settled. Moreover, Deputy Attorney General Rogers's statement evinced the larger issue with modernizing drug control – as the Bureau of Narcotics moved further away from Treasury its shaky foundation in revenue measures grew even more tenuous. Deputy AG Rogers noted, "the principal narcotics statutes (Harrison Act and Marihuana Tax Act) have been considered revenue measures and their constitutionality upheld as such." On the other hand, "had enforcement of these statutes been placed in the Department of Justice rather than in the Treasury Department,"

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[74] 101 Cong. Rec. S345 (daily ed. January 14, 1955) (Statement of Sen. Payne).
[75] William P. Rogers, Deputy Attorney General, to Senator Harley M. Kilgore, Chairman, Committee on the Judiciary, July 15, 1955. Available in "7th Meeting, Sept. 4-5, 1963, Washington, D.C.," Advisory Commission on Drug Abuse, Reel 8, Dean Markham Papers.
[76] 101 Cong. Rec. S9,058 (daily ed. June 23, 1955).

Rogers worried, "these laws might have been considered police statutes and the result in the courts might have been different."[77]

With the Bureau of Narcotics unwilling to take control of barbiturates and the possibility for reorganization remote, Boggs and his fellow Congressmen focused their attention on raising the penalties for violations of existing legislation. Congresswoman Edith Nourse Rogers's bill to control barbiturates never made it out of the House Ways and Means Committee, but those hearings did invigorate Congressional attention to the issue of potentially dangerous pharmaceuticals. As the members of that committee came to recognize that they would not be able to add barbiturates to the FBN's list of controlled substances, they equally realized the need for cooperation between the FBN and the FDA to find some way to proceed. At the end of the 1951 hearings, as Paul Dunbar and other FDA officials testified, Boggs implored them, "Could you gentlemen get together with the Narcotics people and see if you can come up with some concrete proposals for legislation which you think may be enforceable without creating a vast new bureaucracy?" Dunbar could only speak "from the standpoint of the Food and Drug Administration" but insisted, "we would be glad to do so."[78] However, it would take more than a gentlemen's agreement to get an inch from the Bureau of Narcotics, which continued to jealously guard its jurisdictional turf. On the same day President Harry S. Truman signed the first Boggs Act to increase federal penalties for drug offenders, including mandatory jail time for "hardened

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[77] William P. Rogers, Deputy Attorney General, to Senator Harley M. Kilgore, Chairman, Committee on the Judiciary, July 15, 1955. Available in "7th Meeting, Sept. 4-5, 1963, Washington, D.C.," Advisory Commission on Drug Abuse, Reel 8, Dean Markham Papers.
[78] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 235 (1951) (Statement of Dr. Paul B. Dunbar, Commissioner, Food and Drug Administration, Federal Security Agency).

violators," he also issued an order for the official departmental cooperation that the Boggs hearings had exposed as essential.[79]

In conjunction with the planned reorganization of Treasury's Internal Revenue Service amid charges of corruption, Truman signed executive order 10302 in November 1951, creating the Interdepartmental Committee on Narcotics (ICN).[80] President Truman officially requested that the Departments of Treasury, State, Defense, Justice, and Agriculture appoint representatives that would survey the present situation and report to the president.[81] Serving out the final years of his second term and having done his symbolic duty in the "narcotics war," Truman never followed up on his order. Three years later, Eisenhower actually staffed the committee with members from Treasury, State, Justice, Defense, and the new Department of Health, Education, and Welfare (HEW), which became the home of the FDA in 1953.[82] This group finally released a report in 1956 but did little else. Discussing the Committee in 1960, one congressman remarked, "I have read these reports of the Interdepartmental Committee and it seems to me that in 1956 they met and it looks like there has not been too much activity since."[83]

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[79] "Truman Signs Bill for Narcotics War: Stiff Prison Terms Mandatory in Repeat Offenses - Board Set Up to Study Problem," *New York Times,* 3 November 1951, 32.
[80] Frydl, *Drug Wars in America*, 177. Drew Pearson, "Internal Revenue Changes Urged," *Washington Post* 1 November 1951, B17.
[81] Executive Order 10302, President Harry S. Truman, 2 November 1951, Available in Folder: "Narcotics, 1962: 12 February - 20 August (2 of 7 Folders)," Lee White Files, JFKL.
[82] "Report of Interdepartmental Committee on Narcotics," 1 February 1956, 1. Available in "Interdepartmental Committee on Narcotics," Federal Agency Files, Reel 14, Dean Markham Papers. An outcome of the reorganization initiative represented in the Hoover Commission's work, President Dwight D. Eisenhower created the Department of Health, Education and Welfare (HEW) with "Reorganization Plan No. 1 of 1953," which abolished the Federal Security Agency and moved the FDA into HEW. See "Message from the President of the United States Transmitting Reorganization Plan No. 1 of 1953," H.R. Doc. 83-102 (1953).
[83] "Expressing the Sense of the House of Representatives that the President Should Call a White House Conference on Narcotics," Hearings Unpublished, Committee on the Judiciary Subcommittee No. 2, House of Representatives, 2 March 1960, 30.

Though defending the work of the ICN, which was primarily controlled by Treasury department officials, Anslinger confirmed this lack of output. He told the House Judiciary Committee that the group had met "twice since 1956."[84]

If the ICN did little about narcotics, the Committee and Congress took even less substantial action on barbiturates and amphetamines during the remainder of the decade. The Interdepartmental Committee's 1956 report made fourteen recommendations, including calls for even "more severe penalties for narcotics traffickers, whether addicts themselves or not" and tighter "controls over manufacture of synthetic narcotics," a number of initiatives to encourage more state actions, and "a larger agent force" for the FBN. Only one recommendation, however, addressed pharmaceuticals and that was simply for more "study of barbiturates and amphetamines." Following "extensive" hearings in the House and Senate in 1955, the Boggs-Daniel Bill further increased sentences for both possession and trafficking, including a possible death sentence for even a first offense of selling heroin to a minor.[85]

On the other hand, the House Ways and Means Committee, during its hearings and in its final report, "called attention to problems resulting from increased use of barbiturates and amphetamines," but again took no substantive legislative steps to address the issue.[86] Having heard from the FDA repeatedly over the previous five years, the Ways and Means Committee recognized the dangerous potential for misuse of barbiturates and, increasingly, amphetamines, but suffered from their own jurisdictional limitations, especially if the FBN didn't want to

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[84] "Expressing the Sense of the House of Representatives that the President Should Call a White House Conference on Narcotics," 96.
[85] "Legislation on Narcotics, 1945-63," Advance Print from "Congress and the Nation" dated March 23, 1963, *Congressional Quarterly* (1963), available in Legislation Files, Frame 971-9, Reel 19, Dean Markham Papers.
[86] "Legislation on Narcotics, 1945-63."

enforce a new tax statute – the committee's dominion. As Congressman Thomas Jenkins noted during the first hearing, "If the Committee on Ways and Means is going to take this jurisdiction, we will have to put a tax on the stuff."[87] To regulate under interstate commerce would shift control to that committee and Boggs's cohort was also not willing to give up the power that came from a public platform to rail against illegal drugs. Revealing the potential of televised politics, Kefauver, who actually won an Emmy for his crime committee hearings, spent the next decade running for President, as Boggs, Senator Thomas Dodd, and others used similar roles to advance their own standing.[88]

While the FDA had to keep waiting for real legislative authority to control barbiturates and amphetamines, the Hoover Commission and House hearings exposed a number of weaknesses in the current federal drug bureaucracies. They also highlighted fights over jurisdictional turf that would continue to hold up reform of the constitutional and bureaucratic bases for federal drug policing. With those turf wars now laid bare, the Bureau of Narcotics, in particular, fought like hell against any apparent attempt to usurp or undermine its authority. FBN officials and their congressional allies were still working behind the scenes to undermine President Lyndon Johnson's 1968 Reorganization plan that finally moved all drug control from Treasury and HEW to the Justice Department. As the FBN protected its turf, the concomitant need to maintain the appearance of being a revenue-raising enterprise limited the ability of Congress to add new and potentially dangerous drugs to the Bureau's list of responsibilities. Nonetheless, public concern about drugs continuing to grow, and the need to find an alternate

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[87] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 236 (1951).
[88] For more on Kefauver, including his award-winning crime committee hearings, see David Halberstam, *The Fifties* (New York: Fawcett Columbine, 1993), 188-194.

basis for federal drug laws became more pressing over time, especially when a series of court cases in the mid-1960s threatened the entire existence of the Bureau of Narcotics. And, as these failed attempts demonstrated, real reform of the federal drug bureaucracy required more than a moral panic and political posturing over illegal drugs.

FDA Pursues its Own Power

As the Bureau of Narcotics dominated discussions of the Interdepartmental Committee and remained unwilling to regulate psychoactive pharmaceuticals, the FDA had to go it alone with their attempts to police black market pharmaceuticals using more traditional law enforcement tactics. In the mid-1950s, however, the Food and Drug Administration's lack of resources and experience, in turn, limited the success of those attempts. The FDA also struggled to balance policing and placating a diverse industry with divergent demands for regulation or lack thereof. Finally, even as the FDA secured more power to require prescription drugs for all pharmaceuticals that may be "habit-forming," its power still ran up against the limits of how far "interstate" power could be extended into local activities within each state.

By the 1950s, the Food and Drug Administration had developed a positive reputation, but few if any would have considered it a police force. Even Congressman Thomas Jenkins, a former prosecutor who believed the FDA was "a great department of the Government" and "always felt it [was] a very popular organization," remained uncertain whether the FDA was "primarily a police organization" or "an educating organization." Evincing the consumer protection politics undergirding all of the FDA's actions, Jenkins told Commissioner Dunbar, "I have always looked upon you as a protector of the people so that they would have pure foods and pure meats and you would encourage sanitation and all things like that." Responding to Jenkins confusion, Dunbar acknowledged there were "two ways to enforce the law" and insisted their educational

efforts to steer "the well-intentioned manufacturer along the straight and narrow path" were only effective if used in tandem with "the 'big stick'" of enforcement. Thus, Dunbar argued, "we are a police organization."[89] However, the reality of the FDA's work would have not seemed very familiar to actual drug cops then or now. The FDA's inspectors could not carry guns, make arrests, or serve warrants. Moreover, the penalties for violating the FD&C Act remained relatively toothless. To evince the FDA's police work, Dunbar presented information on prosecutions for the illegal sale of barbiturates that the FDA closed between 1945 and 1951. During this period, the FDA terminated 100 total cases, which resulted in just over $50,000 in total fines and apparently no jail time for any of the offenders.[90]

As its officials lobbied for stronger controls over the retail market in pharmaceuticals, the Food and Drug Administration suffered from the broader problem of limited manpower and budgets. Even if the FDA could police local black markets, they simply did not have the personnel to do the job. Speaking in 1952 about reasons for the FDA's "spotty control," Deputy Commissioner George Larrick estimated that the FDA could only dedicate between 25 and 45 "man-years" or approximately one FDA inspector for every two states "to police these sleeping pills."[91] Reflecting the older, less scientific, model of FDA organization, inspectors were in charge of all the products overseen by the FDA and produced or distributed in their area. So an inspector in Kansas City might be checking on feed mills on Monday, ensuring proper charcoaling of horse meat on Tuesday, tracking down a source of bad powdered eggs on

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[89] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 219 (1951).
[90] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 220-226 (1951).
[91] *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 9 & 31 (1952).

Wednesday, and following-up on reports of exploding firecracker toys on Thursday, all before even getting to his pharmacy investigation. Larrick explained, the FDA had "a total of 240 men to patrol the whole 50 billion commerce in food, drug, and cosmetics," which meant they could spend no more than "10 percent" of their time "working on this problem."[92] A decade later, President John Kennedy's Commission on Narcotic and Drug Abuse reached a similar conclusion, estimating the FDA "had a staff of 120 devoted to the regulation of dangerous drugs" and "only 40 of them were inspectors investigating illicit sales."[93] In reality, Larrick observed, "it would take a goodly number of inspectors to police the 50,000 retail drug outlets and all of the bootleg outlets that you have in the country."[94] Despite the size of this market, FDA officials assured Congress, "We intend, with all the force that we can spare, to police the illicit distribution of these things through retail druggists."[95]

However, that Herculean task paled in comparison to the FDA's problems with policing black markets, which demanded both authority and expertise that the FDA did not possess. As the FDA's chief legal counsel, William F. Goodrich, summarized, "the problem, and the ugly problem, is where they are sold, not out of the drug store," but "where they are sold by the street peddlers, where they are sold in houses of prostitution, where they are sold outside of the legitimate channels of commerce." When barbiturates or amphetamines moved outside of not just "channels of commerce" but channels that crossed state lines, the FDA had almost no

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[92] *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 31 (1952).
[93] Quoted in John P. Swann, "The Bureau of Drug Abuse Control: Its Origins, Functions, and Termination in FDA," 5, unpublished manuscript in the possession of the author, courtesy of Dr. Swann and the FDA History office.
[94] *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 9 (1952).
[95] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 235 (1951).

recourse to respond. Moreover, Goodrich noted that policing "illicit distribution" would require the FDA's inspectors "to learn new techniques" already employed by the Bureau of Narcotics. When policing those illicit markets, the FBN had "to operate with informers… to operate on skid rows, and things of that kind," and they had "their contacts with local police officers," which the FDA did not have.[96]

When Harry Anslinger passed the buck on controlling barbiturates, he ignored such issues and insisted that the FDA could handle the job if it just had stricter controls on refilling prescriptions.[97] The ruling in *Sullivan* upheld the FDA's right to enforce its regulations all the way to the individual retail pharmacist, even if they were not directly engaged in interstate commerce. Thus, "the extension of the law to cover the final sale of the drugs and the ability of the FDA to sustain its prosecutions" was now established, but "the legality of requiring prescriptions" and the promulgation of regulations over refills, which drugs should be controlled, and who was responsible were "still unsettled."[98] A day after Harry Anslinger's testimony to the House Ways and Means Committee, Representative Carl Durham introduced a bill to settle these

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[96] *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 31 (1952).

[97] Captivating congressmen with his story of a New York woman who "got a prescription for 10 seconol [sic] tablets which she had refilled 300 times," Anslinger argued, "I think the Food and Drug Administration—if their legislation could be strengthened with respect to this problem, it would have a very great effect providing Congress puts it on a non-refillable basis, because I think that is where a lot of this difficult arises," *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 205 (1951) (Statement of Harry J. Anslinger, Commissioner of Narcotics, Treasury Department).

[98] Temin, *Taking Your Medicine*, 51. For a full analysis of the FDA's prescription drug regulations and the history of the Durham-Humphrey Act, see Temin, 46-57.

questions. Across the Capitol, former pharmacist, Senator Hubert Humphrey proposed similar legislation.[99]

Those proposals became the Durham-Humphrey Amendment, which formalized the FDA's rules for requiring and refilling prescriptions. Under this Amendment, manufacturers were now required to place an Rx Legend on three types of pharmaceuticals – new drugs not yet "shown safe for use in self medication," any drugs not safe for self-medication "because of its toxicity or other potentiality for harmful affect," and "hypnotic or habit-forming drugs," e.g. barbiturates, amphetamines, and their derivatives. More important, the amendment made it illegal to dispense a drug marked with the Rx Legend without a written or telephoned prescription from the doctor, and it prohibited refilling those prescriptions without further authorization from the prescribing practitioner.[100] Thus, the FDA now had full authority to police pharmacists illegally selling barbiturates or other "dangerous drugs" so long as it could prove that those drugs had at some point been engaged in interstate commerce.

Although it primarily formalized procedures already in place, even this legislation had its opponents and the FDA had difficulties in securing these controls, much less moving beyond them to police the black market in barbiturates. Industry groups who opposed including barbiturates in the narcotics laws were also reticent about interstate regulatory power expanding to intrastate activities. As George Lull of the AMA conceded, "the Federal Government may regulate interstate and foreign commerce in the barbiturates without resorting to the authority given to the Congress to levy taxes." On the other hand, Lull insisted, "the extent to which the

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[99] For a Full Bill Report of the Durham-Humphrey Amendment, H.R. 3298, 82nd Cong. (1951), see http://congressional.proquest.com.turing.library.northwestern.edu/congressional/docview/t03.d04.82_hr_3298.

[100] *Federal Food, Drug, and Cosmetic Act: A Legislative History* (Washington, DC: Congressional Research Service, 1989), 417-9.

Federal Government can go… in regulating intrastate transactions raises a substantial question that should be given very careful consideration."[101]

The AMA supported any legislation that upheld their member's professional authority but vigorously opposed any potential challenge to their full control over a patient's treatment. Mindful of how diversion from licit channels fueled illicit markets, FDA officials also considered licensing all points along the chain of distribution, from manufacturers to prescribing doctors to pharmacists to patients. If everyone that might touch a controlled drug needed to have some form of federal license, officials reasoned, it would be a simple trick of proving any unlawful act was an unlicensed activity. The American Medical Association, however, maintained "a strong position" that any "licensing of physicians" would face the AMA's "highest priority of opposition."[102] Politicians had to take seriously these threats from the AMA, which had thrown the full weight of its power against Truman's national health care plan in the late 1940s. The "rabid approach" of the AMA cratered public support for national health insurance from 75 percent in 1945 to only 21 percent four years later.[103] Echoes of that effort could still be heard in debates about Durham-Humphrey's effect on drug prices, with both sides

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[101] *Control of Narcotics, Marihuana, and Barbiturates: Hearings on H. R. 3490 and H. R. 398, Before a Subcomm. of the Comm. on Ways and Means*, 82nd Cong. 211-2 (1951) (Letter from George F. Lull, American Medical Association).

[102] *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 5 (1952).

[103] The "rabid approach" characterization is in a letter from President Harry Truman to Ben Turoff, April 12, 1949, Truman Library, Correspondence Files, Textual Records, Series A. Letter and statistics quoted in Jill Quadagno, *One Nation Uninsured: Why the U.S. Has No National Health Insurance* (New York: Oxford University Press, 2005), 39.

acceding that higher "costs of medical care" could reignite public demands for "socialized medicine."[104]

In general, the AMA maintained a united front with "the big associations that make up the drug trade" – "the Association of Drug Manufacturers, the American Pharmaceutical Manufacturers Association, the National Association of Retail Druggists, the National Association of Wholesale Druggists, the American Pharmaceutical Association, and the Proprietary Association" – that any additional regulations should be handled by the states. In short, "control should be state control."[105] The American Pharmaceutical Association (APA) often led those battles to maintain state primacy, evinced in their propagation of a uniform State law that could be passed by the legislatures of individual states. At many of the hearings throughout this period, the APA's secretary and general manager, Robert Fischelis argued the uniform State law was "the proper way of regulating the dispensing of drugs." In 1952, Fischelis told the House Ways and Means Committee that he knew of "no organizations in the pharmaceutical profession or the drug industry… that did not subscribe to this uniform bill." Despite that apparent consensus, only eleven states had thus far "introduced and acted upon this bill." More problematic for federal officials concerned about potentially dangerous or addictive

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[104] See, for example the House "Minority Report," Amending Section 503 (B) of the Federal Food, Drug, and Cosmetic Act, H.R. Rep. No. 82-700, at 31 (1951). On the other hand, Herman Waller from NARD, told the Senate, "If the need for socialized medicine is based upon the premise that medication is becoming to high for those least able to pay, then this measure will be instead a very significant and practical step in the direction of avoiding the need of socialized medicine." *To Amend Section 503(b) of the Federal Food, Drug, and Cosmetic Act, As Amended: Hearings on S. 1186 and H.R. 3298, Before the Subcomm. on Health of the Comm. on Labor and Public Welfare*, 82nd Cong. 67 (1951) (Statement of Herman S. Waller, legal counsel, National Association of Retail Druggists).

[105] *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 5 (1952).

pharmaceuticals, at least two states still had no "specific regulation" for "barbiturate dispensing."[106]

The ongoing association of addiction with narcotics, even as barbiturates blurred those lines, also brought Anslinger's bureau back into the mix and raised questions about the FDA's authority to determine whether a drug was habit-forming. During the House hearings on the Durham bill, Congressman Oren Harris, who had a developing interest in these matters, asked an official if the FDA would now have authority over "any restrictions with reference to narcotics," and he was assured that they "do not deal with narcotics." Tagging his point, Harris replied that he "wanted to be sure you did not."[107] At the Senate's hearings, Larrick faced similar questions but insisted that all narcotics "would still be under the Harrison Narcotic Act, and the controls would be exercised by Mr. Anslinger and his people instead of by us."[108] Officials from the Bureau of Narcotics, however, wanted more than just assurances from a rival administrator and their authority was "expressly preserved" with a provision included in the final bill.[109]

Conflicts over the specifics of these regulations went beyond battles between bureaucracies, exposing the divergent interests of manufacturers, pharmacists, and doctors. For example, the Durham bill that the House sent to the Senate sought to alleviate the confusing

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[106] *Barbiturate Control: Hearings Before Subcomm. on Narcotics of the House Comm. on Ways and Means* 82nd Cong. 63-4 (1952) (Statement of Robert P. Fischelis, Secretary and General Manager, American Pharmaceutical Association).
[107] *Federal Food, Drug, and Cosmetic Act: Hearings on H. R. 3298, Before the Comm. on Interstate and Foreign Commerce*, 82nd Cong. 34 (1951) (Statement of Oscar R. Ewing, Administrator, Federal Security Agency).
[108] *To Amend Section 503(b) of the Federal Food, Drug, and Cosmetic Act, As Amended: Hearings on S. 1186 and H.R. 3298, Before the Subcomm. on Health of the Comm. on Labor and Public Welfare*, 82nd Cong. 30 (1951) (Statement of George P. Larrick, Federal Food and Drug Administration, Federal Security Agency).
[109] Amending Sections 303 (C) and 503 (B) of the Federal Food, Drug, and Cosmetic Act, S. Rep. No. 82-946, at 6 (1951).

situation wherein manufacturers could decide whether or not to label their drugs as prescription only. The House bill now vested this authority in the FDA and Federal Security Agency. The National Association of Retail Druggists (NARD) supported this provision because druggists could be prosecuted for wrongly selling an Rx drug over the counter if they confused one version of a drug, which a manufacturer had not marked with an Rx legend, for another version that did have the legend. Needless to say, the American Pharmaceutical Manufacturers Association, the Proprietary Association, and others were less pleased with this change. Before the final bill passed the Senate, however, a deal was struck between the major players.

The NARD accomplished its goal of removing druggists' responsibility for determining whether any given drug was dangerous and needed a prescription, but manufacturers retained their authority to make that determination. The FDA and NARD thus simply removed the controversial portion of the new law, which, as Senator Hubert Humphrey noted derisively, was "a good way to alleviate any possible controversy."[110] Nicolas Rasmussen therefore categorizes Durham-Humphrey as "a compromise brokered by druggists." As always, the FDA had to give as good as it got, compromising with the generally ethical parts of the drug trade in return for more power to police the edges. And, once again, the pharmaceutical industry seemed to benefit as much or more in the long run. As Rasmussen argues, "the druggists [got] their certainty and their permission to honor telephone prescribing and the agency [got] legislative authority to do

[110] Amending Sections 303 (C) and 503 (B) of the Federal Food, Drug, and Cosmetic Act, S. Rep. No. 82-946, (1951); *To Amend Section 503(b) of the Federal Food, Drug, and Cosmetic Act, As Amended: Hearings on S. 1186 and H.R. 3298, Before the Subcomm. on Health of the Comm. on Labor and Public Welfare*, 82nd Cong. 79 (1951) (Statement of Herman S. Waller, legal counsel, National Association of Retail Druggists).

more of what it had already been doing administratively."[111] Doctors perhaps benefited the most as the new law further perpetuated their sole gatekeeping authority to decide if individual patients could safely have access to dangerous drugs.

While the manufacturers and doctors maintained their respective powers to shape the prescription drug market after the passage of Durham-Humphrey, the Food and Drug Administration continued to work through regulatory channels to do as much as possible about potentially habit-forming drugs. Although manufacturers could still make "the initial decision" about how to label a new drug, John Swann reports, "the FDA issued advisory lists of prescription drugs" and, if necessary, "the courts would settle any unresolvable differences between the two sides."[112] One such dispute arose at a hearing in 1955, which was supposed to be "a mere legal formality" to remove a barbiturate derivative and mild sedative from the list of habit-forming substances requiring a warning label or prescription. Following the lead of Harris Isbell, Dr. Nathan B. Eddy of the National Institutes of Health threw a wrench into the works when he declared that all analgesics and sedatives "may be habit forming." Eddy's argument was particularly shocking and problematic for industry because he was no crackpot but "widely regarded as the most influential govt. expert on the question of the habit-forming and addiction liability of drugs." The trade press speculated, "Eddy's views on the addiction-liability [of

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[111] In addition to formalizing the FDA's prescription requirements, the Durham-Humphrey amendment made it legal for pharmacists to take prescriptions from a doctor over the phone as long as the pharmacist made a written record of the prescription as soon as possible. Rasmussen, "Goofball Panic," 39.

[112] Swann, "FDA and the Practice of Pharmacy," 66.

goofballs] are certain to play a major role if and when Congress gets around to considering new legislation for barbiturates."[113]

Even before such legislation was considered, Congress arrived at a similar conclusion, in part because the House Ways and Means Committee had already heard years of testimony on barbiturates and other potentially dangerous pharmaceuticals. In 1954, the Ways and Means Subcommittee on Narcotics released a report detailing the "Illicit Traffic in Narcotics, Barbiturates, and Amphetamines," which recognized "the seriousness of the consequences" of misusing all of these substances. In response, the report decried that food and drug officials were "not only operating under the handicap of insufficient funds and shortage of enforcement personnel but also [were] further handicapped by a lack of legislative authority for proper enforcement." The Subcommittee strongly recommended the extension of that authority. The report also endorsed classifying amphetamines "under the Food, Drug and Cosmetic Act along with barbiturates as dangerous drugs."[114]

In the parlance of the time, "dangerous drugs" no longer needed quotations or qualifications. An outgrowth of the FDA's traditional mission to protect consumers from "dangerous food, drugs, and cosmetics," dangerous drugs now signified a specific category of substances – amphetamines and barbiturates, in particular – that remained under the FDA's purview but demanded extra controls to prevent misuse. Despite that certainty, it took another decade and a new consumer movement before the FDA secured the additional authority it needed to police the entire black market for dangerous drugs.

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[113] *F-D-C Reports*, June 13, 1955, 14-16. Copy available in Box 1, Folder 1, "Drugs: Abuse," FDA History Office Files.

[114] Subcommittee on Narcotics, *Illicit Traffic in Narcotics, Barbiturates, and Amphetamines in the United States*, H. R. Rep. to House Comm. on Ways and Means, at 11 (1954).

Policing Dangerous Drugs

George Larrick, an experienced FDA inspector, spent his entire tenure as Commissioner attempting to focus more attention on the growing illicit market in barbiturates and amphetamines. Larrick believed preventing the misuse of dangerous drugs was a central part of the FDA's consumer protection mission, and perhaps its most pressing duty. "In the whole work of the Food and Drug Administration, covering the whole gamut of foods, drugs, and cosmetics," Larrick argued, "we today see more deaths, suicides, family tragedies, because of the promiscuous use of sleeping pills than we do from any other single thing we deal with."[115] As the FDA attempted to do its duties, Larrick complained, "the FDA has been severely hampered by a shortage of personnel and, just as important, by its lack of legal authority."[116] The agency only received the police powers Larrick had doggedly pursued on the eve of his retirement in 1965, but the FDA nonetheless took steps to circumvent their constraints throughout the previous decade.

The requirements for establishing a drug's connection to interstate commerce were cages of red tape for FDA inspectors, who struggled even more with locating points of diversion, especially those wholly outside legal channels. While a pharmacist might still bend the rules to earn an extra buck, as the decade progressed, "'pep pills' and other prescription items popular for non-medical use" were often "peddled by 'pushers' in bars, 'flop houses,' and on 'skid row'

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[115] *To Amend Section 503(b) of the Federal Food, Drug, and Cosmetic Act, As Amended: Hearings on S. 1186 and H.R. 3298, Before the Subcomm. on Health of the Comm. on Labor and Public Welfare*, 82nd Cong. 36 (1951) (Statement of George P. Larrick, Federal Food and Drug Administration, Federal Security Agency).

[116] "Drug Abuse Control Amendments of 1965," 1966 Supplemental Appropriation Request, Food and Drug Administration, Department of Health, Education, and Welfare, July 1965, 3, Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1, FDA History Office Files.

streets, which [made] the problem increasingly complex." The FDA thus needed to find some central location to base its investigations into bootleg sales of dangerous drugs. When officials started reading reports of highway accidents involving truck drivers who used amphetamines "to keep on despite fatigue," the FDA identified truck stops as ideal places to locate the bootleg distribution of dangerous drugs.[117] Foreshadowing the work of the Bureau of Drug Abuse Control a decade later, the FDA trained a small group of inspectors to drive big rigs and police the underground pill trade flowing through truck stops. Even with training, this "cohort of faux truckers" faced some unanticipated challenges and had to learn on the job. Former inspector Clifford Shane recalled, "One of the problems that they encountered early on was that it became very apparent that they were not hauling a load and those trucks were empty." Inspectors learned to pile junk in the back of their rigs and "that the greatest thing was to sprinkle a little sugar on the tailgate." That sweet trick tended to convince inquisitive marks "that you were probably going to make a delivery to a moonshiner" and "buys were then easy to make."[118]

While many former FDA inspectors recalled this time with some measure of amusement, their experiences highlighted the unique nature of police work as well as the unexpected challenges and dangers that came with that type of work. Though they were not permitted to carry guns, FDA investigators and others dealing with potentially criminal elements were still instructed in self-defense. FDA Inspector Ed Wilkens remembered attending a "weaponless

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[117] George Larrick, "Some Current Problems Confronting Food and Drug Officials," Annual Meeting of the Association of Food and Drug Officials of the United States, New Orleans, LA, May 12, 1955, *Speeches and Papers of George P. Larrick*, Vol. 2. For more on this history as well as an economic and sociological analysis for the FDA's decision to focus on truck drivers and truck stops, see Kevin William Riley, "Governing Speed: Amphetamine Use among Truck Drivers and the Making of Deviance," (PhD diss., UCLA, 2010. ProQuest (UMI: 3401673)).

[118] Clifford G. Shane, Director, Kansas City FDA office, interview by Robert G. Porter and Fred L. Lofsvold, Denver, CO, April 23, 1980, "History of the U.S. Food and Drug Administration," transcript, 6, quoted in Swann, "FDA and the Practice of Pharmacy," 64-5.

defense" class with the Los Angeles County Sheriff's Department, where "they had trained us on how to defend ourselves, you know, judo and all that stuff, better than nothing… and that's what we had."[119] Of course, a seasoned inspector did occasionally fear a hairy deal might go bad and, worried about "a double-cross," admitted, "I brought my shotgun along, which was an illegal act, since we could not carry fire arms."[120] FDA district supervisors were aware of this practice but looked the other way, with one remarking, "I know he's carrying a weapon. I just hope he doesn't kill anybody out there."[121] Nonetheless, FDA officials recognized, "It is quite remarkable that we did not have people killed or seriously injured because we had very limited training, and mostly we were learning as we went along and many times were in situations that we didn't realize just how dangerous they were."[122]

The inability of FDA Inspectors to outgun the bad guys and protect themselves was also part of the broader problems stemming from limits on the FDA's interstate commerce power. As Larrick summarized, not only did the law "handicap agents in the field but it also tended to screen the illegal activities of drug peddlers by protecting their bookkeeping and records from examination and by exempting all intrastate shipments from punitive action."[123] Throughout the 1950s, Larrick repeatedly pressed for legislation "to tighten control over the illicit sale of barbiturates and amphetamines." Insisting that it would not even "require any new record-keeping on the part of those in the drug business," Larrick argued legislation had to do two

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[119] Ed Wilkens, FDA Inspector and BDAC Agent, interview by Robert A. Tucker and Ronald T. Ottes, Rockville, MD, April 20, 2004, "History of the U.S. Food and Drug Administration," transcript, 46.
[120] Clifford G. Shane interview transcript, 12-3.
[121] Quote attributed to Louis Lasher in Ed Wilkens interview transcript, 46.
[122] Quote by interviewer, Fred L. Lofsvold, in Clifford G. Shane interview transcript, 23.
[123] "Drug Abuse Control Amendments of 1965," 1966 Supplemental Appropriation Request, Food and Drug Administration, Department of Health, Education, and Welfare, July 1965, 4.

things to be effective. It needed to make "possession by unauthorized persons" a misdemeanor, and, more important, Congress had to "remove the necessity for proof of interstate commerce in dealing with sales outside of legitimate drug trade channels."[124]

Whether addressing the APA's pursuit of a uniform state law or tracing the manufacturing locations of particular base ingredients to prove interstate commerce, the ongoing limits to the FDA's authority arose from a tradition of local primacy in all law enforcement activities. Doctors and the drug industry, as well as their Congressional allies, took little political risk in suggesting that states handle control, because that had been the status quo for most of United States history. This was true of regulating commerce and policing crime, hence the Bureau of Narcotics's own limited jurisdiction and relatively small size. Even at the height of the 1960s counterculture and that era's booming experimentation with all manner of drugs, the FBN could never overcome this traditional limit to its power. On the other hand, with its mandate to protect American consumers, the FDA eventually accomplished what the FBN never could – securing authority to police even the purely intrastate distribution of dangerous drugs. When it finally accomplished this feat in the mid-1960s, the FDA and Congress also created the foundation for a new era in all federal drug policing – expanding its scope and reach beyond anything George Larrick or Harry Anslinger might have ever imagined.

Conclusion

Reminiscing years later about the FDA's first attempts to police dangerous drugs, former FDA Inspector Douglas Hansen summed us this era best, recalling, "To me those are Keystone Cop tactics and we have been guilty of a lot of strange things, but our hearts were always in the

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[124] George Larrick, "Some Current Problems Confronting Food and Drug Officials," Annual Meeting of the Association of Food and Drug Officials of the United States, Lexington, KY, May 9, 1957, *Speeches and Papers of George P. Larrick*, Vol. 3.

right place and we were always trying and things just don't work out in that undercover work."[125] Despite some major hurdles, during the 1950s, the FDA had developed its nascent police tactics. FDA officials pursued those projects because they believed them necessary to fulfill the mandate of the Federal Food, Drug, and Cosmetic Act and the impulses of the "second-wave consumer movement," out of which that act was born.[126] The politics of consumer protection had allowed the FDA to begin requiring that drugs were both properly labeled and safe for use. If some of those drugs were more dangerous, whether because of their toxicity or potential to be habit-forming, the FDA mandated that physicians had to prescribe and supervise their use. As drugs in the latter category, such as barbiturates and amphetamines, leaked out of licit channels, the FDA continued to pursue power to police those areas. Whether focused on protecting the public from dangerous food, drugs, and cosmetics generally or a discrete category of dangerous drugs specifically, the FDA's power to police drugs and regulate commerce arose in tandem with the politics of consumer protection and mass consumption.

During this period, however, things often just didn't work out as the FDA's projects suffered through the nadir of the postwar consumer protection movement. Revealed in the FDA's budgets and manpower, which still hovered around pre-war levels, the Food and Drug Administration struggled against the conservative tide that valued states' primacy, limited federal expenditures, and the streamlining of federal bureaucracies. At the same time, public concerns remained focused on the dangers of narcotics and many were still unwilling to do more about popular pills such as barbiturates or amphetamines. As such, Harry Anslinger's Bureau of

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[125] Doulas C. Hansen, FDA inspector and assistant commissioner, interview by Robert G. Porter, Seattle, WA, September 26, 1978, "History of the U.S. Food and Drug Administration," transcript, 67-8.
[126] Cohen, *A Consumer's Republic*, 13.

Narcotics and their methods of cracking down on criminalized addicts still dominated any discussions of interdepartmental cooperation on drug control.

Nonetheless, the FDA persisted, and a change was going to come which would elevate FDA's consumer protection model and commerce power to the forefront of debates over the future of Federal drug control. According to historian Lizabeth Cohen, "the previous consumer movement of the 1930s and World War II era had collapsed by the late 1940s" and "unorganized consumers" had become "the 'forgotten men' of the federal government."[127] However, a complex set of changes emanating from within bureaus like the FDA and the political campaigns of a new generation of Democrats responded to an even vaster array of challenges outside of Washington – including, "population growth, affluence, rising educational levels, economic growth, technological advance, mass marketing, changing social values and personal attitudes, and institutional changes in business, government, and the marketplace."[128] Thus, by the start of the 1960s, President John F. Kennedy and others helped launch "a third wave of the consumer movement… reminiscent of the two previous waves during the Progressive Era and the New Deal but ultimately more influential."[129]

Over the next two decades, Cohen argues, "this third-wave consumer movement would affect national, state, and even local politics," and, although the movement would decline after the election of Ronald Reagan, "in other subtle ways policymaking justified as being in the consumer's interest would become even more deeply entrenched in American political culture as

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[127] Cohen, *A Consumer's Republic*, 347-8.
[128] Quote is from Cohen, *A Consumer's Republic*, 348, who attributes it to the Chamber of Commerce as quoted in a paper by Commissioner Mary Gardiner Jones, Federal Trade Commission, delivered before the Sixth Biennial World Conference of the International Organization of Consumer Unions, June 29, 1970, Erma Angevine Papers, Special Collections, Rutgers University Library, Box 2, D-3, pp. 20-21.
[129] Cohen, *A Consumer's Republic*, 345.

the twentieth century became the twenty-first."[130] As the FDA and its congressional allies continued to fight for more authority to police dangerous drugs, new attention to "the consumer's interest" expanded the Food and Drug Administration's power and eventually resulted in the creation of the first truly modern federal drug control agency – the FDA's Bureau of Drug Abuse Control.

[130] Cohen, *A Consumer's Republic*, 346.

CHAPTER TWO

Camelot Cops
The Kennedy White House and the Presidential Politics of "Drug Abuse"

What Glove
What leatheriness
Has protected
Me from that shadow --
The indelible buds.
Knuckles at shoulder-blades,

- Sylvia Plath, "Thalidomide" (1962)[1]

The author makes the article sound as if President Kennedy was not devoted to a sound drug bill. The various books about the Kennedy administration will have to correct these impressions.

- Myer Feldman, Counsel to the President, to Wilbur Cohen, Assistant Secretary of Health, Education and Welfare (1964)[2]

In 1957, George Larrick, Commissioner of the Food and Drug Administration (FDA), addressed a meeting of the National Association of Retail Druggists (NARD) to talk about "the unprecedented progress of the drug industry." Larrick reminded his audience the FDA had been "seriously understaffed for quite some time" and mourned how that situation "imposed burdens, both scientific and inspectional, that were next to impossible to meet adequately." In 1940 the FDA had 738 personnel, in 1954, the total had jumped all the way to 789. While the FDA's "sole

[1] Sylvia Plath, "Death & Co., The Swarm, The Other, Getting There, Lady Lazarus, Little Fugue, Childless Woman, The Jailer, Thalidomide, and Daddy," *Encounter*, October 1963, 45-52.
[2] Feldman to Cohen, August 5, 1964, Folder: "HE 4 Medicines – Drugs – Serums (11/22/63 – 8/23/64)," Box 14: "Gen HE [Health] 3, 8/1/67 – ," General Files: Health, White House Central Files (WHCF), Papers of Lyndon Baines Johnson, President, 1963-69, LBJ Presidential Library, University of Texas, Austin, TX, [Hereafter, "LBJ Library"].

objective" persisted – "to provide better protection to the public and better service to those we serve" – the job became untenable as American industry made "tremendous strides" since the start of World War II.[3]

But the winds of change were starting to blow. In 1955, officials finally persuaded Congress to fund a Citizens Advisory Committee to study the work of the FDA and suggest changes. As a result, Larrick happily reported that higher budget appropriations had accomplished the Committee's recommendation that "staff be expanded realistically." The work of the Citizens Advisory Committee, and its follow-up a few years later, dramatized the vast responsibilities of the FDA and its need for more resources. By 1962, Larrick's staff had increased by "two-thirds" and would grow larger still over the next decade. Also represented in the booming budgets of the Department of Health, Education, and Welfare (HEW), home of the FDA, this sea change resulted from a number of factors including the work of the Citizens Committee, the ongoing attention of politicians like Senator Estes Kefauver, growing liberal majorities in Congress and the Democratic party after 1958, and the election of John F. Kennedy, who had weaved a pledge to be the consumer's lobbyist into his campaign stump speech.[4]

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[3] George Larrick, "FDA Reports to the NARD," Meeting of the National Association of Retail Druggists, Minneapolis, MN, October 9, 1957, *Speeches and Papers of George P. Larrick, Vol. 3*. For more on the staffing details, see Larrick, "Progress of the 1938 Federal Food, Drug, and Cosmetic Act," Annual Meeting of American Bar Association, August 17, 1954, *Speeches and Papers of George P. Larrick, Vol. 2*. According to Daniel Carpenter, President Dwight Eisenhower and Congress both gave the FDA "shrift treatment," "as FDA staffing dropped by 155 positions (13 percent) from 1950 to 1954." Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton: Princeton University Press, 2010), 132.

[4] George Larrick, "FDA Reports to the NARD," Meeting of the National Association of Retail Druggists, Minneapolis, MN, October 9, 1957, *Speeches and Papers of George P. Larrick, Vol. 3*. For more on the influence of the Citizens Advisory Committee, which was primarily comprised of industry representatives, see Carpenter, *Reputation and Power*, 132-3 & 167-9; Larrick "two-thirds" quote is cited in Carpenter, 133n18. Carpenter argues, "The boosts in FDA

The fortunes of the FDA improved with the arrival of a new era in consumer protection, but the future of the Federal Bureau of Narcotics (FBN) looked far less bright. Much like the FDA's Citizens Advisory Committee, the American Medical Association (AMA) and American Bar Association (ABA) convened a joint committee in 1955 to "study addiction and the punishment of addicts." The AMA-ABA committee elevated the voices of "health care workers railing against the conceit of addiction as a crime, and legal experts emphasizing the deleterious effects of this approach on the criminal justice system." Publishing its final report, *Drug Addiction: Crime or Disease* in 1961, these respected professional organizations challenged the punitive treatment of users, suggested the end of mandatory minimum sentences for all but major distributors, and advocated an overall shift towards the medically assisted rehabilitation of drug addicts. Throughout the AMA-ABA committee's work, FBN Commissioner Harry Anslinger repeatedly challenged their findings and his bureau remained opposed to nearly all of the group's suggestions.[5] But Anslinger's power was waning and observers believed, "The Federal Narcotics Bureau is in trouble. For decades this agency lived high on bureaucratic fastness where FBI men and other Jovian characters dwell… But all that is ending now."[6] Critiques of the FBN came with a renewed focus on alternative approaches and raised new demands for a White House Conference to bring together the diverse opinions about how to proceed.

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funding in the 1950s were noticeable, all the more so because Eisenhower's 'economy program' meant cuts for many other government agencies," 168n79. For more on Kennedy's pledge and the sources of the "third wave" of the American consumer movement, see Lizabeth Cohen, *A Consumers Republic: The Politics of Mass Consumption in Postwar America* (New York: Random House Books, 2003), esp. Ch. 8.

[5] Kathleen Frydl, *Drug Wars in America, 1940-1973* (New York: Cambridge University Press, 2013), 233-7.

[6] Benjamin DeMott, "The Great Narcotics Muddle," *Harper's Magazine*, March 1962, 46-54. This article can also be found in the Kennedy White House Staff Files of Lee White, with a series of underlines and notations that indicate it was read closely by at least one member of the Kennedy administration.

Elevating debates that had been simmering for the past decade or more, the Kennedy administration finally acceded to these demands and hosted a White House Conference on Narcotics and Drug Abuse in the fall of 1962. The expansive focus of the conference and its follow-up, the Presidential Advisory Commission on Narcotic and Drug Abuse, created a new platform for the FDA to publicize its need for more authority to police the illegal diversion of amphetamines and barbiturates. The FDA and others pursuing stricter control of amphetamines and barbiturates as well as those at the state and federal level who were increasingly dissatisfied with the FBN found new support for their priorities. Protecting Americans from dangerous drugs and transferring all federal drug policing to the Department of Justice were at the top of this list.

Amid the opposition of entrenched bureaucrats and powerful Congressional committee members, the transfer of policing to Justice and remaking of its authority to perform those functions was not fully accomplished until a decade later. Nonetheless, throughout this entire period both Lyndon Johnson and Richard Nixon used the Kennedy administration's recommendations as a yardstick to measure their own accomplishments in the drug field.[7] Subsequent chapters examine the bureaucratic turf wars, administrative decisions, and societal upheavals that altered those recommendations. This chapter demonstrates how the Kennedy administration's efforts to secure political majorities, reactions to dramatized consumer dangers, and confidence in government's ameliorating power all cleared a space for the FDA to finally

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[7] For the Johnson administration, see Dean Markham, "Implementation of the Preview of Recommendations Contained in the Final Report of the President's Advisory Commission on Narcotic and Drug Abuse," August 25, 1965, Executive File Folder: "HE 4 Medicines – Drugs – Serums, 8/24/64," Box 15: "Ex HE 4, 8/24/64," WHCF, LBJ Library. For the Nixon administration, see Jeff Donfeld to Bud Wilkinson, October 15, 1969; Folder: Drug Abuse Memos [2 of 2]; Box 29: Drug Abuse – Presidential Memos to Questions and Answer Booklet on Drugs; Staff Member and Office Files: Charles Burnham "Bud" Wilkinson; White House Central Files; Richard Nixon Presidential Library, Yorba Linda, CA, [Hereafter, "Nixon Presidential Papers"].

achieve the tighter control of dangerous drugs that Larrick and other officials had doggedly pursued for the past two decades.

John Kennedy rarely led the way in tackling domestic issues. His contemporary success and ongoing historic reputation instead depended on popular reactions to problems thrust upon him. The same dynamic of reactive, rather than formative, domestic policy-making characterized his administration's growing engagement with reform of narcotics laws and dangerous drug regulation. In the 1960 Presidential campaign against Richard Nixon, two of Kennedy's campaign pledges – to hold a White House Conference on Narcotics and to serve as the consumer's lobbyist in Washington – heightened public demands for Presidential action on these issues. Residents of states such as California and New York, fearing the consequences of immigration, urbanization, and a growing youth culture, demanded more government action against drugs. However, politicians' long-time support for repressive penalties had already taken punitive options to their maximum conclusion without much evidence of results. On the other hand, liberals like California Governor Edmund "Pat" Brown advocated a more enlightened approach supported by extensive research and more assistance from the federal government. As national media coverage of the ineptitude of the Federal Bureau of Narcotics also increased during this period, these state politicians felt the pressure for action and increasingly pinned their hopes on a new federal strategy.

By the late summer of 1962, two other events inspired demands for more consumer protection from dangerous pharmaceuticals. In July, reports began to spread of the tranquilizer thalidomide causing birth defects and deaths across Europe. A month later, Marilyn Monroe died from an overdose of barbiturates. In response, White House organizers expanded the focus of

their Conference on Narcotics to also examine dangerous drugs – adopting the concept of "drug abuse" and expanding the conference's plans to include more discussion of policing psychoactive pharmaceuticals.

Concepts and actions so commonplace in our own era as to seem almost timeless thus originated with the presidency of John Kennedy. Before 1962, no U.S. chief executive had ever used the phrase "drug abuse" and no White House had ever convened a national bi-partisan group to study the issue. When Kennedy took office, legislation to regulate dangerous drugs still languished in the Senate and House, barbiturates and amphetamines were still sold freely through licit and illicit channels, and the concept of "drug abuse" did not yet dominate the presidential politics of drug policy. However, by the fall of 1962, Kennedy and his advisors harnessed related movements to reform punitive narcotics policy and to ensure pharmaceuticals were safe and effective, helped bind them together in the public imagination, and thus made the policing of pharmaceuticals into a national issue. After holding a White House Conference on Narcotics and Drug Abuse in September 1962, the Kennedy administration sought to demonstrate its ongoing commitment and convened the President's Commission on Narcotics and Drug Abuse in January 1963. Completing its work less than a week before the President's fateful trip to Dallas, this Commission enunciated a new series of federal priorities in drug control that led to the policing of pharmaceuticals and, ultimately, established the punitive power undergirding the modern war on drugs.

While their boss may have been preoccupied with foreign policy, Kennedy's advisors idealized their domestic programs as continuing the progressive traditions of the New Deal, creatively using the full power of the federal government to promote the general welfare and expand the access of all Americans to life, liberty, and happiness. With a faith in rational,

scientific organization and the ability of government to conquer everything from cancer to space travel, this ideal lay behind the New Frontier and Great Society. Lee White, a lawyer and advisor to Kennedy and Johnson, represented the experience and influence of those White House advisors and executive department bureaucrats motivated "to work in the government for betterment of people and society." After his first government job in the legal division of the Tennessee Valley Authority, White became an advisor to Senator John Kennedy in 1954, while also assisting in the work of the Hoover Commission.[8] From his small office on the second floor of the White House, White helped orchestrate the administration's programs on issues from Civil Rights to consumer protection to drug policy.[9]

Many of these advisors, particularly a public utility lawyer such as Lee White, had studied in the mid-century legal tradition that arose out of the New Deal and advocated expansive federal power to regulate based on an equally broad reading of the interstate Commerce Clause.[10] However, even this stance still had some conventional limits. Throughout the Kennedy and Johnson administrations, Presidential advisors continued to respect the primacy of local and state government in law enforcement matters, restricting themselves to supporting research, uniform state laws, and grants-in-aid.[11] Nonetheless, federal power to police dangerous

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[8] "Biographical Profiles: Lee C. White," John F. Kennedy Library, www.jfklibrary.org. For quote on government work and more on White's career, including his time working for Joe Kennedy on the second Hoover Commission, see Lee White, *Government for the People: Reflections of a White House Counsel to Presidents Kennedy and Johnson* (Lanham, MD: Hamilton Books, 2008), 9 & 27.

[9] Adam Bernstein, "Lee C. White, trusted advisor to Kennedy and Johnson on crucial civil rights strategies, dies," *Washington Post*, November 2, 2013.

[10] Stephen Gardbaum, "New Deal Constitutionalism and the Unshackling of Government," *University of Chicago Law Review* 64 (1997): 483-566.

[11] Michael Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2007). Flamm argues that Kennedy and Johnson maintained the primacy of local and state governments in law enforcement as a means

drugs was not achieved solely in the name of punitive law enforcement. The politics of consumer protection were responsible for the FDA's ascendant authority to police dangerous drugs, and, in the early 1960s, both the consumer movement and the FDA were surging to the forefront of public priorities and federal appropriations.

The States Take a Stand

Let the states handle it. So went the most common refrain in opposition to more federal control of psychoactive pharmaceuticals. Throughout the 1950s, the American Pharmaceutical Association (APA) pushed a Uniform State Law and argued this would make more federal legislation unnecessary. Other trade groups and conservative politicians toed a similar line, and their position remained as strong as the deep historic tradition of state and local primacy in all matters of regulation and law enforcement. The states licensed pharmacists and doctors, city vice squads handled the bulk of drug policing, and the FDA's regulatory reach only extended to activities involved in interstate commerce. However, much as FDA recognized their own need for more resources, individual states came to view the federal government as a vital ally in their own fights against drug addiction.

In addition to the federalist tradition of state and local primacy in law enforcement, drug use remained a local issue because public concerns about narcotic addiction remained confined to a few states and localities. With a myopic perspective on the criminalized addict, bureaucratic and political statements from this period situated the problem in four states - New York,

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of passing the buck and not taking full responsibility for ending the riots spreading across urban America in the mid-1960s. However, this historical record shows and subsequent dissertation chapters will demonstrate, that this concept of primacy had a strong basis throughout U.S. history that Johnson sought to overcome in order to take more effective action against crime.

California, Michigan, and Illinois.[12] The shared characteristics of those states revealed some of the underlying causes of public concern with the menace of narcotics. All four had experienced an industrial boom, which brought with it rapid urbanization and substantial numbers of immigrants or southern Black migrants or both. As stereotypical fears of people of color sparked social panics about drugs, a booming youth culture added new impetus for preventing narcotics from causing juvenile delinquency.[13] In California, for example, a national recession in 1958 exacerbated growing discontent with the federal Bracero program that permitted Mexican nationals to enter the country for temporary work. The Bracero program and its attendant policing of "unauthorized workers" heightened the public's conflation of "Mexican" with "illegal."[14] Especially in Southern California, this criminalization of color was inextricable from social panics about narcotics and thus focused attention and blame southward to the vast under-policed border between California and Mexico. Because border control was a federal responsibility, California politicians had a direct interest in national power to police drugs.

By the late 1950s, many states had reached the limit of their resources to combat the problem and, much like the FBN, only experienced limited success with the harsh punishments passed over previous decades. As states "retreated from death penalties and mandatory minimum sentences to more reliance on treatment," they also turned to the federal government for

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[12] See numerous examples, such as "Report of the Interdepartmental Committee on Narcotics," January 10, 1961, 15. Available in "Interdepartmental Committee on Narcotics," Federal Agency Files, Reel 14; and "Conference Planning Preliminary," White House Conference on Drug Abuse File, Reel 4, Dean Markham Papers.

[13] Beth Bailey argues nationalizing forces, opportunities for mobility, and developing youth identities all transcended and thereby threatened local authority. Bailey, *Sex in the Heartland* (Cambridge, MA: Harvard University Press, 1999), 6.

[14] Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2003).

assistance.[15] Many state officials and local observers came to accept the view of Dr. Laurence Kolb, founder of the Public Health Service's narcotic rehabilitation farm at Lexington, that "drug addiction" was "neither menace nor mortal sin, but a health problem." Throwing shade on Anslinger's real motivations, others suggested the "need for consolidation of effort and a free flow of information into some central, jointly operated body more interested in accomplishing the mission than justifying itself."[16]

However, while leaders from states such as New York sought federal funds for the construction of hospitals and creation of treatment programs, California politicians had more direct uses for federal power. Focused on "the steady stream of narcotics" coming into southern California from "below the border," Governor Edmund "Pat" Brown argued in the spring of 1960 that the full attention of the Department of State should be focused "on the seriousness of the Mexican Border problem." He also urged President Eisenhower - and later Kennedy - to call a narcotics conference in order "to attain stronger federal co-operation and action in the narcotics field, particularly in terms of border control." A *Los Angeles Times* editorial agreed with Brown's belief "that failure of the federal government has hurt the state and local efforts at narcotics control in California."[17] Brown and the California Congressional delegation's calls for

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[15] David Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), 230-2.

[16] Gene Sherman, "Experts Differ Widely on Remedy for Narcotics Evils," also available in reprint of full series: "Mexican Monkey on our Back," found in Jack Valenti memorandum to LBJ, with attached file, April 13, 1964, "HE 4-1 Narcotics, 11/22/63 - 4/13/64 (Executive File)," Box 16: "EX HE 4-1 11/22/63 – ," WHCF, LBJ Library.

[17] Robert Blanchard, "Brown Asks Dope Parley in Capital: Governor Writes Eisenhower that Boost in U.S. Narcotic Traffic Points Up Need," *Los Angeles Times*, March 23, 1960, 1. "The Governor on Narcotics Laws," *Los Angeles Times*, March 1, 1960, 84; Robert Blanchard, "Governor Refuses Narcotic Session: Offers Instead 7-Point Administrative Program and New Commission on Dope," *Los Angeles Times*, March 15, 1960, 1.

a White House Conference on Narcotics thus reflected concerns about the limited reach of state and federal power.

The dynamic of a White House Conference reflected postwar liberal efforts to reform punitive drug policies. To combat drug addiction, Brown and other postwar Democrats endorsed a multi-dimensional approach: more focus on traffickers, more medical treatment for users, and wide-ranging, unbiased scientific research to finally provide statistics divorced from political propaganda. Proposals for a White House Conference were representative of this agenda. Characteristic of mid-century liberalism, these policies may have avoided purely punitive measures but nonetheless revealed their authors' affection for state power. Amid calls for more funding of treatment and research programs, Governor Brown endorsed an extension of the first mandatory drug testing of parolees using Nalline.[18] Similarly, the state, under Brown's leadership, later adopted the nation's first civil commitment laws, forcing all alleged addicts to undergo mandatory treatment.[19] Nonetheless, in 1958, during his first race for governor, Brown faced the state's burgeoning conservative forces and questions about his record on drugs while serving as the state's Attorney General. In response, Brown's running mate and replacement for the post of Attorney General, Stanley Mosk "opened a crossfire," calling for a re-examination "of the whole crime pattern in the state."[20] Similar to the midterm sweep for liberal Democrats at the federal level, these and other tactics allowed the Democrats to dominate the state elections in

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[18] "Brown Hopes Nalline Tests End Dope Woes," *Los Angeles Times*, May 13, 1960, 26. Robert Blanchard, "Governor Refuses Narcotic Session: Offers Instead 7-Point Administrative Program and New Commission on Dope," *Los Angeles Times*, March 15, 1960, 1.
[19] For discussion of civil commitment laws by Kennedy's commission and others, see, for example, "Transcript of Proceedings, Panel 4 – Civil Commitment," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers.
[20] Quoted in Rufus King, *The Drug Hang-up,* 230.

1958 -- Brown and Mosk won, a Democrat stole Knowland's former seat, and the Democrats controlled both chambers of the state legislature for the first time since 1889.[21]

Brown and Mosk prevailed because they promised to do something about drugs, but those pledges entailed more study of the entire scope of the issue and, in turn, drew fresh attention to the illegal diversion of pharmaceuticals. In doing so, these proposals evinced the connection between reform of existing narcotics laws and expansion of programs to control potentially addictive pharmaceuticals. For example, Brown proposed, "to attack the problem through a seven-point administrative program including… a crime commission on narcotics."[22] Arguing, "stiffer sentences alone would not necessarily curb 'this terrible traffic' in narcotics," Brown presented a program that could have been an archetype for the Kennedy administration as they subsequently endorsed a legislative overhaul that expanded the reach of federal drug control.[23] Brown and other liberal Democrats endorsed such expansive programs to both reform the current system and hold off more narrowly punitive proposals. As Brown argued, "we must be careful when we correct an evil that we do not create a more serious evil."[24] Such care required more research on the full scope of the drug scene, embodied in Brown's crime commission on narcotics and Kennedy's Commission on Narcotic and Drug Abuse.

More research on the full dimensions of the drug problem, in turn, brought more attention to the misuse of dangerous drugs and the need for federal intervention to prevent diversion from legitimate channels. The State Bureau of Narcotics reported a 31% increase in the use of

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[21] Seymour Korman, "California's Gov. Brown in focus for 1960: Knowland hits bottom; Nixon suffers," *Chicago Daily Tribune* 6 November 1958, 3.
[22] Robert Blanchard, "Governor Refuses Narcotic Session: Offers Instead 7-Point Administrative Program and New Commission on Dope," *Los Angeles Times*, March 15, 1960, 1.
[23] "Brown Warns of Danger in Narcotics Drive," *Los Angeles Times*, March 30, 1960, 18.
[24] "Brown Warns of Danger in Narcotics Drive," *Los Angeles Times*, March 30, 1960, 18.

amphetamines and barbiturates "in just one year."[25] Surmising the source of the problem, a *Los Angeles Times* editorial argued, "The major supply point for California is across the Mexican border where millions of units are shipped from U.S. manufacturers and then dispensed openly and without prescription."[26] Mosk argued "legal drug use" was "out of control" in the state and proposed stricter controls and records for prescriptions.[27] At the same time, the Governor's Special Study Commission on Narcotics reported, "federal controls are so inadequate that large consignments of dangerous drugs can easily be ordered from out-of-state manufacturers."[28] Recommending a "five-point legislative program" to Congress, Brown's Commission "urged intrastate (as well as interstate) trafficking in dangerous drugs be made a federal offense."[29]

As the FDA continued to struggle against this problem, California's focus on federal power and border control provided another avenue through which regulation of pharmaceuticals entered the national conversation about drugs. A resolution sponsored by California Democrats in House of Representatives, which called for a White House Conference on Narcotics, also committed presidential hopeful, John Kennedy, to the issue. Led by FDR's son and personal secretary, Congressman James Roosevelt, California's delegation had proposed multiple resolutions advocating for a White House Conference and prompted the Judiciary Committee to hold hearings on the matter. Those hearings gave a national platform to Mosk and aired criticisms of Anslinger and the inaction of the Interdepartmental Committee on Narcotics.

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[25] "The Peril of 'Dangerous Drugs,'" *Los Angeles Times,* August 19, 1962, F6.
[26] "The 'Dangerous Drug' Menace," *Los Angeles Times,* July 3, 1961, B4.
[27] Daryl Lembke, "Legal Drug Use 'Out of Control,' Mosk Says: Percodan Cited by Attorney General as Senate Group Studies 16-Point Program," *Los Angeles Times*, March 26, 1963, 2; "Percodan Control Will be Costly, Mosk Says: Will Request Additional $200,000 to Pay for 18 More Agents in Narcotics Bureau," *Los Angeles Times*, May 29, 1963, A8.
[28] "The Peril of 'Dangerous Drugs,'" *Los Angeles Times,* August 19, 1962, F6.
[29] "Some Doctors Object to Curbs on Drug Sales: Legislators Cautioned Against More Stringent Controls of Barbiturates," *Los Angeles Times*, October 21, 1961, A6.

Recommending the measure to the full House, the hearings also resulted in the passage of H.R. 431, endorsed by Kennedy during his Presidential campaign. [30]

With the help of his brother, Robert, John Kennedy began locking down support in key states soon after the 1958 elections. This included California, and the Kennedys tapped Pat Brown and other Democratic leaders, such as Stanley Mosk, to lead their charge in the Golden State.[31] Taking his orders from Kennedy headquarters in Room 8315 of the Biltmore Hotel in downtown Los Angeles, the Governor of California managed to hold enough votes from the state to secure Kennedy a first ballot victory.[32] Brown would be equally vital in the general election battle with Richard Nixon for the Vice President's home state. No doubt encouraged by Brown and Mosk's success in 1958, Kennedy's team thought he could compete in the state and took on any issue that would help him garner the support he needed to win – including narcotics. A month before the election, Kennedy sent a telegram to Attorney General Mosk, noting he had "long been aware that the traffic in illicit narcotics is one of our major law enforcement problems." Kennedy outlined his vision for a new Federal drug policy and assured the California Attorney General, "if I am elected President I will convene [a] White House Conference on

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[30] "Expressing the Sense of the House of Representatives that the President Should Call a White House Conference on Narcotics," unpublished hearings before Subcommittee No. 2 of the Committee on the Judiciary, 86th Congress (1960).

[31] In June 1960, Joseph Kennedy and Hyman Raskin flew from Lake Tahoe to Sacramento to meet with Brown and ensure his cooperation at the convention. Edmund G. Brown, recorded interview by Donald C. Swain and William K. Coblentz, July 29, 1964, transcript, 9-10, John F. Kennedy Library Oral History Program, John F. Kennedy Presidential Library and Museum, Boston, MA.

[32] White, *Making of the President, 1960*, Ch. 6.

Narcotics as soon as it is reasonably practicable."[33] It would take more, however, to expand the new administration's attention to include both narcotics and dangerous drugs.

Turf Wars Take Root

Despite his campaign promise, Kennedy had little concern for narcotics addiction or reform of drug policy when he took office, and many Americans would have agreed with the new president. The 1960 Democratic platform tackled numerous issues, such as national defense, civil rights, labor policy, and tax reform. Narcotics, however, was not one of them.[34] At the same time, the reputation and power of the Federal Bureau of Narcotics was waning. While Harry Anslinger had mastered the art of publicizing the work of his bureau and securing more stringent penalties against narcotics, the FBN existed on the periphery of national concerns, especially at the height of the Cold War. Reflecting his agency's marginal importance, Anslinger increasingly conducted the FBN's affairs from the telephone in his small two-story home in Hollidaysburg, Pennsylvania. Despite its international responsibilities, Anslinger's bureau operated on a budget shockingly low by today's standards -- approximately $4 million a year, which supported about 400 agents in their attempts to stem the flow of drugs through police authority still precariously based on the revenue-raising power of the Treasury Department.[35] Punitive and unwilling to consider most forms of medical treatment for addiction, by the 1950s Anslinger's bureau had secured stricter and stricter penalties for narcotics use and even the death penalty for selling heroin to minors. Harry Anslinger's effrontery in protecting his bureau created many enemies.

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[33] "Text of Telegram Sent to Hon. Stanley Mosk, Attorney General of California, by Senator John F. Kennedy, October 6, 1960," Reproduction available in "Conference Planning Preliminary," White House Conference on Drug Abuse File, Reel 4, Dean Markham Papers.
[34] Democratic Party Platforms: "Democratic Party Platform of 1960," July 11, 1960. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=29602.
[35] DeMott, "The Great Narcotics Muddle," 46-54.

Such distaste with Anslinger and the Treasury Department's harsh tactics increasingly inspired calls for a White House Conference and other reform measures.

The FBN's slow but steady decline began under President Dwight Eisenhower, but Anslinger's sense of danger made him and other FBN officials all the more defensive of their turf. In the press and congressional hearings, Anslinger used the Cold War rhetoric of the day to preserve the status of his small cohort of agents engaged mostly in overseas surveillance, arresting heroin users, and harassing the occasional doctor still prescribing maintenance doses for addicts. During a House Judiciary committee hearing in the spring of 1960, Anslinger reminded his audience, "the Red Chinese could stop the traffic if they wanted… [with] the great source of the supply being Red China."[36] Anslinger also continued to decry the dangers of marijuana, though he denied any discernable usage of cocaine and refused to take on the task of helping to regulate pharmaceuticals.[37] In short, Anslinger maintained any stance that protected the sanctity of his small bureaucratic domain, and this included opposition to any calls for more interdepartmental cooperation. Any cooperation that did occur was superficial, as Anslinger and Treasury Department officials undermined any reform effort in order to maintain the status quo. Responding to public suggestions for a national conference on narcotic addiction, Anslinger dismissed such an effort as a "waste of time."[38]

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[36] "Expressing the Sense of the House of Representatives that the President Should Call a White House Conference on Narcotics," unpublished hearings before Subcommittee No. 2 of the Committee on the Judiciary, 86th Congress (1960), 86-7.

[37] In 1962, Anslinger still told audiences, "Our cocain [sic] users are practically nil throughout the world. Synthetic drugs are under control." Harry J. Anslinger, Former Commissioner, Federal Bureau of Narcotics, Prepared Statement, "Panel 1 - Law Enforcement and Controls," September 27, 1962, 10, "Transcript of Proceedings, Panel 1 - Controls," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers.

[38] DeMott, "The Great Narcotics Muddle," 53.

Ironically, although the Cold War kept narcotics on the back burner, Anslinger used those more pressing concerns to maintain his meager fiefdom. Many agreed with Anslinger's reticence to take more drastic action on an issue that seemed inconsequential in comparison to Cold War clashes and Civil Rights protests. Many officials, including the new Kennedy administration, also hesitated to directly challenge Anslinger or his bureau. Democrats still thought of Anslinger as "The Untouchable" and Kennedy chose to retain him as commissioner, at least through the summer of 1962.[39] Even after his retirement, Anslinger still sat on the dais at the opening of the White House Conference to bask in more formal praise for his years of service from Robert Kennedy.[40]

Political prognosticators also vacillated in their cost-benefit analyses of taking on drug policy reform. The Bureau of the Budget argued a Conference would unnecessarily dramatize "a problem which, when balanced against other social problems, is not of sufficient significance or seriousness to merit this treatment."[41] In the minds of many politicians and voters, narcotics remained a local issue, with most of the imagery and narrative focused on the stereotypical heroin user or "junkie."[42] Even if official estimates of 45,000 to 50,000 heroin users proved too low, the American public was largely removed from personal experience with addiction and likely had few other thoughts on the issue.[43] As Benjamin DeMott wrote in January 1962, "A

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[39] DeMott, "The Great Narcotics Muddle," 46. For more on Anslinger's retirement, see, for example, Frydl, *Drug Wars in America*, 370.
[40] Robert Kennedy, "Remarks to White House Conference," Dean Markham Papers. The day before the conference Anslinger also was given an award from JFK, see speech in Narcotics Files.
[41] "Staff Memorandum on Narcotic Addiction," Bureau of the Budget, 11 April 1962, "Narcotics, Folder 2 of 7," Lee White Files, JFKL.
[42] Eric C. Schneider, *Smack: Heroin and the American City* (Philadelphia: University of Pennsylvania Press, 2008), 43.
[43] See, for example, "Progress Report of Ad Hoc Panel," Dean Markham Papers.

polltaker who sought to read the national pulse on the topic of drug addiction would learn, of course, that most citizens are solidly against heroin--but nothing else worth recording."[44]

Despite this apparent public indifference, critiques of the FBN received increasing attention in the national media, creating more demands as well as possibilities for action by the Kennedy administration. Following the lead of the American Medical and Bar Associations, rebukes of the FBN and calls for a White House Conference came from many professional organizations, including the National Association of Attorneys General and the American Ethical Union.[45] Criticism mounted from all directions. The New York City Chief Magistrate denounced "sadistic" FBN policies, and, according to DeMott, "objections to the Bureau's methods" had recently appeared in "periodicals ranging in temper (and audience)" from "elite" monthlies to "Sunday supplements."[46] Calls for a White House Conference, DeMott argued, were "designed to transfer discussion of narcotics issues from their present setting, in the shadows of a [bureaucratic] feud, to neutral ground."[47] He concluded, "there is at least a chance that a formal Presidential inquiry might redirect the energy hitherto spent by public officials and private professionals in abusing each other."[48]

Without sufficient authority or political motivation to drastically alter the institutional basis for federal drug policy, the Kennedy brothers initially worked through back channels to effect change and appease political backers, such as Brown, Mosk, and New York Mayor Robert

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[44] DeMott, "The Great Narcotics Muddle," 47.
[45] Richard B. Hertz, Chairman, Public Affairs Committee, American Ethical Union, to Secretary Abraham Ribicoff, Department of Health, Education, and Welfare, January 26, 1962, "Narcotics, Folder 2 of 7," Lee White Files, JFKL.
[46] Examples included, respectively, *Commentary* and *This Week*, DeMott, "The Great Narcotics Muddle," *Harper's Magazine*, March 1962, 46.
[47] DeMott, "The Great Narcotics Muddle," 53.
[48] DeMott, "The Great Narcotics Muddle," 54.

Wagner, Jr. Those actions included Robert Kennedy quietly persuading Harry Anslinger to at least consider a more balanced approach, and both the White House and Justice department taking some measure of control over the Interdepartmental Committee on Narcotics. Recounting his "insider's tale" to Benjamin DeMott, Anslinger described Attorney General Kennedy's attempts to gain his trust, stating, "Bob called me right in after he took office. He said he got more help during that labor-rackets investigation of his from the Narcotics people than from anybody else in any department." After praising the 69 year-old, Kennedy pressed him on "the matter of nonprosecution of felonious addicts." Anslinger remembered, "Bob said, 'Listen, you've got to give a little,' and I said: 'Okay, Bob… But only a *little*.'"[49]

Bobby may have appreciated the help of the Narcotics Bureau in the past, but he now headed the Justice Department and his own political aspirations demanded more than the old man's tepid assurances. In the spring of 1961, the Attorney General appointed his Special Assistant, John Seigenthaler, to represent Justice on the Interdepartmental Committee on Narcotics (ICN).[50] To represent the White House, President Kennedy chose Lee White, who worked closely with Seigenthaler to effect the transition from the outdated ICN to Kennedy's Conference and subsequent Commission on drugs.[51] More often remembered for his work on

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[49] DeMott, "The Great Narcotics Muddle," 48; Italics in original, all quotes from Anslinger except "nonprosecution," which is DeMott's language.

[50] Meeting Minutes, Interdepartmental Committee on Narcotics, July 19, 1961, pg. 5, "Narcotics, Folder 2 of 7," Lee White Files. See also, Meeting Minutes, Interdepartmental Committee on Narcotics, April 7, 1961 (Revised April 19, 1961) and Charles Winick, Director, Narcotic Addiction Program, American Social Health Association to John Seigenthaler, Special Assistant to Attorney General, Justice Department, March 14, 1962, "Narcotics, Folder 2 of 7," Lee White Files. A staff memo on "Narcotic Drug Bills" from the spring of 1962, also noted, "Justice, some time ago, requested that we inform them of any action on the White House Conference." Earl A. Radley to Sam Hughes, March 20, 1962, "Narcotics, Folder 2 of 7," Lee White Files, JFKL.

[51] Meeting Minutes, Interdepartmental Committee on Narcotics, April 7, 1961 (Revised April 19, 1961), "Narcotics, Folder 2 of 7," Lee White Files, JFKL.

civil rights, White remained responsible for coordinating White House drug policy actions through the early years of the Johnson administration.

Despite Lee White's best efforts, organizing the conference remained a problem to be overcome, as the reticence of Anslinger and more pressing international issues limited the possibility of taking a strong national stand for drug reform. No issue better represented the conjunction of these two roadblocks than the ICN's debate over the United Nations Single Convention on Narcotics. Throughout the 1950s, Anslinger and the Federal Bureau of Narcotics promoted a new Single Convention on narcotics, under the auspices of the United Nations, to enhance international efforts "to limit production and distribution of narcotic drugs, to the legitimate needs of medicine and science." However, when the U.N.'s Plenipotentiary Conference finally completed the Single Convention on March 25, 1961, Anslinger and the FBN argued it "would weaken international control of narcotic drugs, and it is unacceptable to the United States."[52] Reflecting the views of the Bureau, Anslinger's deputy working in the Middle East exclaimed, "Surely, the Devil himself must have attended the voting on the Single Convention… This is an open invitation to grow poppy and produce opium." He concluded, "I think we should make the fight of our life to prevent ratifications of this Convention."[53] With equally hyperbolic language, Anslinger magnified these complaints through the rhetoric of the

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[52] "Report of the Interdepartmental Committee on Narcotics," January 10, 1961, 15. Available in "Interdepartmental Committee on Narcotics," Federal Agency Files, Reel 14, Dean Markham Papers. Reflecting the abrupt about-face of the FBN on this issue, the report was sent to the President in January with a Single Convention as its top recommendation, but by the time of its publication, a note had to be added to the top of the page, stating the U.S. no longer supported such an agreement.

[53] Garland Williams, Federal Bureau of Narcotics, Tehran, Iran to Harry J. Anslinger, Commissioner of Narcotics, Treasury Department, April 15, 1961, Available in "Narcotics, 1961: 28 March - 11 September (1 of 7 Folders)," Lee White Files, JFKL.

Cold War, arguing Soviet bloc countries in Southeast Asia would flood the world market with opium and heroin.[54]

Dragging its feet, the Interdepartmental Committee remained focused on the Single Convention, but pressure mounted for Kennedy to take some kind of action. Lee White reminded the group that "the White House was continuing to receive inquires."[55] The administration needed to do something, especially as inter-departmental disagreements postponed ratification of the Single Convention indefinitely.[56] Assessing the situation on Capitol Hill, a White House memo from March 1962 noted "considerable Congressional pressure on bills in this area" and predicted, "sharp pressure will develop in the near future for some definite action on the part of the Executive Branch."[57] Senators Thomas Dodd and Congressman Hale Boggs continued to rail against juveniles' misuse of dangerous drugs. Republican Senators Jacob Javits and Kenneth Keating promoted a bill to build a federal narcotics treatment hospital in their home state of New York. Moreover, Kennedy still owed California Democrats some action on the 1960 House

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[54] Harry J. Anslinger, Former Commissioner, Federal Bureau of Narcotics, Prepared Statement, "Panel 1 - Law Enforcement and Controls," September 27, 1962, 7, "Transcript of Proceedings, Panel 1 - Controls," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers.

[55] Meeting Minutes, Interdepartmental Committee on Narcotics, July 19, 1961 (Revised August 8, 1961), "Narcotics, Folder 2 of 7," Lee White Files, JFKL.

[56] By the fall of 1961, the failure of the U.S. to sign the Single Convention had drawn the attention of the U.N. Secretary General, and through him, the White House and National Security Council. See for example, Marcus Raskin to Lee White, November 28, 1961, which includes telegram excerpt: "SYG would like to know current US policy in narcotics field… noting UN reports two US representatives trying persuade governments adhere to old narcotics protocol in preference to convention approved last spring;" and L.D. Battle, Executive Secretary to McGeorge Bundy to Marcus Raskin, December 1, 1961. Both available in "Narcotics, Folder 1 of 7," Lee White Files, JFKL. The United States did not ratify the Single Convention until May 25, 1967, "Single Convention on Narcotic Drugs," Section 18, Chapter VI - Narcotic Drugs and Psychotropic Substances, "Multilateral Treaties Deposited with the Secretary-General," *United Nations Treaty Collection*, treaties.un.org, Accessed May 18, 2014.

[57] "Narcotic Drug Bills," Memo from Earl A. Radley to Sam Hughes, March 20, 1962, "Narcotics, Folder 2 of 7," Lee White Files, JFKL.

Resolution for a White House Conference, and Javits and Keating sought to push a similar bill through the Senate in the spring of 1962.[58] Relatedly, Mayor Robert Wagner, Jr., who lost the New York Senate race to Keating in 1958, and Governor Pat Brown both faced tough re-election campaigns in the fall and hoped for the administration's assistance. When Brown's opponent, and the Kennedys' old nemesis, Richard Nixon criticized Brown for "being soft-hearted in meting out retribution to dope peddlers… the Kennedy's response was all out."[59] That response began with calling a White House Conference on Narcotics.

A White House Conference on Narcotics served many political purposes - it could publicize the President's engagement with the issue, undercut criticism from Republican Congressmen, and keep the political capital flowing to Democratic allies. Unsatisfied with Treasury's reticence and the Interdepartmental Committee's inability to resolve the Convention issue, Kennedy installed more key bureaucratic allies to assist in bending the ICN to his purposes. The administration began by forcing out Assistant Secretary of Treasury and Anslinger supporter, A. Gilmore Flues, officially accepting his resignation in December 1961. To replace Flues as Assistant Secretary, Kennedy appointed James A. Reed, who was nominally a Republican but also had a long-standing and close relationship with the President.[60] Until his

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[58] "Staff Memorandum on Narcotic Addiction," Bureau of the Budget, 10. Available in "Narcotics, Folder 2 of 7," Lee White Files, JFKL. For a list of pending legislation see "Staff Memorandum" and "Narcotic Drug Bills," Memo from Earl A. Radley to Sam Hughes, March 20, 1962, "Narcotics, Folder 2 of 7," Lee White Files, JFKL.

[59] Rufus King, *The Drug Hang-up*, 232. See also, Robert E. Thompson, "Is Political Collision at Hand? Kennedy Will Hit Democratic Campaign Trail Come Autumn," *Los Angeles Times*, May 20, 1962, F1; and Samuel Lubell, "Lubell Asks the Voters: Nixon's Big Foe is Still Kennedy, Race with Brown is Toss-Up in Straight Party Voting," *Boston Globe,* October 3, 1962.

[60] "Treasury Aide to Quit: War Friend of Kennedy Gets Assistant Secretaryship," *New York Times*, December 6, 1961, 96. For the suggestion that Kennedy asked Flues to "vacate his post," see Kathleen Frydl, *Drug Wars in America*, 371.

appointment at Assistant Treasury Secretary, Reed worked as a special assistant to Robert Kennedy in the Justice Department.[61]

With a trusted friend now running the Interdepartmental Committee and the November mid-term elections on the horizon, President Kennedy publicly added drugs to his administration's national agenda on May 29, 1962. Formally announcing plans for a White House Conference on Narcotics, Kennedy laid bare the political motivation for the event. Backing two key allies in their upcoming races, Kennedy assured his audience that he "discussed this proposal with Governor Brown of California and Mayor Wagner of New York City." Kennedy also demarcated the dimensions of his focus, acknowledging that associated issues were "many and varied including those of law enforcement, the treatment accorded addicts, post treatment procedures and perhaps most importantly an accurate and up-to-date assessment of the particular nature and magnitude of addiction in the United States." Committing his administration to ameliorating "the problems arising out of the use of narcotics and other habit-forming drugs," Kennedy opened a space for the FDA and Commissioner George Larrick to inject discussion of amphetamines and barbiturates into the national conversation about drugs.[62]

Despite this promising opening, throughout the summer of 1962 planning continued on a *narcotics* conference. Moreover, the White House's first proposed agenda split the conference into only "two main subject headings: Elimination of traffic in narcotics, and the treatment of

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[61] Reed first met John Kennedy aboard the USS Rochambeau on their way to the South Pacific and was on the island of Tulagi when JFK and his crew were rescued after their infamous shipwreck ordeal. Reed served as an usher at John's wedding after dodging flying whiskey glasses at the bachelor party, and he campaigned for his friend from 1946 onward. Emma Stickgold, "James Reed, Kennedy Confidant Served in Treasury Department," *Boston Globe*, August 28, 2006.

[62] John F. Kennedy, "Statement by the President Announcing a forthcoming White House Conference on Narcotics," May 29, 1962. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http.//www.presidency.ucsb.edu/ws/?pid=8686.

addicts."[63] A follow-up agenda suggested the program "basically, consist of two separate items: (a) rehabilitation and treatment of addicts and (b) law enforcement."[64] While HEW's involvement encouraged more focus on dangerous drugs as organizing progressed, this initial plan showed little promise for drawing increased attention to the abuse of prescription pharmaceuticals. Nonetheless, a White House Conference and the reform of existing drug policy represented only one avenue through which regulation of amphetamines, barbiturates, and other psychoactive substances became a national issue. The politics of consumer protection and a number of highly publicized events also made regulation of pharmaceuticals a hot-button issue by the fall of 1962.

Surfing the "Third Wave of the Consumer Movement"

In late summer of 1962, public crises forced Kennedy to take a strong stand on a related problem - consumer protection. In March, Kennedy gave a congressional address on "Protecting Consumers." That rhetorical commitment became real in mid-summer when news broke of thousands of European babies born with birth defects after their mothers took the sedative, thalidomide. In tandem with the death of Marilyn Monroe in August from a barbiturate overdose, this news solidified public demands for more regulation of the drug industry. Again, however, Kennedy's first foray into the politics of the "Consumer Republic" resulted from commitments made during his presidential campaign. According to historian Lizabeth Cohen, JFK's "rhetorical pledge -- 'The consumer is the only man in our economy without a high-powered

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[63] Meeting Minutes, Interdepartmental Committee on Narcotics, April 18, 1962 (Drafted April 25, 1962), 2, "Interdepartmental Committee on Narcotics," Federal Agency Files, Reel 14, Dean Markham Papers.

[64] "Agenda for a Meeting of the Working Group on the White House Narcotics Conference," May 14, 1962, "Interdepartmental Committee on Narcotics," Federal Agency Files, Reel 14, Dean Markham Papers.

lobbyist. I intend to be that lobbyist' -- met with unexpected enthusiasm from audiences." Finding success with the line, Kennedy made it a regular part of his stump speech in the fall of 1960. To those applauding, JFK's rhetoric might have referred to a range of issues, including "federal laws and regulations to protect consumers from harmful food, drugs, and cosmetics; unsafe manufactured products… misleading labeling… discriminatory banks… unfair monopolies; [and] toxic air and water."[65] Protecting consumers from the harm of a growing U.S. pharmacopeia, and more specifically, promoting "new drug labeling standards" brought talk of dangerous drugs further into the legislative spotlight. The Kennedy administration's activity in the fields of consumer protection and illegal drug policy reform, both in the summer of 1962, mutually established protecting consumers from the abuse of amphetamines and barbiturates as a national issue.

In the White House, Lee White personified the connection, as he was assigned to lead administration policy in both areas. At Kennedy's annual policy planning meeting, White revealed how the control of "dangerous drugs" fit squarely within the administration's programs to improve drug safety and protect consumers. White introduced a "Drug Labeling Act" that would make "substantial amendments to the Food, Drug and Cosmetic Act [and] will strengthen it in many ways." Similar to a bill proposed by Senator Estes Kefauver, the Administration's version included measures to standardize generic drug names, strengthen inspection and regulation of manufacturing, require that drugs be both safe and "effective," and grant the FDA more authority to withdraw drugs from the market. Although omitting the limits on drug patents

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[65] Lizabeth Cohen, *A Consumers' Republic: The Politics of Mass Consumption in Postwar America* (Vintage Books: New York, 2004), 345-6.

that first inspired Kefauver's crusade, White's version did include "strengthened authority to handle [the] illicit sale of barbiturates and other habit-forming drugs."[66]

Kennedy's advisors identified a number of actions the President could take to show his support for consumer protection, many of which also furthered the FDA's pursuit of tighter controls over psychoactive pharmaceuticals. In the budget submitted to Congress in early 1962, Kennedy and his advisors provided funding for a number of programs relevant to consumer protection, including "a 2 percent increase in staff for the Food and Drug Administration… the largest single increase in the agency's history." The White House also scheduled a speech on "Consumers" for spring, ensuring plenty of time for Kennedy's "domestic program… to be considered before the 1962 election."[67] On the morning of March 15, 1962, Kennedy invited reporters to the White House to film him reading a summary of his new program for consumers. Shortly after the evening news coverage of that announcement ended, JFK traveled to Capitol Hill to give a "Special Message to the Congress on Protecting the Consumer Interest," and, according to Lizabeth Cohen, thereby "launched a third wave of the consumer movement in the twentieth century, reminiscent of the two previous waves during the Progressive Era and the New Deal, but ultimately more influential."[68]

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[66] Theodore C. Sorensen, "Memorandum for the President," December 18, 1961, White's Memo included as, "Drug Labeling Act," within "Memorandum C: Summary of Possible Program - Possible Items for Inclusion on List of Major Kennedy Proposals in 1962," 24. For the schedule of speeches, see "V. Possible Schedule of Presidential Messages," 4. "Legislative Program, 12 December 1961 - 23 October 1963, and Undated," Lee White Files, JFKL.

[67] Theodore C. Sorensen, "Memorandum for the President," December 18, 1961, for the schedule of speeches, see "V. Possible Schedule of Presidential Messages," 4. "Legislative Program, 12 December 1961 - 23 October 1963, and Undated," Lee White Files, JFKL. John F. Kennedy, "Special Message to the Congress on Protecting the Consumer Interest," March 15, 1962. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=9108

[68] Cohen, *Consumer's Republic,* 345.

In *A Consumer's Republic*, Cohen highlights that influence, analyzing how Kennedy's action helped entrench the practice of justifying a wide array of policies "as being in the consumer's interest." The commitment Kennedy represented, however, "went far beyond presidential rhetoric." JFK's speech inspired "the enactment of dozens of [new] federal laws and regulations."[69] This included many issues studied by historians, such as credit financing, seat belts, and clean air; but Kennedy's call for consumer protection also entailed policing of the illegal distribution of amphetamines and barbiturates. Nonetheless these policies were sold as non-coercive, and in line with other uses of the full power of the federal government to regulate commerce and industry. Cohen also argues the difference between Eisenhower and Kennedy and Lyndon Johnson "was [the latter two's] greater comfort with a strong federal hand in the economy. Not only were they willing to stimulate demand through tax policy and public spending, which Ike himself did, but they also favored empowering the government to intervene in the market to protect the engine of that demand, consumers."[70] Though reticent to challenge the primacy of local and state governments in the field of narcotics enforcement, Kennedy and Johnson fully endorsed federal regulation of the distribution of dangerous pharmaceuticals in the name of consumer protection.

The President's message on "Protecting the Consumer Interest" evinced how Kennedy's vision of consumer protection necessarily entailed more federal power to regulate the manufacture and distribution of amphetamines and barbiturates. Kennedy began by presenting consumer protection as a nonpartisan issue, arguing, "Consumers, by definition, include us all." Demonstrating his commitment to a stronger government hand in regulation, JFK insisted, "it is

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[69] Cohen, *Consumer's Republic*, 346-7, for a gendered analysis of the third wave of consumerism, see also 145-9.
[70] Cohen, *Consumer's Republic,* 352.

necessary that existing Government programs be strengthened, that Government organization be improved, and, in certain areas, that new legislation be enacted." Kennedy argued the federal government required "new legislative authority for added consumer protection." At the top of the President's agenda was the need to "strengthen regulatory authority over food and drugs."[71] In addition to ensuring safe and effective drugs, Kennedy decried the "inadequate supervision over distribution" and "an extensive underground traffic… in habit-forming barbiturates (sedatives) and amphetamines (stimulants)." Pushing the point further, Kennedy called existing laws "inadequate" and advocated for new legislation "to provide consumers with better, safer, and less expensive drugs." This consumerist program, significantly for the future of illegal drug policy, included, "authorizing the Department of Health, Education, and Welfare to… Establish an enforceable system of preventing the illicit distribution of habit-forming barbiturates and amphetamines."[72] Until the passage of the Drug Control Amendments of 1965 and creation of BDAC, Commissioner George Larrick, other FDA administrators, and interested Congressmen all repeatedly cited this Presidential proposal in their arguments for granting more policing powers to the Food and Drug Administration.[73]

Kennedy may have provided the rhetorical support drug reformers desired, but as many historians have noted, his priorities remained elsewhere, and he avoided endorsing any specific

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[71] John F. Kennedy, "Special Message to the Congress on Protecting the Consumer Interest," March 15, 1962. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=9108

[72] John F. Kennedy, "Special Message to the Congress on Protecting the Consumer Interest," March 15, 1962. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=9108.

[73] See, for example, George Larrick testimony, "White House Conference on Narcotics and Dangerous Drugs - Transcript of Proceedings, Panel 1 - Controls," 23, Reel 5, Dean Markham Papers.

policies that his administration considered too "controversial."[74] In 1962, many Congressional observers associated Senator Estes Kefauver with such controversial policies. In addition to railing against excessive profits in the drug, automotive, and steel industries, Kefauver alienated many Southern Democrats with his progressive stance on civil rights.[75] Preparing for a Presidential run, he refused to sign the Southern Manifesto in early 1956, and then, a year later, cast the only Southern vote for a liberal move to make it more difficult to filibuster civil rights legislation.[76] During the Democratic Convention of 1956, Kefauver also managed to cross the Kennedy family, challenging and defeating John in a bid for the Vice-Presidential nomination.[77] Finally, Kefauver's investigation into the safety, effectiveness, and cost of prescription drugs,

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[74] See Sorensen, "Memorandum for the President," December 18, 1961. Kennedy famously remarked in a private conversation with Richard Nixon, "It really is true that foreign affairs is the only important issue for a President to handle, isn't it? I mean who gives a shit if the minimum wage is $1.15 or $1.25?" Quoted in Richard Reeves, *President Kennedy: Profile in Power* (New York: Simon & Schuster, 1994), 100; see also Maurice Isserman and Michael Kazin, *America Divided: The Civil War of the 1960s*, 4th ed. (New York: Oxford University Press, 2012), 43-61.

[75] Journalist Richard Harris quoted a "top" Kennedy "White House official" as stating, "Estes is disliked in a lot of quarters because he's such a lone wolf--and, what's worse, a reformer… [The President] doesn't want to get involved in anything controversial, and just about everything that Kefauver puts his hand to is controversial." Quoted in Philip J. Hilts, *Protecting America's Health: The FDA, Business, and One Hundred Years of Regulation* (New York: Alfred A. Knopf, 2003), 142.

[76] Joseph Bruce Gorman, *Kefauver: A Political Biography* (New York, Oxford University Press: 1971), 314-31. Gorman and others have argued popular views on Kefauver's racial liberalism may have been overblown, as Gorman notes, "He was never as liberal on racial matters as liberals hoped or conservatives feared," 314. See also, Charles L. Fontenay, *Estes Kefauver: A Biography* (Knoxville: University of Tennessee Press, 1980), 334-54.

[77] Observations of this fact and speculations of its import are scattered throughout the contemporary and historical sources, including numerous biographies of both Kennedy and Kefauver. Interviewed in the mid-1970s, Wilbur Cohen, then Assistant Secretary of HEW and the man responsible for crafting a compromise drug bill, argued he was never personally aware of any animosities between the President and Kefauver and stated, "I never heard anything on the point that was anti-Kefauver although… I don't think the Kennedy people would have gone out of their way to help Kefauver." Wilbur J. Cohen, interview by Richard McFadyen, Ann Arbor, MI, September 29, 1973, "Oral History Program of the National Library of Medicine, Bethesda, Maryland," transcript, 14.

without the FDA's cooperation or approval, "posed some very worrisome problems" for HEW and the White House. As Richard McFadyen explains, "the bill originated from a source other than the FDA itself, therefore, the bill had not gone through the traditional FDA-industry negotiations which tended to reduce opposition."[78] For all of these reasons, in his consumer protection speech, Kennedy chose to endorse "the thoroughgoing investigation led by Senator Kefauver" but not his proposed legislation, even going so far as to remove from the speech any mention of other numbered bills.[79]

While Kennedy's rhetorical support was important for the consumer protection movement, Kefauver and the FDA discovered it would take a more dramatic demonstration to secure new legislation. Between his investigative hearings in 1959-1960 and his legislative hearings from July 1961 to February 1962, Kefauver pivoted from an exclusive focus on the economics of pharmaceuticals to more concern with effectiveness and safety and softened some of his proposed patent and registration requirements.[80] Nonetheless, industry opposition endured, and the President's priorities remained elsewhere. More important, much of the public was still ambivalent about the need for added regulation of an industry that clearly had its benefits. As Dr. Louis Lasagna, a drug reformer in his own right, reflected at the time, "Most people--in and out of the medical industry--were not unhappy about the state of affairs… The drug industry,

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[78] Richard E. McFadyen, "Estes Kefauver and the Drug Industry," (Ph.D. diss., History, Emory University, 1973), 276.

[79] John F. Kennedy, "Special Message to the Congress on Protecting the Consumer Interest," March 15, 1962. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=9108. In late February, Cohen sent a memo to Mike Feldman, noting the current draft of the speech "makes reference to several numbered bills" but not S. 1552, and arguing, "it might be advisable either to mention S. 1552 by number or not to mention any numbered bills." Quoted in McFadyen, "Estes Kefauver and the Drug Industry," 293.

[80] Gorman, *Estes Kefauver: A Biography*, 352, and McFadyen, "Estes Kefauver and the Drug Industry," Ch. 8.

certainly, was riding high… Doctors and their patients had available to them a large number of new drugs that could add comfort to the lives of many and were indeed life-saving."[81]

Demonstrating the ongoing tepid support for drug reform, Morton Mintz reported, "a tranquilized, sedated public raised little outcry when the Senate Judiciary Committee gutted Senator Estes Kefauver's bill to strengthen the drug laws."[82] Therefore, Kefauver should not have been completely surprised when he discovered his conservative opponents had offered twelve new amendments that completely emasculated the bill and would preserve "only 55 lines" of his original bill.[83] At the behest of Kennedy and Assistant Secretary of Health, Education, and Welfare Wilbur Cohen, representatives of HEW and the Pharmaceutical Manufacturer's Association (PMA) met in Judiciary Committee Chair James Eastland's offices on June 8. Kefauver was not invited and the manufacturers dominated the meeting. HEW lawyers Jerome Sonosky and Theodore Ellenbogen tried valiantly for "negotiation," but were "completely outgunned" by Lloyd Cutler, chief spokesman for the PMA.[84] In July 1962, the Judiciary committee approved the bill with 11 of 12 of the industry-sponsored amendments, and "the general feeling in Washington now was that S. 1552 was dead for that session."[85]

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[81] Quoted in Hilts, *Protecting America's Health*, 141-2.
[82] Morton Mintz, "Drug Tragedy Revives Hope for Cure," *Washington Post,* August 19, 1962 quoted in Carpenter, *Reputation and Power*, 236.
[83] McFadyen, "Estes Kefauver and the Drug Industry," 305; and Richard Harris, *The Real Voice* (New York: The Macmillan Company, 1964), 180.
[84] Cohen takes responsibility for the meeting and argues for its necessity in Cohen interview transcript, 23-7. Hilts, *Protecting America's Health*, 143. This particular saga in the history of Kefauver's bill is covered in a number of places, including Carpenter, *Reputation and Power*, 236-8; Harris, *The Real Voice*; and Dominique A. Tobbell, *Pills, Power, and Policy: The Struggle for Drug Reform in Cold War America and its Consequences* (Berkeley: University of California Press, 2012), 110-118, for the most detailed legislative history, see McFadyen, "Estes Kefauver and the Drug Industry," Ch. 8, esp. 303-17.
[85] Harris, *The Real Voice*, 181; and McFadyen, "Estes Kefauver and the Drug Industry," 314-5.

Kefauver may have lost that battle, but he still had plans to win the war. The man who masterfully harnessed the new power of television during his hearings on organized crime in the early 1950s – winning an Emmy in the process – still had one media trick up his sleeve. Fed the story by Kefauver and his staff, reporter Morton Mintz was set to publish a front-page article in the Sunday edition of the *Washington Post* that would grab the attention of the American public and turn regulation of pharmaceuticals into a national issue. Making them into household names, equally revered or feared, Mintz's story introduced the country to "the heroine of the FDA," Dr. Frances Oldham Kelsey and the new danger stalking children across Europe – thalidomide.[86]

While *The Jungle* famously inspired the 1906 Pure Food and Drug Act and the tragic deaths of children from tainted sulfa drugs led to the 1938 Food, Drug, and Cosmetic Act, no event proved more significant for the history of the FDA than the social panic over thalidomide in the summer of 1962. "Thalidomide created one of those moments," according to Daniel Carpenter, "when heaven and earth seem to align, when the felt pressure for legislation produces quick, consensual action that subsumes and elides persistent disagreements."[87] The thalidomide episode marked another turning point in the growing power of the FDA – expanding its budget and political capital. Much as *The Jungle* needed an author and the elixir sulfanilamide required innocent children to turn a dangerous incident in a sensational, tragic episode, however, thalidomide needed its own publicist. Kefauver led the charge in connecting this incident to the need for more federal authority to protect consumers from potentially dangerous pharmaceuticals.

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[86] Morton Mintz, "Heroine of FDA Keeps Bad Drug Off Markets--Linked to Malformed Babies," *Washington Post*, July 15, 1962, A1.
[87] Daniel Carpenter, *Reputation and Power*, 230.

Thalidomide was part and parcel of the therapeutic revolution, a product of the same processes that developed markets for many other mood-altering medicines. Originally synthesized by Swiss researchers who shelved the drug after unpromising trials, thalidomide was rediscovered by the German company Chemie Grünenthal in 1954 during its search for a marketable "breakthrough drug." Despite conflicting toxicity reports in animal and human trials, lenient German regulations allowed Grünenthal to begin selling the drug over the counter without a prescription in October 1957 under the name Contergan. A sedative and anti-nausea medicine promoted as less dangerous than barbiturates, thalidomide had plenty of market potential, especially for women suffering through difficult pregnancies. In Sweden, the drug was even marketed for the children of overextended mothers, "sold, literally, as the 'Babysitter' drug."[88] With aggressive advertising of these apparent benefits, by 1960, "West Germans were ingesting over one million doses of the drug per day."[89]

As the drug's popularity spread across Europe, American companies considered getting in on the action, and in February 1959, Grünenthal sold the U.S. distribution rights to Richardson-Merrell, Inc., a subsidiary of the Vick Chemical Company, makers of Vick's VapoRub. A year later, without any animal trials, Merrell began distributing the drug to doctors for testing on patients, and, in September 1960 it filed an application with the FDA to officially market thalidomide under the name Kevadon.[90] The application was the first assignment for a new investigator in the FDA's Bureau of Medicine - Dr. Frances Kelsey. With an M.D. and Ph.D. in Pharmacology from the University of Chicago, Kelsey had taught and worked as a

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[88] Hilts, *Protecting America's Health*, 148.
[89] Carpenter, *Reputation and Power*, 240-1.
[90] Hilts, *Protecting America's Health*, 144-152. These details are also covered by Carpenter, Harris, McFadyen, Tone, and others.

doctor before taking the job in Washington, D.C., and she was immediately "shocked at the caliber of work" in the Kevadon application.[91]

Dr. Kelsey's initial problems with thalidomide revolved around Merrell's lack of scientific studies and dependence on selected "testimonials" from doctors and patients. This type of application was not rare and actually in line with contemporary FDA requirements, which only mandated that drugs be properly labeled and proven generally safe. At the same time, however, European researchers began to see deeper, more disturbing problems with the drug. By late 1960, German authorities discovered an "epidemic" of new birth defects and, a year later, announced their independent findings that thalidomide was causing the deformities. As the "link between drug and defects became clearer," Merrell finally withdrew its application to market Kevadon in March 1962.[92] At an April 1962 meeting of the American College of Physicians, Dr. Helen B. Taussig, professor of pediatrics at Johns Hopkins University, detailed her findings from a six-week tour of Europe about the "horrible malformities" associated with the use of thalidomide by pregnant women. A month later, Taussig told a House subcommittee about babies born with phocomelia, "a malformation of the long bones of the arms and/or legs resulting in a condition in which the hands and feet protrude directly from the baby's trunk." The phrase, from the Greek words "phoko" and "melos" meaning literally "seal" and "limb," paints a picture of the terrible condition that affected at least 8,000 babies born across Europe and likely killed several thousand more. In addition to her testimony, Taussig's forthcoming article for *Scientific American* was entered in the hearing record. Despite the doctor's shocking revelations, many in the United States considered it a European issue and few took notice of her story. The House

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[91] Quoted in Hilts, *Protecting America's Health*, 152.
[92] Carpenter, *Reputation and Power*, 239-40.

subcommittee staff, "not realizing the significance of Dr. Taussig's testimony," failed to even alert the press before her appearance.[93]

Significantly for the history of federal drug regulation, one person in Washington D.C. did notice Taussig's findings and sensed the "more dramatic story to be found within the tragedy." On April 12, a day after Dr. Taussig spoke at the College of Physicians, Jo Anne Youngblood, a staffer in Kefauver's office, showed the *New York Times* report of Taussig's speech to John Blair, Chief Economist for the Senate Anti-Trust and Monopoly Subcommittee. Blair recognized the potential in the thalidomide story and assigned Lucile Burd Wendt - the subcommittee's "lawyer, bacteriologist and chemist rolled into one" - to find out more about the drug. During her research, Wendt found the golden thread "buried" in Taussig's *Scientific American* article – the heroics of "Dr. Frances Oldham Kelsey of the FDA" who "delayed approval of the drug," protecting American babies and mothers from a dangerous medicine. After the disastrous Judiciary Committee meetings in early July, Kefauver's staffers passed the story to Morton Mintz. A seasoned investigative reporter, Mintz quickly scheduled an interview with Kelsey, "laying the groundwork," as McFadyen notes, "to crack the story."[94]

Shaping thalidomide into another dramatic demonstration of the need for more FDA power to protect consumers, Mintz published his story above the fold on the front page of the Sunday edition of *The Washington Post*. Grabbing his readers' attention, Mintz breathlessly

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[93] All quotes from McFadyen, "Estes Kefauver and the Drug Industry," 322-4, 331. Similar details available in Harris, *The Real Voice,* 161, 183-4; Carpenter, *Reputation and Power*, 240-2; and Hilts, *Protecting America's Health*, 158. According to Hilts, conservative estimates suggest 8,000 European babies born with deformities, 5-7,000 died before birth, and approximately 40 babies were affected in the United States. If the drug had been brought to market in the U.S., officials estimated an additional 10,000 babies might have been affected.

[94] McFadyen, "Estes Kefauver and the Drug Industry," 323 & 332; and Harris, *The Real Voice*, 161 & 183-4.

recounted, "how the skepticism and stubbornness of a Government physician prevented what could have been an appalling American tragedy, the birth of hundreds or indeed thousands of armless and legless babies."[95] Public outrage grew even more intense two weeks later after Kelsey and the FDA confirmed that, although Kelsey kept Kevadon from going to market, some U.S. doctors gave the drug to patients experimentally, often without the patient's knowledge.[96] The Mintz article, Carpenter demonstrates, "started an avalanche of publicity both about thalidomide and about Kelsey," and, he concludes, "in the end, Morton Mintz's reportage would become the dominant narrative of thalidomide."[97]

Kelsey's tale of heroism and the powerful images of thalidomide thus altered the public narrative about pharmaceuticals, making clear the ongoing problems in a highly respected industry and elevating the political payoff for taking action on those problems. Demonstrating a subtle shift in his administrations priorities, Kennedy held a press conference on August 1. The session still occurred in the State Department auditorium and "diplomacy and espionage over nuclear weapons remained the central issues of the day," but Kennedy began the press conference "with a frank discussion of thalidomide's hazards and a note of reassurance to the American public."[98] The President declared that "the bill reported by the Senate Judiciary

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[95] Morton Mintz, "'Heroine' of FDA Keeps Bad Drug off of Market," *The Washington Post,* July 15, 1962, A1.
[96] Carpenter, *Reputation and Power,* 244; Carpenter traced the expansion of news coverage of thalidomide after Mintz's article on July 15 and the FDA's revelation on July 28, see Figure 4.3 for a chart of that data.
[97] Carpenter, *Reputation and Power*, 242 & 253.
[98] Carpenter, *Reputation and Power*, 244.

Committee… does not go far enough," and he urged swift action "to provide both administrative and legislative safeguards" against unsafe or ineffective drugs.[99]

As Kelsey's public persona ascended to almost mythic status, Carpenter argues, "the FDA's public and journalistic reputation was for a time concrete, visually tangible, and widespread."[100] On August 7, Kennedy invited Kelsey to the White House and presented her with the President's Award for Distinguished Service, the highest honor for Federal civilian service.[101] The day before, Kelsey traveled across the Mall to testify before the Senate Judiciary Committee in support of the President's new proposed amendments for the Kefauver bill.[102] Shortly after the thalidomide story broke, the White House ordered Ted Ellenbogen and Jerome Sonosky to draft a series of amendments that would re-invigorate S. 1552 and bring it into line with HEW's own version of a drug bill, which had been introduced through the House Commerce Committee by its chairman, Arkansas Democrat Oren Harris.[103]After Kennedy sent a letter to Eastland formally requesting the amendments, Ellenbogen and Sonosky went back to the negotiating table with Lloyd Cutler and his Senate supporters, Everett Dirksen and Roman

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[99] John F. Kennedy, "The President's News Conference," August 1, 1962. Online by Gerhard Peters and John T. Woodley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/pid=8799; Robert C. Toth, "JFK Demands Tough Law on Danger Drugs," *Boston Globe*, August 2, 1962, 1.

[100] Carpenter, *Reputation and Power*, 247.

[101] "Dr. Kelsey Will Receive a High Presidential Award: Dr. Kelsey to Get a Top U.S. Award," *New York Times*, August 5, 1962, 1; "Dr. Kelsey Receives Gold Medal From Kennedy at White House," *New York Times,* August 8, 1962, 19; "Dr. Kelsey, Five Others Get Medals, Kennedy Cites Hopes 'For All Our Children' In Drug Decision," *The Sun*, August 8, 1962, 2; Daniel Carpenter, *Reputation and Power*, 245.

[102] Jerry T. Baulch, "Dr. Kelsey's Testimony Backs Rigid Drug Bill: Agrees in General to Weigh All Changes," *The Washington Post*, August 7, 1962, A17; "Dr. Kelsey Calls for Tighter Restrictions on Drugs as Senate Hearings Open," *New York Times*, August 7, 1962, 15.

[103] Theodore Ellenbogen, General Counsel's Office, HEW, interview by Richard McFadyen, Washington, DC, March 1974, "Oral History Program of the National Library of Medicine, Bethesda, Maryland," transcript, 85-6.

Hruska. However, with the full backing of Kennedy and "newly emboldened" by the thalidomide fallout, Ellenbogen and Sonosky now found the tables turned in their favor.[104]

Much like the Durham-Humphrey amendments a decade earlier, the Kefauver-Harris amendments primarily solidified FDA administrative tactics already in practice. The bill required that drugs now be proven safe *and* effective and it formalized the New Drug Application (NDA) process. However, the Kefauver-Harris amendments also set the stage for more direct control of dangerous drugs. After unanimous votes in support of the bill from both chambers, on October 10, Kennedy signed Public Law 87-781 with Kelsey and Kefauver looking over his shoulder. Afterwards, he presented both with signatory pens.[105] The bill contained many advances in the FDA's authority, but it did not include new enforcement schemes for dangerous drugs, which had been present in the Harris version of the bill.[106] Speaking of HEW's omnibus bill, Ted Ellenbogen recalled, "We included a whole part on barbiturates and amphetamines and so forth. Which was <u>one</u> of the things we had been thinking about."[107] Nonetheless, the tragedy of thalidomide and passage of Kefauver-Harris exponentially expanded the political authority and cultural capital of the Food and Drug Administration.

Moreover, with the public awakened to the dangers of pharmaceuticals, tighter regulation of amphetamines and barbiturates now seemed inevitable to many inside the FDA. As Carpenter

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[104] Hilts, *Protecting America's Health*, 158-160. For the text and drafts of Kennedy's letter to Eastland and proposed amendments, see Folder: "Legislation, Drug: August 1962: 5-6," Lee White Files, JFKL.
[105] "Drug Reform Bill Is Signed at White House, With Dr. Kelsey Present," *New York Times*, October 11, 1962, 31.
[106] Hilts, *Protecting America's Health*, 161-2; and Carpenter, *Reputation and Power*, 260.
[107] Theodore Ellenbogen, interview transcript, 8-9. For more discussion of the congressional, bureaucratic, and industry debates and compromises, which surrounded the passage of the Kefauver-Harris amendments and carried on through the passage of the Drug Abuse Control Amendments of 1965, see Chapter 3.

concludes, the Kefauver-Harris amendments "codified the [FDA's] burgeoning powers and expansive practices of the 1950s, and it supplied the agency with commanding new authorities."[108] Journalist Fran Hawthorne concurs, albeit with more literary flair, writing, "If the 1938 Food and Drug Act laid the foundation of the agency, the Kefauver-Harris Amendments put in the kitchen, living room, and bedrooms that make it a real house."[109] Most important, all of this attention justified the booming budgets of the FDA, which had been "growing rapidly" since 1960. By 1962, the FDA's budget had grown from a low of $5 million in the mid-1950s to a respectable $23 million, which supported 2,481 staff members. In 1966, the year the FDA created its Bureau of Drug Abuse Control, those numbers had more than doubled to $58.8 million and 4,710 staffers.[110] Expanding rapidly throughout the 1960s with more resources and more responsibilities, HEW and its activities characterized the Great Society deployment of federal power on issues ranging from education and healthcare to consumer protection and community programs.

The Death of Marilyn and Birth of "Drug Abuse"

Personal concerns further compelled President Kennedy to support the control of dangerous drugs, but also required he did not overly associate the legitimate use of pharmaceuticals with pejorative conceptions of addiction to narcotics. On August 6, a day before Kennedy was set to award Kelsey for her service, Americans awoke to more shocking evidence of the dangers of prescription drugs. Front-page headlines across the country screamed: "MARILYN MONROE FOUND DEAD." And, in only slightly smaller headlines, declared,

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[108] Carpenter, *Reputation and Power*, 229.
[109] Hawthorne, *Inside the FDA*, 44-5.
[110] "60 Years of the FDC Act," *Food and Drug Review* 50, no. 6 (June 1966), 185-7 & 203.

"Sleeping Pill Overdose Blamed."[111] Among other salacious details, all of the articles reported that police found an empty bottle of the barbiturate Nembutal near the star's lifeless body. A couple of weeks later, a "suicide team" of psychiatrists ruled the death a "probable suicide" and reported toxicology reports showed lethal amounts of Nembutal and chloral hydrate, another prescription sedative.[112] The Kennedy administration immediately connected Monroe's death to the thalidomide tragedy and need for more drug regulation. A memo of "Background Material Leading to White House Conference," circulated shortly after Monroe's passing, made the connection explicit, stating, "incidents such as the Thalidomide episode and Marilyn Monroe's death from an overdose of sleeping pills… have all served to bring about a most opportune climate in which to hold this Conference."[113]

Beyond taking advantage of the "opportune climate" to win political support for a new drug policy, Kennedy may have also sought to deflect attention from any personal connections to Monroe's death, though they certainly could have been made. Kennedy's hometown paper, *The Boston Globe* reported on his brother-in-law Peter Lawford's foiled plans to attend the funeral. Tom Wolfe also joined many Americans in remembering that Monroe's final public appearance

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[111] Howard Hertel and Don Neff, "MARILYN MONROE FOUND DEAD: Sleeping Pill Overdose Blamed, Unclad Body of Star Discovered on Bed, Empty Bottle Near," *Los Angeles Times*, August 6, 1962, 1. See also, "Marilyn Monroe Dead, Pills Near: Star's Body is Found in Bedroom of Her Home on the Coast, Police Say She Left No Notes--Official Verdict Delayed," *New York Times*, August 6, 1962, 1; "Marilyn Monroe Dead: Victim of Sleeping Drug: Unable to Arouse Her," *The Washington Post*, August 6, 1962, 1; and "Marilyn Monroe Dead, Dies From Overdose of Pills," *Boston Globe*, August 6, 1962, 1.

[112] Joe Hyams, "Marilyn Monroe: 'Probably Suicide,'" *New York Herald Tribune*, August 16, 1962, 1; and Seymour Korman, "Marilyn Monroe Ruled 'Probable Suicide' Victim, Other Attempts to Kill Herself Are Told," *Chicago Daily Tribune*, August 18, 1962, S1.

[113] "Background Material Leading to White House Conference," undated, ca. August 1962 (sometime between Monroe's death on August 5 and the renaming of the Conference announced on August 14), "Background Material, Press Releases, Fact Sheets, etc.," While House Conference on Drug Abuse File, Reel 4, Dean Markham Papers.

had been her "sweet, wholesome" performance singing "Happy Birthday" for the President in May.[114]

While deeper relations between the Kennedy brothers and the death of Marilyn Monroe remain firmly in the realm of the conspiratorial, historians have confirmed John Kennedy's own complicated relationship with prescription drugs. Suffering from Addison's Disease – a hormonal deficiency disorder – President Kennedy relied on numerous pharmaceuticals to maintain his public image of youthful vitality. According to Robert Dallek and Robert Caro, this drug regimen alternatively included opiates or cortisone for back pain, amphetamines for energy, and barbiturates and tranquilizers to relax, often administered by the infamous Max "Dr. Feelgood" Jacobson.[115]

For all of those reasons, the Kennedys needed a new language for talking about the dangers of abusing pharmaceuticals without denigrating their legitimate use. By mid-August, the administration found its rhetorical solution with a concept that has become ubiquitous in the parlance of our own times - "drug abuse."[116] In mid-summer, Kennedy appointed Dean

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[114] "Lawfords Not Invited to Funeral: President's Sister and Her Husband Shocked at Slight," *Boston Globe*, August 9, 1962, 17; Frank Laro, "Police to Guard Marilyn Rites," *Los Angeles Times*, August 8, 1962, 1; and Tom Wolfe, "Of Beauty and Tragedy: Her Life," August 6, 1962, *New York Herald Tribune*, August 6, 1962, 1. After Monroe's performance at JFK's birthday celebration in Madison Square Garden, he famously joked, "I can now retire from politics after having had Happy Birthday sung to me in such a sweet, wholesome way."

[115] Robert Dallek, *An Unfinished Life: John F. Kennedy, 1917-1963* (New York: Back Bay Books, 2003), 398-9 & passim; Robert A. Caro, *The Years of Lyndon Johnson: Passage of Power* (New York: Vintage Books, 2012), 27-53.

[116] Today, the National Institute on Drug Abuse, a branch of the National Institutes of Health, directs the scientific research undergirding federal drug policy, and all of those who experienced public education after the mid-1980s are familiar with the D.A.R.E. program and its Drug Abuse Resistance Education. Thus, the concept of drug abuse is now used to describe the unacceptable use of all drugs, its deployment based as much on characterizations of the user as the drug. More than a simple rhetorical shift, the concept of abuse is now used to determine the legality of all

Markham to serve as Executive Secretary and chief organizer for the upcoming White House Conference on Narcotics. Bobby Kennedy's "cherished friend" and former Harvard football teammate, Markham continued to work on drug reform policy for RFK until his own untimely death in 1966.[117] As a trusted family associate, Markham towed the Kennedy's line throughout the organization and activities of the Conference and its follow-up Commission. At the final meeting of the Interdepartmental Committee on August 14, 1962, Markham "circulated a statement of aims" for the upcoming conference and announced that the event had "now been designated the White House Conference on Narcotic and Drug Abuse." He also circulated a press release dated August 6, which confirmed the dates of the event as September 27 and 28 and, for the first time, labeled it as a conference on narcotics *and drug abuse*.[118] On the same day that its front-page headlines declared Marilyn dead, the *New York Times* published the notice of the Conference's new name and schedule. According to the *Times* digital archive, this was the first time the newspaper of record used the term "drug abuse."[119]

The words "drug" and "abuse" were occasionally used together in the past, but Kennedy breathed life into the concept and it quickly became the dominant phraseology in debates about

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drugs as the Controlled Substances Act of 1970 created a scheduling system based on a drug's "medical value" and "potential for abuse."

[117] Arthur Schlesinger, Jr., *Robert Kennedy and His Times* (Boston: Houghton Mifflin Company, 1978), 609 & 813. Markham died in a plane crash in September 1966 along with George Skakel, brother of RFK's wife, Ethel.

[118] "Meeting Minutes," Interdepartmental Committee on Narcotics, August 14, 1962; "Immediate Release," Office of the White House Press Secretary, The White House, August 6, 1962. Both available in "Narcotics, Folder 2 of 7," Lee White Files, JFKL.

[119] "White House Narcotics Parley," *New York Times*, August 6, 1962, 31; for other coverage of the release see, Robert Thompson, "White House Narcotics Parley Set Sept. 27-28: President to Address First Session; Robert Kennedy to Serve as Chairman, *Los Angeles Times*, August 7 1962. A basic search of the term "drug abuse" using Google's Ngram Viewer confirms an almost complete lack of usage of the phrase before the early 1960s.

drugs.[120] Rufus King argues the Kennedy administration came up with "the new concept--or, more accurately, new bird-call phrase--'drug abuse,'" because it "could embrace 'dangerous' drugs."[121] The White House hoped the rhetorical shift from "narcotics addiction" to "drug abuse" would open the door for a broader, less exclusively punitive, consideration of the misuse of both licit and illicit drugs. As the first item on Markham's "Aims of Conference" memo made clear, the new concept enabled the administration "to re-examine the whole problem of narcotics use in the United States and evaluate it in the larger context of the abuse of drugs."[122]

Establishing the administration's vision for future drug policy reforms, the "Progress Report of an Ad Hoc Panel on Drug Abuse" laid out many of the scientific reasons for adopting the phrase "drug abuse."[123] In March, prepping for his Address on Consumers, the President asked Dr. Jerome Wiesner to study the current state of drug use and federal drug policy.[124] As Chairman of the President's Science Advisory Council and the man behind the plans to put an American on the moon, Wiesner served as the "chief planner, arbitrator and counselor of science" within the Kennedy administration and the "Progress Report" reflected that orientation.[125] It began by rejecting the use of "the terms 'addiction' and 'addict,'" which, it

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[120] Reflecting on our current state of affairs, Richard DeGrandpre argues concepts of "drug misuse" and proposals for treatment are only used for prescription drug users, while the idea of "drug abuse" is now exclusively applied to "criminal" use, calling "first and foremost for punishment." DeGrandpre, *The Cult of Pharmacology: How America Became the World's Most Troubled Drug Culture* (Durham: Duke University Press, 2006), 172.
[121] King, *The Drug Hang-up*, 235.
[122] Dean Markham, "Aims of Conference on Narcotics and Drug Abuse," undated, ca. August 1962, "Narcotics, folder 2 of 7," Lee White Files, JFKL.
[123] "Meeting Minutes," Interdepartmental Committee on Narcotics, August 14, 1962, "Narcotics, 2 of 7," Lee White Files, JFKL.
[124] Press Release, Office of the White House Press Secretary, The White House, September 14, 1962, "Narcotics, 1962: 12 September - 7 December (4 of 7 folders)," Lee White Files, JFKL.
[125] Eric Pace, "Jerome Wiesner, President of M.I.T., Is Dead at 79," *New York Times*, October 23, 1994, 45.

argued, "have become divorced from their original association with physical dependence and habitual use, and have come to be synonymous with illicit use." The report acknowledged, "almost all of the drugs presently abused are extremely valuable in normal medical practice" and defined the abuse of any drugs as "a prostitution of their legitimate function." Wiesner's scientific group highlighted "a marked need for a standard core of information," and encouraged "all types of experimental treatment methods" with the firm belief that "the compulsive drug abuser can be rehabilitated to a legal and… productive place in society." Finally, it deemed essential this new more expansive view because the Ad Hoc Panel had found "an evident decrease in the abuse of narcotics, with a concomitant increase in abuse of non-narcotic drugs."[126] With drug abuse replacing narcotics addiction as the problem under examination, it was no longer possible to ignore the policing of psychoactive pharmaceuticals.

Much like the President's support for a narcotics conference, high-minded ideals went hand-in-hand with more blatant political motivations to encourage the Kennedys' new focus on drug abuse. Some contemporary observers believed Attorney General Kennedy hoped the President's program would lead to more power for the Justice Department. In his 1972 study, Rufus King suggests, "pressure was generated within the administration to come up with something different, preferably a fresh theme dissociated from the shopworn Harrison Act, and outside the Treasury Department's field so it could be developed as a vehicle for promoting the image of the Attorney General." He concludes, "That was what the Ad Hoc Committee's survey

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[126] "Progress Report of an Ad Hoc Panel on Drug Abuse," September 7, 1962, 2. Full report available in "Progress Report of Ad Hoc Panel on Drug Abuse," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers; Press Release, Office of the White House Press Secretary, The White House, September 14, 1962, "Narcotics, 4 of 7," Lee White Files, JFKL.

was really supposed to turn up."[127] Assistant Secretary of HEW Wilbur Cohen posited a similar scenario. In an oral history conducted in 1972, Cohen described the appointment of David Hackett - a "very close personal friend" of Bobby - as Executive Director of the President's committee on juvenile delinquency. As a result, "Bobby Kennedy took control of the work on juvenile delinquency." In Cohen's opinion, Kennedy "wanted HEW money, that was the point." "They didn't have any money in the Justice Department," so, Cohen explained, "they wanted to use the money that we had in social welfare and elsewhere in the legislation that was being proposed, and they wanted to keep their hands on it and disperse it.[128] It can often be forgotten amidst the series of tragedies soon to strike the Kennedy family that John entered the White House with long-term plans for himself and his brother. With the HEW and FDA budgets booming, the Kennedys were happy to take on issues such as juvenile delinquency or drug abuse if it meant access to some of those resources for their own political benefit.

Regardless of the Kennedys' exact motivations, the boats of HEW and the FDA also rose with this rhetorical shift. The politics of drug abuse, especially when connected to the politics of consumer protection, provided a new foundation for discussing regulation of dangerous drugs. The FDA took advantage of the shift in plans for the White House Conference and submitted a report on "Barbiturates and Amphetamines." The report began with a brief acknowledgement of the "therapeutic value" of the drugs and even shorter recap of "current federal authority to deal with illegal distribution." It then spent the next three and a half pages detailing "Congressional

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[127] Rufus King, *The Drug Hang-Up*, 235. Familiar with the Kennedy's drug policy, King had been involved in the ABA's late-1950s studies of drugs and was even considered as a panelist for the Conference, see John Seigenthaler memo to Lee White, December 28, 1961, "Narcotics, 4 of 7," Lee White Files, JFKL.

[128] Wilbur J. Cohen, "JFK #3," recorded interview by William W. Moss, July 20, 1972, transcript, 102, John F. Kennedy Library Oral History Program, John F. Kennedy Presidential Library and Museum, Boston, MA.

recognition of," and its own reasons for, "additional Federal legislation to control barbiturates and amphetamines." Detailing the limited abilities of the FDA's 600 inspectors spread across the nation to carry on "its program against illegal distribution," the report also attempted to outline the scope of the problem. Citing U.S. Tariff Commission reports for 1960, FDA officials conservatively estimated that enough barbiturate capsules and amphetamines tablets were produced each year to provide "33 capsules and 22 tablets for every man, woman, and child in the United States." To effectively police the illegal distribution and manufacture of these drugs by physicians, pharmacists, and "operators whose activities cover many States and… involved hundreds of thousands and even millions of tablets," the report claimed that the FDA required more power. As officials had been insisting for the past decade, that situation required legislation that provided for "regulation of intrastate commerce" of dangerous pharmaceuticals. FDA officials reasoned, "such drugs, when held for illicit sale, often do not bear labeling showing their places of origin," which meant "a determination of their place of origin [in another state] is sometimes extremely difficult or impossible."[129]

In recounting this history and the need for more legislative power, the FDA also connected their pursuits to the politics of consumer protection and Kennedy's renewed attention to those matters. "The President in his Consumer Message," the FDA reminded conference planners, "recommended legislation to strengthen and broaden existing laws in the food and drug field," which included authorization for HEW to "establish an enforceable system of preventing the illicit distribution of habit-forming barbiturates and amphetamines." To accomplish JFK's goal, FDA officials endorsed the drug bill recently submitted to the House through Oren Harris,

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[129] "Barbiturates and Amphetamines," Food and Drug Administration, Department of Health, Education, and Welfare, July 5, 1962, 1-3, "Narcotics, 2 of 7," Lee White Files, JFKL.

which would "restrict the authorized manufacture, handling, or possession of the drugs… whether or not they are in interstate commerce."[130] As stated above, this clause did not make the final Kefauver-Harris bill and would not be enacted until the Drug Abuse Control Amendments of 1965, but the FDA still used the President's proclamation to gain more of a voice at the White House Conference.

The final agenda for the White House Conference evinced that possibility with equal focus on "narcotics" and "the ever increasing problem of the so-called dangerous drug or hypnotic drug, the barbiturates and amphetamines."[131] Following a meeting with FDA officials, Assistant Attorney General Herbert Miller, who was helping to plan for the conference, raised the question, "Barbiturates - what kind of control is needed?" Unsure, he nonetheless reminded his readers, "The President said that some form of Federal control is necessary."[132] In late August, after a second consultation with William Goodrich, FDA's General Counsel, and Dr. Kenneth Milstead, Deputy Director of the Bureau of Enforcement, Miller reported the "startling" fact that the majority of the public had a "complete lack of knowledge of the nature and scope of barbiturate and amphetamine drug abuse."[133] A month later, the White House Conference on Narcotic and Drug Abuse allowed the FDA and HEW to dramatize both the scope of the problem and need for new legislation.

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[130] "Barbiturates and Amphetamines," Food and Drug Administration, Department of Health, Education, and Welfare, July 5, 1962, 1-3, "Narcotics, 2 of 7," Lee White Files, JFKL.
[131] "Panel 1 - Law Enforcement and Controls," September 27, 1962, 4, "Transcript of Proceedings, Panel 1 - Controls," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers.
[132] Herbert J. Miller memo to Dean Markham, June 20, 1962, Conference Planning Preliminary, White House Conference on Drug Abuse file, Reel 4, Dean Markham Papers.
[133] Herbert J. Miller memo to Dean Markham, "Meeting with William Goodrich, General Counsel, FDA, and Dr. Kenneth L. Milstead, Deputy Director, Bureau of Enforcement, FDA," August 27, 1962, "Department of Justice: Herbert J. Miller, Assistant Attorney General," Federal Agency File cont., Reel 14, Dean Markham Papers.

Opening the Conference on September 27, President Kennedy demonstrated the event's significance for expanding regulation of pharmaceuticals. Kennedy outlined the problems to be solved, especially "the growing abuse of nonnarcotic drugs, including barbiturates and amphetamines." Kennedy also reminded the attendees that his consumer protection message requested legislation "to strengthen Federal authority to control the manufacture and distribution of barbiturates and stimulant drugs." Setting the agenda for future drug policy debates, the President concluded, "This key area should be the subject of continuous, extensive scrutiny."[134]

Following the President's speech, the first panel on controls further demonstrated how the FDA used the White House Conference to increase public focus on the problem of dangerous drugs and need to strengthen the FDA's authority to police such substances. Addressing the panel, FDA Commissioner George Larrick focused his remarks on the need for legislation to regulate "the mis-use [sic] of drugs for non-medical purposes" and, more important, "reduce materially the ready availability" of dangerous prescription drugs. As Larrick had explained many times before, this entailed more regulation of all links in the chain of pharmaceutical distribution, including pharmacists refilling "prescriptions without the authority of the prescriber" and "physicians selling these drugs by the thousands without any doctor-patient relationship whatsoever." Larrick also reiterated the FDA's need for authority to regulate "both intra- and interstate commerce in barbiturates and amphetamines," and - predicting the FDA's swift change in focus over the coming years - "other drugs which may later be found to be habit forming because of their stimulating effect on the central nervous system." Despite the demands for more power, the FDA had no interest in prosecuting "the person who is the possessor of a

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[134] John F. Kennedy, "Remarks to the White House Conference on Narcotic and Drug Abuse," September 27, 1962. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=8905.

few pills." Instead, Larrick and the FDA sought "registration by manufacturers and record keeping… through to the ultimate dispenser."[135] In support of such legislation, Larrick repeated President Kennedy's proclamation from his March consumer message.

Other testimony reiterated Kennedy's and Larrick's points, evincing the growing acceptance on all sides that there needed to be some form of special controls over the manufacture and distribution of dangerous drugs. Reflecting how the states brought in demands for more federal regulation of pharmaceuticals, California Attorney General Stanley Mosk testified immediately following Commissioner Larrick. Mosk began by outlining the problem at the state level, declaring, "When we talk about addiction in California, we are not talking only about heroin and other opium derivatives; we are talking about the dangerous drugs, to which considerable reference has already been made." He also reiterated the need for more federal power to deal with the availability of such drugs. "The lack of controls on production and distribution," Mosk argued, "facilitates the shipment of huge orders of pills and capsules to pharmacies and other outlets in Mexican border towns [where] they are diverted to the illegal traffic."[136] Even John Kelly, Legislative Counsel for the Pharmaceutical Manufacturers Association, could read the writing on the wall. Kelly directed attention away from the PMA's 140 member firms, insisting the ethical manufacturers would not be affected because "it would be the height of all folly for any responsible drug manufacturers to ship his products to anyone not entitled to have them." Nevertheless, he did support "strengthening federal power to prevent

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[135] George Larrick, Commissioner of the Food and Drug Administration, Prepared Statement - "Panel 1 - Law Enforcement and Controls," September 27, 1962, 23-7, "Transcript of Proceedings, Panel 1 - Controls," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers.

[136] Stanley Mosk, Attorney General of the State of California, Prepared Statement - "Panel 1 - Law Enforcement and Controls," September 27, 1962, 27-33, "Transcript of Proceedings, Panel 1 - Controls," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers.

illicit distribution of barbiturates and amphetamines" - as long as the focus was "on the peddler rather than the consumer."[137] Those specifics still needed to be worked out over the coming years, but the first panel on the first day of the White House Conference already made clear the need for more federal policing of dangerous pharmaceuticals.

Beyond highlighting the need for more federal authority to regulate amphetamines and barbiturates, Kennedy's White House Conference on Narcotic and Drug Abuse produced three key outcomes that defined the next phase in the ascension of dangerous drug policy. First, the President's Advisory Commission on Narcotics and Drug Abuse took up the work of the Conference and made policy recommendations for the administration. Second, the Commission settled beyond dispute the need for strengthened regulation and policing of the manufacture and distribution of dangerous drugs. Third, the Commission argued, yet again, that federal drug policy had to be taken out of the hands of the Treasury Department and placed in HEW and Justice, which entailed a shift in the constitutional basis for federal drug policing. The resultant debates began on the Commission; spread to Congress, the White House, and executive departments; and were heightened by similar debates between different facets of industry from manufacturers to retailers to doctors. These "Turf Wars," which will be examined in the next chapter, shaped the future direction of federal drug policy and the President's power to enact such policies.

Conclusion

Serving as the titular chairman of the White House Conference, Robert Kennedy addressed the final session, a panel on legislation, and summarized all of the liberal ideals

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[137] John Kelly, Pharmaceutical Manufacturers Association, Prepared Statement, "Panel 1 - Law Enforcement and Controls," September 27, 1962, 43-9, "Transcript of Proceedings, Panel 1 - Controls," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers.

undergirding the Kennedy administration's attempted reform of drug policy. The Attorney General began by declaring, "There is no affliction to which we have to surrender." And yet, he lamented, "not only do we not have a comprehensive program, we do not have sufficient reliable information on which to even base such a program." Describing such a program, Kennedy argued solutions to the problem of drug abuse reached "across many disciplines - psychology, economics, and medicine, as well as criminology." Announcing the follow-up Commission, he promised the White House would support "legislation which is broadly directed toward the general problem of compulsive drug abuse… on a rational and national basis." Giving "our best as experts, as Americans, and as human beings," Kennedy confidently concluded, "we can defeat the problem of narcotics and drug abuse."[138] The Kennedy brothers thus put their stamp on the next era in federal drug policy.

When it was created in the mid-1960s, the Bureau of Drug Abuse Control (BDAC) still bore the imprint of its first Presidential promoter –- expanding federal power to protect consumers, with a focus on regulation and rehabilitation and confidence in the abilities of a well-trained staff of government administrators. Looking back less than a decade later, BDAC Director John Finlator remembered the Bureau "as an enigma, an inscrutable organization that died almost before its honeymoon period was over." The Drug Abuse Control Amendments that created BDAC were, Finlator argued, "a fresh approach to the national drug problem… progressive and well-conceived."[139] That approach came from the traditions of the FDA but was equally inspired by Kennedy's vision of governance and ability to harness the politics of

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[138] Robert F. Kennedy, Closing Remarks - "Panel 5 - Legislation," September 27, 1962, 5-11, "Transcript of Proceedings, Panel 5 - Legislation," White House Conference on Drug Abuse file cont., Reel 5, Dean Markham Papers.

[139] John Finlator, *The Drugged Nation: A "Narc's" Story* (New York: Simon and Schuster, 1973), 22-3.

consumer protection together with a liberal project to reform federal drug control. Demonstrating that point, Finlator's cohort situated their endeavors at BDAC squarely within an idealized version of Kennedy's New Frontier. Shortly after his retirement in January 1972, Finlator received a package at his front door. It contained "a large hand-carved alabaster ashtray" with a short phrase "embossed in handsome gold letters." The legend read: "BDAC--IT WAS CAMELOT."[140]

That idealized version of Camelot and Kennedy's New Frontier became possible, however, because of far greater tragedy – Kennedy's assassination in November 1963. A week before a sniper's bullet struck down the president on the streets of Dallas, the chair of Kennedy's Commission on Narcotics and Drug Abuse, Judge E. Barrett Prettyman submitted the Commission's final report to the White House. Kennedy never had the chance to formally accept the report and his replacement avoided it as long as possible. Weary of the controversial recommendations made by the Prettyman Commission, Lyndon Johnson did not authorize publishing the Commission's findings until late January 1964 and took no action on its proposals until mid-July.

Among its twenty-five recommendations, the Prettyman Commission proposed new research on all aspects of drug use, an end to mandatory minimum sentences, as well as new controls for barbiturates and amphetamines. The controversy arose from the Commission's support for the transfer of all law enforcement functions related to the control of narcotics, marijuana, and dangerous drugs from the Treasury Department to the Department of Justice. Equally controversial, the report proposed that the regulation of the legitimate traffic in all drugs be placed in the Department of Health, Education and Welfare, where "drugs would be regulated

[140] Finlator, *Drugged Nation*, 55.

under the power to regulate interstate and foreign commerce, not under the tax power."[141] These were the blueprints for a new era in federal drug control and it would be up to Kennedy's successor, Lyndon Johnson, to decide how and when to begin construction.

[141] "Final Report of the Prettyman Commission," November 1963.

CHAPTER THREE

Turf Wars
Conflict and Compromise in the Pursuit of Federal Power to Police Pharmaceuticals

> The narcotics addict who 'mainlines' heroin… the teenager who sniffs model airplane cement… the truck driver who gulps 'bennies' to stay awake on a long haul… the nervous housewife who can't get to sleep without barbiturates… the harassed businessman who lives on martinis and Miltown… They're all part of a growing national problem – the problem of drug abuse.
>
> - *The Oregonian*, September 24, 1962

> The only block now to action from both fronts seems to be the drug of bureaucratic pettycoddling.
>
> - Arthur Arundel, "Our Drugged Bureaucracy," WAVA AM & FM Radio, March 13, 1964

In November 1963, looking forward to the 1964 legislative season – an important campaign year – Judge E. Barrett Prettyman, chair of John Kennedy's Advisory Commission on Narcotic and Drug Abuse, submitted his Commission's final report to the president. A few days later, on Wednesday, November 20, Judge Prettyman and his wife went to the White House for the President's Judiciary Reception. Falling into conversation with Dean Markham, the Executive Director of the Commission, and Lee White, the White House's liaison to the group, Prettyman asked, "What about the report?" Indicating the scope and nature of the group's recommendations, White responded, "That's no report. That's a bomb." He nonetheless assured the judge, "when the President return[s] from his Thanksgiving vacation, he [wants] the

Commission to come to the White House."[1] First, however, the President had to make a campaign trip to Dallas. The tragic events in Dallas that cut short John Kennedy's life also ended, as least temporarily, the White House's involvement with any new federal drug program.[2] With Kennedy dead, it fell to Lyndon Johnson to implement those plans, and before the federal government could launch a national "war" on drugs, there were internal battles to be fought. [3]

Commonly referred to as the Prettyman Commission, Kennedy's group recommended a complete overhaul of the federal program to fight drug abuse, a capacious concept that had only recently replaced the more narrow and racialized notion of the narcotic addict. Using the Kennedy administration's initiatives to further their pursuit of more power to police pharmaceuticals, FDA officials found everything they wanted and more in the final report. That was, in part, what made it such a controversial "bomb." Regulating psychoactive pharmaceuticals was only part of Prettyman's vision, which challenged nearly every established federal agency then working to control drugs. Most significant, the Commission recommended the dismantling and transfer of the Treasury Department's Bureau of Narcotics, a move that offended everyone from Treasury officials and FBN agents to Congressional committee

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[1] "EBP's account of appointment to see LBJ on Narcotics," July 1964, File: "President's Commission," Box 123: Essays, E. B. Prettyman Papers, Library of Congress, Washington, DC [Hereafter, "Prettyman memo."]

[2] Louis Cassels, "Night Lead Narcotics," *United Press International*, January 19, 1964, available in Executive File - "FG 727, President's Advisory Commission on Narcotic & Dangerous Drug Abuse, 11/22/63-2/29/64," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

[3] "Step Up War on Narcotics, Presidential Panel Urges," *Cincinnati Enquirer*, January 25, 1964; "Justice Department War on Dope Urged: Commission Asks Shift from Treasury," *Washington Post*, January 25, 1964; and "Calls on U.S. to Press War on Narcotics: Commission Makes 25 Recommendations," *Chicago Tribune*, January 25, 1964, all available in General File - "FG 727 President's Advisory Commission on Narcotic & Drug Abuse," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

chairmen and the FBN's industry allies. Steering clear of the brewing controversy, the LBJ administration sought for as long as possible to avoid challenging the bureaucratic status quo.

In March 1964 Arthur Arundel took to the airwaves of his AM/FM radio station, WAVA, one of the first all-news radio stations in the Washington, D.C. area.[4] Calling the dismantling of the Federal Bureau of Narcotics (FBN) and transfer of all drug-policing functions to the Justice Department "a bureaucratic action of no earth rattling importance," Arundel nonetheless argued, "it is an excellent proposal." He praised the Report's view "that drug addiction must be recognized as both a health and legal problem" but warned his listeners, "so many departments and agencies are involved that it may be years, if ever, before we get the kind of legislation that will truly be effective." As Arundel declared, "the only block now to action" on both the health and legal "fronts seems to be the drug of bureaucratic pettycoddling."[5]

The affliction of "bureaucratic pettycoddling" encompasses this chapter's focus on the "turf wars" among executive branch bureaucracies, congressmen, industry, and across the National Mall. Those bureaucratic battles were the last hurdle to be overcome before Food and Drug Administration (FDA) officials succeeded in their decades-long quest to get more control over the unchecked distribution of potentially addictive prescription drugs. Despite his pessimism, Arundel offered one quick fix to the problem of legislative sluggishness. President Lyndon Johnson could, Arundel argued, "put the first needle of progress to the battle against

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[4] T. Rees Shapiro, "Arthur W. 'Nick' Arundel, newspaper publisher and philanthropist, dies at 83," *The Washington Post*, February 8, 2011.
[5] Arthur W. Arundel, "Our Drugged Bureaucracy," WAVA Editorial #30-64, *WAVA AM & FM*, March 13, 1964.

drug addiction…simply by ordering his offices reorganized for the attack."[6] However, Johnson hesitated to take ownership of the work of Kennedy's Commission. After giving serious consideration to just burying the report, Johnson administration officials finally released it with little fanfare and no public ceremony in early 1964. Other than brief discussion of regulating pharmaceuticals in his spring messages to Congress on "Consumer Interests" and the "Nation's Health," LBJ only once mentioned drug abuse during 1964 and that was in a press release following a short meeting with Judge Prettyman in July. That year, LBJ faced more pressing issues, from the Cold War abroad to the Civil Rights struggle raging across the South. He also needed to establish his legitimacy as President, work with the many Kennedy administration holdovers, and accomplish a wealth of legislative goals. The "Master" of D.C. politics knew not to take sides in a bureaucratic battle that seemed "of no earth rattling importance."[7] Nonetheless, Johnson's hesitation opened up space for the half-measure of creating a unit in the Food and Drug Administration to police pharmaceuticals.

As with Kennedy, the bureaucratic tail once again had to the wag the presidential dog, with FDA and White House staffers working to convince LBJ that action was both appropriate and necessary. However, a larger cultural shift – inspired in part by the work of the Prettyman Commission – made that task far easier this time around. As the hundreds of articles and editorials covering the Commission's report made clear, the public at large now accepted two key ideas that would have seemed outlandish even a decade earlier. First, the capacious new concept of drug abuse shifted attention from hard narcotics and cocaine to the class of pharmaceuticals now being classified as "dangerous drugs" – amphetamines, barbiturates,

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[6] Arundel, "Our Drugged Bureaucracy."
[7] Arundel, "Our Drugged Bureaucracy." Robert A. Caro, *The Years of Lyndon Johnson: Master of the Senate*. (New York: Random House, 2002).

tranquilizers, and hallucinogens. As the Prettyman Commission and subsequent advocates insisted, in the early 1960s "the traffic in heroin and other narcotics [was] being overshadowed by the peddling of barbiturates, amphetamines, and other depressant and stimulant drugs."[8] The Food and Drug Administration's research upheld this point. In 1963, an FDA survey of industry data and review of prescription records estimated "over 9 billion barbiturate and amphetamine capsules and tablets are manufactured annually in the United States" with approximately "half of them" eventually "diverted from legal channels" to be sold illegally.[9] Adding those 4.5 *billion* pills to the millions more being counterfeited created a staggering number of pharmaceuticals being taken without any kind of regulation or government controls.[10]

Even with many still arguing for stricter punishment of large-scale traffickers and prescription drug counterfeiters, more legislators now accepted that most drug users could benefit far more from medical treatment and rehabilitation than draconian prison sentences. Paul Coates poured out a bit of soul-searching confessional for the *Los Angeles Times* subscribers who previously read his horror stories about "drug-infected fiends… raping and pillaging in our

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[8] Food and Drug Administration, "Fact Sheet, Drug Abuse Control Amendments of 1965," (Washington, DC: Government Printing Office, 1965), included as Appendix IV in Frederick M. Garfield, "Drug Abuse and FDA's Efforts to Control It." This and other Garfield reports are available in "The Administrative Histories of the Lyndon Johnson Administration," ca. 1968, available through the FDA History Office, U.S. Food and Drug Administration, Department of Health and Human Services, Silver Spring, MD [Hereafter, "LBJ Administrative Histories"].

[9] "Proceedings of FDA Conference on the Drug Abuse Control Amendments of 1965," March 11, 1966; and Food and Drug Administration, "Fact Sheet, Drug Abuse Control Amendments of 1965," (Washington, DC: Government Printing Office, 1965), included as Appendixes III and IV in Frederick M. Garfield, "Drug Abuse and FDA's Efforts to Control It," LBJ Administrative Histories.

[10] Relatively speaking, however, this number is not that large when even compared to the production numbers from a decade and a half later, much less when compared to our truly staggering contemporary numbers. For example, in 1978, Hoffman-LaRoche alone sold 2.3 billion tablets of a single drug – Valium. Andrea Tone, *Age of Anxiety: A History of America's Turbulent Affair with Tranquilizers* (New York: Basic Books, 2009), ix.

society." Having realized his personal "role in spreading that hysteria," Coates decided to start studying the addicts themselves. He quickly learned that, while a "technical criminal," the heroin addict was "desperately sick." Thus even the "terrifying" dope fiend now deserved medical and not criminal treatment.[11] Moreover, because users of licit prescription drugs were often classified as white and well-off – far from the apparent moral and cultural faults of the terrifying dope fiend –medical treatment of those users went hand in hand with initiatives to protect hapless and otherwise moral "consumers" from falling victim to drug abuse.

The best evidence of this new understanding was in the final vote for the House version of the Drug Abuse Control Amendments of 1965. The bill created BDAC, granted the FDA vast new policing powers, and greatly increased government regulatory authority over licit drugs. It passed the House unanimously and the Senate with only minor revision. Thus, the cultural shift precipitated by Kennedy and the Prettyman Commission opened up a fertile space between a full reorganization of federal drug control and LBJ's initial instinct to do nothing. And in that space, federal power to protect consumers and strictly regulate the manufacture and distribution of dangerous prescription drugs finally blossomed. Securing this new authority, however, still required the support of industry, and that was purchased with more power to police counterfeit drugs and protect corporate profits.

Prettyman Commission

Knowing their report would roil many industry representatives and entrenched bureaucrats, Markham and members of the Commission had been grappling with their transfer recommendations since the previous winter. Despite those efforts, they felt the blowback from

[11] Paul Coates, "State's Method of Handling Drug Addicts Would Be Good Pattern," *Los Angeles Times*, January 29, 1964, 6.

Treasury, Justice, and interested professional groups even before they released their Interim Report in April 1963. Chairman Prettyman nonetheless refused to relent in his effort to present a comprehensive plan for fundamentally changing federal drug policy. Ultimately, to the frustration of LBJ and others, the Commission took their task seriously and produced a more "rational" than "political" document.[12] Many Kennedy and Johnson staffers were thus wary of the resultant "bomb," however, it should not obscure how the Commission came from the same politics and permanent campaigning that first compelled Kennedy to take on drug policy reform and reposition it within the capacious politics of consumer protection and public health.

That politicking began with the composition of the Presidential Commission on Narcotic and Drug Abuse. The mere existence of the Prettyman Commission belied the White House's goals and priorities for the group – transfer of the Federal Bureau of Narcotics from the Treasury Department to Justice. As such, Kennedy's staffers understood it was "impossible for one agency to successfully evaluate, criticize, and reorganize the functions of another." Thus, with "interagency and intergroup tensions" especially fraught in the federal drug regime, the Commission had to appear balanced but avoid giving Treasury any undue influence.[13] Prettyman's selection as chairman personified those goals. Considered "an 'undeviating middle of the roader' on the bench," E. Barrett Prettyman was still widely regarded as "a fighter and maneuverer in the capital's national and local arena." As Chief Justice of the D.C. Appeals Court

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[12] Comment by James Dixon, Minutes of the Second Meeting of the President's Advisory Commission on Narcotics and Drug Abuse, March 11-12, 1963, pg. 3, "2nd Meeting, March 11-12, 1963, Washington, D.C.," Advisory Commission on Drug Abuse cont., Reel 8, Dean Markham Papers. Dixon argued that he "favor[ed] the rational solution and can't even see a political one."

[13] Dean Markham to Attorney General Robert Kennedy, "Memorandum for Record," October 16, 1962, "Narcotics, 1963: 12 September-7 December (4 of 7 Folders)," Lee White Files, JFKL.

he became "a new phenomenon – a judicial lobbyist in Congress."[14] The Chairman thus had a background in advocating for judicial reform and navigating the labyrinth that was the Congressional committee system. He also had personal experience with the Treasury Department's enforcement authority, which left him skeptical of those powers. Recalling his time working as an IRS attorney during the early years of the New Deal, Prettyman remembered struggling with pressures from department higher-ups "to make politically motivated tax rulings."[15]

In addition to Prettyman, who had recently retired as Chief Justice of the Court of Appeals, the Commission represented a range of experience that nonetheless leaned towards public health. Evincing Kennedy's desired perspective for the Commission's policy recommendations, the six commissioners included three medical doctors and a majority with backgrounds in medicine not law enforcement. Demonstrating the still localized demand and potential electoral returns for drug policy reform, five out of six Commissioners hailed from New York City or California.[16] With the White House reasoning the "highest incidence of addiction is among Negro and Puerto Rican minority groups," the two members from New York – Commissioner of Welfare James Dumpson and Dr. Rafael Sanchez-Ubeda from St. Vincent's

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[14] "A Fighting Judge: Elijah Barrett Prettyman," *New York Times*, February 28, 1962, p. 8.
[15] Statement by U.S. District Judge Louis F. Oberdorfer, "resident historian" at the E. Barrett Prettyman Courthouse in D.C., who researched Prettyman's personal diaries available at the Library of Congress. Toni Locy, "A Tribute to a Champion of the Law; U.S. Courthouse Named After Longtime Appellate Judge," *The Washington Post*, March 27, 1997.
[16] Serving as President of Antioch College, Dr. James Dixon, MD served for a decade as Philadelphia Commissioner of Health, making him one of the four with public health experience, along with Dr. Roger Egeberg, James Dumpson, and Dr. Rafael Sanchez-Ubeda, who, in addition to directing the out-patient and emergency departments at St. Vincent's, served on the New York City Health Commissioners Medical Advisory Committee. For curriculum vitae and other background information on the Prettyman Commission, see: "Background Material," Advisory Commission on Drug Abuse, Reel 6, Dean Markham Papers.

Hospital – made the all-male group at least a multiracial affair. According to confidential memos, the White House considered it "a wise choice to include a Negro on the Commission if possible" though they "would not have a Puerto-Rican [sic] just to have a Puerto Rican."[17] Of course, both men were amply qualified and made productive additions to the Commission.

The Kennedy administration's biggest political conundrum lay in balancing loyal members, who had "the 'word' regarding timetable and priority," with potentially unfriendly representation from the FBN and Treasury Department. Of the two members representing law enforcement, former FBI Special-Agent-in-Charge Harry Kimball maintained close ties to the Justice Department and chaired Governor Pat Brown's Special Study Committee on Narcotics in 1960. As such, Kimball was a dependable and vocal advocate for reform of the FBN even after the Commission officially completed its work.[18] Staffer to General Douglas MacArthur during World War II, Dr. Roger Egeberg was also close to Governor Brown and served on Kennedy's Ad-Hoc Panel, which set the agenda for the 1962 White House Conference and first popularized the concept of "drug abuse."[19] A potential "dark horse," Dr. James Dixon was allegedly appointed by Treasury without prior White House approval. However, Dixon also had the support of the Department of Health, Education and Welfare (HEW) and understood the "priority to get specific recommendations in and fast" so bills could be passed before the 1964 elections.

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[17] "DUMPSON" and "SANCHEZ-UBEDA," Series of Confidential Memos including resumes and "confidential discussions" of candidates for membership on Commission, unsigned, dated January 25, 1963, "Narcotics, 1963: 9 January-11 February (5 of 7 Folders)," Lee White Files, JFKL.

[18] "KIMBALL, Mr. Harry M.," Confidential Memo, unsigned, dated January 25, 1963, "Narcotics, 1963: 9 January-11 February (5 of 7 Folders)," Lee White Files, JFKL.

[19] "EGEBERG, Dr. Roger O.," Confidential Memo, unsigned, dated January 25, 1963, "Narcotics, 1963: 9 January-11 February (5 of 7 Folders)," Lee White Files, JFKL.

Even before the work of the Commission began, the White House believed that the Treasury Department sought to undermine its goals and thus was particularly concerned about the final appointee – Dr. Austin MacCormick, a University of California professor and former New York Commissioner of Corrections. According to confidential White House memos, a deputy to Assistant Treasury Secretary James Reed invited Dr. Dixon and Dr. MacCormick with the false assurance that President Kennedy had selected them. MacCormick opposed the short timeline and was excited at the per diem, causing White House fears that he "may want to make a permanent career out of it!!!" After a "pep talk," MacCormick ultimately enjoyed his free trips and meals and was otherwise handled.[20] Descending upon Washington to begin their work in January 1963, this group of seven men – a federal judge, two doctors, two academics, two public health officials, and an hotelier – established a platform that would become a measuring stick for all federal drug policy decisions at least until the Carter administration.

With its preferred outlooks and optics in place, the White House invited the Commission to meet with the President and kick-off its work in January 1963. After "much fluff-de-duff… engraved certificates and stuff," the Commission finally met with President Kennedy in the Cabinet Room. Sitting down and turning to Prettyman, Kennedy reiterated his vision for the group, asking the Chairman, "Now Judge, what do you think you can do with this Commission?" Prettyman answered, "Mr. President, if you want a program, I think we can work something out. If all you want is a report of what's what or has been, I have no interest. We can supply plenty of those, already written." Not hesitating, the President responded, "I want a program," and buzzed

[20] "MAC CORMICK, Dr. Austin Harbutt," Confidential Memo, unsigned, dated January 25, 1963, "Narcotics, 1963: 9 January-11 February (5 of 7 Folders)," Lee White Files, JFKL.

for the photographers.[21] With the obligatory photographs taken, Prettyman and his fellow commissioners set about constructing a new strategy for federal drug control that guided Presidential action over the next decade.

From the start, the Commission realized their work would be controversial and therefore sought the input of all interested parties, public and private. In the first series of meetings, the Commission heard from leaders of federal agencies and departments, including the Public Health Service, HEW, FBN, Justice, Bureau of Customs, National Academy of Science, and Food and Drug Administration.[22] The Commission also asked the American Medical Association and National Research Council (NRC) to submit "definitive statements as to what constitutes the legitimate medical treatment of an addict, both in and out of institutions."[23]

Most important, the Commission turned to professional lobbying organizations for guidance on how they wanted to be regulated, especially with new controls for dangerous drugs. Judge Prettyman outlined this strategy on the second day of the Commission's meetings. He insisted the group "consider in depth… dangerous drugs control" before the release of its interim report. Planning to recommend new regulations of "dangerous drugs manufactured in the United States," Prettyman sought to avoid unnecessary controversy and asked aloud, "Why not reverse the [usual] method?" He suggested, "Tell the Pharmaceutical [Manufacturers] Association [PMA] that the government will control it and for them to prepare the bill and bring it back on

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[21] Prettyman memo.
[22] "First Meeting - Notes and Summary Memo," pg. 1-4, "1st Meeting, Jan. 28-30, Washington, D.C.," Reel 7 - Advisory Commission on Drug Abuse, cont., Dean Markham Papers.
[23] Dean Markham, "The Activities of the President's Advisory Commission on Narcotic and Drug Abuse," August 1, 1963, "Background Material," Reel 6 – Advisory Commission on Drug Abuse, Dean Markham Papers.

how to control it."[24] According to Prettyman, the Commission also "solicited the assistance" of the National Association of Retail Druggists (NARD) "in the development of a program of effective measures."[25] Following the release of their Interim Report, the commissioners also asked the American Pharmaceutical Association (APA) to "submit a statement similar to the PMA."[26]

That strategy of cooperation with lobbying organizations ensured widespread support for pharmaceutical regulation from industry and federal bureaucrats, despite their persistent opposition to a total overhaul of federal drug control. In fact, even the Treasury Department's man on the Commission, Austin MacCormick, approved more control of pharmaceuticals, which lay outside the FBN's domain. He agreed with Prettyman, citing the growing "public interest directed towards dangerous drugs" and advocating, "more study of the problem."[27] Like the Treasury Department, the pharmaceutical industry opposed transferring the power to police pharmaceuticals to the Justice Department but supported new power for the FDA and HEW, even if it meant policing the manufacture and distribution of prescription drugs "all the way through to the ultimate consumer."[28] Self-interest nonetheless motivated this endorsement, as pharmaceutical manufacturers believed federal power to regulate *intrastate* commerce was necessary to eliminate counterfeit drugs from the market.

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[24] "First Meeting – Notes and Summary Memo," pg. 16, Dean Markham Papers.
[25] "Recommendations of E. Barrett Prettyman – Proposed Outline of Interim Report," pg. 6, "2nd Meeting, March 11-12, 1963, Washington, D.C.," Reel 8 – Advisory Commission on Drug Abuse, cont., Dean Markham Papers.
[26] "Topics to Be Considers From the Fourth Meeting," May 16, 1963, pg. 5, "4th Meeting, May 16, 1963, Washington, D.C.," Reel 8 – Advisory Commission on Drug Abuse, cont., Dean Markham Papers.
[27] "First Meeting – Notes and Summary Memo," pg. 16, Dean Markham Papers.
[28] Statement by FDA Commissioner George Larrick, "Transcript of Proceedings, Panel No. 1, Controls," pg. 24, Reel 5 – White House Conference on Drug Abuse File cont., Dean Markham Papers.

Thus, while the Commission continued to debate everything from treatment plans to wiretapping, a consensus emerged around the need for stricter regulation of potentially addictive pharmaceuticals and the desirability of vesting at least some of those powers in the Department of Health, Education, and Welfare. Submitting its Interim Report to President Kennedy on April 1, 1963, the Prettyman Commission focused on seven recommendations. They advocated for a new office in Justice to go after major traffickers and legislation to eliminate mandatory minimums for minor offenders. Recommendations also included plans to research all aspects of the drug abuse problem, requests for the FDA and FBN to study their manpower needs, and a proposed joint U.S.-Mexico project to stem the flow of illegal drugs across the border. Most important, Prettyman's group recognized drug abuse was "a complex of problems," which was "not limited to the abuse of narcotics" but also included "the various so-called dangerous drugs."[29] The President's Commission recommended "legislation for strict Federal regulation of the manufacture, sale and distribution of all habit-forming hypnotic and stimulant drugs which are subject to abuse."[30]

Taking a strong stance on the need for federal control of "compounds frequently referred to as dangerous drugs," which were being "manufactured in the United States in increasing quantities and varieties," the Commissioners still hedged on the precise way to accomplish such

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[29] "Interim Report of the President's Advisory Commission on Narcotic and Drug Abuse, 3 April 1963," pg. 1. Special Events Through the Years, President's Office Files, Presidential Papers, Papers of John F. Kennedy, JFK Library.

[30] "Summary of April 1st Interim Report," pg.1, "Interim Report of the President's Advisory Commission on Narcotic and Drug Abuse, 3 April 1963," Special Events Through the Years, President's Office Files, Presidential Papers, Papers of John F. Kennedy, JFK Library.

a task.[31] They endorsed in principle the "general scheme of regulation" present in the latest iteration of Senator Thomas Dodd's legislation to control the manufacture, sale, and distribution of "psychotoxic" drugs. (While Dodd often called these drugs "psychotoxic," that term was also used to describe the effects of abusing those substances falling under the umbrella "dangerous drugs.") However, the Interim Report stopped short of commenting on "the detailed terms and provisions" of Dodd's bill (S. 553) until the Commission had given "thorough consideration" to the "views of the Pharmaceutical Manufacturers Association and of the National Association of Retail Druggists."[32] The Commissioners also asked the Food and Drug Administration and Department of Health, Education, and Welfare to submit their best plans "to control the dangerous drug problem and to implement a regulatory scheme."[33]

Despite their reticence to antagonize the manufacturers or pharmacists who would be affected by such legislation, the Prettyman Commission still made some "general observations" that would, for better or worse, shape the future direction of all federal drug policy. Least influential in the long term, the Commission opposed "criminal penalties" being "visited upon those who are primarily the victims of these drugs," i.e. those who only possess them for their own use. The Report also recognized the medical value of dangerous drugs when properly used and thus opposed combining any scheme for regulating pharmaceuticals with "the more stringent

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[31] "Interim Report of the President's Advisory Commission on Narcotic and Drug Abuse, 3 April 1963," pg. 9-10. Special Events Through the Years, President's Office Files, Presidential Papers, Papers of John F. Kennedy, JFK Library.
[32] "Interim Report of the President's Advisory Commission on Narcotic and Drug Abuse, 3 April 1963," pg. 10-11. Special Events Through the Years, President's Office Files, Presidential Papers, Papers of John F. Kennedy, JFK Library.
[33] "The Activities of the President's Advisory Commission on Narcotic and Drug Abuse," August 1, 1963, "Background Material," Reel 6 – Advisory Commission on Drug Abuse, Dean Markham Papers.

controls of the narcotics laws."[34] The group's primary critique of Dodd's bill – that Congress should expand its coverage beyond just amphetamines and barbiturates – proved most influential, though not as the Commission intended. As will be discussed below and in subsequent chapters, this contributed to a series of developments that ultimately resulted in the federal government having greater power than ever to make arrests for the simple possession of illegal drugs while the legal retail distribution of all manner of potentially addictive pharmaceuticals continued to grow by leaps and bounds.

Envisioning enlightened and "flexible" legislation, the Prettyman Commission argued for a bill that covered all "drugs having a potential for abuse that results in psychotoxic and antisocial behavior." While the Interim Report went on to clarify that this only implied "habit-forming" stimulants, depressants, and tranquilizers, the document's expansive and pejorative generalization overshadowed any scientific specifics that followed.[35] In August 1964, Senator Thomas Dodd testified before a Senate Subcommittee in support of the next version of his drug control legislation (S. 2628). After recounting the final recommendations of the Prettyman Commission, Dodd assured his fellow Senators that the bill "has been broadened" to include "all nonnarcotic drugs capable of producing serious psychotoxic and antisocial effects."[36] This development proved incredibly consequential almost as soon as it happened, because another

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[34] "Interim Report of the President's Advisory Commission on Narcotic and Drug Abuse, 3 April 1963," pg. 12-13. Special Events Through the Years, President's Office Files, Presidential Papers, Papers of John F. Kennedy, JFK Library.

[35] "Interim Report of the President's Advisory Commission on Narcotic and Drug Abuse, 3 April 1963," pg. 11-12. Special Events Through the Years, President's Office Files, Presidential Papers, Papers of John F. Kennedy, JFK Library.

[36] Thomas J. Dodd, "Control of Psychotoxic Drugs," August 3, 1964, Subcommittee on Health, Committee on Labor and Public Welfare, United States Senate, pg. 48, *ProQuest Congressional* <HTTP://congressional.proquest.com.turing.library.northwestern.edu/congressional/docview/t29.d30.hrg-1964-lpw-0001?accountid=12861>

prescription drug, lysergic acid diethylamide (LSD), had already begun its bad trip from miracle pharmaceutical to youth-destroying acid.

After careful consideration, the Commission decided to not yet take strong stances in some areas, especially the total reorganization of narcotics control. However, the release of its Interim Report in April still garnered strong criticism from both the Treasury and Justice Departments. Moreover, by late summer, the ultimate intentions of the Prettyman Commission became clear to all concerned parties. Both Treasury and Justice opposed revision of the draconian mandatory minimum sentences that had been repeatedly extended throughout the 1950s. Appreciative of how punitive penalties "worked hardships on addicts," Justice nonetheless sought "to retain the unquestioned benefits that mandatory penalties have accomplished while at the same time furnishing an opportunity for rehabilitation."[37] James Reed from Treasury focused on the fiscal, instead of moral, argument and asked, "how can we be certain, without further study, that it is cheaper for society to have more narcotic violators on parole and probation than in prison?"[38] Both Departments also had reservations about the creation of a new Major Trafficker unit in Justice, with Treasury again taking the harder line for fear of losing any of the FBN's statutory turf. Those fears were realized when Reed and others learned the full scope of the Commission's reorganization plans. Officials from Treasury and Justice thus demanded to air their grievances before the group concluded their work. Writing to

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[37] Herbert J. Miller to E. Barrett Prettyman, May 31, 1963, "Department of Justice: Herbert J. Miller, Assistant Attorney General," Reel 14 – Federal Agency File cont., Dean Markham Papers.

[38] James A. Reed to E. Barrett Prettyman, May 22, 1963, "Treasury Department: General," Reel 14 – Federal Agency File cont., Dean Markham Papers. For an insightful analysis of the limitations to the fiscal and moral arguments against mass incarceration in contemporary society, see Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015).

Dean Markham in August, Reed asked to appear before the Prettyman Commission to oppose "the possibility of transferring some or all of the functions of the Bureau of Narcotics."[39]

While leaders of the Treasury Department and Bureau of Narcotics defended their bureaucratic fiefdoms, officials in the Justice Department opposed the transfer of policing functions and questioned the proposal to regulate pharmaceuticals with the commerce power. In his propagandizing against the Commission's final report, FBN Commissioner Giordano insisted this opposition extended all the way to Attorney General Robert Kennedy, allegedly revealing his brother, the slain President's true feelings about the Commission that carried his name. However, most, if not all, official communication from Justice came through the Department's liaison to the Commission, Herbert "Jack" Miller. This distinction is important because Robert Kennedy's apparent flip-flop has resulted in diverging historical interpretations of the Kennedys' influence on modern drug policy.

Many contemporary observers, such as Rufus King in *The Drug Hang-Up*, assumed the Kennedys wanted more power for Bobby in the Justice Department and that Lyndon Johnson subsequently opposed the transfer of policing authority for the same reason. Countering that personal rivalry narrative, historian Kathleen Frydl points out that Robert Kennedy left the Justice Department to run for Senate well before LBJ ever endorsed a transfer. She posits Kennedy might have instead caught wind of corruption in the Federal Bureau of Narcotics and changed his mind even before John died.[40] However, there is ample evidence to suggest the

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[39] James A. Reed to Dean F. Markham, August 14, 1963, Treasury Department: General," Reel 14 – Federal Agency File cont., Dean Markham Papers.
[40] Kathleen J. Frydl, *The Drug Wars in America, 1940-1973* (New York: Cambridge University Press, 2013), 269.

Attorney General was already quite familiar with the corners regularly cut by narcotics agents.[41] Moreover, as this chapter seeks to demonstrate, there were multiple points of opposition to a total overhaul of the federal drug regime, all of which proved far more significant than any personal animosity between RFK and LBJ. Finally, the Justice Department's opposition did not necessarily continue with those who took up Kennedy's work, especially Ramsey Clark. It is therefore more productive to evaluate the Justice Department's criticism as a product of the individual who produced it – Assistant Attorney General Herbert "Jack" Miller.

When he became Attorney General, Robert Kennedy handpicked Jack Miller to head the Justice Department's Criminal Division, where he took charge of everything from drug policy to mob investigations. Though a lifelong Republican, Miller had impressed Kennedy with his work on a court-appointed board to monitor the Teamsters Union, and Miller did not fail to disappoint the AG as he hounded Teamsters President Jimmy Hoffa "through four indictments, three trials and four appeals." In fact, the AG and his assistant became friends, and Miller served as a pallbearer at Robert Kennedy's funeral in 1968. Nonetheless, Miller never renounced his party allegiance, and, after successfully representing "several minor figures involved in the Watergate scandals," he became Richard Nixon's personal attorney in August 1974. In that capacity, Miller orchestrated the ex-President's pardon from Gerald Ford and convinced the Supreme Court to dismiss any civil liability for acts performed while in office.[42]

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[41] Often dealing in unsubstantiated stories, at least one historian has suggested that Robert Kennedy's "romance with the Bureau of Narcotics" even included participating in some of the FBN's seedier drug busts, see Burton Hersh, *Bobby and J. Edgar* (New York: Basic Books, 2007), 166-7.

[42] William Grimes, "Herbert J. Miller Jr., Justice Dept. Leader, Dies at 85," *The New York Times*, November 21, 2009.

Miller displayed the same mixed allegiances when he gave James Reed archival files documenting the Justice Department's opposition to a similar transfer suggestion made by the Hoover Commission in the 1950s.[43] However, it was Miller's outdated and conservative reading of Constitutional power to police drugs that was most out of line with the Prettyman Commission. Testifying at the penultimate Commission meetings in September 1963, Miller debated commissioners over the FBN's status as a revenue-raising agency and then turned to the "tax versus commerce power" issue laid bare by their transfer proposal. He argued, "the taxing power does go further than the commerce power and reaches transactions which the commerce power cannot reach." Miller based this argument on an issue the FDA already understood all too well – "intra-state" activities "divorced from inter-state commerce" could only be reached with the "taxing power."[44] However, he failed to recognize that, because of this very issue, every proposed dangerous drug bill now granted FDA the authority to police even those pharmaceuticals not directly engaged in interstate commerce simply because of that local traffic's effect on the broader market.

This reading of the Commerce Clause had defined liberal jurisprudence since the New Deal, but Miller persisted with a more conservative interpretation hailing from an earlier era.[45] Reviewing the final Prettyman Report, Miller admitted, "We have not extensively researched the

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[43] Herbert J. Miller, Assistant Attorney General, Justice Department, to James A. Reed, Assistant Secretary, Treasury Department, July 31, 1963, "Treasury Department: General," Reel 14 – Federal Agency File cont., Dean Markham Papers.

[44] "Discussion of the transferal of the FBN to Justice and wiretapping," pg. 13-14, "7th Meeting, Sept. 4-5, 1963, Washington, D.C.," Reel 8 – Advisory Commission on Drug Abuse cont., Dean Markham Papers.

[45] The literature on Commerce Clause jurisprudence in the 20th century fills entire sections of law libraries and pages of legal journal indexes. For a short but detailed introduction to many of these cases and issues swirling around debates about our federalist system, see Susan Low Bloch and Vicki C. Jackson, *Federalism: A Reference Guide to the United States Constitution* (Santa Barbara, CA: Praeger, 2013), esp. chapters 3-5.

area… but agree tentatively that it probably would be upheld." He nonetheless warned, "a shift to the Commerce Clause would result in extensive litigation until the matter was settled judicially." Removed from the work of Justice's Civil Rights division, Miller perhaps did not foresee that most of this judicial reckoning would occur in another arena. In the landmark Civil Rights Act of 1964, Congress claimed the authority to prevent racial discrimination even in locally owned and operated hotels and restaurants because of their relationship to interstate commerce. Supreme court rulings in *Heart of Atlanta Motel v. US* and *Katzenbach v. McClung* upheld that power, settling the matter judicially before Congress wielded this expansive interpretation of federal power against everything from pharmaceuticals and illegal drugs to guns in schools and violence against women.[46] Fifty years later, while conservative judicial activists have reversed federal protections for the latter two issues, federal drug control remains powerful because of the Drug Enforcement Agency (DEA)'s authority to police even simple possession – a relic of mid-century liberal legislation to regulate *intrastate* commerce.[47]

After hearing opinions from all sides and debating every minute detail of their report, President Kennedy's Commission produced a complete "program for the federal government in

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[46] Citing the *Wickard* decision, written by FDR's former Attorney General, Robert Jackson, the court reasoned even a "single local event, when added to many others of a similar nature, may impose a burden on interstate commerce by reducing its volume or distorting its flow." *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); and *Katzenbach v. McClung*, 379 U.S. 294 (1964).

[47] The Gun-Free School Zones Act of 1990 was nullified in *United States v. Lopez*, 514 U.S. 549 (1995). For an analysis of *United States v. Lopez* (1995) and a conservative rebuke to the federalization of crime control through usage of the interstate Commerce Clause, see Kathleen F. Brickey, "The Commerce Clause and Federalized Crime: A Tale of Two Thieves," *Annals* 543 (Jan 1996), 27-38. Five years later, the Violence Against Women Act was declared unconstitutional in *United States v. Morrison*, 529 U.S. 598 (2002). For a recent analysis of the group behind this reversal in New Deal era jurisprudence, see Amanda Hollis-Brusky, *Ideas with Consequences: The Federalist Society and the Conservative Counterrevolution* (New York: Oxford University Press, 2015), esp. chapter 4.

respect to narcotic and drug abuse," including research, education, new or revised statutes, and a complete overhaul of the drug bureaucracy.[48] While some Commissioners, including Prettyman himself, still worried transferring the FBN would be "too disruptive," all agreed on the need for more attention to the problem of dangerous drugs and, in turn, the need to regulate all drugs under the commerce power. Even Treasury's inside man on the Commission, Austin MacCormick, acknowledged the need to remove narcotics laws from the Internal Revenue Code. Evaluating the group's final recommendations, MacCormick admitted, "Trying to control narcotics under the taxing power seems to me little better than an archaic subterfuge."[49] As such, the Final Report of President Kennedy's Advisory Commission on Narcotic and Drug Abuse advocated stricter policing of prescription drugs in the short-term while outlining a new model for all federal drug control that continues to reverberate through our contemporary carceral state.[50]

Choosing Sides in the Turf War

Getting his new boss up to speed, Lee White informed President Lyndon Johnson "a date was to be set for presentation to President Kennedy in the first half of December." White believed it would still be "appropriate and useful to meet with the Commission, receive its report and thank them for their efforts."[51] Johnson, however, did not want Kennedy's "bomb" blowing

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[48] Prettyman memo.
[49] "Answers to Questionnaire: Compilation," pg. 85, Reel 15 – Final Report File, Dean Markham Papers.
[50] In regards to policing dangerous drugs, Recommendation #13 stated succinctly, "The Commission recommends that all non-narcotic drugs capable of producing serious psychotoxic effect when abused be brought under strict control by federal statute." "Final Report as Published," Reel 15 – "Final Report File," Dean Markham Papers.
[51] Lee White quoted in MJDR memo, January 22, 1964, Executive File - "FG 727, President's Advisory Commission on Narcotic & Dangerous Drug Abuse, 11/22/63-2/29/64," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

up in his own lap and refused to acknowledge the Prettyman report throughout his first two months as president.

As White gently prodded the new President, Dean Markham was feeling the heat from all those who had worked with the Commission. Moreover, Markham now spoke on behalf of the Prettyman Commission and his family friend, the slain President. Under this cloud, Markham wrote to LBJ's key domestic advisors in early December. Citing "present plans" to release the report in a couple weeks, Markham reported that he had just spoken to Prettyman, who "urged that I try and get this released earlier due to pressures being brought to bear on him and other members of the Commission." Additionally, according to Markham, his office in the White House was "also receiving a great deal of inquiry from the newspapers and members of Congress and the Senate as well as interested special groups."[52]

Those interested parties included politicians and activists who had provided the initial impetus to Kennedy's actions in this field. California Governor Pat Brown wrote to Johnson in December 1963 to "strongly" advocate "that the recommendations of the President's Advisory Commission on Narcotic and Drug Abuse be adopted." Brown's Attorney General, Stanley Mosk, also expressed to Markham his "hope that you will continue with the special projects about which President Kennedy cared so much."[53] Similarly, Lee White informed Johnson's close aides that Presidential action on the Commission's recommendations "is of keen and sharp

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[52] Dean Markham memo to Lee White, Walter Jenkins, Kenneth O'Donnell, Pierre Salinger, and Larry O'Brien, "Release and follow up on Commission report." "FG 727, President's Advisory Commission on Narcotic & Dangerous Drug Abuse, 11/22/63-2/29/64," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

[53] Edmund G. Brown to Lyndon B. Johnson, December 21, 1963; and Stanley Mosk to Dean Markham, December 5, 1963, Executive File - "HE 4-1 Narcotics, 11/22/63-4/13/64," Box 16 – "EX HE 4-1 11/22/63," Subject Files, White House Central Files, LBJ Library.

interest to New York City and Los Angeles in particular." He argued, release of the report "demonstrates an interest in solving a critical problem that exists in a few areas in the country."[54]

Although "a few areas" of the country wanted more federal money and manpower in the fight against drug addiction, most of those tracing the path of Prettyman's "bomb" looked forward to the blow-up inside the Beltway. Observers in the press and Congress sensed a looming battle between Treasury, Justice, and HEW for jurisdictional turf, and the new Johnson White House sought to avoid this fight. Quoting an unnamed source, the first *FDC Reports* of December 1963 warned its readers that Prettyman's falling "bomb" was "understood to include 'far out of left field' recommendations for transfer of govt. regulatory functions." Detailing the Commission's recommendations, the health industry newsletter gossiped, "Chairman E. Barrett Prettyman is said to have dreamed up the idea."[55] Reading leaks like this over the Christmas vacation, Johnson's political allies began sharing concerns the report might undo their previous legislation or undermine influential committee assignments. Speaking on behalf of his fellow southerner, House Majority Whip Hale Boggs, former Texas Governor Price Daniel passed word to the President in early January, warning him "parts of the report will be highly controversial." Daniel and Boggs were especially outraged that some Prettyman recommendations "would greatly weaken" their Narcotics Act of 1956. Still one of Johnson's closest advisors, Walter Jenkins spoke directly with both Daniels and Congressman Boggs.[56]

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[54] Lee White to Kenneth O'Donnell, January 17, 1964, Executive File - "FG 727, President's Advisory Commission on Narcotic & Dangerous Drug Abuse, 11/22/63-2/29/64," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.
[55] "White House Narcotics & Drug Abuse Report," *F-D-C Reports*, December 2, 1963, available in "Memorandums to Commission Members," Reel 6 – Advisory Commission on Drug Abuse, Dean Markham Papers.
[56] Price Daniel to Walter Jenkins, January 6, 1964 and Walter Jenkins to Price Daniel, January 15, 1964, General Folder – "FG 727 President's Advisory Commission on Narcotic & Drug

The complexity of the Prettyman Commission's transfer recommendations threatened the cooperative relationships manufacturers and doctors had developed with both the Federal Bureau of Narcotics and the Food and Drug Administration. Out of twenty-five total recommendations, four actually related to the transfer of policing and regulatory functions. Advocating the dismantling of the FBN and its regulation of narcotics "under the tax power," the Commission advocated controlling all drugs under "the power to regulate interstate and foreign commerce." Moreover, it recommended that the policing of illicit narcotics and pharmaceuticals be transferred from the FBN and FDA, respectively, and be made a Justice Department responsibility, while the FDA would take charge of regulating the legal import, manufacture, and distribution of both pharmaceutical drugs and narcotics.[57] Thus, while the previous regime had

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Abuse, " Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

[57] *Final Report of the President's Commission on Narcotics and Dangerous Drugs* (Washington: Government Printing Office, 1963). Summary of Report and Recommendations available in "Final Report as Published," Reel 15 – "Final Report File," Dean Markham Papers. Pertinent recommendations are numbers 7, 8, 9, and 10:

#7 - "The Commission recommends that the functions of the Bureau of Narcotics relating to the investigation of the illicit manufacture, sale, or other distribution, or possession of narcotic drugs and marihuana be transferred from the Department of the Treasury to the Department of Justice."

#8 - "The Commission recommends that the responsibility for the investigation of the illicit traffic in dangerous drugs be transferred from the Department of Health, Education, and Welfare to the Department of Justice."

#9 - "The Commission recommends that the functions of the Bureau of Narcotics relating to the regulation of the legitimate importation, exportation, manufacture, sale, and other transfer of narcotic drugs and marihuana be transferred from the Department of the Treasury to the Department of Health, Education, and Welfare. Narcotic Drugs would be regulated under the power to regulate interstate and foreign commerce, not under the tax power; and the importation, production, sale, or other transfer of marijuana would be prohibited except where expressly licenses [sic] for legitimate scientific purposes or for the emergency production of hemp."

#10 - "The Commission recommends that a unit be established within the Department of Health, Education, and Welfare to determine the safety and efficacy of and to regulate all narcotics and drugs capable of producing severe psychotoxic effects which can lead to criminal or lawless behavior when abused. This unit would also regulate the legitimate importation, exportation, manufacture, sale, and other transfer of narcotic and dangerous drugs."

been divided between licit and illicit drugs, Prettyman's group envisioned a new division between the legitimate and illegitimate uses of all drugs. However, this prescription for ending drug abuse did not go down easy with the current drug bureaucracy and its industry associates.

Complaints and concerns rolled in from industry representatives and their respective lobbying groups, including previous critics of the Federal Bureau of Narcotics. As the American Medical Association's (AMA) critique revealed, the Prettyman Commission's recommendations threatened the cooperative relationship developed between the drug bureaucracy and certain industries. Executive Secretary of the AMA, Francis Blasingame, MD, wrote the President in March 1964 to oppose the transfer and, in doing so, detailed the symbiosis that had developed between the FBN and AMA. Emphasizing the "important role that physicians must play in a program of combating the abuse in the use of narcotics," Blasingame assured President Johnson the FBN appreciated doctors' important role while recognizing "the significant and beneficial use of narcotic drugs in the practice of medicine."[58] A letter from Willard B. Simmons, Secretary of the National Association of Retail Druggists (NARD) shared similar sentiments. Opposed to the transfer recommendations, Simmons insisted the FBN "functioned in exemplary fashion as far as the distribution of narcotics through legal pharmaceutical channels is concerned." Likewise, according to Simmons, the FDA "has done an effective job in controlling the distribution of dangerous drugs." Echoing Simmons, the Pharmaceutical Manufacturers

[58] F. J. L. Blasingame, M.D. to Lyndon Johnson, March 11, 1964, "American Medical Association," Reel 21 – "Organization File," Dean Markham Papers; see also Ralph Dungan, Special Assistant to the President, Route Slip to Dean Markham, Covering letter of March 11, 1964 from Blasingame, March 13, 1964, General File – "FG 727 President's Advisory Commission on Narcotic & Dangerous Drugs," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

Association (PMA) also opposed any interruption of "the normal flow of both narcotic and psychotoxic [pharmaceutical] drugs."[59]

Although many contemporary readers might understand this opposition as standard corporate hostility to any new forms of government regulation, the reality was not so simple. As Dr. Blasingame explained to President Johnson, the AMA stood "ready to further [any] cause that will ameliorate the conditions" causing drug abuse, including more enforcement personnel for the FBN. However, the AMA was also quick to argue: "In recent years there have developed between the Bureau and the Nation's physicians a mutual trust and confidence which are manifest in the cooperation and rapport now existing in their relationship."[60] Thus, it was not new regulation, but the need to build "cooperation and rapport" with a new executive department that troubled industry leaders and threatened their profits. The Food and Drug Administration had its own complicated and symbiotic relationship with the pharmaceutical industry. Allegations of corruption in that relationship eventually undermined Commissioner George Larrick, but close cooperation between the FDA and the nation's largest pharmaceutical manufacturers provided the bedrock upon which Congress constructed the Bureau of Drug Abuse Control.

While doctors and pharmacists hated to lose the rapprochement finally achieved with the FBN, Benjamin Oehlert, Jr., of the Coca-Cola Company described how the transfer would affect

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[59] Willard B. Simmons to Lyndon Johnson, February 4, 1964, General File – "FG 110-12 Narcotics, Bureau of," Box 158 – "EX & GEN FG 110-12," Subject Files, White House Central Files, LBJ Library; and Ralph Dungan, Special Assistant to the President, Route Slip to Dean Markham, Covering letter of March 11, 1964 from Austin Smith, M.D., President, Pharmaceutical Manufacturers Association (PMA), March 13, 1964, General File – "FG 727 President's Advisory Commission on Narcotic & Dangerous Drugs," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

[60] F. J. L. Blasingame, M.D. to Lyndon Johnson, March 11, 1964, "American Medical Association," Reel 21 – "Organization File," Dean Markham Papers.

other licit industries' access to important resources – further revealing it was not more regulation, but new regulators, that troubled the FBN's allies in private industry**.** Serving as Coke's Senior Vice President, Oehlert spent many years observing "the operations of the Bureau of Narcotics because of the circumstance that one of the ingredients of Coca-Cola is derived from the coca leaf, and was processed under the jurisdiction of the Bureau."[61] Based on that experience, Oehlert urged his fellow Texan, Walter Jenkins to advise "the Boss" that "fragmentizing of the Bureau's activities would seriously complicate the narcotics picture and would create a chaotic situation which would take many years to overcome."[62]

As Oehlert implied, the Federal Bureau of Narcotics was a vital partner for Coca-Cola in securing and guaranteeing access to coca leaves, which provided an essential "flavoring agent" even after Coke stopped putting actual cocaine into its beverages. According to historian Suzanna Reiss, "A combined effort by lawyers for the pharmaceutical industry, the Coca-Cola Company, and Commissioner Anslinger of the Federal Bureau of Narcotics secured this concession for 'special leaves' in the 1931 Geneva Convention." The global upheaval of World War II allowed Coca-Cola and Merck Pharmaceutical – the only other authorized U.S. importer of coca leaves – to further ingratiate themselves "with the interests of the U.S. government and benefit from the collaboration."[63] By the 1950s, FBN agents regularly visited Maywood Chemical Works to certify their containers of "Merchandise #5" as non-narcotic coca extract for

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[61] Benjamin H. Oehlert, Jr. to Joseph Califano, May 3, 1968, Folder – "Crime General – Narcotics, Drug Abuse, Alcoholism," Box 5 – "Presidential Task Forces Subject File," Files of James Gaither, Office Files of the White House Aides, LBJ Library.
[62] Benjamin H. Oehlert, Jr. to Walter Jenkins, December 20, 1963, General File – "FG 110-12 Narcotics, Bureau of," Box 158 – "EX & GEN FG 110-12," Subject Files, White House Central Files, LBJ Library.
[63] Suzanna Reiss, *We Sell Drugs: The Alchemy of US Empire* (Berkeley: University of California Press, 2014), 24-32.

use in Coca-Cola products. Reiss thus concludes, "Coca-Cola's use of coca leaves… produced extensive relations and collaborations between company executives and various agencies of the federal government, including the Federal Bureau of Narcotics." In 1964, the FBN continued to protect Coca-Cola's exclusive rights to stockpile raw coca leaves, process coca extract, and sell the world a Coke.[64] As such, Oehlert and his fellow executives did not oppose more regulation of illegal drugs and often supported policing of black markets. However, they did not want to have to grease the wheels of a new agency, especially when they had already developed such a profitable relationship with the FBN.

Even after the official submission of the report, Markham, Prettyman, and other members of the Commission continued to fight pressure from the Treasury Department to alter their recommendations. At the same time, while Johnson delayed public release, Markham did his best to prevent leaks and counter unfavorable press speculation. Despite Lee White's admonitions to all interested Department officials, Markham reported that representatives from Treasury and its Bureau of Narcotics continued in their attempts to undermine or alter the final recommendations of the Commission. Even before Kennedy's death, Assistant Secretary of Treasury James Reed and Arnold Sagalyn, Treasury's Law Enforcement Coordinator, began pressuring Judge Prettyman and other members of the Commission to change their recommendations. Additionally, Markham revealed that his staff gave Sagalyn and FBN Commissioner Henry Giordano access "to have a preview reading in my office of the report." Brazenly taking

[64] Reiss, *We Sell Drugs*, 91-3 & 222-3.

advantage of this professional courtesy, Giordano and Sagalyn "copied down verbatim certain passages which have since been read off to members of the Senate or the Congress."[65]

Aiming to head off further issues, Markham reminded all involved departments that the White House "intends to make further exploration and evaluation of all recommendations," which meant, "there is no need for any specific emphatic positions at this time."[66] Officials from the FBN and Treasury, however, continued to tilt at windmills, and FBN Commissioner Giordano was one of the worst offenders. In early January, Giordano spoke before a meeting of the State Judges of Western New York, where he revealed many of the Commission's recommendations and specifically criticized the proposed transfer of functions away from the Treasury Department.[67] Writing to Giordano, Markham expressed his surprise "to see reference to recommendations" even though "we had requested you to keep these recommendations confidential until after the report had been released and evaluated by the White House." Most disconcerting to Markham, Giordano argued in his speech that Attorney General Robert Kennedy no longer supported the transfer of functions to Justice. Unaware of any such statement from his long-time friend, Markham demanded more info on the source of such a statement and also wrote directly to Kennedy for clarification.[68] As noted above, the veracity of Giordano's

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[65] Dean Markham, Memorandum of Record: "Activities of the Department of Treasury in advance of release of the report," December 11, 1963, "Treasury Department: General," Reel 14 – "Federal Agency File, cont.," Dean Markham Papers.
[66] Dean Markham to Assistant to the Secretary (Public Affairs) of the Department of Treasury, December 13, 1963, Executive File - "HE 4-1 Narcotics, 11/22/63-4/13/64," Box 16 – "EX HE 4-1 11/22/63," Subject Files, White House Central Files, LBJ Library.
[67] Henry L. Giordano, "Remarks of Henry L. Giordano, Commissioner of the United States Bureau of Narcotics Before a Meeting of State Judges of Western New York," January 9, 1964, "Treasury Department: Bureau of Narcotics, Henry L. Giordano," Reel 15 – "Federal Agency File, cont.," Dean Markham Papers.
[68] Dean Markham to Henry Giordano, January 14, 1964, "Treasury Department: Bureau of Narcotics, Henry L. Giordano," Reel 15 – "Federal Agency File, cont.," Dean Markham Papers;

accusations remain uncertain; however, Markham did send RFK a follow-up memo with details about the recommendations of the committee and Treasury's opposition. That memo presumably was in response to a note from the AG that claimed ignorance of Giordano's accusations and requested more information.[69]

Despite ongoing dissent from within the executive branch, the White House feared that political opponents "will certainly raise the loudest imaginable fuss if they can a claim a report has been suppressed." Therefore, in mid-January, the Johnson administration finally began serious consideration of how to handle releasing the Commission's work.[70] However, Markham had already tempered the Commission members' expectations that they would get to meet with Johnson, blaming the busy schedule of the new President.[71] While Johnson's schedule was busy in the transitional and tragic weeks following Kennedy's death, other legislative histories of the period reveal that the new President made time for priority issues.[72] Moreover, throughout his Presidency, Johnson was a master of the optics of bill signings and official presentations of Task Force reports. In short, Johnson's White House grasped the importance of appearances, and, in

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Dean Markham memorandum for Attorney General Robert F. Kennedy, January 14, 1964, "Department of Justice: Robert F. Kennedy, Attorney General," Reel 14 – "Federal Agency File, cont.," Dean Markham Papers.

[69] Dean Markham memorandum for Attorney General Robert F. Kennedy, April 8, 1964, "Department of Justice: Robert F. Kennedy, Attorney General," Reel 14 – "Federal Agency File, cont.," Dean Markham Papers.

[70] Lee White memorandum for Kenneth O'Donnell, January 17, 1964, "Report of the President's Commission on Narcotics and Drug Abuse," Executive File - "FG 727, President's Advisory Commission on Narcotic & Dangerous Drug Abuse, 11/22/63-2/29/64," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

[71] Dean Markham memorandum for Members of the Commission, December 18, 1963, "Memorandums to Commission Members," Reel 6 – "Advisory Commission on Drug Abuse," Dean Markham Papers.

[72] For a fairly comprehensive compendium of President Johnson's interactions during this transition period, see Max Holland, David Shreve, and Ashley Harvard High, eds., *The Presidential Recordings: Lyndon B. Johnson, The Kennedy Assassination and the Transfer of Power, November 1963—January 1964*, vol. 1-3 (New York: W. W. Norton & Company, 2005).

this case, they sought to appear as neither suppressing nor endorsing the Prettyman Commission's report.

When White House staffers practiced this distancing act, they insisted the Prettyman Commission was merely a citizens' group, "composed of persons outside the Executive Branch… and their function is purely advisory."[73] Lee White laid out the main options for keeping up this political shell game in mid-January.[74] At the same time, however, the press began to ask questions about the results of the Prettyman Commission's work, and Press Secretary Pierre Salinger made the mistake of calling it a "citizens report," stating that it "would be duly filed." Hearing this, Prettyman "hit the roof" and immediately called the White House to complain. The judge considered his group to be advisors to the president, charged with helping him to craft a new drug program. Therefore, he was offended by Salinger's dismissive implication that the report was just another group of citizens' opinions. According to Prettyman, he "told them that what Mr. Salinger had said was untrue, he knew it was untrue, and if they didn't correct it forthwith, I would." Taking his threat seriously, that same afternoon the White House sent by messenger a "very fine" official note from LBJ to Prettyman.[75] However, even that letter took multiple drafts to make it sufficiently non-committal.[76] Finally, on January 24 the

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[73] Lawrence F. O'Brien to Representative Frank M. Karsten, January 23, 1964, General Folder – "FG 727 President's Advisory Commission on Narcotic & Drug Abuse, " Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library. For another interpretation of this transitional period, see Kathleen Frydl, *The Drug Wars in America, 1940-1973* (New York: Cambridge University Press,2013), 267-9.

[74] Lee White to Kenneth O'Donnell, January 17, 1964, Executive File - "FG 727, President's Advisory Commission on Narcotic & Dangerous Drug Abuse, 11/22/63-2/29/64," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

[75] Prettyman memo.

[76] Drafts of letter by Lee White and others available in Executive File - "FG 727, President's Advisory Commission on Narcotic & Dangerous Drug Abuse, 11/22/63-2/29/64," Box 401 – "EX FG 727 11/23/63," Subject Files, White House Central Files, LBJ Library.

White House released the final report of the Prettyman Commission along with a list of 105 experts the Commission consulted. Three days later, the White House also publicized Johnson's letter to Prettyman and with that, after over a year of substantial work, Commission members saw no more action taken on their recommendations until July 1964.[77]

Health and the Great Society

Johnson did not address the issue of "narcotic and drug abuse" again until July 1964, but the President, like his predecessor, included requests for more power to protect consumers from harmful prescription drugs in his special messages to Congress on "Consumer Interests" and "the Nation's Health." On February 5, 1964, Johnson spoke to Congress in order to "reaffirm" the basic consumer rights Kennedy had "first set forth" in his "historic consumer message of March 15, 1962." In that message, Kennedy argued for more control over the safety and efficacy of all medicines as well as specific regulation of the manufacture and distribution of amphetamines, barbiturates, and other dangerous prescription drugs. Of course, the latter failed to make it into the final version of the resultant legislation. Thus, even with the passage of the Kefauver-Harris Amendments in the fall of 1962, Johnson requested that Congress continue to "extend and clarify" the Food and Drug Administration's "needed authority."[78]

Planting the seeds for the prolific amount of health legislation that characterized his vision for the Great Society, Johnson gave another Special Message to Congress less than a week

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[77] For the text of the letter and information on its release with the final report of the Commission, see Lyndon B. Johnson, "Letter to Judge Prettyman in Response to Report of the President's Advisory Commission on Narcotic and Drug Abuse," January 28, 1964. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=26042.

[78] Lyndon B. Johnson, "Special Message to the Congress on Consumer Interests," February 5, 1964. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=26058.

later, this time on "the Nation's Health." In addition to arguing for new legislation to provide healthcare for the aged, improved health facilities, and more treatment for issues like "mental retardation," Johnson reiterated his call for "increased appropriations to the Food and Drug Administration" and "new legislation to extend and clarify the food, drug, and cosmetic laws." Charging the Congress and Nation with curing heart disease, cancer, and stroke, the President also insisted, "abuse of drugs and traffic in narcotics are a tragic menace to public health." He then proposed a remedy for that disease – a four-pronged plan of "education, regulation, law enforcement, and rehabilitation." Briefly acknowledging the work of Prettyman Commission, LBJ promised that appropriate departments and agencies "will review this report."[79] While Prettyman Commission members continued to wait for some substantive action on their recommendations, Johnson had now completed the process begun under Kennedy – positioning the abuse of drugs, particularly pharmaceuticals, squarely within a health policy framework.

This umbrella of health policy, under which Johnson and his advisors situated the control of dangerous prescription drugs, is significant for a number of reasons. First, it evinces how this government power, which would subsequently be applied to criminal justice matters, only received the necessary political and public support because it was originally sold as *not* having to do with the criminal justice politics that remained a prerogative of state and local governments. Moreover, drug regulation as a consumer protection and health issue fit within LBJ's larger vision for his Great Society programs. Like Kennedy's New Frontier, Johnson's Great Society reflected the high modernist ideal that intelligent uses of government power could ameliorate the worst aspects of the modern world, from poverty and disease to crime and drug abuse. Finally,

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[79] Lyndon B. Johnson, "Special Message to the Congress on the Nation's Health," February 10, 1964. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=26064.

Johnson's rhetorical tactics and failure to truly prioritize drug abuse evinces a key moment in the developing and increasingly complex historical relationship between cultural and political understandings of drugs, crime, and youth culture. In its April 1963 Report, for example, the Prettyman Commission even demurred that it was "not [yet] prepared… to state that the problem of drug abuse should be assigned the highest priority."[80] A year later, President Johnson continued to follow suit. At the start of the decade, the typical drug defendant in California was a "25-year-old working-class Mexican American" heroin user, but seven years later the stereotypical arrestee was "a 19-year-old white middle-class male" pot smoker.[81] Obviously, much changed between 1960 and 1967. In 1964, however, LBJ remained far more concerned about the dangers that liberal white college students faced from southern sheriffs.

Other than his health and consumer protection speeches, LBJ did not say anything more about drugs – illegal or prescription – until mid-July 1964 and that act was again symbolic. In early July, Kennedy called Judge Prettyman and invited him to come speak with Johnson. With Bobby accompanying him, Prettyman met the President and Lee White in the afternoon of July 15. As Johnson rocked in his rocking chair, the men discussed the background, work, and recommendations of the Commission while sipping orange drinks – "non caloric," the President assured Judge Prettyman. After Kennedy prompted him, Prettyman outlined the need for a strong Presidential statement, supported the Dodd bill, and suggested the transfer controversy "for the present… could be avoided." When Johnson said he was going to have Lee White coordinate White House policy, Prettyman praised that idea and recommended Dean Markham stay on to

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[80] "Interim Report of the President's Advisory Commission on Narcotic and Drug Abuse," 28.
[81] Michael R. Aldrich, Todd H. Mikuriya, and Gordon S. Brownell, *Preliminary Report: Fiscal Costs of California Marijuana Law Enforcement, 1960-1984* (Berkeley, 1986), Ch. 1, Quoted in Lassiter, "Impossible Criminals," 8-9.

assist White. According to Prettyman, "the Attorney General strongly supported the idea." And so, with everyone having achieved their unstated goals, all rose to exit. Before they left, Johnson "buzzed an intercom on his desk and told someone he had an item for release."[82] That release, announcing Lee White as White House coordinator and directing all interested agencies to pay the utmost attention to drug abuse, was simply more of the same lip-service but all Johnson would say or do about the issue until the following year.[83]

Instead, Landslide Lyndon, the consummate campaigner, turned his attention to the upcoming Presidential election, and this did not affect his drug policy in the way many might assume. The evening after his meeting with Prettyman, Johnson blew off another appointment and had an assistant turn on the television just as his old Senate colleague Everett Dirksen took the stage at the Cow Palace in San Francisco. LBJ watched Dirksen nominate the new standard-bearer for a resurgent conservatism, Arizona Senator Barry Goldwater, as the Republican candidate for President.[84] Scholars of both mass incarceration and the rise of the New Right have examined Goldwater's influence on the domestic politics of LBJ and his fellow Democrats. According to many historians, Goldwater's punitive politics, in tandem with the growing urban unrest announced by the Watts Rebellion a year later, pushed Johnson to focus more on law and

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[82] Prettyman memo.

[83] Perhaps attempting to establish future precedent, LBJ's statement did include the following language: "The Federal Government, <u>being responsible for the regulation of foreign and interstate commerce,</u> bears a major responsibility in respect to the illegal traffic in drugs and the consequences of that traffic," [emphasis added], Lyndon B. Johnson: "Statement by the President on Narcotic and Drug Abuse," July 15, 1964. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=26374.

[84] Handwritten note by VM on Typed MJDR note to President Johnson, July 16, 1964, Folder: "July 15, 1964," Box 7 – The President's Appointment File [Diary Backup], 7/1/64-7/31/64, Presidential Papers, LBJ Library.

order issues.[85] Taking a strong stance against dangerous drugs and juvenile delinquency certainly would have elevated Johnson's law and order credentials, however he avoided the issue until after the election, confirming recent scholarship that has minimized the role of Goldwater in Johnson's personal punitive turn.[86]

Throwing his weight behind the latest iteration of Thomas Dodd's dangerous drugs bill (S. 2628) – a product of years of investigation by Dodd as Chairman of the Senate Juvenile Delinquency Subcommittee – could have been an easy way for Johnson to take on a winning law and order issue. This would have been an especially low risk move considering the bill passed the Senate by unanimous voice vote.[87] That vote happened too late, however, as LBJ sought to take advantage of a quirk in congressional campaigning rules, which provided a far bigger political payoff. In late September, LBJ confidentially approached high-ranking Congressional Democrats, including Senate Majority Leader Mike Mansfield, "suggesting a recess of the Congress until after the election." Having passed all of the president's "'must' legislation," Mansfield and a small group of trusted Senators conspired to secure a Sine Die adjournment, meaning they would have no plans to return until the next Congress was formed in January. In addition to preserving LBJ's "untarnished record of legislative accomplishment," this move ensured he could keep Medicare and relief for Appalachia as campaign issues. Most important, it

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[85] Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2007). For a popular account of this same narrative, see Rick Perlstein, *Nixonland: The Rise of a President and the Fracturing of America* (New York: Scribner, 2008), esp. chapter 1.

[86] Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York: Oxford University Press, 2014).

[87] The bill did face opposition from the American Medical Association, however no Senators raised objections during floor discussions, "Senate Votes To Tighten Controls On Dangerous Drugs," *CQ Almanac 1964*, 20th ed., 253-54. Washington, DC: Congressional Quarterly, 1965. http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/cqal64-1304297.

would "bring… to a halt" the investigation of LBJ's former assistant, Bobby Baker, which was being coordinated in the Justice Department by none other than Jack Miller.[88] However, an adjournment in the House meant it would not have enough time to consider Dodd's bill, and so yet again, a seemingly popular measure to regulate prescription drugs was overshadowed by more pressing political considerations.[89]

A Compromise with Commerce

As public attention continued to spread, LBJ eventually had to take some substantive action in regard to drugs, especially the problem that seemed most at risk of creeping into the innocent domains of white suburbs – dangerous pharmaceuticals. Laws to control the abuse of pharmaceuticals also had support from across the political spectrum, in part because the rhetorical distance because legitimate use and illegal abuse gave self-diagnosed *users* of such drugs no cause for concern. That legislation could attract those law and order voters who also regularly popped a pill to slim their waistline or ensure a restful night's sleep. Adding to that appeal, Dodd failed to get his bill passed, but he further convinced his fellow Senators and their constituents that a relationship existed between the abuse of prescription drugs and juvenile delinquency. Moreover, if dangerous drugs could lead to delinquency, they could also be a

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[88] Mike Manatos, "Memorandum to the President," October 1, 1964, Folder: "Legislation 1964 – General Info – Mr. O'Brien," Box 1 [1 of 2], Office Files of Mike Manatos, Office Files of the White House Aides, Presidential Papers, LBJ Library; William Grimes, "Herbert J. Miller Jr., Justice Dept. Leader, Dies at 85," *The New York Times*, November 21, 2009.

[89] According to the *CQ Almanac*, S. 2628 was referred to the House Interstate and Foreign Commerce Committee, chaired by Oren Harris, but no hearings were ever held, "Congress Votes Controls on Barbiturates, Amphetamines," *CQ Almanac 1965*, 21st ed., 352-55. Washington, DC: Congressional Quarterly, 1966. http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/cqal65-1259284.

"gateway" to harder stuff. As one older male Californian put it, "While their parents are at some cocktail party, the kids drink, gulp down pills, and away they go toward marijuana and heroin."[90]

Concerns about such a relationship were further elevated by the seemingly never-ending growth in the production and availability of amphetamines, barbiturates, and other potentially habit-forming drugs. Unlike narcotics and marijuana, amphetamines and barbiturates were legally produced within the United States and thus never had to cross a border, where standard search and seizure measurers could be most effective. Instead, these drugs were available in most corner drugstores. With little oversight, they could also be ordered from an array of manufacturers and packagers ranging in size from mom and pop operations to Smith Kline & French, which held the patent on Benzedrine.[91] Dramatizing these issues and exacerbating fears about them, Jay McMullen, a producer for CBS News, created a fake distribution company and spent four months in 1964 attempting to order amphetamines and barbiturates from a range of manufacturers.

Host of the CBS Evening News, Walter Cronkite may have been the only person LBJ could not ignore. He was also the most trusted man in America, and in September 1964, Cronkite told his millions of viewers, "One of the unresolved and major evils of our modern American society is narcotics addiction." He gravely continued, "And today it frequently begins—and ends tragically—in the use of the seemingly innocent pep pills and goof balls—properly barbiturate drugs and amphetamines." Cronkite then suggested that abuse could lead to addiction, use of

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[90] Robert P. Goldman, "Dope invades the suburbs: Teen-age addiction in spreading fast in our 'best' communities," *The Saturday Evening Post* 237, no. 13 (April 9, 1964), 20.

[91] In addition to the large number of manufacturers, these drugs were also available from 125,000 pharmacists, working at 52,000 drugstores across the United States. Quoted in William Goodrich Testimony, "H.R. 2: Drug Abuse Control Amendments of 1965," Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 89th Congress, (Washington: Government Printing Office, 1965), 98.

other drugs, and the old FDA standby – "death on the highways." Before cutting to McMullen's report on "the black market traffic in pep pills and goof balls," America's newsman concluded that current federal and local laws were "inadequate… because the supply of the drug cannot be cut off." McMullen, who had previously investigated the heroin trade for CBS, then detailed the operations of his dummy corporation, McMullen Services. With some fake letterhead and about $600, McMullen Services successfully procured the equivalent of 1,075,000 pills, which would retail in drugstores at $5 per 100 or sell on the black market for a total of between $250,000 and $500,000, making the motivations for getting into this business self-evident.[92]

A day later, Cronkite followed up on McMullen's story, interviewing FDA officials, former addicts, and Senator Dodd. Speaking of Dodd's bill, Cronkite reported, "up to now, it has been given little or no chance of getting out this year. But as a result of our story, the situation was brought to the attention of both houses of Congresses today."[93] It was not brought to the attention of Cronkite or Dodd, however, that Johnson had an election to win and plans to send Congress home early to help make that happen. Cronkite and Dodd, nonetheless, touched a nerve with the public that kept the pressure on even after Lyndon got his landslide. Reflecting on Johnson's lack of action and the public climate in the summer of 1964, Judge Prettyman wrote, "What he did was his business… we knew that nobody yet has had the guts to tackle the narcotics problem." Mocking what he perceived as mere excuses for inaction, the Judge

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[92] "CBS Evening News with Walter Cronkite," September 2, 1964, Transcript in "H.R. 2: Drug Abuse Control Amendments of 1965," Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 89th Congress, (Washington: Government Printing Office, 1965), 283-5. For the newsman's reputation as "the most trusted man in America," see, for example, Douglas Brinkley, *Cronkite* (New York: Harper Collins, 2012).

[93] "CBS Evening News with Walter Cronkite," September 3, 1964, Transcript in "H.R. 2: Drug Abuse Control Amendments of 1965," Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 89th Congress, (Washington: Government Printing Office, 1965), 285-7. ["H.R. 2 Hearings," House Commerce Committee]

continued, "The feds proclaim how intricate, dangerous and difficult the job is. And [sic] CBS goes in and takes movies of transactions in narcotics on the street corners and shows a one-hour documentary on the subject!!!"[94] Johnson may not have had "the guts" to tackle all of the Prettyman report's recommendations, but the President did have enough political sense to know when he had a bird in hand. Both Cronkite and his trusted Senate had shown LBJ it was time to mop-up in the fight for tighter control of pharmaceuticals, an easy move that would fit within Johnson's larger health legislation package and also demonstrate his due diligence in drug control.

Addressing the Congress in early January 1965 to again speak about "Advancing the Nation's Health," President Johnson finally threw the full measure of his support behind dangerous drug regulation. He also added a new twist that further ensured passage of such legislation. LBJ began by acknowledging, "Narcotics are not alone among the hazardous, habit-forming drugs." He also admitted, "Widespread traffic resulting from inadequate controls over the manufacture, distribution, and sale of these drugs is creating a growing problem." However, in arguing that problem "must be met," he tweaked the focus, concluding, "We must also counter the threat from counterfeit drugs." Without mentioning Dodd's bill by name, Johnson recommended legislation to more effectively control "the production and distribution of barbiturates, amphetamines, and other psycho-toxic drugs." To secure "the fuller protection of our families," he also specifically requested new Federal "authority to seize counterfeit drugs at their source."[95]

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[94] Exclamatory emphasis in original, Prettyman memo.

[95] Lyndon B. Johnson: "Special Message to the Congress: "Advancing the Nation's Health.," January 7, 1965. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=27240.

Hardly an afterthought, this new concentration on counterfeit pharmaceuticals was a calculated political maneuver to guarantee support for a substantial expansion of federal regulatory power – at least from the largest and most influential drug manufacturers. Power to police counterfeit medicines also directly related to FDA Commissioner Larrick's quest for the authority to regulate prescriptions drugs without having to prove pills were engaged in interstate commerce. Speaking in early 1965, Larrick reiterated yet again that the current process for proving drugs had been engaged in interstate commerce – before even showing that an actual crime had been committed – required "torturous, involved procedures."[96] One of the primary ways the FDA determined movement across state lines was through the unique manufacturing markings on each pill, something inspectors called "pillistics." For example, if FDA inspectors caught a truck driver selling pills in Peoria, Illinois and could prove those pills were Benzedrine manufactured by Smith Kline & French in Philadelphia, they could charge that truck driver with illegal distribution. The process became especially problematic when dealing with counterfeit drugs, because the charge that pills had been counterfeited undermined the necessary proof that they had also been manufactured out-of-state. With intra-state authority, the FDA could focus solely on proving counterfeiting and illegal distribution. Like the FBN ensuring a steady flow of South American coca leaves to Coca-Cola bottling plants, this new authority enabled the FDA to help its industry allies police and protect the bounds of their respective marketplaces. Despite the proven fact that diversion from legitimate manufacturers could more than supply the black market, the rhetoric of fighting counterfeits thus justified an extension of federal power to control drugs. It also ensured industry support for that expansion.

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[96] Testimony of George P. Larrick, Commissioner, Food and Drug Administration, "H.R. 2 Hearings," House Commerce Committee, 99.

A tactical focus on counterfeit pharmaceuticals was also evident in legislative proposals from the new Congress. Working closely with officials from HEW and FDA to craft his own legislation, Representative Oren Harris submitted the bill (H.R. 2) as soon as the 89th Congress began its official business. As Chairman of the House Interstate and Foreign Commerce Committee, Harris neglected to take up Dodd's Senate bill the previous fall, but he would now lead hearings on his own legislation to control dangerous drugs. Overall, Harris's bill was similar to Dodd's; however, "in addition to imposing sharper controls on barbiturates and amphetamines, HR 2 also strengthened federal prohibitions against the counterfeiting of trademarked, brand-name or any other drugs."[97] Proposing amendments to the original version of H.R. 2, staffers at the Department of Health, Education, and Welfare pushed the new focus even further, suggesting the Committee "insert 'and counterfeit drugs' in the title of the bill after 'depressant and stimulant drugs.'"[98] Speaking before the House Commerce Committee, Commissioner Larrick directed the group's attention to "a very vicious type of crime." He declared, "A counterfeit drug, like counterfeit money, is a fraud on the public." He also reiterated, "Because of the clandestine methods by which counterfeit drugs are manufactured and distributed… their regulation… whether they are in interstate commerce or not, is absolutely essential to the effective protection of the public health."[99]

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[97] "Congress Votes Controls on Barbiturates, Amphetamines," *CQ Almanac 1965*, 21st ed., 352-55. Washington, DC: Congressional Quarterly, 1966. http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/cqal65-1259284.

[98] "Draft of Amendments to H.R. 2 to Carry Out Recommendations in Report of Department of Health, Education, and Welfare, Plus Technical Suggestions by Department of Health, Education, and Welfare Staff," included in "H.R. 2 Hearings," House Commerce Committee, 11-3.

[99] Testimony of George P. Larrick, Commissioner, Food and Drug Administration, "H.R. 2 Hearings," House Commerce Committee, 31-33.

While attention to counterfeit pills may have appeased manufacturers, Harris's bill received criticism from pharmacists and drug-dispensing doctors, who, like drug makers, faced new federal recordkeeping requirements. Those requirements were at the heart of the regulation model enshrined in the Drug Abuse Control Amendments, as H.R. 2 was called after it became law. The FDA's Assistant General Counsel, William Goodrich explained, the new legislation required the "keeping of records from the manufacturing level to disposition level, so that points of diversion could be located."[100] The law also authorized the FDA to inspect those records. Since the passage of the Durham-Humphrey amendments in 1952, pharmacists had to keep records of every prescription, but until now they did not have to share them with the Food and Drug Administration, unless FDA inspectors obtained a search warrant.

In addition to opposing this measure, the National Association of Retail Druggists (NARD) disputed doctors' initial exemption from the same requirements because of their licensing through state agencies. Ralph Rooke of the NARD explained that pharmacists were in "vigorous competition" with "doctors who sell drugs to their patients," and he complained the law unduly favored those direct distributors.[101] Of course, the American Medical Association opposed any consideration of including physicians. In order to not prejudice either group, the Commerce Committee decided both doctors and pharmacists should be subject to the new recordkeeping requirements. As the Federation of Homemakers concurred, "the primary

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[100] Testimony of William W. Goodrich, Assistant General Counsel, Food and Drug Administration, "H.R. 2 Hearings," House Commerce Committee, 98-9.
[101] Testimony of Ralph R. Rooke, Chairman of the Committee on National Legislation, National Association of Retail Druggists, "H.R. 2 Hearings," House Commerce Committee, 122-3.

concern… must be to protect the public rather than to spare the manufacturers, distributors, wholesalers, and dispensers the necessary chores of keeping accurate records."[102]

Shortly after the full House voted unanimously in favor of the bill, the Assistant Secretary of HEW, Wilbur Cohen presented one more convincing case for doctors and pharmaceutical professionals, who supported the principles of the bill but opposed the potential expenses involved in more recordkeeping. In late March, Cohen spoke to the annual meeting of the American Pharmaceutical Association about "The Administration's Objectives in the Field of Health." Discussing Johnson's entire program, Cohen paused to answer, "why legitimate dealers should be required to observe even these simple recordkeeping requirements." He explained there was "no practical way to find these points of diversion except through a system which accounts for all production and distribution down to the ultimate consumer." After also summarizing the new protections against counterfeiting, Cohen quickly detailed another new measure to fund construction of more medical and pharmacy schools and scholarships for more students.[103]

Finally, he turned to Social Security Amendments of 1965, which would become known as Medicaid and Medicare. Though the program only covered the full cost of drugs administered in hospitals and nursing homes, Cohen posited, "as older people gain access to health care, they will correspondingly have prescribed for them the necessary drugs to improve or sustain their health." He further suggested, "With the cost of much of their medical care being met by the

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[102] "H.R. 2 Hearings," House Commerce Committee, 384.
[103] "The Administration's Objectives in the Field of Health," Wilbur Cohen Speech to Annual Meeting of American Pharmaceutical Association, Detroit, MI, March 31, 1965, Folder 3: "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

proposed program, older people will be better able to afford the cost of the drugs they need."[104] Cohen thus connected the new regulation of dangerous drugs with the potential windfall in federal dollars to be had from the keystone of LBJ's Great Society health program – government-funded medical care for the elderly. If members of the American Pharmaceutical Association wanted the latter, Cohen implied, they had to accept the former.

Seeking to keep this connection alive in the minds of the public and professional groups, the Johnson administration planned a tight schedule for the passage and signing of a variety health measures, including both Medicare and the Drug Abuse Control Amendments. This time, however, Tom Dodd almost threw a wrench into LBJ's plans. After H.R. 2 passed the House, it was referred to the Senate Labor and Public Welfare Committee, chaired by Alabama Democrat Lister Hill. A day after the bill passed the House, Dodd told Wilbur Cohen "that he would be happy to support it." However a few days later, Dodd changed his mind and demanded Committee hearings on amendments to the bill. If new amendments were attached to the bill before going back to the House, it would have to spend time in conference before congressmen reconciled the two versions. As Cohen noted, this would "seriously jeopardize the scheduling of major health legislation."[105] Dodd apparently changed his mind when he discovered the House bill allowed the possession of peyote for "the Southwest Indians use in their tribal ceremonies." According to a White House aide, Dodd thought this was "shameful and these are not religious

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[104] "The Administration's Objectives in the Field of Health," Wilbur Cohen Speech to Annual Meeting of American Pharmaceutical Association, Detroit, MI, March 31, 1965, Folder 3: "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

[105] Wilbur J. Cohen, "Memorandum for Honorable Lawrence F. O'Brien, Subject: Status of Drug Control Legislation," March 19, 1965, Executive Folder: "HE 4 Medicines – Drugs – Serums, 8/24/64 – ," Box 15 – "Ex HE 4, 8/24/64," White House Central Files, Presidential Files, LBJ Library.

ceremonies but 'orgies.'"[106] Eventually the White House overcame Dodd's objections, convincing Hill to add the amendment with no hearings and then having friendly congressional leaders guide the new version through final votes on the floor of the Senate and House. On July 8, the House passed the Senate amendments and the Drug Abuse Control Amendments of 1965 were sent to the President for his signature.[107]

Though perhaps more personal than political, Dodd's actions highlighted some of the growing cracks in the false edifice of the liberal consensus. A booze swilling, older, whiter, law and order liberal, Dodd increasingly came into conflict with the younger generation entering the politics of the New Left or the lifestyle of the counterculture.[108] Those divisions between old liberals and the New Left only grew deeper over the next few years, spreading with each new disappointment in the Civil Rights struggle or escalation in Vietnam. The growing hysteria over LSD perhaps best characterized such conflicts. Suffocating the FDA's Bureau of Drug Abuse Control when it was still in its infancy, that discord also brought LBJ's Great Society and the Democratic Party of FDR to its knees on the streets of Chicago in the summer of 1968.

Conclusion

On July 15, just two weeks before enacting his historic Medicare/Medicaid program, Lyndon Johnson signed into law the Drug Abuse Control Amendments of 1965 (DACA). In his

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[106] Mike Manatos, "Memorandum for Larry O'Brien," March 29, 1965, Executive Folder: "HE 4 Medicines – Drugs – Serums, 8/24/64 – ," Box 15 – "Ex HE 4, 8/24/64," White House Central Files, Presidential Files, LBJ Library.

[107] "Congress Votes Controls on Barbiturates, Amphetamines," *CQ Almanac 1965*, 21st ed., 352-55. Washington, DC: Congressional Quarterly, 1966. http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/cqal65-1259284.

[108] During Dodd's censure hearings and the associated reporting by Drew Pearson, it was revealed that Dodd had quite the appetite for hard drink. See selected articles in Folder – "DODD, Senator Thomas J.," Box 4, Office Files of Bill Moyers, Office Files of the White House Aides, Presidential Papers, LBJ Library.

remarks, the President began by placing DACA squarely "in that proud and that respected tradition" wherein "the American people have benefited greatly from the effective protection of their health… by their government." Having seen prescription drug control become a winning health issue, Johnson nonetheless decried "racketeers" preying on "our finest young people." Foreshadowing how understanding drug abuse as a medical issue had already begun to recede just as it finally succeeded, Johnson completed his pivot to the politics of law and order. He concluded with the hope that "this measure will be followed by the enactment of other important measures recommended" in his March message to Congress on "Law Enforcement and the Administration of Justice."[109]

Despite that ominous concluding note, Commissioner George Larrick and his compatriots at the Food and Drug Administration had cause to celebrate. While the Treasury Department and its Federal Bureau of Narcotics had only succeeded in protecting their turf, the FDA's field continued to grow. The passage of DACA corresponded with – and contributed to – a booming period in the FDA's history that first accelerated with Kefauver-Harris Amendments of 1962. Already rising, the FDA's total budget in 1962 was $23 million to support 2,481 staff members. In four years, those numbers had already more than doubled to $58.8 million and 4,710 total personnel.[110] After "2 decades of FDA investigation, congressional hearings spanning 13 years, and 40 bills introduced into Congress in the past 14 years," George Larrick finally secured the

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[109] Lyndon B. Johnson: "Remarks at the Signing of the Drug Abuse Control Amendments Bill," July 15, 1965. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=27087; and Lyndon B. Johnson: "Special Message to the Congress on Law Enforcement and the Administration of Justice," March 8, 1965. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=26800.

[110] "60 Years of the FDC Act," *Food and Drug Review* 50, no. 6 (June 1966), 203.

authority for the FDA that he and other officials had long sought.[111] In doing so, the FDA expanded its traditional mandate to ensure the safety of medicine and medical devices with new power to regulate the actual practice of medicine.

Of course, more authority came with more problems, and the FDA continued to experience growing pains as it moved into new areas, especially the outright policing of illegal drug dealers. Larrick also had his own issues as he faced congressional accusations of being too close to the pharmaceutical industry, and he was replaced before the end of 1965. Prior to departing, however, Larrick made one final executive decision that influenced the future direction of both the Food and Drug Administration and federal drug policy. Mindful of growing momentum for transferring enforcement functions from Treasury to Justice, Larrick chose to establish a new unit, "separate from other FDA Bureaus, to enforce the new Drug Abuse Control Amendments." Larrick reasoned, "if a decision was made to transfer these duties to Justice" – as would happen less than three years later – the new bureau "could be moved without significant disruption of FDA operations."[112] This new unit was called the Bureau of Drug Abuse Control and its short but significant history will be the focus of the next chapter.

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[111] Testimony of George P. Larrick, Commissioner, Food and Drug Administration, "H.R. 2 Hearings," House Commerce Committee, 31-33.
[112] Frederick M. Garfield, "Drug Abuse and FDA's Effort to Control It," 6, LBJ Administrative Histories.

CHAPTER FOUR

The Short, Strange Trip of BDAC

To fathom hell or soar angelic
Just take a pinch of psychedelic.

- Humphry Osmond to Aldous Huxley (1957)[1]

Get those sugar cubes down to the crime lab.

- Captain Lou Ritchey, *Dragnet* (1967)

In the spring of 1966, Food and Drug Administration (FDA) officials had high hopes for their new drug enforcement arm. Shortly before launching the Bureau of Drug Abuse Control (BDAC), its commissioner, John Finlator, assured an audience of pharmaceutical industry representatives, "BDAC's enforcement policy will not digress from the pattern long established by FDA." Describing that pattern, Finlator argued, "Initially our emphasis will be education and voluntary compliance."[2] Planning began with a specific list of controlled psychoactive pharmaceuticals – mostly derivations of amphetamines, barbiturates, and hallucinogens. The FDA intended to use strict new recordkeeping requirements in tandem with "education and voluntary compliance" to control all points along the chain distribution and ensure only prescribed users had access to dangerous drugs. The Drug Abuse Control Amendments of 1965 also granted FDA inspectors new powers to carry guns, arrest suspects, and police even purely

[1] The exchanges between Osmond and Huxley that coined the term "psychedelic" are quoted in Don Lattin, *The Harvard Psychedelic Club* (New York: HarperOne, 2010), 66.
[2] "450 Attend Drug Abuse Conference," *Food and Drug Review* 50, no. 4 (April 1966), 106.

intrastate illegal activities. Nonetheless, FDA and BDAC officials envisioned reserving those punitive powers for counterfeiters operating outside the supply chain and the occasional unethical industry insider abetting diversion. Thus, officials sought a balanced enforcement philosophy approach that accomplished the FDA's primary charge – working with industry to protect American consumers from dangerous food and drugs.

Charged with controlling both the licit and illicit drug trades, however, BDAC quickly learned that the deployment of bureaucratic resources was a zero-sum game and there were numerous forces shaping how those reserves would be spent. When BDAC launched its mission to control drug abuse, administrative and budgetary considerations forced a choice between focusing money and manpower on either regulating activities in the legitimate supply chain or policing the illicit distribution and use of pharmaceuticals by individuals. The pharmaceutical industry made this choice easier, using its influence to redirect federal power towards policing users. Ostensibly assisting BDAC, for example, Smith, Klein & French (SKF), manufacturer of a popular amphetamine, distributed thousands of copies of a drug abuse manual, which only served to reinforce attention to individual drug users and not the manufacturers of such drugs. Adopting the same outlook, public concern about youth drug use further shaped the mission of BDAC. Moreover, everyone from corrupt BDAC agents to the FDA's publicity conscious commissioner made choices that rippled throughout the bureaucracy and further shaped its course and consequences. This chapter examines the myriad ways that policymakers and FDA regulators grappled with the dual nature of their challenge, demonstrating how these decisions, in tandem with the changing political climate in which they were made, refocused federal power on the exclusive policing of drug abusers.

In January 1967, NBC viewers turned on their sets and heard a familiar refrain: "The story you are about to see is true. Only the names have been changed to protect the innocent." Detective Joe Friday, lead character in the hit 1950s series, *Dragnet*, was back and, for many, it seemed just in time. The setting was Los Angeles, a beautiful city and place to raise children. Eventually those kids, beginning "to feel old," would go "searching for something" – maybe at an amusement park or church or university. One thing was certain, Friday declared in a sweeping opening narrative, "whatever they are looking for cannot be found in a #5 capsule." When they tried, that's where Friday and his new partner, Detective Bill Gannon, came in. Working the juvenile narcotics squad, the detectives were particularly concerned "a powerful new drug capable of producing weird and dangerous hallucinations had found its way onto the streets of the city" and "fallen into the hands of juvenile experimenters." Now Detective Joe Friday and his partner "had to try and stop it."[3] The drug – lysergic acid diethylamide, LSD-25. Street name – "acid."

A year later, the *Dragnet* detectives again focused on policing LSD, and the show's star and creator, Jack Webb notified the White House, in case President Lyndon Johnson wanted to watch.[4] Whether or not he turned on and tuned in, the President was well aware of growing public concern about youth drug use and concomitant demands for more law and order policies.

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[3] Jack Webb, "The L.S.D. Story," *Dragnet* (1967).

[4] W. Marvin Watson, Special Assistant to the President, to Jack Webb, January 11, 1968, Folder: "HE 4-1 Narcotics, 11/1/64 - ," Box 16: "EX HE 4-1 11/22/63 - ," Subject Files, WHCF, LBJ Library; Webb is referring to an episode that aired the same date, "The Big Prophet," *Dragnet* (1968). Almost all of the episodes from the 1950s and late 1960s runs of *Dragnet* are now available in the public domain. For more on Jack Webb's relationship and infatuation with the Los Angeles Police Department, including Chief William Parker, see Jack Webb and James Elroy, *The Badge: True and Terrifying Crime Stories that Could Not Be Presented on TV, From the Creator and Star of Dragnet* (Boston: Da Capo Press, 2005 (1958)); and Daniel Moyer and Eugene Alvarez, *Just the Facts, Ma'am: The Authorized Biography of Jack Webb, The Creator of Dragnet* (Santa Ana, CA: Seven Locks Press, 2001).

Shortly after Webb's letter to the President, the *New York Times* reported that the Johnson administration "blocked Congressional testimony by Dr. James L. Goddard, the Food and Drug Commissioner, because he is opposed to part of the President's proposed drive against the drug LSD."[5] After most states passed laws against the possession of LSD, Johnson wanted the FDA to take similar actions at the federal level. Goddard, however, opposed making simple possession illegal and thereby criminalizing a large swath of young Americans. This conflict between the FDA and the White House spelled doom for the fledgling Bureau of Drug Abuse Control. In early 1968, after less than two years in existence, BDAC was removed from the FDA, merged with the Federal Bureau of Narcotics and placed in the Department of Justice. That move in turn set the stage for our modern federal drug regime, with a massive operating budget and the power to police even the simple possession of all drugs with a potential for abuse.

Commissioner James Goddard disapproved of criminalizing LSD users, but he and other FDA officials supported LBJ's Reorganization Plan. In fact, Goddard took the unprecedented step for a bureaucratic manager and requested that this powerful new part of the FDA be given to another department. He did so because, although many in the public argued the FDA was not doing enough to combat drug abuse, in reality BDAC was pulling the FDA further away from its traditional regulatory duties. Aware of the increasing threats to BDAC agents policing black market drug sales, Goddard feared an agent might be killed. He was equally "concerned that the Food and Drug Administration should be more of a scientific agency, rather than one going on the street and fighting drug abuse."[6]

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[5] "Johnson Said to Bar Goddard Testimony," *New York Times*, February 20, 1968, 36.
[6] Paul A. Pumpian, Deputy Director of BDAC, interview by Robert A. Tucker, Washington, DC, January 22, 1996, "History of the U.S. Food and Drug Administration," transcript, 25.

While the theoretical power to police pharmaceuticals had long appealed to FDA officials, the reality of wielding that power began to seem more akin to managing a pulp fiction vice squad. Public perceptions of BDAC as an overzealous regulatory agency or an underperforming police force equally threatened the FDA's positive reputation for protecting consumers from dangerous food, drugs, and cosmetics. As historian Daniel Carpenter has argued, "the regulatory power of the Food and Drug Administration stems in large measure from a reputation that inspires praise and fear."[7] With more attention on BDAC, praise and fear both came in short supply. Therefore, public panic and skewed perceptions undermined the Bureau of Drug Abuse Control, but FDA officials own concerns about the Bureau ultimately prompted them to acquiesce when LBJ pulled the plug.

For more than two decades, FDA officials had pursued new legislation to control the distribution of potentially dangerous pharmaceuticals, envisioning a regulatory model that combined records oversight, industry cooperation, and more traditional policing authority when needed. Once it attained that power, however, the FDA struggled to apply this model to all the drugs under its purview. The decision to hire many former Bureau of Narcotics agents to lead BDAC also pulled the Bureau of Drug Abuse Control into less traditional territory and further undermined the balanced approach sought by FDA officials. This chapter thus demonstrates how institutional decisions and practices were as significant as specific policies or public demands in the development of federal drug policy. Of course, those bureaucratic machinations were nonetheless inextricable from the wider cultural shift evinced by the first Technicolor episode of *Dragnet* and its focus on the scourge of LSD.

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[7] Daniel Carpenter, *Reputation and Power: Organizational Image and Pharmaceutical Regulation at the FDA* (Princeton: Princeton University Press, 2010), 11.

The public panic over LSD occurred just as BDAC came into being. But such panic did not inspire BDAC's creation. In fact, opposition to the draconian *Dragnet*-style policies of the 1950s inspired bureaucrats, politicians, and reformers to demand an overhaul of the federal drug regime. Calls for more rehabilitation, education, and research arose along with a broader focus on both narcotics and potentially dangerous pharmaceuticals. Focus on non-narcotic, but nonetheless "dangerous," drugs also came with a transition in political rhetoric from the pejorative concept of addiction, characterized by the heroin fiend, to a more capacious concept of drug abuse. For a time, this rhetorical shift went hand-in-hand with the recognition that misuse of drugs spanned all races and classes. While many still believed "heroin addiction [was] an urban problem," they nonetheless recognized, "the improper use of dangerous drugs – barbiturates, pep pills, speed, other amphetamines – cuts across all segments of the population."[8]

Reflecting this shift, advocates for the Drug Abuse Control Amendments concentrated on amphetamines and barbiturates, and the legislation focused on regulating manufacturing and distribution, without barring possession of the drugs. Even President Lyndon Johnson, citing the work of Kennedy's commission, endorsed more opportunities for rehabilitation and limiting mandatory minimum sentences. He also focused exclusively on barbiturates and amphetamines and mandated the new Bureau of Drug Abuse Control not constrict the "legitimate medical uses" of any drug that might be dangerous when abused.[9] By the time DACA went into effect in

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[8] Lyndon B. Johnson: "Special Message to the Congress on Crime and Law Enforcement: 'To Insure the Public Safety,'" February 7, 1968. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. http://www.presidency.ucsb.edu/ws/?pid=29237.

[9] Lyndon B. Johnson, "Special Message to the Congress on Law Enforcement and the Administration of Justice," March 8, 1965. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=26800.

February 1966, however, the growing wave of public panic about LSD was already reshaping BDAC's responsibilities and refocusing attention on specific groups of users.

In the early 1960s, drugs remained a minor concern for most Americans and their political representatives. A Gallup Poll from 1964 found most people preoccupied with "racial" and "international problems." Equally significant, when explaining "the lack of respect for the law," only 2% of respondents mentioned drugs.[10] Just two years later, politicians on both sides of the aisle – from Democrats like Lyndon Johnson and Senator Thomas Dodd to Republicans like Richard Nixon – began citing a disrespect for law and order as the most pressing problem facing the nation. And, unlike the Gallup poll respondents a couple of years earlier, those politicians and many American citizens closely associated drug use with young people's growing disdain for legal and moral authority.

LBJ's reorganization plan ended the fourth act in the construction of the modern federal war on drugs. Instead of a beginning, the passage of the Controlled Substances Act in 1970 and President Richard Nixon's declaration of a war against drugs a year later marked a tragic denouement to this earlier story. Until 1965, reform of narcotics laws had popular supporters in Congress and executive departments but flew under the national radar as a secondary issue. With the public now clamoring for action, politicians like LBJ had little time for patient deliberations and reverted to the timeless strategy of punishing the offenders in the name of the innocent. Thus, just as federal drug policy expanded to accomplish a host of new liberal goals, political responses to a boom in youth drug taking again metastasized around a primarily punitive

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[10] Stephen Siff, *Acid Hype: American News Media and the Psychedelic Experience* (Urbana: University of Illinois Press, 2015), 142.

approach. At the same time, bureaucratic decisions and actions prompted an institutional shift that elevated the power behind new punitive policies.

Attempting a Balanced Approach

When the Food and Drug Administration opened its spacious new headquarters in downtown Washington in November 1965, the building's layout revealed the magnitude of its diverse tasks. Those duties had continued to expand in the five years after President John Kennedy ignited the "third wave of the consumer movement" in national politics.[11] A decade earlier, the FDA had only 829 employees with a budget of less that $7 million. In 1962, staff and budget had grown to about 2,500 and $23 million and, by 1966, doubled again to 4,700 staffers and a bottom line of almost $60 million.[12] The FDA's new $13 million headquarters contained an additional $6.5 million in laboratory equipment to research "methods and techniques for inspecting, testing, and evaluating the production and consumer use of foods, drugs, cosmetics, and therapeutic devices." This included studies on everything "from plastic food wraps, to certification of the safety and effectiveness of antibiotics and insulin."[13]

Although business was booming in President Johnson's Great Society, the Food and Drug Administration faced closer scrutiny and the potential for disappointed expectations as it struggled to live up to the promise of its growing mandate. Administrators, such as Commissioner George Larrick, long understood that basic arithmetic kept the FDA from ever being able to check the safety of all the goods under its purview. Instead, FDA leaders depended

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[11] Lizabeth Cohen, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (Random House: New York, 2003), Ch. 8.
[12] "60 Years of the FDC Act," *Food and Drug* Review 50, no. 6 (June 1966), Food and Drug Administration, Department of Health, Education, and Welfare, 185-187, 203.
[13] "FDA to Dedicate Headquarters Building," *Food and Drug* Review 49, no. 11 (November 1965), 233-4.

primarily on voluntary industry compliance, generally only stepping in after something went wrong. The optics of this close cooperation, however, clashed with the politics of Sixties consumerism and created problems for Larrick and the FDA, eventually leading Larrick to resign at the end of 1965. When Dr. James Goddard was selected in January 1966 to replace Larrick, HEW Secretary John W. Gardner suggested, "rapid growth and the shouldering of unexpected responsibilities had resulted in management growing pains." Nonetheless, Secretary Gardner and President Johnson were confident Goddard could lead the FDA "to fully meet its vast and varied responsibilities."[14]

The decisions and priorities of Larrick and Goddard, as well as the switch in leadership, influenced the outlook and outcomes for the fledgling Bureau of Drug Abuse Control. That history, in turn, reveals how institutional developments became as significant as any piece of legislation for determining the future direction of federal drug control. FDA officials had to decide what drugs to regulate and how to regulate them, and those decisions reverberated throughout the short tenure of the Bureau of Drug Abuse Control. The transition from Larrick to Goddard was also consequential, as Larrick had a lax attitude towards industry but supported strict policing of illegal distribution, while Goddard was more critical of the drug industry but reticent to make the FDA into a traditional police force.

Led by Commissioner Larrick since the mid-1950s, FDA officials actively pursued the authority they received from the Drug Abuse Control Amendments of 1965, which updated the 1938 Federal Food, Drug, and Cosmetic Act. According to FDA historian John Swann, the passage of DACA "formalized a function… that this Agency had pursued since at least the

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[14] "Dr. Goddard Appointed FDA Commissioner," *Food and Drug Review* 50, no. 2 (February 1966), 33-4.

1940s."[15] In doing so, the FDA expanded its traditional mandate to ensure the safety of medicine and medical devices with new power to regulate the actual practice of medicine. Significantly, in one of his final acts as commissioner, Larrick chose to establish a new unit, "separate from other FDA Bureaus, to enforce the new Drug Abuse Control Amendments."[16] That new unit was the Bureau of Drug Abuse Control. Larrick noted "the law enforcement aspects of these new amendments" in his decision to create BDAC.[17] To organize the new bureau, Larrick chose his trusted deputy Frederick Garfield, "an old-line Food-and-Drugger."[18] Garfield handled organization as Food and Drug officials debated BDAC's structure and "enforcement philosophy" as well as the specific drugs it would regulate.

In his decision to create a separate bureau, Larrick recognized a potential conflict between the FDA's traditional regulatory practices and the requirements of fighting illicit drugs, but neither Larrick nor Garfield shied away from the "law enforcement perspective" when soliciting help with the creation of their new Bureau. The FDA reached out to a variety of experts, including government administrators, doctors, and "people with a background in law enforcement and investigations, such as FBI and Bureau of Narcotics officials."[19] That close

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[15] John P. Swann, "The Bureau of Drug Abuse Control: Its Origins, Functions, and Termination in FDA," 1. Draft in possession of the author courtesy of Dr. Swann and the FDA History Office.
[16] Frederick M. Garfield, "Drug Abuse and FDA's Effort to Control It," 6, LBJ Administrative Histories.
[17] "Proposed Establishment of Bureau of Drug Abuse Control," Commissioner George P. Larrick to Secretary of HEW, October 6, 1965, Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.
[18] Alfred Barnard, FDA Director of Regulatory Compliance, interview by Ronald Oates, Rockville, MD, March 14 & June 4, 1987 & March 2, 1989, Rockville, MD, "History of the U.S. Food and Drug Administration," transcript, 23.
[19] Special Assistant to the Commissioner for Drug Abuse Control to George P. Larrick, Commissioner of Food and Drugs, "Implementation of P.L. 89-74 – Philosophy of Enforcement and Selection of the Bureau Director," Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

relationship with the Federal Bureau of Narcotics established the ongoing influence traditional narcotics policing would have on the new Bureau. In his report on these interviews, Garfield summarized "the prevailing view" that "an initial approach of strict regulatory enforcement was necessary." Larrick and Garfield accepted the "natural bias" inherent in the law enforcement backgrounds of most of the group because, they argued, "FDA has committed itself to putting its first efforts into curtailing the illicit traffic and other criminal activity in depressant, stimulant, and counterfeit drugs."[20]

Beyond policing the black market trade in pharmaceuticals, FDA officials also realized the new law necessitated a different relationship with legitimate manufacturers and distributors of such drugs. As Larrick argued, the FDA long "concerned itself with illicit traffic in amphetamines and barbiturates, the primary drugs subject to regulation under the new amendments." However, the Drug Abuse Control Amendments "add[ed] new dimensions to FDA's responsibilities and workload." In addition to controlling the illicit and counterfeit traffic in dangerous pharmaceuticals, the FDA now also had the power and mandate "for surveillance of the drug industry and its distribution channels to determine manufacturing and distribution patterns" for amphetamines and barbiturates.[21] With the creation of BDAC, the FDA sought to

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[20] Even in August 1965, Garfield and the FDA's focus remains squarely on depressant and stimulant drugs and not hallucinogens. Special Assistant to the Commissioner for Drug Abuse Control to George P. Larrick, Commissioner of Food and Drugs, "Implementation of P.L. 89-74 – Philosophy of Enforcement and Selection of the Bureau Director," Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

[21] George P. Larrick, Commissioner of Food and Drugs to Secretary of the Department of Health, Education, and Welfare, "Proposed Establishment of the Bureau of Drug Abuse Control," October 6, 1965, Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

establish a bureau with the authority to police the boundaries of the licit drug market and stamp out anything beyond the pale.

In practice, however, FDA officials hesitated to undermine their cooperative relationship with industry. During the FDA's conference on DACA in the spring of 1966, newly appointed BDAC Director John Finlator reassured his audience of industry representatives, "Our enforcement policy, again, will not digress from the pattern long established by the Food and Drug Administration." He continued, "this means that initially our emphasis will be education and voluntary compliance." Nonetheless, he also predicted, "there will be large numbers of individuals who will violate these Amendments" and promised, "we intend to move with dispatch in order to bring the individuals responsible to court."[22]

Charged with ending the abuse of otherwise useful depressant and stimulant drugs, BDAC's initial mission centered on locating and closing points of diversion from legitimate channels. Building on the FDA's tradition of voluntary compliance, officials sought to accomplish this task through strict record-keeping requirements for all nodes along the chain of distribution. That chain included "drug manufacturers, processors and their suppliers, wholesale druggists, pharmacies, hospitals, clinics, public health agencies, dispensing physicians, and research laboratories."[23] All of these groups were also now required to register with the FDA. In response, the Food and Drug Administration received reams of questions and complaints before

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[22] John H. Finlator, "Bureau of Drug Abuse Control: Organization, Staff, Authority, and Purpose," *Proceedings: FDA Conference on the Drug Abuse Control Amendments of 1965*, March 11, 1966, p. 30. Available as Appendix III in Garfield, "Drug Abuse and FDA's Effort to Control It."

[23] "Tighter Controls," *The BDAC Bulletin*, L-2 (October 21, 1966), Food and Drug Administration, U.S. Department of Health, Education, and Welfare, Washington, D.C. All eight editions of *The BDAC Bulletin* are in the possession of the author and also available through the FDA History Office.

the February 1966 registration deadline, but officials continued to work to explain and justify the new procedures.[24] A press release to trade and professional journals explained, "previously only establishments engaged in the manufacture, preparation, propagation, compounding, processing, repacking or relabeling of drugs in general were required to register."[25] With the power provided by DACA, the FDA now extended that requirement to all those engaged in distributing or selling dangerous drugs, including individual pharmacists and doctors.

Commissioner Larrick and other FDA officials may have sought to maintain their traditional regulatory focus, but they also revealed their willingness to police those who did not cooperate, even if it meant prosecuting professionals. In fact, the first drugs seized under the 1965 amendments were from a fifty-seven year-old Salt Lake City osteopath, Dr. Varrian Tritt, who was arrested for selling more than 11,000 amphetamine tablets to undercover FDA agents.[26] Thus, the FDA had moved far beyond ensuring the safety and efficacy of drugs and now engaged in overseeing the practice of prescribing and dispensing medicine.

In tandem with establishing an enforcement philosophy, FDA officials also had to determine the exact "classes of drugs covered by the law, and those that are exempt."[27] The Drug

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[24] In addition to formal appeals from manufacturers, compounders, and individual pharmacists, the FDA files (Record Group 88) in the National Archives at College Park, MD from this time period are full of examples of letters received with questions and complaints about the new regulations, and the standard replies sent and speeches given to explain the new law.

[25] Food and Drug Administration, U.S. Department of Health, Education, and Welfare, Press Release: "Registration Under Drug Abuse Control Act of 1965," August 16, 1965, Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

[26] "First Drugs Seized Under 1965 Amendments," *FDA Report on Enforcement and Compliance*, March 1966, Folder 4 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

[27] Food and Drug Administration, "For Release to Trade and Professional Journals: Registration Under Drug Abuse Control Act of 1965," August 18, 1965, Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

Abuse Control Amendments named two of those classes of drugs – barbiturates and amphetamines. Establishing a model that continues in our modern Controlled Substances Act, legislators left it up to the FDA and HEW to decide which other "drugs should be controlled because of their potential for abuse."[28] The legislation's broad mandate included "depressant and stimulant drugs… and other psychotoxic drugs which have a potential for abuse because of their depressant or stimulant effect on the central nervous system or because of their hallucinogenic effect."[29] The FDA was already familiar with the latter. During hearings for H.R. 2, Commissioner Larrick pointed out "abuses that have developed around some of our larger educational and research institutions from experimentation with drugs which produce hallucinations and other mental aberrations." He also detailed the 1963 arrest of two young men for smuggling LSD-25 into the country and offering to sell $15,000 worth of liquid LSD to an undercover FDA inspector. Larrick, however, made clear this was only one of many possible candidates for inclusion as he swiftly moved on to discussing tranquilizers, bromides, and inhalers.[30]

Though leaving the door open for more drugs to be considered "dangerous," those diverse considerations did not distract from the initial intent of the Act. As LBJ made explicit at DACA's signing ceremony, the law was "designed to prevent both the misuse and illicit traffic

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[28] Garfield, "A History of FDA's Bureau of Drug Abuse Control," 8.
[29] "FACT SHEET: Drug Abuse Control Amendments of 1965, Public Law 89-74 --- 89th Congress," U.S. Department of Health, Education, and Welfare, available as Appendix IV, Garfield, "Drug Abuse and FDA's Efforts to Control It."
[30] Testimony of George P. Larrick, Commissioner, Food and Drug Administration, "H.R. 2 Hearings," House Commerce Committee, 23. Bernard Copely and Bernard Roseman were accused of smuggling the LSD into the U.S. after it was manufactured in Israel. They sought to challenge their conviction under the interstate Commerce Clause and insisted they had made it in California and kept it buried in the desert in Joshua Tree. Of course, this was no longer an issue after the passage of DACA.

of potentially dangerous drugs, especially the sedatives and stimulants."[31] In fact, even the open-ended regulations arose from a focus on traditional uppers and downers. As Kennedy's Advisory Commission noted in its 1963 report, "experience has proved that the drug abuser often turns to other drugs having similar effects when barbiturates and amphetamines become difficult to obtain."[32] In late July and early August, Garfield thus instructed the heads of all FDA bureaus and district offices "to investigate a list of stimulant and depressant drugs which had a potential for abuse" and "to collect data and information on these and other drugs being abused."[33] After another round of consultations, FDA Commissioner Larrick appointed an Advisory Committee to make the final determination on drugs with a potential for abuse. Larrick also planned to rely on close relations with the National Institute on Mental Health for future "studies in the area of drug abuse." As a result of this work, by 1968 the FDA established new controls for "30 drugs

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[31] Lyndon B. Johnson, "Remarks of the President on Signing the Drug Abuse Control Amendments Act of 1965," July 15, 1965, included in "FACT SHEET: Drug Abuse Control Amendments of 1965, Public Law 89-74 --- 89th Congress," U.S. Department of Health, Education, and Welfare, available as Appendix IV, Garfield, "Drug Abuse and FDA's Efforts to Control It." Emphasis by the Author.

[32] Food and Drug Administration, "Fact Sheet: Drug Abuse Control Amendments of 1965, 89th Congress," Available as Exhibit 5 in Frederick Garfield Memo, "Implementation of P.L. 89-74, Philosophy of Enforcement and Selection of the Bureau Director," August 3, 1965, Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

[33] Garfield, "Drug Abuse and FDA's Efforts to Control It," 7. In his memos seeking to establish a "Philosophy of Enforcement" and appropriate credentials for BDAC's Director, Garfield asked other FDA officials, "What barbiturate and amphetamine drugs should be covered by the controls, as well as drugs having a potential for abuse because of their depressant or stimulant effect on the central nervous system or because of their hallucinogenic effect," Exhibit 1, "Implementation of P.L. 89-74, Philosophy of Enforcement and Selection of the Bureau Director," August 3, 1965, Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

having a potential for abuse" and an additional "500 combinations of such drugs" with more innocuous ingredients like aspirin or caffeine.[34]

The bulk of those drugs still had legitimate uses in the eyes of profit-minded executives and middle-class consumers, making the maintenance of legal channels as important as any crackdown on illicit markets. This meant BDAC and the FDA had to also educate about proper use of the drugs and maintain their availability. Thus, when announcing BDAC's enforcement policy, FDA officials ranked "voluntary compliance by the affected industry" and "education of the public in general" of equal importance as enforcement. The Bureau sought "to apprehend the illegal distributor" while BDAC agents could, and did, "seize illegal supplies… serve warrants… arrest persons… [and] carry firearms."[35] However, the Bureau planned to split its time equally between spotting "diversions" from legitimate channels and investigating "those willfully engaged in the clandestine trafficking."[36] Moreover, FDA officials insisted that BDAC would follow a "total approach," which combined "investigative, medical, statistical, psychological and educational activities."[37]

More than just a rhetorical tactic to appease industry, BDAC's balanced approach stemmed from the established practices of the Food and Drug Administration as well as the FDA's steady pursuit of more police power. In late 1965, FDA officials acknowledged, "The

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[34] Garfield, "Drug Abuse and FDA's Efforts to Control It," 8.
[35] "Information for Law Enforcement Agencies," *The BDAC Bulletin*, L-1 (July 21, 1966).
[36] "A Report: The Drug Abuse Problem and the Drug Abuse Control Amendments to the Food, Drug & Cosmetic Act," 10, Draft of report with subsequent edits. Draft sent by J. K. Kirk, Assistant Commissioner, Food and Drug Administration to Michael Parker, Special Assistant to the Assistant Secretary for Legislation (and HEW representative to the President's Commission on Law Enforcement and Administration of Justice), December 23, 1965, Folder 1 – "Drugs: Abuse," Box 1: "Drug Abuse Files," FDA History Office Files.
[37] Frederick M. Garfield, "A History of FDA's Bureau of Drug Abuse Control," LBJ Administrative Histories.

mission of the BDAC is to enforce the regulatory provisions of the Drug Abuse Control Amendments of 1965." While they had long sought such powers, FDA officials insisted, "the intent of Congress in passing this legislation – namely, to provide increased controls over the distribution of barbiturates, amphetamines, and other drugs having a similar effect on the central nervous system – cannot be accomplished by regulatory enforcement activities alone." Instead, the FDA report touted a multifaceted approach and argued, "substantial reduction in drug abuse calls for a concerted program of regulatory activity, education, and research." Officials concluded with their belief that this program would lead "eventually to heavy reliance on preventive, rather than punitive, measures."[38] The appointment of the former Director of Manpower in the General Services Administration, John Finlator, to serve as Director of BDAC equally embodied that "rational, scientific" administrative philosophy, which extended beyond traditional policing tactics.[39]

The mandate to maintain legitimate access to potentially useful medicines kept the fledgling Bureau of Drug Abuse Control focused on illicit distribution and limited officials' ability or desire to stamp out all possession of any controlled drugs. According to the new law, possession of any of these substances was barred except for personal use, but this only regulated possession with intent to distribute.[40] Whether tracking records along the chain of distribution or

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[38] "A Report: The Drug Abuse Problem and the Drug Abuse Control Amendments to the Food, Drug & Cosmetic Act," 10, Draft of report with subsequent edits. Draft sent by J. K. Kirk, Assistant Commissioner, Food and Drug Administration to Michael Parker, Special Assistant to the Assistant Secretary for Legislation (and HEW representative to the President's Commission on Law Enforcement and Administration of Justice), December 23, 1965, Folder 1 – "Drugs: Abuse," Box 1: "Drug Abuse Files," FDA History Office Files.

[39] Frederick M. Garfield, "A History of FDA's Bureau of Drug Abuse Control," LBJ Administrative Histories.

[40] According to historian David Herzberg, "Possession for 'personal' or even 'family' use continued to be perfectly legal, even if the drugs had been obtained illegally." Herzberg, *Happy*

confiscating equipment used to counterfeit drugs and packaging, BDAC's primary responsibility can be understood as policing the borders of the licit market in pharmaceuticals. Using recordkeeping and registration to uncover unauthorized drug trafficking, which BDAC referred to as its "records accountability" program, proved successful. In its two-year history, BDAC agents performed over 1,100 accountability investigations.[41] During 1967 – the bureau's one full year of operation – agents conducted 600 investigations and seized over 80 million doses of barbiturates and amphetamines.[42]

Acid Test Panic

In January 1966, the Advisory Committee announced the first 17 drugs that would be added to the controlled substances list, revealing the balanced approach initially undertaken by the Bureau of Drug Abuse Control in service of its legislative mandate. Published in the *Federal Register*, the FDA's first controlled substances list included nine "depressant" drugs – seven tranquilizers; two "stimulant" drugs; and six substances "having a potential for abuse because of their hallucinogenic effect."[43] The hallucinogens listed by the FDA because of their "seriously detrimental" affect on human behavior – and not because of their potential for dependency or abuse – were "DMT, LSD-25, mescaline, peyote, psilocybin and psilocyn [sic]."[44] Despite FDA

Pills in America: From Miltown to Prozac (Baltimore: Johns Hopkins University Press, 2010), 105.

[41] Garfield, " Summary of BDAC Activities," LBJ Administrative Histories.

[42] "Dangerous Drug Diversion Reduced by Records Checks," *The BDAC Bulletin*, L-8 (March 1968), 3-4.

[43] Frederick M. Garfield, "Regulations – Current Status and Scope," 11, "Proceedings: FDA Conference on the Drug Abuse Control Amendments of 1965," March 11, 1966, available as Appendix III in Garfield, "Drug Abuse and FDA's Efforts to Control It." See also, "Additional Drugs Proposed for Abuse Control," *Food and Drug* Review 50, no. 2 (February 1966), 40-1.

[44] Norman N. Alberstadt, M.D., "Covered and Exempt Drugs," 14, "Proceedings: FDA Conference on the Drug Abuse Control Amendments of 1965," March 11, 1966, available as Appendix III in Garfield, "Drug Abuse and FDA's Efforts to Control It."

concerns about "prolonged psychosis and accidental death," officials still maintained their regulatory mandate and avoided taking an overly punitive stance on hallucinogens.[45] In practice, they did not seek to eliminate the use of any of the amphetamines, barbiturates, or other drugs brought under strict controls. Instead, the FDA sought to ensure only the *legitimate use* of such drugs. Even the hallucinogens remained "available as investigational new drugs." Officials also chose to ignore the panic politics espoused by Dodd during the passage of DACA. According to Garfield, BDAC initially made no plans to bar the use of peyote "in bona fide religious ceremonies."[46]

FDA officials took a similar approach with the pharmaceutical industry, even as they pursued more power to regulate it. If FDA officials had to choose between deferring to industry and strictly enforcing the administration's control protocols, they regularly sided with industry. Adhering to their tradition of education and voluntary compliance, FDA and BDAC officials held a daylong conference in March 1966 to explain all aspects of the new law and bureau to industry representatives for doctors, pharmacists, wholesalers, and drug manufacturers. During the conference, Garfield discussed numerous exemptions and extensions designed to appease the affected industry and ensure support for the law. The FDA temporarily exempted from record-keeping requirements any drugs that were a combination of amphetamines or barbiturates and other substance, such as aspirin or caffeine.[47] Officials also excused all pills deemed safe enough

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[45] Norman N. Alberstadt, M.D., "Covered and Exempt Drugs," 14, "Proceedings: FDA Conference on the Drug Abuse Control Amendments of 1965," March 11, 1966, available as Appendix III in Garfield, "Drug Abuse and FDA's Efforts to Control It."
[46] Frederick M. Garfield, "Regulations – Current Status and Scope," 11, "Proceedings: FDA Conference on the Drug Abuse Control Amendments of 1965," March 11, 1966, available as Appendix III in Garfield, "Drug Abuse and FDA's Efforts to Control It."
[47] Frederick M. Garfield, "Regulations – Current Status and Scope," *Proceedings: FDA Conference on the Drug Abuse Control Amendments of 1965*, March 11, 1966, p. 10-1. Available

to sell over-the-counter because of a minimum amount of stimulants or depressants.[48] After arguing for the need to keep separate records for controlled substances during hearings on the law, FDA officials reversed course and agreed "the invoices, control records, prescription files, etc., normally maintained by a well run business will generally suffice to comply."[49] In short, those reputable manufacturers and distributors of pharmaceuticals, who kept good records and avoided letting any drugs walk out the back door, saw minimal changes in operating procedure – or profits.

Nonetheless, FDA officials offered the opportunity to appeal its rulings on controlled substances, and the manufacturers of some drugs, including the minor tranquilizers – Miltown and Valium, jumped at the chance. Historian David Herzberg has studied how debates over the inclusion of minor tranquilizers "became the test case of pharmacological reasoning" for government rulings on a drug's "abuse potential." According to Herzberg, this debate arose in part from tranquillizers lack of "reputation for illegal use or abuse."[50] Over the previous decade, barbiturates had taken on an increasingly criminal connotation, but happy pills like Librium and Miltown – "psychiatry's first mass-market blockbuster"[51] – remained an acceptable sight in the medicine cabinets of executives, housewives, even Presidents. To protect that reputation and

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as Appendix III in Garfield, "Drug Abuse and FDA's Effort to Control It." See also relevant *Federal Register* notices.

[48] "Record-Keeping Not Requisite for Some Drugs," *Food and Drug Review* 50, No. 2 (February 1966), 41.

[49] Alfred Barnard, "The Record-Keeping Requirements of the Drug Abuse Control Amendments of 1965," *Proceedings: FDA Conference on the Drug Abuse Control Amendments of 1965*, March 11, 1966, p. 24. Available as Appendix III in Garfield, "Drug Abuse and FDA's Effort to Control It."

[50] Herzberg, *Happy Pills in America*, 106. For more on the history of Americans' "contested and enduring relationship with tranquilizers," see Andrea Tone, *The Age of Anxiety: A History of America's Turbulent Affair with Tranquilizers* (New York: Basic Books, 2009).

[51] Tone, *The Age of Anxiety*, 37.

their resultant profits, Carter Products and Roche Laboratories initiated "years of legal wrangling in the FDA and the court system to determine whether they met the criteria for 'abuse potential' as defined in the new law."[52] Carter, the makers of the Miltown brand of meprobamate, only lost their appeal in 1969, after BDAC had moved to the Justice Department. On the other hand, Roche, the creators of Valium and Librium, won their appeal on a technicality in 1973 and only faced government regulation after an out-of-court settlement in 1975.[53]

Sandoz Pharmaceuticals, a respected Swiss company, could have made the same decision as Roche or Carter and appealed the decision to list LSD as a BDAC controlled substance. Sandoz also could have accepted the FDA's ruling and simply kept records of all the LSD they distributed to registered and approved laboratories and doctors. However, they faced the same Manichean conflicts that characterized the FDA's internal debates about the drug. The incomplete records on LSD-25 available in FDA files at the National Archives and Records Administration are still voluminous and evince the complexity of FDA decisions to study and regulate the substance. FDA officials revealed the basic contradiction in those considerations with a report on drug abuse to LBJ's new Commission on Law Enforcement and Administration of Justice. They wrote, "Most of the hallucinogens have no legitimate medical use today." But then continued, "LSD-25, a powerful hallucinogen, is being studied as an investigational drug in psychotherapy and psychiatry."[54]

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[52] Herzberg, *Happy Pills in America*, 106.
[53] Herzberg, *Happy Pills in America,* 115. Revealing the ongoing power of industry to shape drug control policies, Herzberg writes, when the Controlled Substances Act of 1970 finally became law, "it had not four but five schedules, including what critics called the 'Roche Schedule' (IV) for minor tranquilizers—even though Roche had successfully kept its own minor tranquilizers, Librium and Valium, out of the bill altogether," *Happy Pills in America*, 119.
[54] "A Report: The Drug Abuse Problem and the Drug Abuse Control Amendments to the Food, Drug & Cosmetic Act," 10, Draft of report with subsequent edits. Draft sent by J. K. Kirk,

This medical and cultural debate between the divine and diabolical possibilities of LSD-25 was perhaps best characterized in the competing nomenclature for the drug. Some categorized it as a "psychotomimetic," meaning capable of mimicking psychosis, while others, who took a more holistic view of the acid trip, adopted the term "psychedelic" or "mind-manifesting."[55] Ultimately, BDAC agents chose the former and treated the drug as a powerful psychotic. After one agent described their procedures to "guard against getting a trace of LSD in the mouth, on a cigarette or toothpick," he insisted, "If one of our men went on a trip we couldn't trust him any more – and he carries a gun."[56] Agent Jan Larsen may have been certain about the true nature of LSD, but such unanimity was never achieved in the halls of the FDA, Congress, or research hospitals and universities. Instead, public panics created a demand for more simplistic punitive policies that minimized considerations of the complex questions associated with all drug use and abuse.

As the term psychotomimetic implied, LSD could produce something akin to a psychotic reaction. Despite the possibility of a mental breakdown, the actual damage done by LSD was repeatedly overstated, with some suggesting as many as a third of all users suffered a psychotic episode. Researchers studying the problem in the mid-1960s estimated that about two percent of

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Assistant Commissioner, Food and Drug Administration to Michael Parker, Special Assistant to the Assistant Secretary for Legislation (and HEW representative to the President's Commission on Law Enforcement and Administration of Justice), December 23, 1965; and James Vorenberg, Executive Director, President's Commission on Law Enforcement and Administration of Justice, to A. E. Ledder, Advisory Opinions Branch, Food and Drug Administration, November 1, 1965, Folder 1 – "Drugs: Abuse," Box 1: "Drug Abuse Files," FDA History Office Files.

[55] Humphry Osmond, "A Review of the Clinical Effects of Psychotomimetic Agents." *Annals of the New York Academy of Sciences* 66 (March 1957): 418–34.

[56] T. George Harris, "B.D.A.C. Secret Agent in a Losing Battle," *Look Magazine* (March 5, 1968), reprinted in "Increased Controls over Hallucinogens and Other Dangerous Drugs," Hearings before the Subcommittee on Public Health and Welfare, February – March 1968, 90th Congress, Second Session, 46.

all users experienced adverse complications and one-third of that group suffered a serious mental breakdown. This meant approximately seven out of every one thousand people experienced the effects portrayed in more and more news reports, which, as Jay Stevens argues, "was seven too many, but it was hardly epidemic material."[57] Of course, this might also be said of overall use of LSD. A 1971 study estimated that, over the previous decade, "between 1,000,000 and 2,000,000 Americans had taken an LSD trip" – less than one percent of the total U.S. population.[58] Though not a precise estimate, this would imply that, at most, about 14,000 people suffered an LSD-induced breakdown during the entire decade. For perspective, during our current prescription drug epidemic, over 20,000 Americans died from overdoses of prescription drugs just in 2013.[59]

Bad publicity does not completely explain LSD's trip from marvel to menace. Once considered a miracle drug, part and parcel of the therapeutic revolution in psychopharmacology, what made LSD different from other "dangerous drugs" – amphetamines, barbiturates, even the minor tranquilizers? The answer lies at the intersection of culture and finance, and it reveals much about the often invisible hand that labels some drugs licit and some illicit, some beneficial medicines and others dangerous dope. In sheer scale, the trade in LSD always paled in comparison to other psychoactive pharmaceuticals. Throughout the decade, the FDA estimated the annual trade in amphetamines and barbiturate pills to be in the billions. On the other hand, no more a few million Americans tried LSD during the entire decade and that number still towered above the legal use of LSD before the recall of Delysid. Between 1950 and 1965, only about

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[57] Stevens, *Storming Heaven*, 274.
[58] William H. McGlothlin and David O. Arnold, "LSD Revisited: A Ten-Year Follow-Up of Medical LSD Use," *Archives of General Psychiatry*, January 24, 1971, 35, cited in Brecher, *Licit and Illicit Drugs*, 367, n4. According to the 1970 Census, the U.S. population was 203.2 million, U.S. Census Bureau, *1970 Decennial Census Report*.
[59] National Institute on Drug Abuse, "Overdose Death Rates," Revised February 2015, available at http://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates.

"40,000 patients had been prescribed one form of LSD therapy or another."[60] Moreover, while therapists could charge patients for a trip on the couch, the FDA requested that Sandoz not charge investigators for samples, so the company distributed both Psilocybin and Delysid for free.[61] With no profits in supporting research and no accepted mass market developing in the foreseeable future, Sandoz officials had little economic incentive to challenge the new regulations.

Profits also depended on conformity to convention. Culturally, many have suggested that drugs like amphetamines and barbiturates found mass markets and acceptance because they offered a means for thriving in or dealing with modern society.[62] On the other hand, LSD seemed to offer a way out, a look beyond the curtain. This was the threat of Timothy Leary's ethos, the New Left's agitation, and the counterculture's idleness – a whole generation of the country's future leaders jumping ship from modern society and threatening to take older Americans overboard right along with them. Thus, unprofitable and unacceptable often became illegal, while other "dangerous" pharmaceuticals merely suffered new regulatory hoops on their way to impressive lines at the bottom of balance sheets and in front of pharmacy counters.

The majority of problems with LSD could be boiled down to an unregulated black-market, unsupervised users, and an uninformed public – none of which were the fault of Sandoz Pharmaceuticals. However, in mid-April 1966, with headlines screaming about LSD murders and

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[60] Moheb Costandi, "A brief history of psychedelic psychiatry," *The Psychologist* 27, no. 9 (September 2014), 715.
[61] U.S. Senate Subcommittee on Executive Reorganization, "Federal Research on the Drug LSD," 61 & 80.
[62] For more on this theory see Richard Grandpre, *The Cult of Pharmacology: How America Became the World's Most Troubled Drug Culture* (Durham: Duke University Press, 2006) and Nick Reding, *Methland: The Death and Life of an American Small Town* (New York: Bloomsbury, 2010).

poisoned toddlers, Sandoz "became so spooked by the bad publicity" that it withdrew from all contracts to distribute the drug domestically.[63] At first the company decided to cut off all new supplies of LSD, which it marketed and distributed under the name Delysid. However, officials at the U.S. branch of Sandoz chose to go even further because "articles about black-market operations in the drug were injuring [the company's] reputation." In fact, even the *New York Times* article reporting on the recall of Delysid concluded with a recap of the murder Stephen Kessler had committed just a few days previous.[64]

Once they ended manufacture and distribution, Sandoz officials turned over all of their remaining supply of Delysid to the National Institute of Mental Health (NIMH), delivering about 21 grams of LSD to NIMH headquarters by armored car in late April.[65] Working in tandem, the FDA and NIMH continued to collect old batches of Delysid while tightly monitoring any ongoing studies by the VA and other approved government agencies.[66] Writing to one of three Congressional committees investigating LSD in the spring of 1966, Sandoz Medical Director Dr. Craig Burrell insisted, "the provision of adequate measures for the control and distribution of

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[63] Kimberly Allyn Hewitt, "Psychedelics and Psychosis: LSD and Changing Ideas of Mental Illness, 1943-1966," (Ph.D. Dissertation, University of Texas at Austin, 2002), 255.
[64] Murray Schumach, "Distributor of LSD Recalls All Supplies," *New York Times*, April 15, 1966, 1.
[65] U.S. Senate Subcommittee on Executive Reorganization, "Federal Research on the Drug LSD," 35.
[66] Overlooked bottles of Sandoz Delysid have become a part of underground drug lore. Some have suggested that Timothy Leary died with a massive stash still hidden somewhere. In 2006, at a gathering to celebrate of Dr. Albert Hofmann's 100th birthday, someone contributed "an unopened, brown-glass vial of 1951 Sandoz LSD-25 (Delysid)," and of course everyone there volunteered to experiment with the still potent drug, see "Myth Debunking & Storage: LSD Purity," *Vaults of Erowid*, June 2006, available at https://www.erowid.org/chemicals/lsd/lsd_article2.shtml.

hallucinogens must now be undertaken by government authorities."[67] With that decision, the legal market for LSD was closed. Unable to regulate records of distribution and manufacturing, the FDA's efforts to stem the spread of LSD now depended solely on policing the black market.

The FDA no longer had to contend with Sandoz-manufactured Delysid (LSD-25), but it still struggled to stem the flood of counterfeit LSD and control the sale of the chemicals that could be used to make black-market acid and other psychedelics. Without any legitimate distribution channel on which to keep records and with controls on chemical suppliers still pending, BDAC agents had to adopt other means for regulating the public's new bête noire. Compounding this problem, according to the 1972 *Consumer Union Report*, "the new laws, the new FDA regulations, and the Sandoz restrictions were followed by a marked *increase* in the availability of LSD."[68] It is not surprising that products in a completely unregulated market have the potential to be more available than those in a regulated market. Inability to control who has access to such products is a problem compounded by the inability to control who manufactures those products and the quality of the job done. In the case of acid, the latter problem was less of an issue at first. Many of the first consumers of black market LSD-25 were middle and upper class people tripping with psychiatrists who had just lost their access to Delysid because of the Kefauver Amendments. Moreover, the process for manufacturing the drug was relatively straightforward and precursor chemicals remained accessible. With responsible chemists, who

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[67] Craig D. Burrell, M.D., Medical Director, Sandoz Pharmaceuticals to Frank Moore, U.S. Senate, May 13, 1966, available in U.S. Senate Subcommittee on Executive Reorganization, "Federal Research on the Drug LSD," 80-1.

[68] Edward M. Brecher, *Licit and Illicit Drugs: The* Consumers Union Report *on Narcotics, Stimulants, Depressants, Inhalants, Hallucinogens, and Marijuana – including caffeine, Nicotine, and Alcohol* (Boston: Little, Brown and Company, 1972), 366.

often had a personal stake in making a good batch, safety risks were limited. Of course, this did not remain the case as more profit-minded producers got in on the act.

The story of August Owsley Stanley III illustrates the issues facing the FDA and new BDAC agents. The grandson of a Democratic Congressman from Kentucky, Owsley was perhaps the most successful and certainly most famous of the Sixties' black market chemists. Distributing his high-quality acid to all manner of countercultural heroes, from Ken Kesey's Merry Pranksters to the Beatles, Owsley was immortalized in the Grateful Dead song, "Alice D. Millionaire." According to Stanley, he first tried acid in 1964 and shortly thereafter acquired some Sandoz-manufactured LSD. Living in Berkeley with a chemistry student at the University of California, he tried to make his own acid that was "at least as good or better than any pharmaceutical firm." With three weeks of research in the UC Berkeley library, Stanley had all the information he required and just needed the base chemicals. Stanley and his partner made methamphetamine in the bathtub to finance the start-up costs of their LSD operation. To overcome the requirement that such chemicals only be distributed to serious researchers, Stanley formed the "Bear Research Group" and began ordering bottles of lysergic monohydrate from the Cyclo Chemical Corporation, paying $4000 every three or four weeks for more supplies. By May 1965, Stanley could supply the Bay Area with thousands of doses of "extremely pure" LSD, which he provided to the Merry Pranksters, finally allowing them to share acid with everyone at their parties and thereby launch their infamous Acid Tests.[69]

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[69] Robert Greenfield, "Owsley Stanley: The King of LSD," *Rolling Stone*, no. 1030, July 12, 2007, republished March 14, 2011, http://www.rollingstone.com/culture/news/owsley-stanley-the-king-of-lsd-20110314. For a contemporary account of the Acid Tests, Kesey, and Stanley, see Tom Wolfe, *The Electric Kool-Aid Acid Test* (New York: Farrar, Straus and Giroux, 1968). For a recent historical analysis, see Michael J. Kramer, *The Republic of Rock: Music and Citizenship in the Sixties Counterculture*, (New York: Oxford University Press, 2013), Ch. 1.

The Merry Prankster's Acid Tests further demonstrated BDAC's challenges. Inspector Clifford Shane transferred to Northern California in the early 1960s and witnessed firsthand how policing LSD was almost impossible with inspectors' standard operating procedures. Shane insisted, "Anybody with… even some chemistry background could probably compound LSD." This created "a different sort of distribution pattern than we were normally used to." He thus concluded, "it was very difficult to make cases." Recalling how "the illegal sale was done through an individual who was at that time considered the early hippie," Shane argued, "there wasn't much of a sale at that time for profit and gain; it was more of a cult deal that was involved." To get into the cult, Shane said, "you were always expected to be a participant and, of course, we were not about to find ourselves as a participant in that type of situation."[70] Prosecuting someone like Owsley Stanley for distributing acid at a Merry Prankster party thus created a number of difficulties for FDA inspectors. Even after the passage of DACA, the FDA still could not regulate the distribution of base chemicals and Stanley hardly had his own official records for them to review. To witness distribution an inspector actually had to go to Prankster's party and indulge in the spiked Kool-Aid, and even then might not be able to prove illegal sale of the drug. Although they were no longer required to prove involvement in interstate commerce, BDAC agents thus faced the same problems as earlier FDA inspectors.

More important, as LSD drew their attention away from dispensing pharmacists and physicians, agents often encountered more than they could handle. Agents seized a clandestine LSD lab while arresting a seller in Brooklyn and impounded a milk truck in Colorado outfitted to

[70] Clifford G. Shane interview transcript, 10-11.

produce all manner of psychedelics.[71] But that was just the tip of the iceberg. Policing LSD also pulled BDAC agents into situations for which they were unprepared. Executing two arrest warrants in Boston for illegal sales of LSD, BDAC agents "netted five men (members of a notorious motorcycle gang); a 17 year-old runaway girl from New Hampshire; two 25-caliber Baretta [sic] automatics; knives; and thousands of dollars worth of LSD, amphetamines, barbiturates, marijuana, and hashish."[72] With only the authority to regulate the LSD and pills, agents thus had work even more closely with other Federal and State police agencies, including the Bureau of Narcotics.

A Consequential Choice of Administrators

Even with the growing black-market trade and concomitant public panic about LSD, FDA officials and BDAC agents still attempted a balanced approach of education and industry compliance. However, personnel decisions proved as significant as enforcement policies in shaping the history of BDAC and FDA's drug control. Goddard ushered in a new era at the FDA, but former Bureau of Narcotics agents transferring to BDAC also threatened the traditions and reputation of the agency.

Though BDAC was a separate Bureau within the FDA but officials from both units cooperated in pursuit of that balanced approach. Cooperating in this charge were two administrators new to the FDA – Commissioner James Goddard and BDAC chief, John Finlator. Adding to the hurricane of change surrounding the launch of BDAC, Goddard replaced outgoing Commissioner George Larrick in January 1966. The confluence of events in the spring of 1966 thus grew even larger. While Finlator was an experienced federal bureaucratic manager, Goddard

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[71] "Bootleg LSD Laboratory," *The BDAC Bulletin* L-3 (January 1967), 1; "Traveling Laboratory Seized," *The BDAC Bulletin* L-5 (May 1967), 4.
[72] "Joint Efforts Rewarding," *The BDAC Bulletin* L-5 (May 1967), 1.

was appointed to bring a fresh perspective free from the heavy chains of a long FDA tradition of industry cooperation and, often perceived, collusion.

Criticism of FDA Commissioner George Larrick was brewing for a few years and reached a boiling point when one of his Deputy Commissioners was accused of conspiring with a major drug company to influence FDA policy. While public spectacles like the thalidomide tragedy resulted in more power for the FDA, these missteps also generated their fair share of critiques of the agency. The FDA's detractors, according to historian Daniel Carpenter, "faulted Larrick for supporting an open-door policy—one in which aggressive industry representatives were free to roam the halls of the Administration and hound medical reviewers." The FDA, nonetheless, dodged the harshest criticism because most politicians, scientists, and journalists believed "the most systemic failures of the agency were failures of Congress."[73] Going back to the first Citizen's Committee of 1955, many had noted the lack of sufficient budgets and authority, which undermined the FDA's regulatory mission. However, with the passage of Kefauver-Harris in 1962 and the Drug Abuse Control Amendments of 1965 (DACA), the agency's hands were no longer tied and now FDA officials would have to answer for their own failures to achieve their mandate.

After Larrick resigned at the end of 1965, it fell to the new Commissioner to make crucial decisions about implementing that legislation and to shoulder any criticism of those choices. In January 1966, the Secretary of the Department of Health, Education, and Welfare (HEW), John Gardner, appointed Dr. Goddard as the new FDA Commissioner. Previously the chief of the Communicable Disease Center (CDC) in Atlanta, Dr. Goddard was serving as the Assistant

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[73] Carpenter, *Reputation and Power,* 267-8.

Surgeon General in the Public Health Service.[74] His real desire was to become the nation's top doctor, but he put that dream on hold and accepted Gardner's appointment.[75]

James Goddard's ascension to commissioner began a new era in leadership for the FDA. Going back to Harvey Wiley in the fledgling Bureau of Chemistry, all FDA leaders had climbed the bureaucratic ladder and spent their careers working for the FDA.[76] Goddard had no such background and was appointed, in part, to end those insular traditions. As one journalist summarized, Goddard "was hired to carry out far-reaching changes armed at putting the FDA in the scientific forefront of medical practice."[77] To fulfill that mandate, Goddard reorganized the FDA, created a new five-year plan for the agency, streamlined its scientific operations, and brought in outside experts to assist in the massive job of regulating over $100 billion in annual commerce.[78] He contracted with the National Academy of Sciences to review all the drugs created after 1938 that now had to be proven safe and effective under the Kefauver-Harris Act. Using the *Federal Register* as a platform, Goddard also upped the publication of FDA rulings and orders, establishing new regulatory protocols and insisting on cooperation with those decisions.[79] Goddard thus attempted to revitalize the scientific authority of the FDA in the drug

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[74] "New FDA Commissioner Appointed," *Food and Drug Review* 50, no. 1 (January 1966): 6. The CDC is now known as the Centers for Disease Control and Prevention.
[75] Carpenter, *Reputation and Power*, 347. See FDA Oral History Collection for more details and speculation on Goddard's appointment and personal ambitions.
[76] "About FDA: Past Commissioners," U.S. Food and Drug Administration, US. Department of Health and Human Services, last modified April 6, 2015, accessed October 22, 2015. http://www.fda.gov/AboutFDA/CommissionersPage/ucm2005244.htm
[77] Tom Nolan, "FDA's Goddard: A Hip-Shooter On Target," *Patriot Ledger* [Quincy, MA], July 18, 1966, reprinted in *Food and Drug Review* 50, no. 9 (September 1966), 289.
[78] "Drug makers get a tough, new cop," *Business Week*, March 26, 1966, 72, reprinted in *Food and Drug Review* 50, no. 6 (June 1966): 200. For a summary of the scale of FDA's operations when Goddard took charge, see for example, "Dedicatory Remarks by HEW Secretary Gardner," *Food and Drug Review* 49, no. 12 (December 1965): 264.
[79] Carpenter, *Reputation and Power*, 347-8.

industry. He was also clear on the source of his mandate to do so, arguing, "I think the mood of Congress –and of the nation – is in favor of consumer protection. And we have what seems to be adequate legal authority."[80]

New to the FDA, Goddard was also largely unknown to the pharmaceutical manufacturers and lobbying associations now subject to his authority. Industry leaders thus feared "the end of 'gamesmanship' in FDA-industry relations," and Goddard confirmed those fears almost immediately.[81] He publicly chastised the drug industry for their poor safety protocols and shoddy research practices. Addressing the Pharmaceutical Manufacturers Association at their annual meeting in Boca Raton, Florida, Goddard "warned drug manufacturers that their industry is showing symptoms of a disease that drugs cannot cure." "That disease," Goddard provocatively declared, "is irresponsibility." He decried dishonest advertising, labeling, and research practices, concluding, "government alone cannot serve all the health needs of the American people. This is a responsibility we gladly share with private industry."[82]

FDA officials also communicated directly with those professionals who did not keep up with the *Federal Register.* Combining educational initiatives with demands for cooperation, Goddard and BDAC Director John Finlator informed individual pharmacists about the new protocols mandated by DACA. In his July letter to the country's pharmacists, Goddard insisted the FDA had "excellent cooperation… from Associations of professional pharmacists at the National and State levels." He assured his correspondents that corner-store druggists had an

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[80] Tom Nolan, "FDA's Goddard: A Hip-Shooter On Target," *Patriot Ledger* [Quincy, MA], July 18, 1966.
[81] Carpenter, *Reputation and Power*, 347-8.
[82] "Goddard Challenges Drug Industry," *Food and Drug Review* 50, no. 5 (May 1966): 149.

equally important role and was certain they could "be counted upon to fulfill it well."[83] Finlator expanded upon Goddard's message, sending his own "Dear Pharmacist" letter to explain the new record-keeping requirements and prescription refill limitations for drugs controlled under DACA. He also requested that theft of such drugs be reported to both local police and the nearest BDAC or FDA office. Warning that "from time to time agents of our Bureau of Drug Abuse Control will visit pharmacies to obtain information from invoices, prescription files, and/or inventory records," Finlator insisted the pharmacists' cooperation was needed and concluded, "we are looking forward to working together."[84] While Finlator implicitly demanded that pharmacists respect BDAC's authority, he also wanted to be sure to educate the vast majority of professionals who sought to follow the law. He therefore wrote to the country's pharmacy schools, seeking "to establish and maintain liaison with the member of your staff who presents the law to your students."[85] Educating, cooperating, but demanding respect for the new regulations thus all became interrelated aspects of the FDA and BDAC's comprehensive approach to enforcing the Drug Abuse Control Amendments.

In addition to his demands for cooperation from industry, Commissioner Goddard focused on other voluntary initiatives. Opposed to outright criminalization and increasingly saddled with a reputation as a cultural libertine, Dr. Goddard was nonetheless willing to use a bit of Anslinger-esque hyperbole to accomplish his educational objectives. At the beginning of April, the FDA sent out two mass mailings with a form letter from Goddard. The first, dubbed

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[83] James L. Goddard, "Dear Colleague" form letter, July 29, 1966, Folder 4 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.
[84] John Finlator, "Dear Pharmacist" form letter, July 29, 1966, Folder 4 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.
[85] John Finlator, "Dear Dean" form letter, July 29, 1966, Folder 4 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

the "Dear Administrator" letter, addressed leaders of the country's colleges and universities. Goddard began with the solemn reminder: "During the past year a marked increase in the illegal use of hallucinogenic and stimulant drugs throughout the nation, particularly around educational institutions, has been reported." Continuing his summary of this "most hazardous situation," the Commissioner insisted, "both students and members of the faculty are being secretly approached to engage in hallucinogenic 'experiences.'" As such, he sought "to alert all educational administrators" and "enlist their assistance in combatting an insidious and dangerous activity." Though he opposed criminalizing a large swath of American youth, Goddard also pushed the FDA's policing powers onto college campuses. He wrote, "Any instances of illegal use or possession of these drugs or sleep-delaying drugs, such as the amphetamines, should be reported at once to the Food and Drug Administration district office," presumably so they could send some BDAC men to investigate.[86]

The Dear Administrator letter evinced the delicate balancing act necessitated by the growing divide between ensuring the proper use of legally distributed pharmaceuticals and regulating hallucinogens only available for supervised clinical research. A month later, Goddard addressed elementary and high school educators with a related warning that further revealed the rhetorical intricacies of the new concept of "drug abuse." Writing in the HEW publication, *American Education*, Goddard opened with a familiar refrain: "Over nine billion barbiturate and amphetamine capsules and tablets are manufactured annually in the United States. And about half of them are sold illegally." Unlike his letter to college administrators, Goddard's article continued to avoid the panic that elevated the taking of LSD over the far more prevalent use of

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[86] James L. Goddard, "Dear Administrator" form letter, April 5, 1966, Folder 4 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

amphetamines and barbiturates. He acknowledged the source of the divide between these two groups, noting while the latter "two are used legitimately for medical purposes," the former was only "used experimentally for limited research with mental patients… [and] still had not been proven safe and effective." Despite that argument, Goddard devoted the bulk of his concern to "the 'nice' drugs – the innocent-looking pills or capsules that help us get a refreshing night's sleep… [or] curb the appetite." Writing primarily for high school teachers, Goddard was implying that many young people had to look no further than their parents' medicine cabinet for access to such drugs. He noted, "evidence of drug abuse by college students is increasing" and focused attention on students taking "pep pills" to "keep awake while cramming" or "generate excitement for the big game."[87]

Avoiding hyperbole and unwilling to indulge the public panic over LSD and other hallucinogens, Goddard offered insight into the original concerns that spawned BDAC and the nuanced approach the FDA adopted to address those concerns. He acknowledged "the criminal nature of illegal drug traffic" and praised the "new powers vested in FDA investigators" to combat that traffic, but he also insisted, "new laws will not solve the problem without public cooperation." In addition to enforcement, the FDA's "two-pronged approach" needed teachers and parents to educate young people about "how to use drugs safely and effectively; how to avoid misuse; and certainly how to avoid the hazards of drug abuse."[88] The FDA Commissioner gave the same message to a group of 500 New York City educators and parents at a conference in June 1966, insisting, "We may provide the law enforcement – but <u>you</u> must provide the

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[87] James L. Goddard, "The Menace of Drug Abuse," *American Education* 2, no. 5 (May 1966), 4-7.
[88] Goddard, "The Menace of Drug Abuse," 6-7.

educational climate to eliminate drug abuse."[89] Most important, Goddard's promotion of education initiatives also propagated the new scale of analysis undergirding our modern drug policy – focused not on good and bad drugs, but on the use, misuse, or abuse of all drugs. This fit squarely within the consumer protection basis for liberal drug legislation, as Goddard implied when concluding, "The Drug Abuse Control Amendments provide the legal means to protect the public from danger."[90]

Despite the best intentions of Goddard and the FDA to protect the public, the need to eliminate counterfeit medicines was the lodestar pulling focus from consumer protection to more traditional drug policing. Unlike other pharmaceuticals that entered the black market through diversion from licit sources, counterfeit medicines had no manufacturing or distribution records to be reviewed. In the case of LSD, with no licit source all black market drugs came from counterfeit manufacturers. Thus, BDAC officials had to either locate and arrest those counterfeiters or limit their access to the chemical ingredients needed to manufacture counterfeit drugs.

At the same time as his "Dear Administrator" letter, Goddard addressed a similar open letter to all of the nation's suppliers of the base chemicals used to manufacture medicines. This "Dear Mr. Chemical Supplier" dispatch alerted its recipients to the "recent increased use of, and traffic in, dangerous and illegal hallucinogenic drugs." Goddard reminded his correspondents, "all commercial distribution of LSD-25 for any drug use violates the Federal Food, Drug, and Cosmetic Act." His primary concern, however, was the ongoing distribution of precursor

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[89] James L. Goddard, "Before It's Too Late," Address to the City-Wide Conference on Drug Abuse, New York City, June 16, 1966, 7; FDA Press Release, June 7, 1966; FDA Press Release, June 16, 1966, all available in Folder 4 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.
[90] Goddard, "The Menace of Drug Abuse," 7.

chemicals, particularly lysergic acid and ergotamine tartrate, which could be used to manufacture LSD and other hallucinogens. Insisting the bulk of illicitly manufactured psychedelics originated with materials from these legitimate chemical suppliers, Goddard strongly suggested industry cooperation to ensure their products did "not get into the hands of those who would divert them to illegal use." If suppliers had any doubts about the legitimacy of their customers, Goddard requested that they contact the director of the nearest FDA office. Again exacting a sort of compulsory cooperation, Goddard concluded his letter with a caveat: "Failure to take action to determine legitimate use of these chemicals may result in unnecessary investigations of your activities and possible regulatory action."[91]

A New Era in Law Enforcement

Problems with punitive policing may have been the source of BDAC's downfall, but policing in BDAC was not simply a response to LSD. Under the direction of Commissioner George Larrick, himself a former Chief Inspector, the FDA long pursued the authority to police the illegal distribution of dangerous drugs, but officials never really wanted to become a police force, certainly not one modeled after the Treasury Department's Bureau of Narcotics. This was the reason Commissioner Paul Dunbar had first proposed shifting control of dangerous drugs to the Federal Bureau of Narcotics in the late 1940s. Now, however, President Johnson wanted to appear tough on crime and needed the only federal agency with the authority to police LSD to take the lead in fighting drug-induced disorder. As such, just as FDA officials were becoming uncomfortable with their policing duties, the President wanted them to do more and many

[91] James L. Goddard, "Dear Mr. Chemical Supplier" form letter, April 5, 1966; and Food and Drug Administration, Press Release to Trade Journals, April 5, 1966, Folder 4 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

industry and countercultural forces wanted them to do even less. Under siege on all sides and unwilling to police the simple possession of acid, Goddard and the FDA were more than willing to let go of BDAC and move past some of the discord that had begun to overwhelm the agency.

Throughout the 1940s and 1950s, the FDA unsuccessfully sought authority to serve warrants and carry firearms – the sine qua non of police work. Commissioner Larrick, who cut his teeth as an FDA inspector, spent his entire tenure as Commissioner attempting to focus more attention on the growing illicit market in barbiturates and amphetamines. With those attempts came complaints that "FDA has been severely hampered by a shortage of personnel and, just as important, by its lack of legal authority."[92] After the passage of the Drug Abuse Control Amendments of 1965 and the creation of BDAC, the FDA no longer had "to rely on voluntary cooperation in an area where police power is needed." However, Larrick insisted that controlling access to dangerous drugs had to go hand-in-hand with an equal or greater effort towards stopping the demand for those drugs. On the access side, Larrick also acknowledged that surveillance of licit channels was as important as "apprehension of law breakers." In his supplemental budget request for funding BDAC, Larrick broke down "the major activities which FDA must undertake" to fulfill its new obligations and included many traditional agency practices – from registering manufacturers and analyzing samples to researching use patterns, educating the public, and cooperating with local and state authorities.

But the FDA also could now set about developing "a field force skilled in the techniques of law enforcement and undercover investigation, including the use of firearms and special

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[92] "Drug Abuse Control Amendments of 1965," 1966 Supplemental Appropriation Request, Food and Drug Administration, Department of Health, Education, and Welfare, July 1965, 3, Folder 3 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1: "Drug Abuse Files," FDA History Office Files.

equipment, to stop illegal traffic in these drugs and to arrest lawbreakers."[93] That force would work out of BDAC's Division of Investigations and the first twenty-eight members of the division were sent for eight-weeks of training in early 1966. The site of the training was Berkeley, California at the University of California's School of Criminology.[94]

With new power came new responsibility, and the FDA took seriously its job of selecting "suitable individuals" and providing "first-rate training programs and equipment." To fulfill its duties, officials estimated they would need about 250 agents and planned to fill the Bureau's ranks first with about 75 former FDA investigators. Though many FDA veterans were chosen because of their past experience with undercover pharmacy investigations, they still needed training in many of the traditional aspects of police work. As such, many of the members of the first class of BDAC agents came from FDA field work and were trained in subjects ranging "from physical education and weapons training to the interpretation of production records, criminal law, the culture and social-psychology of drug use and abuse, and the pharmacology of drugs." While taking specially designed courses in "investigative techniques, self-defense and disarmament and small arms fire," the trainees merely had to walk outside and look around for an education in at least one blossoming "culture" of drug use.[95]

BDAC's training program in Berkeley – a bastion of the student Left and birth place of the Free Speech Movement – certainly provided opportunities for immersion in the counterculture that many wanted BDAC to police. Frank Flaherty, an FDA Inspector who made

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[93] "Drug Abuse Control Amendments of 1965," 1966 Supplemental Appropriation Request, Food and Drug Administration, Department of Health, Education, and Welfare, July 1965, 3-5.
[94] "BDAC Investigators Begin Work," *Food and Drug Review* 50, no. 5 (May 1966): 150.
[95] "BDAC Investigators Begin Work," *Food and Drug Review* 50, no. 5 (May 1966): 150; "Drug Abuse Control Amendments of 1965," 1966 Supplemental Appropriation Request, Food and Drug Administration, Department of Health, Education, and Welfare, July 1965, 12-13.

the transfer to BDAC, recalled the atmosphere when the new agents arrived at their training program, reminiscing, "That was right in the middle of the free speech movement at Berkeley, and the daily riots that they had there, all the upset. It was a real interesting time."[96] Another lifelong FDAer, who temporarily made the jump to BDAC, Ed Wilkens paints a more vivid picture of the scene, joking, "It was Disney Land out there."[97] He explained, "it was right in the middle of the hippie era, you know, and you'd go out for lunch, and here would be on the main mall there, I mean the main thoroughfare, there'd be, you know, 'Legalize Abortion,' 'Legalize Marijuana.'" He recounted how one of the first modern topless dancers, Carol Doda, was even featured on a platform "out in the middle of the college" to attract support for one such issue. Even four decades later, Wilkens recalled wondering, "What the hell is this?" and concluded pithily, "So that was the atmosphere out there."[98]

That atmosphere may have been educational or entertaining, but BDAC had other reasons for training their agents at UC Berkeley. In fact, if the motivations behind BDAC were broken down into component parts – intelligent, scientific, and opposed to bias and overt punishment with a preference for rehabilitation and education while still believing firmly in the power of strong police force – those same qualities could equally be said of the founder of the nation's first school of criminology at UC Berkeley. By the 1950s considered to be "America's greatest cop," August Vollmer began developing his "Berkeley system" before World War I and, in the five decades since, "his program of professionalization had become the lodestar of American law

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[96] Francis J. Flaherty, BDAC agent, interview by Ronald Ottes and Robert Tucker, Rockville, MD, June 14, 2000, "History of the U.S. Food and Drug Administration," transcript, 7.
[97] Ed Wilkens interview transcript, 48.
[98] Ed Wilkens interview transcript, 46-7. In 1964 Doda gained national notoriety for being the first woman to dance topless at the infamous Condor Club, located in San Francisco's original home of the Beats and hipsters, North Beach; c.f., Sam Roberts, "Carol Doda, Pioneer of Topless Entertainment, Dies at 78," *New York Times*, November 11, 2015.

enforcement."[99] According to historian Ken Alder, Vollmer believed in police officers using their discretion intelligently but "wanted them to enforce the law fairly and efficiently." He thus "urged a managerial revolution in police work," which included "the centralization of command and communication, specialization of tasks, and the deployment of scientific know-how." Promoting technological innovations such as the lie detector test and a new cross-referenced identification filing system, Vollmer established a police school in 1906. At first, University of California faculty members taught in-house courses to Vollmer's officers before he hired a full time criminology professor from UC's pharmacy school a decade later, thereby launching the School of Criminology.[100]

Taking up the mandate of progressive reformers, both Commissioner Goddard and BDAC chief John Finlator were strong proponents and practitioners of a similar managerial revolution and the results showed in the quick formation of these training programs and BDAC units. Finlator previously taught university courses in executive management, and when he was first appointed in February, Finlator told his new assistant, Paul Pumpian, "I don't know anything about drugs… but I'm a manager." By the official launch of BDAC in June, Pumpian believed in those managerial skills, recalling, "I think we had nine district BDAC offices operating, with automobiles and guns and radios and making cases, and that was unheard of in the federal government for anybody to move that fast."[101]

In a report for the *Journal of Criminal Law, Criminology, and Police Science*, UC School of Criminology Dean Joseph Lohman and research criminologist Robert Carter highlighted the

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[99] Albert Deutsch, *Colliers*, February 3, 1951, quoted in Ken Alder, *The Lie Detectors: The History of an American Obsession* (Lincoln: University of Nebraska Press, 2007), 244-5.
[100] Alder, *The Lie Detectors*, 20.
[101] Paul A. Pumpian interview transcript, 27.

BDAC course's unique aspects and progressive pedigree. To train its first 150 agents, the FDA initially contracted with the School for three eight-week courses offered to between 30 and 60 recruits. With the bulk of instruction provided by University staff, the program was "divided into nine principle components including criminology and corrections, law, techniques of enforcement, narcotics and dangerous drugs, physical evidence, accounting and auditing for law enforcement, and weapons, vehicle, and physical training." According to Lohman and Carter, the agents' instruction came "from a perspective which significantly departs from that of most traditional law enforcement agency training programs." Unlike those other programs, the BDAC course was "academically oriented" and "designed to provide the student-agent with the widest possible understanding of the total problem of law enforcement and dangerous drugs."[102]

Despite the FDA's success in birthing the bureaucracy of BDAC and officials' desire for a cutting-edge training program at the University of California's flagship campus, many interested observers were suspicious of the real motives of the new agents, who now seemed to fall under the dubious category of "narcs."[103] One of the leaders of the first class of BDAC agents, Ed Wilkens remembered, "The young people used to wait outside our training room." Aware that the agents were being trained in undercover work, the interested observers set out to expose them. During breaks from their course work and physical training, Wilkens remembered, the agents would head outside to be greeted by flashbulbs and shouts of, "You are not going to catch us. We are taking your picture." Cast as the antagonist in the student protesters' morality

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[102] Joseph D. Lohman and Robert M. Carter, "A University Training Program for Agents of the Bureau of Drug Abuse Control," *The Journal of Criminal Law, Criminology and Political Science* 57, no. 4 (1966): 526-529.

[103] The spelling "narc" to represent an undercover narcotics agent has become ubiquitous, but some 1960s radicals used the term "nark," presumably fitting it into a broader pattern of trying to expose the racism in "Amerika" by replacing "c" with "k" to invoke the history of the Ku Klux Klan.

play, Wilkens nonetheless understood their position. The official student newspaper and the quintessential Sixties underground weekly, *The Berkeley Barb*, both "were chewing out… the university for bringing law enforcement people here" and Wilkens empathized, "training them on our campus to go out and catch people who are using mind-altering drugs" at a time when, Wilkens recognized, "a lot of students were taking hallucinogenic drugs."[104]

What seemed natural to agents like Wilkens, however, took on air of conspiracy when reported in *The Barb*. In July 1966, the underground paper revealed, "The Barb Bares Undercover Men." The article reported on the contract between the FDA and the University and detailed portions of the agents' training program held at Harmon Gymnasium. Warning of infiltration by these government agents, the *Barb* argued, "Contrary to popular notions, it is not easy to recognize an agent." According to the reporter's observations, agents did not fit the older mold of the FBI G-Man in a dark suit. Instead, they were younger, most "between 27 and 35 years old," and "there are some men with beards, some with moustaches, some are Negroes and Orientals and there may be some women." Moreover, the trainees seemed to "know the language of the 'hippies'" and appeared to be learning it with the young people of the area as their guinea pigs. As the *Barb* argued, "They learn this language from observations around Berkeley… They frequent [Telegraph] Avenue, observing the behavior of people who, they imagine, use drugs." Most problematic, "they are taught this language by instructors from the Criminology Department," who, the article insisted, only gleaned such information from the willing cooperation of those who now faced prosecution by BDAC agents. Unaware that new BDAC agents were also being trained in firearms, the *Barb* still concluded, "these agents are dangerous"

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[104] Ed Wilkens interview transcript, 48.

and warned, "they know Judo, Karate, and boxing [and] will use these techniques against dangerous drug users, such as people with suspicious sugar-cubes or home-rolled cigarettes."[105]

Despite their protestations; however, the *Barb* doubted "that these revelations will cause the University to terminate the FDA agent-training contract." As the author reasoned, even after similar "publicity the University continues to buy DiGiorgio products, allows the Armed Services to recruit men for the war in Vietnam, and has not terminated its defense contracts."[106] This was the context in which student opponents understood the BDAC training program. They were aware this was a liberal project, no different than the tracking system sending some young people to class and others to the front lines and no better than the Defense funds paying for weapons research in their campus laboratories.

Seeking to avoid such opposition and needing to save budgetary resources, FDA officials decided to not renew their contact with the School of Criminology for more courses. Instead, the FDA launched a new "Basic Criminal Investigation School" in Arlington, Virginia and moved all of its training programs to those friendlier confines in September 1966. In Arlington, the program was cut from eight to six weeks with less theoretical examination of the sociology of drug abuse and more focus on the policing practices of drug control.[107]

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[105] John O. Milligan, "BARB Bares Undercover Drug Men," *The Berkeley Barb* 3, Issue 2 (no. 48), July 15, 1966, 1-2.
[106] Milligan, "BARB Bares Undercover Drug Men," 2.
[107] It is unclear whether student opposition or cost overruns had more to do with the move back to Virginia, but BDAC Director Finlator did argue, "The Criminal Investigation School will provide the necessary training <u>at less cost to the Government</u>," [emphasis mine], "BDAC Training School Opens to Train Drug Control Agents," *Food and Drug Review* 50, no. 12 (December 1966), 356; see also, "BDAC Investigators Begin Work," *Food and Drug Review* 50, no. 5 (May 1966): 150.

Counterfeit Cops

The shift in training programs was just one symptom of BDAC's narrowing focus on policing the illicit distribution of dangerous drugs. First and foremost, an apparent increase in the unauthorized use of pharmaceuticals altered the Bureau's original intent and began to knock off kilter the tenuous balance FDA officials sought to strike between regulating supply chain records and policing major counterfeiters. By the time the first class of agents graduated from the training program at UC Berkeley's School of Criminology, BDAC faced a growing underground market in an array of psychoactive pharmaceuticals that remained accessible to almost all American consumers and began to cause serious problems for some. At the same time that organized crime cornered more of the black market, amphetamine and methamphetamine became the most misused and problematic substance among young people. A *Look Magazine* article argued in the spring of 1968, "more kids now eat, sniff or inject speed than take LSD."[108]

Even counterculture luminaries, such as Owsley Stanley, warned against the growing problem of "speed freaks." Writing in *The Berkeley Barb* under the pseudonym, "Loveable Ol' Doc Stanley," Bear offered tips on "How to Survive on the Streets" for the thousands of young people streaming into the Bay Area and becoming a serious problem for local authorities and even non-government support groups like the anarchist Diggers. Stanley cautioned, "don't try to murder sleep with speed or any other kind of up-er [sic]," and argued, "the dues you will pay are in vitamin shortages and nerve damage." For those readers who did not believe him, Stanley admonished, "If you are new on the set, ask someone to show you a burned-out speed freak and

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[108] Jack Shepherd, "The Cruel Chemical World of Speed," *Look Magazine*, March 5, 1968, reprinted in "Increased Controls over Hallucinogens and Other Dangerous Drugs," Hearings before the Subcommittee on Public Health and Welfare, February – March 1968, 90th Congress, Second Session, 42-6.

see for yourself what amphetamines will do."[109] Having indulged in amphetamines during his younger years, Allen Ginsburg warned as early as 1965, "All the nice gentle dope fiends are getting screwed up by the real horror monster Frankenstein Speedfreaks who are going around stealing and bad mouthing everybody." Following Ginsburg's lead, musicians like Frank Zappa and Grace Slick added their voices to a 1968 radio campaign called "Speed Kills."[110]

In San Francisco, the problem "became obvious" during 1967's "Summer of Love" – challenging popular narratives then and now, which associate this countercultural phenomenon with LSD. According to historian Nicolas Rasmussen, "the doctrine of peace and love, combined with escalation in Vietnam that spelled impending draft for hundreds of thousands of young men, drew flocks of newcomers to San Francisco in search of some combination of enlightenment and escapist pleasure." Instead of the acid and pot preferred by their hippie counterparts, these fresh thrill-seekers chose to inject high dosages of amphetamines and methamphetamines and chaos ensued, undermining the communal idyll of the hippie counterculture. Dr. David E. Smith saw the problem first-hand after establishing the Haight-Ashbury Free Clinic. Just during the summer of 1967, Smith treated over 300 people "for toxic reactions to very high doses of amphetamines."[111]

In addition to causing erratic behavior, petty crime, and serious public health problems, groups engaging in these speed binges or "runs" often became more addicted to the downers used to come off a run, contributing to the heroin epidemic that characterized the next era in

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[109] Loveable Ol' Doc Stanley, "How to Survive on the Streets," *The Berkeley Barb* 4, Issue 22 (no. 94), June 2, 1967, 10.
[110] Nicolas Rasmussen, *On Speed: The Many Lives of Amphetamine* (New York: New York University Press, 2008), 183-8.
[111] Rasmussen, *On Speed,* 184.

federal drug control.[112] Smith also insisted that methamphetamine could have negative effects even for those not interested in taking speed. He argued, "methamphetamine crystals or 'speed' (depending on the frame of reference) have appeared in great abundance in the Haight-Ashbury." Implicating the problems with unregulated drug manufacturing, he continued, "because of its small cost and ease of synthesis" meth was "often mixed with small quantities of LSD and sold as 'pure acid,'" – a mixture that increased "the likelihood of a 'bad trip.'"[113] Thus, while FDA and BDAC officials had envisioned a bureau that would balance the regulation of legitimate manufacturers with the policing of illegal distributors, the latter issue was threatening to become a far bigger problem that demanded more and more of their bureaucratic resources and attention.

As BDAC officials went further down the rabbit hole of illegal drug policing, others who the Bureau was charged with regulating – especially pharmacists – started to chafe at being lumped together with common criminals. Those pharmacists argued for the continuance of traditional state primacy in the licensing and inspection of individual pharmacies. At the same time, some of the major manufacturers of psychoactive pharmaceuticals, especially Smith Kline French, actively encouraged more police and public focus on the individual drug user. While seemingly in opposition, these initiatives both succeeded in focusing BDAC's limited resources on the policing of black markets and away from the regulation of industry.

Even before the official launch of BDAC, the FDA came under pressure from pharmacists' supporters in Congress and on K Street to stop treating drug dispensers like

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[112] This was the same pattern witnessed in postwar Japan, "when a massive methamphetamine epidemic in the early 1950s was followed by a large heroin epidemic late in the decade," Rasmussen, *On Speed*, 189.

[113] David E. Smith, M.D. and Alan J. Rose, "The Use and Abuse of LSD in Haight-Ashbury (Observations by the Haight-Ashbury Medical Clinic)," *Clinical Pediatrics* 7, no. 6 (June 1968): 319.

criminals. Those industry reps found an ally in the assistant to the BDAC Director and then head of the FDA's Office of Legislative and Governmental Services, Paul Pumpian. Past secretary of the Wisconsin State Board of Pharmacy and still close with many other state board officials, Pumpian sympathized with the pharmacists. He argued, "the community pharmacy should be off bounds to Food and Drug inspectors, because I felt that was a state operation and that only state Board of Pharmacy inspectors should go into the pharmacies."[114] Following suit, BDAC Director John Finlator announced, "We feel the states logically should take over the job of overseeing drug store operations." He continued, "We want to begin pilot projects to see what they can do," and predicted, "FDA will try out the idea in selected areas before going all out to transfer these enforcement operations to the states."[115] Conducting a trial run in six states, officials announced in February 1967 that they were launching "a new program [which] places major responsibility on participating State Boards of Pharmacy and State Health Department drug enforcement units to control illegal sales or diversion of drugs."[116] The FDA and BDAC did not want to become a police agency in the minds of its key constituents, the individual pharmacists, who they depended on for voluntary cooperation.

FDA officials needed that voluntary cooperation – from both pharmacists and state pharmacy boards – because they still struggled with the problem of available man-hours to

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[114] Paul A. Pumpian interview transcript, 40. Unlike Goddard or Finlator, who were both brought into the FDA because of their managerial expertise and had few previous ties to industry, Pumpian reflected the ongoing FDA tradition, wherein FDA administrators often had close ties or had even worked in the industries they were regulating. Pumpian, for example, had not only been secretary of the Wisconsin State Board of Pharmacy, he was also a patent attorney for E. R. Squibb & Sons, a drug manufacturer, and he was licensed to practice both law and pharmacy in the states of Maryland and Wisconsin, "State Official, Others Receive BDAC Appointments," *Food and Drug Review* 50, no. 4 (April 1966), 105.

[115] "FDA Conducts Retail Drug Investigation Course," *Food and Drug Review* 50, no. 9 (September 1966): 281.

[116] "State Actions: States to Check Pharmacies," *FDA Papers* 1, no. 1 (February 1967), 28.

complete a monumental task. Even with 300 or so BDAC agents on the payroll by the end of 1966, this was still not enough to handle the scale of the job. When preparing to implement DACA in 1965, FDA officials estimated about 4,000 establishments would have to register under the new law. This included 1,600 manufacturers, compounders, and processors; 1,500 wholesale druggists; and 900 jobbers and distributors of controlled pharmaceuticals. Even more staggering, those numbers did not include "the final major link in the distribution chain" – comprised by "65,000 'receivers, such as pharmacies, hospitals, and clinics, and 330,000 'handlers,' such as practitioners and researchers."[117] There was no way BDAC agents could regularly check the records of even a small sampling of those hundreds of thousands of drug distribution points. Instead this task would be left to the states, and BDAC agents would be free to focus on policing those illicit distributors who did not have lobbyists or stockholders. Cognizant of how the transfer of regulation to the states would increase BDAC's focus on the illegal traffic in pharmaceuticals, FDA officials hoped state cooperation "will greatly extend BDAC's ability to cope with major drug abuse problems of an… underworld nature."[118]

As the manufacturer of a number of substances now controlled by BDAC and the Drug Abuse Control Amendments, Smith Kline & French faced strict new regulations and record-keeping requirements, many of which it opposed. At the same time, the company ostensibly supported many of the FDA's new endeavors. The company provided speakers and grants for schools and "published a manual on drug abuse for law enforcement officers, a guide for teachers and a general booklet on the subject." The manufacturer of popular amphetamines also distributed 750,000 copies of its booklet, *Drug Abuse: The Empty Life*, free of charge across the

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[117] "Drug Abuse Control Amendments of 1965," 1966 Supplemental Appropriation Request, Food and Drug Administration, Department of Health, Education, and Welfare, July 1965, 9-10.
[118] "State Actions: States to Check Pharmacies," *FDA Papers* 1, no. 1 (February 1967), 28.

country.[119] This glossy, stylized mini-magazine had little to say about the companies manufacturing massive numbers of pharmaceuticals with sometimes little concern for who was receiving their product. Instead, as the title indicates, it directed most of the reader's attention to the individual "drug abuser" who misused otherwise beneficial medicines.[120] Propelled by such a focus, public concern continued to turn towards youth drug use, and the feedback loops reshaping the bureau's mission continued to multiply.[121]

FDA and BDAC officials had to make critical decisions about how to deploy manpower, but individual agents also played a role in shaping the bureau's mission and activities. Many new BDAC agents had little background in traditional FDA investigations and even less interest in spending their days reviewing the corner pharmacy's records of goods received and sold. Those conflicting visions of what BDAC agents could and should be doing came to the fore as soon as the first crop of recruits started their training in Berkeley.

Staying in a hotel just off campus, former FDA inspectors like Frank Flaherty and Ed Wilkens got to know their new co-workers. Most came from other policing agencies, especially the Bureau of Narcotics, and thus out-ranked the FDA men in terms of experience with this kind of work. Wilkens remembered, "you'd hear stories about the border patrol, you'd hear Bureau of Narcotics guys telling stories, and it was great." Anteing up their own expertise, Wilkens reminisced, "we'd tell them about a big drugstore case where we went out and bought some pills

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[119] "What SK&F's Doing About It (Sidebar to "Drug Abuse: Wonderland or Wasteland?"), *Emphasis: The Smith Kline & French Magazine* 2, no. 4 (Fall 1968), 5.
[120] Photocopies of *Drug Abuse: The Empty Life* in possession of author, and booklet also available in Folder 1, "Drugs: Abuse," Box 1: "Drug Abuse Files," FDA History Office Files.
[121] For more on the concept of cultural "feedback loops" and its role in the punitive turn, see Michael Sherry, *Go Directly to Jail: The Punitive Turn in American Life* [forthcoming].

from a druggist, and they'd laugh."[122] For the battle-hardened narcotics men, the buttoned-up stories of FDA inspections must have seemed positively quaint, and they raised the pot with tales of raids where they discovered "huge amounts of money and huge amounts of drugs."[123] This perspective, however, came from more than just harrowing experience as an officer of the law. Filling the ranks of the new bureau and bringing with them much needed experience in policing illicit drug markets, many former FBN officers were also used to walking a fine line that could easily veer from officer of the law to offender.

When launching BDAC, FDA officials prioritized filling the ranks above all else, but that decision had negative consequences down the road. In the long run, officials hoped to have nine BDAC offices across the country, with 75 to 100 agents working out of the larger districts and at least 25 to 50 agents operating in the less busy areas of the country. The first budget for BDAC funded 180 agents, and public outcries for action against drug abuse necessitated that FDA fill those positions in haste. Having only forty total inspectors with drug policing experience, officials had to look outside the administration for acceptable candidates to make up the slack. Even at the March conference on the Drug Abuse Control Amendments, FDA officials could not state exactly how many agents they had secured for BDAC "besides the 28 that are presently enrolled at the University of California." They could only assure their audience of industry representatives that "we expect to have these positions filled by June 30, 1966," a day before the official opening of BDAC operations.[124]

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[122] Ed Wilkens interview transcript, 48.
[123] Ed Wilkens interview transcript, 69.
[124] "Summary of Questions and Answers: Organization of the Bureau of Drug Abuse Control," *Proceedings: FDA Conference on the Drug Abuse Control Amendments of 1965*, March 11, 1966, 41. Available as Appendix III in Garfield, "Drug Abuse and FDA's Effort to Control It." See also, "BDAC Investigative Jobs to Open," *Food and Drug Review* 49, no. 11 (November

Recruits for BDAC came from a number of places, in addition to FDA inspectors, agents had been border patrol, IRS, and customs officers, some were even local policemen, but the majority of those coming in from outside the FDA were former agents of the Bureau of Narcotics. In a hurry to staff their fledgling Bureau, FDA officials made the decision not to vet those coming from other federal agencies. As an experienced illicit drug inspector, Ed Wilkens was chosen to help run the New York BDAC office and assist with the training of new agents, supervising the first class at Berkeley. He recalls,

> If they came from another federal agency – and a lot of them, most of them did, Narcotics or whatever – we didn't do any background checks on them. We accepted them as qualified, good guys… And they decided down there [at FDA headquarters] not to do, waste the time, take the time to check out people, who'd been working, say, for the Bureau of Narcotics for 12 years, 15 years. So none of them were checked out. I guess they did some checks on maybe some of the policemen… but in most cases, the people we hired in that first group were not checked out at all virtually.[125]

In failing to do background checks, FDA officials missed the reason many Narcotics agents were willing to make the jump to BDAC, beyond the offers of promotion. According to a number of FDA sources, the Bureau of Narcotics was then conducting an internal corruption investigation and many of their implicated agents became those who moved to the FDA's new Bureau. As Frank Flaherty argues, "Bureau of Narcotics internal security people were in the midst of a big corruption investigation of their own agents, and many of them, they just passed all them off to FDA… So we hired some fairly unattractive people."[126]

Some FDA officials insisted that the Bureau of Narcotics knowingly withheld information on their transferring agents, and those officials were likely correct. Supporting the

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1965), 254; "Positions Announced for Newly Organized BDAC," *Food and Drug Review* 50, no. 1 (January 1966), 7.

[125] Ed Wilkens interview transcript, 43-4.

[126] Francis J. Flaherty interview transcript, 8.

accusations of these FDA administrators, the Justice Department opened an investigation and began to clean house immediately after suspected former FBN agents were moved into the new Bureau of Narcotics and Dangerous Drugs in 1968. In July of that year, a federal grand jury indicted the former head of the Baltimore office, Charles McDonnell for re-selling confiscated heroin, which was often far above street-level in terms of purity.[127] By the end of 1968, thirty-two former Bureau of Narcotics agents had resigned from the BNDD amid charges of corruption, and at least five were arrested on charges involving the sale of narcotics.[128]

These arrests confirmed anecdotal evidence making its way back to FDA officials. Even Goddard reported, "the hippies in the Haight-Ashbury section of San Francisco and in the Village in New York had told me on a number of occasions… the Narks are on the take… The Narks are peddling drugs." He admitted his doubts, "because the hippies tended to be a little paranoid anyway about the Narks," but he could not discount "hearing it on both coasts and every time you encounter hippies." The last thing Goddard wanted was for his own operation in BDAC to fall into the same trap, even though he could "see how the opportunity certainly exists by virtue of the up-front money that's used in these kinds of things."[129] Wilkens had a similar perspective, admitting, "they'd go in and there's tons of money laying around, so they were really exposed to the biggest temptation you can imagine, and it's hard to pass up."[130] With the quintessential perspective of the mythic FDA do-gooder, Frank Flaherty considered the potential temptation, admitting, "it was like the cop on the street who takes an apple off of the cart… starts

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[127] Theodore W. Hendricks, "Former U.S. Narcotics Official Here Faces 14-Count Indictment, Charged with Heroin Sale, Corruption in Public Office," *Baltimore Sun*, July 11, 1968, C20.
[128] "32 U.S. Narcotics Agents Resign in Corruption Investigation Here," *New York Times*, December 14, 1968, 1.
[129] James L. Goddard, FDA Commissioner, interview by James Harvey Young, Atlanta, GA, April 30 to June 19, 1969, "History of the U.S. Food and Drug Administration," transcript, 334.
[130] Ed Wilkens interview transcript, 69.

out by taking an apple and you go from there." But he concluded, "probably the lesson, if there is one, is that you don't take the apple—you don't ever take that first step."[131]

Corrupt or not, the policing style that former-FBN agents brought to the fledgling Bureau of Drug Abuse Control clashed with FDA traditions, upset FDA officials, and threatened the FDA's public reputation. The presence of former FBN and FBI agents in BDAC leadership positions created what Frank Flaherty characterized as "a 'we' and 'them' kind of attitude."[132] FBN agents were required to meet a quota of arrests and relied on turning low-level drug criminals to become informants on larger distributors. This style was vastly different from the surveillance practices preferred by FDA inspectors, who were encouraged to only prosecute airtight cases based on multiple documented incidents of malfeasance.[133] Ed Kelly, an ex-FBI agent who ran the New York BDAC office with Ed Wilkens, concurred with this assessment, declaring, "We're the old gun totters." Dismissively describing his high-minded agents who came from the FDA's ranks, he jested, "The pink-cheeks are different."[134] Different or not, Wilkens insisted it was difficult for his fellow "pink-cheeks" to do their jobs "when you never could really trust some of your people."[135]

Fresh on the job, many former FDA inspectors like Wilkens, Flaherty, and Jan Larsen were eager to do things by the book and employ the high-standards they were taught at the UC School of Criminology. Former Narcotics agents, on the other hand, had bad habits that proved

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[131] Francis J. Flaherty interview transcript, 8.
[132] Francis J. Flaherty interview transcript, 8.
[133] Wilkens provides details of the quota demands on FBN agents and the informant and entrapment practices that resulted, see especially Wilkens interview transcript, 57-8.
[134] T. George Harris, "B.D.A.C. Secret Agent in a Losing Battle," *Look Magazine* (March 5, 1968), reprinted in "Increased Controls over Hallucinogens and Other Dangerous Drugs," Hearings before the Subcommittee on Public Health and Welfare, February – March 1968, 90th Congress, Second Session, 46.
[135] Ed Wilkens interview transcript, 69.

hard to break. For example, BDAC agents were instructed to wear Kel units – an early version of the proverbial "wire" – when conducting undercover investigations. However, Wilkens insists, "you could not get a narcotic agent to put one of those things on for anything," because, he argues, "a few of them, were essentially entrapping people."[136] Of course, based on the indictments that would soon rain down, many were engaged in far more nefarious behavior. Whatever the reasons for their reticence, this conduct was hurting BDAC's reputation with federal prosecutors, who "never really liked to handle Bureau of Narcotics agents' cases."[137] Fed up with this situation, many former inspectors left BDAC and returned to regular FDA assignments. Ed Wilkens was one of those prodigal sons and transferred from BDAC disillusioned, "because it wasn't, in my mind, an FDA type agency." He continued, "We were overwhelmed, overtaken at the headquarters level and the field level and the agent level with these other people with different standards, different ways of operating."[138] During BDAC's short tenure in the FDA, it was the Bureau of Narcotics' ways of operating that ultimately won out.

Requesting Reorganization

As the actions of former FBN agents caused more and more problems for their pink-cheeked fellow BDAC agents, Goddard and other Food and Drug officials grew concerned about BDAC agents coming closer and closer to deadly situations. In January 1967, two BDAC agents attempted to arrest a Brooklyn man after he offered to sell them "a large quantity of LSD." Apparently "a student of karate," the suspect put up quite a fight, sending both men to the

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[136] Ed Wilkens interview transcript, 56.
[137] Ed Wilkens interview transcript, 62. Wilkens talks in detail about FBN corruption and its affects on BDAC throughout his oral history. See, especially, Wilkens interview transcript, 56-70.
[138] Ed Wilkens interview transcript, 70.

hospital, where one was treated for multiple severed tendons in his arm.[139] The agent with severed tendons was an ex-FDA man, relatively inexperienced in making arrests, and not wearing a Kel unit, so he actually "punched his fist through the window up there… to save his neck" and get the attention of other agents waiting below. While Wilkens complained to Ed Kelly that they were "going to get somebody killed" because of failure to follow protocol, that incident paled in comparison to the threat of increased dealings with organized crime and suspects armed with guns.[140]

Even before the Kennedy Commission in the early 1960s, advocates for transferring control of illicit pharmaceuticals to the Justice Department had based their reasoning on the involvement of organized crime in this trade and the FBI's reputation for effectively dealing with organized crime. FDA officials and others recognized the vast profits to be made in this black market and the attraction for organized crime. It was still shocking, however, when "word got out" that the director of the Philadelphia BDAC office was "the target of a $5000 underground contract for murder." Eight armed undercover officers guarded the agent's home and office around the clock, but BDAC agents faced other murderous threats.[141]

For some the danger went beyond mere threats. Another BDAC agent narrowly escaped death thanks only to a faulty firing pin after a drug suspect "drew a .38 caliber automatic, thrust it in the lead agent's stomach, and pulled the trigger."[142] In Chicago, a BDAC agent shot and

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[139] "Field Reports: New York BDAC," *FDA Papers* 1, no. 5 (June 1967), 28.
[140] Ed Wilkens interview transcript, 58.
[141] "Philadelphia Chief Reported Murder Threat," *The Sound of Action* 1, no. 8, June 15, 1967, 4, (published by the Food and Drug Administration, New York District), copies in possession of the author, courtesy of Dr. John Swann and the FDA History Office, whose original copies were provided by Ed Wilkens.
[142] "BDAC Agent Escapes Death in Detroit," *The BDAC Bulletin* L-7 (December 1967), 1.

killed a suspect, who had fired upon the agent and a local policeman.[143] Revealing the newsworthiness of this event, both the *BDAC Bulletin* and the *FDA Papers* reported on the incident. Each article included a close-up photo of the Chicago detective's jacket, showing where "the shots passed through the right side of the detective's coat, leaving powder burns on his shirt."[144]

Reports of those incidents and threats of further violence spooked FDA officials and convinced Goddard that illegal drug policing might be better left to another department. Even years later, Paul Pumpian recalled, "the worst thing that happened in the time I was involved with FDA was when one of the agents got shot."[145] Sometime in late 1967 or early 1968, Pumpian remembered, Goddard approached him and stated, "You know, I'd like to get rid of the Bureau of Drug Abuse Control." Goddard's reasons for this break-up were two-fold and reflective of how the FDA's consumer protection mission had gone astray. According to Pumpian, Commissioner Goddard "was very concerned about the reaction to agents being killed." The commissioner was equally "concerned that the Food and Drug Administration should be more of a scientific agency, rather than one going on the street and fighting drug abuse."[146] Many questioned why Goddard and the FDA would accept something almost unheard of in bureaucratic politics – "an agency to give up a big chunk of its power," but Goddard maintained, "it was wise to do it."[147] Moreover, as FDA historian John Swann has argued, "BDAC's departure probably did not displease many in the FDA." Swann explains, "the average food and drug inspector was college educated and by no means iconoclastic in appearance or

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[143] "Suspected Peddler Shot," *The BDAC Bulletin* L-6 (July 1967), 1.
[144] "Field Reports: Chicago BDAC," *FDA Papers* 1, no. 8 (October 1967), 25.
[145] Paul A. Pumpian interview transcript, 27.
[146] Paul A. Pumpian interview transcript, 25.
[147] James L. Goddard interview transcript, 335.

demeanor," on the other hand, BDAC criminal investigators "had to fit in with the surroundings" and "the agents themselves were cut from a different cloth."[148]

Thanks to the foresight of Goddard's predecessor, George Larrick, BDAC's existence as a separate entity within the FDA made this move a straightforward proposition. Larrick based that decision, at least in part, on the recommendations of Kennedy's Commission on Narcotic and Drug Abuse. That commission created controversy when its final report suggested that policing the illegal distribution of all drugs be moved from Treasury and HEW and reorganized in the Justice Department. Although LBJ rejected that recommendation and instead opted for the half-measure of giving the FDA more policing power, Larrick saw the writing on the wall and correctly predicted this move might be temporary. Larrick retired by the end of 1965, but Paul Pumpian had also worked with Kennedy's commission, serving as a consultant to Dean Markham. So when Goddard told Pumpian about his fears and idea to jettison BDAC, Pumpian recalled his work with the commission and mentioned to Goddard "that we had recommended that these functions be in the Justice Department."[149]

While most references to President Johnson's Reorganization plan suggest it originated in the White House, Pumpian insists that the FDA initially proposed the move.[150] After Goddard

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[148] Swann, "The Bureau of Drug Abuse Control: Its Origins, Functions, and Termination in FDA," 12.

[149] Paul A. Pumpian interview transcript, 25.

[150] Files in the LBJ Library support Pumpian's argument the FDA wanted to give away BDAC as much or more than the President wanted to take it way from them. An internal Treasury Department memo to Treasury Secretary Henry Fowler states that in November 1967, Treasury submitted to the White House, upon the request of Joseph Califano, a proposal to transfer just the policing of LSD and other hallucinogens from BDAC in HEW to the FBN in Treasury. Shortly thereafter, Treasury officials learned that "HEW wished to transfer <u>all</u> of Bureau of Drug Abuse Control's criminal enforcement responsibilities," J. P. Hendrick memo to Secretary Henry Fowler, "Consolidation of HEW Drug Abuse and Treasury Narcotics Enforcement Bureaus,"

was reminded of the Kennedy commission's recommendation, he asked Pumpian "to write a memo to that effect." According to Pumpian, Goddard then "passed the memo up to Assistant Secretary Ralph Huitt," and he "passed it on to the White House."[151] Goddard also argued that he "recommended to the Secretary [of HEW] that we give up the Bureau [of Drug Abuse Control]," but only if "the Bureau of Narcotics was pulled out of Treasury and the two brought together in Justice." More than the stated goals of streamlining federal jurisdiction, however, Goddard made this demand because of his "suspicion that there was some hanky-panky going on in the Bureau of Narcotics." Beyond his anecdotal evidence of corrupt FBN agents, Goddard believed "Harry Anslinger's boy," current FBN Commissioner Henry Giordano, "was a dangerous man" and that Giordano had lied when "he assured me that they were not arresting young people, making felons out of them."[152] Rejecting the Dragnet-style, punitive policing of Giordano's FBN, Goddard did not want the same for the FDA and thus willingly gave up the power to police pharmaceuticals that his predecessors had long pursued.

Fearing the death of an FDA employee and fed up with the former FBN agents undermining his agencies reputation, Goddard was ready to let go of BDAC. He also remained opposed to expanding the policing functions of the bureau. Nonetheless, Goddard's public stances often caused cultural and political backlashes that inspired President Lyndon Johnson to demand more of those punitive approaches. Thus, President Lyndon Johnson also wanted to take the Bureau from the FDA, but for different reasons, most of which he saw personified in Goddard's own actions.

January 25, 1968, Executive File Folder: "FG 135-13 Bureau of Narcotics and Dangerous Drugs," Box 194: "EX & GEN FG 135-13," WHCF, LBJ Library.

[151] Paul A. Pumpian interview transcript, 25.

[152] James L. Goddard interview transcript, 333-5.

Even as BDAC agents put their lives on the line, LBJ remained unimpressed with the results. In pursuing its first jury trials for the illegal sale of LSD, BDAC made two high profile arrests. Richard Bird and Lisa Bieberman, "Chief Boo Hoos" of the New-American Church of Miami and Boston, respectively, were convicted under the Drug Abuse Control Amendments. Bieberman was found guilty on four counts of illegal shipments but received a suspended sentence of one year in prison and served only one year of probation. Convicted for multiple illegal sales to undercover agents, Bird was sentenced to one year on each of three counts, however, "all but 30 days of the sentence were suspended."[153] As states across the nation passed strict laws against LSD sales and possession, Johnson wanted more action than this from his own departments, but FDA officials resisted making the simple possession of the drug a federal offense.

Compounding those demands from the public and the White House, the individual actions of BDAC agents were often overshadowed by Goddard's leadership style and public persona, which also made him an easy target for Johnson's ire. Early in Goddard's tenure, FDA officials already had a story that they loved to tell to characterize his unique brand of leadership. Shortly after taking over, the Commissioner asked "whether a teletype machine connecting FDA offices had ever been considered" and was told officials had "been discussing that for 10 years." In characteristic fashion, he replied, "I want it set up in two weeks," and then, when it was done, waited several days for any kind of reply from the district offices.[154] These kinds of frenetic demands for immediate action enabled Goddard to oversee the construction of an entirely new

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[153] "LSD Convictions," *The BDAC Bulletin* L-3 (January 1967), 2-3; "Boo Hoo Behind Bars," *The BDAC Bulletin* L-4 (March 1967), 3-4.
[154] "What Hath Goddard Wrought at FDA?" *Washington Post*, May 9, 1966, reprinted in *Food and Drug Review* 50, no. 6 (June 1966), 201.

Bureau in a matter of months. But that leadership style also often put him out in front of FDA capabilities and made him a lightening rod for controversy when his unfiltered proclamations were not achieved or not well received by superiors.

Complicating matters, Goddard actively pursued press coverage, so his public statements were broadcast and repeated widely. Even when visiting the newly opened BDAC office in Denver, Goddard "was accompanied by a reporter and a photographer from *Time* magazine who were with him constantly." Joining Goddard on that trip, FDA official Fred Lofsvold "saw firsthand the emphasis placed on publicity." The *Time* reporter and photographer, Lofsvold remembered, "sat in on all his meetings with District and BDAC managers and staff, accompanied him on an inspection of a feed mill, and literally never let him out of their sight."[155] Reporter Tom Nolan aptly summarized Goddard's activities during his first six months as commissioner, writing, "Dr. James Goddard has made more speeches than any Cabinet members, more decisions than any of his predecessors in a similar time span, and more enemies than is considered safe."[156]

Achieving his desired public attention, Commissioner Goddard soon discovered the FDA was not immune from the feedback loop of panic that flattened understandings of their activities and often prompted a panicked public response. In November 1967, for example, Goddard and BDAC Director John Finlator presented the government's "first achievement award for scientific research in drug abuse control" to a 17 year-old Georgia high school student, named Kenneth Healey. Over a full year, Healey experimented with the effects of LSD on spiders,

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[155] Fred L. Lofsvold, FDA regional director, interview by Robert G. Porter, Denver, CO, August 25, 1981, "History of the U.S. Food and Drug Administration," transcript, 132.
[156] Tom Nolan, "FDA's Goddard: A Hip-Shooter On Target," *Patriot Ledger* [Quincy, MA], July 18, 1966, reprinted in *Food and Drug Review* 50, no. 9 (September 1966), 289.

"photographing the webs spun by spiders while under the influence of LSD" and demonstrating "the disruption of normal web patterns following the use of LSD." To get through the rigorous process of acquiring a sample of LSD-25 for his experiments, "Healey carried on extensive correspondence with Federal agencies to show his serious scientific intent." Even after receiving 100 micrograms of LSD from the Emory University Medical School, Healey still had to report the amount used in his experiments every two weeks to the University.[157] Publicity about Healey's award "created great interest throughout the country," and the FDA "received many inquiries from students wishing to conduct similar projects." Responding to all requests, officials informed their young correspondents that the FDA did not endorse the use "of LSD for a high school study project unless rigidly supervised by a competent senior investigator."[158]

More problematic, while some might have missed the hoops Healey jumped through to complete his project, others misinterpreted his research altogether. Listening to a radio report on the award, James Malton "heard an alarming thing… that the Government gave a high school student an award for the use of L.S.D." Shocked "our Government" was "giving awards to a dope peddler," Malton fired off a letter to his Senator, Strom Thurmond, who, in turn, passed on the letter to the FDA for clarification. The FDA thus had to respond to both Mr. Malton and Senator Thurmond, assuring them both that this was the not the case, that Healey had experimented on spiders, and, "in fact, at the time of the presentation he told the members of the

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[157] FDA Press Release, November 1, 1967; "Agenda: Ken Healey Presentation," November 2, 1967; and "Background Information on Kenneth Healey," Folder 4 – "Drugs: Abuse: FDA and the Bureau of Drug Abuse Control," Box 1, FDA History Office Files.

[158] Joan F. Giambalvo to Deputy Director, Bureau of Medicine, "Re: Requests for LSD for Research by Students (Junior or Senior High School), December 14, 1967; Joan F. Giambalvo to Larice Hubiak, December 14, 1967 [Sample FDA response to student requests], Binder: "LSD-25 - November 1967 to July 1969, Vol. XI" - 500.67101x LSD," Box 4242: "500.66 thru 500.67101 LSD," FDA-NACP.

press corps that he definitely did not wish to ever use LSD and warned other teenagers of the danger."[159]

If public interpretations of FDA actions, such as supporting student research, were often oversimplified or mistaken, this was doubly true when Goddard made statements about marijuana or LSD. In October 1967, at a news conference in Minneapolis, Minnesota, Goddard spoke off the cuff about the relative dangers of alcohol and marijuana. Focused on the deadly effects of alcohol abuse, Goddard also admitted his doubts that marijuana "is any more dangerous than alcohol." However, when the stringer for the United Press International Wire wrote the story, the Commissioner's focus on the dangers of drinking was not mentioned. Instead, from coast to coast, Americans read the next day that the Food and Drug Commissioner "would not object to his daughter smoking marijuana any more than if she drank a cocktail."[160] The response was swift and fierce, many called for his resignation and at least three congressional committees clamored over who "would have the first crack at" Goddard.[161] Acknowledging how the misstep garnered "heavy Republican criticism," FDA officials nonetheless had some fun at the expense of their outspoken commissioner, with the following limerick echoing through the halls of FDA headquarters:

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[159] James C. Malton to Senator Strom Thurmond, November 3, 1967; Paul A. Pumpian to Senator Strom Thurmond, November 17, 1967, Binder: "LSD-25 - November 1967 to July 1969, Vol. XI" - 500.67101x LSD," Box 4242: "500.66 thru 500.67101 LSD," FDA-NACP.

[160] The UPI story was picked up by a number of papers, including *The Washington Post*, *Los Angeles Times, Boston Globe*, and *Chicago Defender*, quote is from "Food, Drug Chief Calls Marijuana Laws Too Severe," *Los Angeles Times*, October 19, 1967; see also "Marijuana, Cocktails Equal?" *Boston Globe*, October 19, 1967, 2; "FDA Chief Says 'Pot' Is No Worse Than Alcohol," *Chicago Defender,* October 19, 1967, 15. Confirming Goddard's subsequent clarifications, the *New York Times* published a more balanced recap of his remarks, at least acknowledging his opposition to his children using either substance, see "Drug Chief Equates Peril of Marijuana and That of Alcohol," *New York Times*, October 19, 1967, 1.

[161] James Goddard interview transcript, 356-8.

A well-known physician named Jim,
Has really gone out on a limb;
Believe it or not
He's decided that pot
Is better than drinking straight gin.[162]

Needless to say, President Johnson was not as amused by Goddard's gaffe or its consequences for his administration.

While Goddard prepared to defend himself in front of multiple Congressional committees, White House aides scrambled to deal with the fallout behind the scenes and reassert the Johnson administration's commitment to law and order. During the same week that Goddard made his comments in Minnesota, the International Criminal Police Organization (INTERPOL) passed a resolution declaring marijuana harmful and recommending strict control of possession and distribution by all member states. As one Johnson aide noted, "With all the hippie excitement around it is made-to-order Reagan material to have an FDA official and world police disagree."[163] Treasury Department officials piled on, arguing, Goddard's statements were implying "marijuana is harmless, and the law forbidding its consumption oppressive." A Treasury memo thus warned, "such open disparagement of our law… encourages its violation."[164] Defending his FDA Commissioner from such charges, HEW Secretary Gardner sent LBJ a clarification from Goddard and his own personal assurances that Goddard "was badly misquoted and had no intention of minimizing the dangers of marijuana by comparing it with

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[162] "Marijuana Reference a Misquotation," *The Sound of Action* 1, no. 27, October 26, 1967, 4.
[163] Unsigned Memo to Harry McPherson and Lady Bird Johnson, "Re: Marijuana," November 1, 1967, Folder: "Drugs," Box 7, Office Files of Harry McPherson, Office Files of the White House Aides, Presidential Papers, LBJ Library.
[164] J.P. Hendrick to Secretary Henry Fowler, "Subject: Marijuana," October 25, 1967, Folder: Government Treasury, Department of: Narcotics," Box 161, Papers of Henry Fowler, Personal Papers, LBJ Library.

alcohol." President Johnson appreciated Gardner's gesture but still strongly suggested the Secretary tell "Goddard that he had better listen more and talk less on subjects like this."[165]

The broader subject of Goddard's concern was the disparity in punishments between offenses for marijuana and those for LSD. President Johnson and Treasury Department hard-liners strongly agreed with Goddard that "inconsistencies in our laws" was a serious problem, but they were diametrically opposed over how to iron out those inconsistencies.[166] As one Johnson aide summarized, "Goddard was mainly concerned with the extreme penalties that are provide for the most casual usage of marijuana." Under the federal Marijuana Tax Act, possession of marijuana (without the appropriate tax stamp) was considered a felony and convictions were punishable by up to two years in prison. Goddard thus opposed, "placing hundreds of thousands of young Americans under a potential felony indictment."[167] This echoed the argument he had made against criminalizing the possession of LSD for past two years. In May 1966, a month before the launch of BDAC, Goddard rejected Senator Thomas Dodd's suggestion to make use of LSD a crime and insisted, "it would automatically place maybe 10 per cent or hundreds of thousands of college students in the category of criminals," concluding, "I would hate to see them charged with a crime."[168]

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[165] Secretary John Gardner, "Memorandum for the President," October 20, 1967; "Statement by Commissioner James L. Goddard, M.D.," undated; and Small typed covering note with LBJ's response, October 20, 1967; Executive Folder: "HE 4 Medicines – Drugs – Serums, 8/24/64 –," Box 15: "Ex HE 4, 8/24/64 –," WHCF, LBJ Library.
[166] J.P. Hendrick to Secretary Henry Fowler, "Subject: Marijuana," October 25, 1967, Folder: Government Treasury, Department of: Narcotics," Box 161, Papers of Henry Fowler, Personal Papers, LBJ Library.
[167] Harry C. McPherson, Jr., "Memo for the President," November 7, 1967, Folder: "Drugs," Box 7, Office Files of Harry McPherson, Office Files of the White House Aides, Presidential Papers, LBJ Library.
[168] Marjorie Hunter, "F.D.A. Denies Need For New LSD Law: Goddard Against Legislation to Make Use a Crime," *New York Times*, May 24, 1966, 33.

On this subject, Johnson would have also preferred that Goddard keep his mouth shut. The President wanted to bring penalties against LSD into line with those for marijuana, but he wanted to do so by making possession of acid a misdemeanor and elevating its illegal sale and manufacture to a felony. Responding to public pressure, Johnson sought stricter punishments for drug offenders, but Goddard and the FDA had no desire to make a whole generation of drug users into criminals. At this impasse, LBJ agreed to transfer BDAC to Justice, and, with differing perspectives still in full force, the two men finally found a reality with which they could both live.

Breaking Down Bureaucratic Barriers

Critical of the President's punitive goals, Goddard and the FDA were happy to comply with reorganization. Others were far less enthusiastic about the change. Treasury Department officials caught wind of the deliberations and began agitating against the reorganization plan as early as November 1967, reminding the President of their strong opposition to similar recommendations made by representatives of his predecessor.[169] However, drug abuse was no longer a secondary issue by the start of 1968, and LBJ now depended more than ever on conservative, law and order Democrats to maintain his waning political power. With it clear that Goddard could not be trusted to lead this battle, Johnson sought a fresh start in the Justice Department, home of the respected Federal Bureau of Investigation and far removed from the controversy of corruption in the Treasury Department's Bureau of Narcotics.

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[169] Charles C. Humpstone, Treasury Department, to Matthew Nimetz, November 11, 1967, with attachments of Treasury Comments opposing the recommendations of President Kennedy's Commission on Narcotic and Drug Abuse (Prettyman Commission), Executive File Folder: "FG 135-13 Bureau of Narcotics and Dangerous Drugs," Box 194: "EX & GEN FG 135-13," WHCF, LBJ Library.

Frustrated and embattled on all sides, LBJ doubled-down on his plan to get tough on crime. In February 1968, he presented a program to Congress, which was designed to ratchet up all aspects of federal law enforcement. In addition to making the possession of LSD a misdemeanor and the manufacture or distribution a felony, the president requested funds for a thirty percent increase in agents prosecuting illegal narcotics and dangerous drugs.[170] With the FDA reticent about taking on the responsibility of policing LSD possession and advocating for a total reorganization in the Justice Department, Johnson took the final leap in the reconstruction of federal drug control. Along with his special message on crime and law enforcement, the President submitted Reorganization Plan Number 1 of 1968, which combined BDAC and the Treasury Department's Bureau of Narcotics to form a new Bureau of Narcotics and Dangerous Drugs (BNDD) in the Justice Department.[171]

According to the law, once the President submitted a Reorganization Plan to Congress, either the House or Senate had sixty days to pass a resolution opposing the plan or it automatically went into effect. During his tenure as President, Johnson submitted 17 total reorganization plans and the majority went into effect without debate, but LBJ's plans for the new BNDD did not go down so easy.[172] Reflecting the bureaucratic turf wars still undermining a unified drug policy, the three Republican members of the House Reorganization Subcommittee submitted a resolution opposing the President's plan. Goddard and the FDA supported

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[170] Lyndon B. Johnson: "Special Message to the Congress on Crime and Law Enforcement: 'To Insure the Public Safety,'" February 7, 1968. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. http://www.presidency.ucsb.edu/ws/?pid=29237.
[171] Lyndon B. Johnson: "Special Message to the Congress Transmitting Reorganization Plan 1 of 1968 Relating to Narcotics and Drug Abuse Control," February 7, 1968. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=29249.
[172] "Reorganization Plans," *CQ Almanac 1968*, 24th ed., (Washington, DC: Congressional Quarterly, 1969).

reorganization, and FBN Commissioner Henry Giordano expressed his "personal support" to both FBN staffers and the House subcommittee.[173] Some FDA officials doubted Giordano's sincerity and alleged he worked behind the scenes with Congressman Hale Boggs to undermine the plan.[174] Other Treasury officials, however, willingly admitted their opposition. Like their congressional supporters, those Treasury officials agreed that control should be unified but insisted that the Treasury Department was the best place to centralize the federal drug regime.[175]

Whipping votes for the resolution, White House aides found that opposition to the BNDD went beyond allegiances to Treasury and the FBN. Revealing the broad support for law and order initiatives, many congressmen supported strict drug control but were opposed to BNDD because they were concerned about Attorney General Ramsey Clarke's lax prosecution of student radicals. At least three of Representatives argued, "the Attorney General does not prosecute enough as in the case of riots."[176] The House Government Operations Committee, however, still reflected Democratic congressional majorities and supported LBJ's plan. That action sent the

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[173] U.S. House of Representatives Executive and Legislative Reorganization Subcommittee, "Reorganization Plan No. 1 of 1968 (Drug Abuse and Narcotics) and H. Res. 1101," March 19, 20, and 21, 1968 (Washington, DC: U.S. Government Printing Office, 1968); Henry Giordano to Joseph Califano, February 7, 1968, Executive File Folder: "FG 135-13 Bureau of Narcotics and Dangerous Drugs," Box 194: "EX & GEN FG 135-13," WHCF, LBJ Library.

[174] Paul A. Pumpian interview transcript, 27-8. During the 1950s, while working for the FBN, Giordano had also served as lead investigator for Boggs's Subcommittee on the Traffic in Narcotics, Barbiturates, and Amphetamines, see Patricia Sullivan (writing for the *Washington Post)*, "Henry L. Giordano, 89; Head of Narcotics Bureau, Colorful Undercover Officer," *Los Angeles Times*, October 11, 2003.

[175] Secretary Henry H. Fowler, "Memorandum for the President," January 24, 1968; Joseph Califano, "Memo for the President," January 29, 1968, Executive File Folder: "FG 135-13 Bureau of Narcotics and Dangerous Drugs," Box 194: "EX & GEN FG 135-13," WHCF, LBJ Library.

[176] Ken Burns to Barefoot Sanders, April 9, 1968, Executive File Folder: "FG 135-13 Bureau of Narcotics and Dangerous Drugs," Box 194: "EX & GEN FG 135-13," WHCF, LBJ Library.

resolution on to the full House for a final vote before the reorganization plan automatically took effect on April 8.[177]

The House of Representatives, just three years earlier, had voted unanimously to pass the Drug Abuse Control Amendments and authorize the FDA to create the Bureau of Drug Abuse Control. Now in the spring of 1968, the House, by only a slim 190-200 roll call vote, rejected the attempt to stop LBJ's plan, endorsed reorganization, and thus created the institutional basis of the modern war on drugs. Although the vote "was largely along party lines," it reflected the difficult final hurdle in reorganizing federal drug control and also signified the growing divide over the substance of drug policy.[178]

While liberals and conservatives continued to debate the merits of treatment and punishment policies, LBJ's reorganization plan nullified the underlying impediment to growth of the national drug control bureaucracy. Before the passage of DACA, Harry Anslinger had protected his Bureau of Narcotics fiefdom by tamping down expectations and resisting expansions. Since then, the Bureau of Narcotics and the FDA had openly competed over resources, but now there would be only one agency pressing the Congress for bigger budgets and more personnel.

Free to expand without competition from other federal departments, the Bureau of Narcotic and Dangerous Drugs also gave the Justice Department sole authority to regulate the licit and illicit distribution of both narcotics and potentially dangerous pharmaceuticals. The FDA maintained its traditional duty to determine the safety and efficacy of drugs before they hit

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[177] "Reorganization Plans," *CQ Almanac 1968*, 24th ed., (Washington, DC: Congressional Quarterly, 1969).

[178] Republicans voted 166-8 in favor of the anti-Reorganization resolution, while the Democrats voted 192-24 in support of the President's plan, "Reorganization Plans," *CQ Almanac 1968*, 24th ed., (Washington, DC: Congressional Quarterly, 1969).

the market and to ensure the proper manufacture of those drugs once approved for sale. Taking a role in the fight against drug abuse, the FDA had accepted the power to also regulate the distribution of certain dangerous drugs, inserting itself in the relationship between doctor, pharmacist, and patient and the actual practice of medicine. However, as John Swann concludes, "once BDAC was transferred from the Agency, FDA lost virtually all contact with regulation and control of narcotics and dangerous drugs."[179] After the creation of the BNDD, all control of those drugs would be handled by the Justice Department, which, unlike the FDA and HEW, had few ties to scientific and medical communities. The move from the Department of Health, Education, and Welfare to the Department of Justice thus guaranteed a more punitive and policing-oriented approach that still characterizes the progeny of BNDD – the Drug Enforcement Administration.

Conclusion

On April 2, 1968, the House narrowly approved the President's Reorganization Plan, and a week later the move became official. Taking the Bureau of Drug Abuse Control from the FDA and the Bureau of Narcotics from the Treasury Department, Congress created the Bureau of Narcotics and Dangerous Drugs. For the first time in U.S. history, all responsibility for domestic drug control was located in the Justice Department. As the main law enforcement arm of the federal government, most of that drug control would now be handled through traditional policing methods. With ongoing public concern demanding more action and the previous impediment of bureaucratic competition out of the way, budgets boomed and the ranks of agents swelled – more

[179] Swann, "The Bureau of Drug Abuse Control: Its Origins, Functions, and Termination in FDA," 5.

than tripling by 1975.[180] Over the new few years, President Nixon created a handful of other drug agencies in the Justice Department, all for primarily political reasons, but the new BNDD led the charge. Then, in 1973, Nixon proposed his own Reorganization plan, which merged all of these agencies into the new Drug Enforcement Administration, and, with another contentious congressional approval, finished constructing the institutional launching pad for the war on drugs.

The pursuit of stricter punishments under a comprehensive and unified legal regime as well as faltering opposition to the punitive outlook of that regime represented the tragic denouement in the liberal reform of federal drug control. As the next chapter will demonstrate, it also marked the beginning of a new era, wherein drugs and crime became inextricable and only a militarized police force seemed capable of winning the war on drugs. Signifying the suddenness of this shift, on March 4, FDA Commissioner Goddard testified before Thomas Dodd's Subcommittee on Juvenile Delinquency about new laws intended to make simple possession of LSD a misdemeanor and distribution a felony, bringing it into line with federal marijuana penalties. Though he would soon lose control over the regulation of LSD, Goddard nonetheless repeated his assertion that is would be "unwise… [to] mark a large number of young people just entering adulthood as criminals." The next day, Dodd's committee heard testimony from the 21-year-old son of novelist John Steinbeck. Returning from service with Armed Forces Radio and Television, John Steinbeck IV regaled the senators with exaggerated stories of a majority of

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[180] Prior to the creation of BNDD, the FBN employed 314 agents and BDAC employed 325, by 1975 the DEA had 2,135 Special Agents, see Matthew Nimetz to DeVier Pierson, "Narcotics and Drugs," February 2, 1968, Executive File Folder: "FG 135-13 Bureau of Narcotics and Dangerous Drugs," Box 194: "EX & GEN FG 135-13," WHCF, LBJ Library; and "Drug Enforcement Administration: 1970-1975," 2, available at www.dea.gov/about/history/1970-1975.pdf.

American soldiers abusing drugs, especially marijuana.[181] Steinbeck thus helped to launch what one historian has called "the myth of the addicted army," which "equated all drug use with abuse… downplayed the differences among drugs… [and] alleged that drug use was so widespread in Vietnam that it contributed to a breakdown in the military's fighting capacities."[182]

The rise of this myth did not create the modern "war on drugs," but it did signify a cultural shift that, in turn, altered the basis for the ongoing expansion of federal power to control drugs. The FDA's recognition of a booming and unchecked pharmaceutical market, Kennedy's promise to protect consumers, and LBJ's Great Society—until this point the push for more regulation of "dangerous drugs" had been representative of a politics of abundance. Now, it seemed to many Americans that Vietnam veterans were bringing home more than just the occasional heroin addiction. Fears of cultural breakdown prevailed and those fears seemed justified with assassinations on the front pages, disorder in the streets, and crime rates on the rise. To explain and overcome those rising crime rates, many returned to the paradigm that inextricably tied heroin addiction to street crime and thus suggested that policing drug users would bring down overall crime.

While liberal congressmen continued to support funding for treatment, the main impetus for federal policing again became arresting junkies and fighting crime. However, relative to a decade earlier when opposition to punitive drug laws first blossomed, the government's resources and power to fight this war on drugs and crime was now massive and growing bigger everyday. Nonetheless, as the newly elected President Richard Nixon would soon discover, the

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[181] "Drug Abuse Control," *CQ Almanac 1968*, 24th ed. (Washington, DC: Congressional Quarterly, 1969).
[182] Jeremy Kuzmarov, *The Myth of the Addicted Army: Vietnam and the Modern War on Drugs* (Amherst: University of Massachusetts Press, 2009), 5.

institution for policing all illegal use of drugs had been streamlined and centralized, but the laws supporting that institution remained a teetering house of cards. To fix that problem, the Nixon administration had to appropriate the constitutional authority first vested in BDAC. That story, culminating in the passage of the Controlled Substances Act – another contentious step in the construction of our contemporary drug war – will be the subject of the final chapter.

CHAPTER FIVE

Contesting Control
Claiming the Commerce Power to Police All Drugs

You see, homosexuality, dope, immorality in general: These are the enemies of strong societies. That's why the Communists and left-wingers are pushing the stuff, they're trying to destroy us.

- President Richard Nixon speaking to John Ehrlichman and Bob Haldeman, May 13, 1971, White House Tapes

By God we are going to hit the marijuana thing, and I want to hit it right square in the puss.

- President Richard Nixon speaking to Bob Haldeman, May 26, 1971, White House Tapes

In March 2016, an old admission found new life. In a piece for *Harper's* magazine, Dan Baum recycled a quote from his mid-1990s reporting on the Nixon administration's drug war. Nixon's chief domestic policy advisor and convicted Watergate co-conspirator, John Ehrlichman spoke with Baum in 1994. Cutting through the fat of Baum's policy questions, Ehrlichman declared: "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people.[1]" He continued, "We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify

[1] Dan Baum, "Legalize It All: How to win the war on drugs," *Harper's*, April 2016, 22-34; see also Baum, *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (Boston: Back Bay Books, 1996).

them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."[2]

Shocking to be sure, this admission, when it first came to light, still just seemed to be more evidence of the Nixon administration's particular abuse of power. Like so many quotes from the steady stream of de-classified tapes recorded during his presidency, Nixon's intentions were indexed alongside numerous other impolitic proclamations. More people have now recognized the racial disparities at the heart of our nation's carceral state, and the quote, therefore, has taken on new salience, evincing the hidden origins of racialized drug policies.[3]

The importance of Ehrlichman's assertion can actually be found in the space between those two conclusions. Only with the new powers of the Controlled Substances Act of 1970 (CSA) could the Nixon White House ever dream of running the same type of "stop and frisk" street enforcement operations associated with punitive state laws, such as New York's infamous Rockefeller Drug Laws.[4] The CSA established a new constitutional basis for all drug policing, which only became possible through the precedents of consumer protection policies from the previous era. Many of the other infamous abuses of the Nixon administration have become

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[2] Baum, "Legalize It All: How to win the war on drugs," 22.

[3] This scholarly attention was encouraged and evinced by the publication of Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010), even as that work reflected previous scholarship such as Doris Marie Provine, *Unequal Under the Law: Race in the War on Drugs* (Chicago: University of Chicago Press, 2007); and Marc Mauer and the Sentencing Project, *Race to Incarcerate* (New York: W.W. Norton, 2006).

[4] Julilly Kohler-Hausmann, "'The Attila the Hun Law': New York's Rockefeller Drug Laws and the Making of a Punitive State," *Journal of Social History* 44 (Fall 2010), 71-95; Richard Velde, Donald Santarelli, Brian Gettings, and John W. Dean, III, "Part II: Improving Law Enforcement, A Federal 'Stop and Frisk Law,'' 20, "Confidential Report: A Crime Program for the Nixon Administration," Emphasis in original. Available in Folder: "Confidential Report for the President-Elect RE Crime [I] [1 of 6], Box 26, Staff Member Office Files – John W. Dean, Subject File, 1969-73, White House Special Files, Nixon Presidential Papers.

aberrations with subsequent prohibitive legislation. On the other hand, the ability of national politicians to apply the full force of federal power to policing the use of drugs has persisted. In a punitive race to the bottom, politicians from both parties have followed Nixon's lead in talking tough about drugs. To act tough, however, those drug warriors still depend on legal powers first claimed in the name of protecting consumers from dangerous pharmaceuticals.

Second acts are rare in American political life, but Richard Nixon was hard at work on a script for his. He adopted a new language of crisis with the potential to take him to the Promised Land. Fighter of Communists and "Pink" ladies, Nixon stepped into the national spotlight as a political wunderkind for the Republican Party before defeats in the 1960 Presidential election and 1962 California Governor's election sent the former Vice President packing.[5] But this was only intermission. During that time, Nixon moved to New York, reinvented himself as a sober commentator on the crises facing the nation, and people took notice – especially in the White House. In the fall of 1966, President Lyndon Johnson's chief domestic policy advisor, Bill Moyers, sent a confidential memo to outgoing Attorney General Nicholas Katzenbach. He had just read an interview in Sunday's *New York Times*, wherein Nixon stated, "crime in the streets will be one of the three major issues in the campaign." With the midterm elections looming, Moyers wanted some hard statistics to counter Nixon's assertion that crime had increased "48 percent" since LBJ and his predecessor, John Kennedy, took office.[6] Over the next two years, however, the Johnson White House did far more than compile statistics. LBJ reorganized federal

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[5] For a popular biography of Nixon and history of the period, see Rick Perlstein, *Nixonland: The Rise of a President and the Fracturing of America* (New York: Scribner, 2008).
[6] Bill Moyers, "Memorandum for the Attorney General," September 6, 1966, Folder 16: "FG 135 – Department of Justice," Box 28: "FG 120 (1966)," Confidential Files, WHCF, LBJ Library.

drug control and created the new Bureau of Narcotics and Dangerous Drugs, pursued stricter penalties against the possession of controlled substances, and launched the Law Enforcement Assistance Administration to funnel massive amounts of money into local police forces.

Still Richard Nixon persisted. In October 1967, he published an article in *Reader's Digest*, asking "What Has Happened to America?" Nixon outlined the grievances plaguing his nascent "silent majority" of supporters and argued, "Far from being a great society, ours is becoming a lawless society." He demanded a return of respect for law and order and chastised the tendency of Democrats to focus on the root causes of disorder. Instead of viewing problems like crime and drug abuse as a product of poverty and inadequate social safety nets, Nixon endorsed the conservative idea that all were the result of individual failings or government coddling. "In a civilized nation," Nixon thus concluded, "no man can excuse his crime against the person or property of another by claiming that he, too, has been a victim of injustice."[7] Officially announcing his candidacy for president a few months later, Nixon continued to develop this rhetoric throughout the campaign and, with a self-fulfilling prophecy, made law and order into a winning issue for the 1968 campaign. In a series of television spots, candidate Nixon asserted "the first civil right" of all Americans "is the right to be secure from domestic violence." Nixon's ads ratcheted up fears of such violence even further, concluding, "this time vote like your whole world depended on it."[8]

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[7] Richard Nixon, "What Has Happened to America?" *Reader's Digest*, October 1967, 49-54.
[8] Joe McGinniss, *The Selling of the President 1968* (New York: Trident Press, 1969), Chapter 1; See also the series of ads created for Nixon by Eugene Jones with the theme "Vote Like Your Whole World Depended on It," especially the spot on "Crime," all available at Museum of the Moving Image, "The Living Room Candidate: Presidential Campaign Commercials, 1952-2012," http://www.livingroomcandidate.org/commercials/1968. This line is also part of the inspiration for Naomi Murakawa's *The First Civil Right: How Liberals Built Prison America* (New York: Oxford University Press, 2014). Murakawa shows how Nixon's quote and a similar

Reworking an old script, Nixon turned law and order politics into a principal issue for the 1968 campaign against Johnson's Vice President, Hubert Humphrey.[9] But, according to at least one observer, "he intentionally avoided defining the problem in anything more than a vague way."[10] In September 1968, Nixon rejected Humphrey's proposal for "a moratorium on 'rhetoric' about the law and order issue." Instead he repeated his new favorite, racially coded applause line, declaring, "I believe in civil rights, but the first right is to be free of domestic violence." Despite Nixon's overstuffed oratory, journalists noticed, "When it came to a discussion of what steps he would take to combat crime and to restore greater respect for law and order, Nixon concentrated on the narcotics problem."[11] Talking tough about drugs thus became a means for Nixon to address the broader issue of law and order. As one reporter summarized, "The emphasis on the drug problem was just part of his now-standard campaign speech in which he assailed Democrats for failure to maintain respect for law and order at home."[12]

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statement made by President Harry Truman two decades previous bookend a period of liberal-led growth in federal policing power that was designed to liberate Black Americans from the injustices of local and state forces. See the dissertation introduction for a full discussion of the impact of Murakawa's study on my own work.

[9] This endeavor was certainly aided by the circumstances under which Humphrey was nominated at the Democratic Convention in Chicago in 1968. In fact, one of Nixon's most controversial campaign ads was entitled "Convention," and featured images of Humphrey accepting the nomination intercut with stark images of Vietnam while "Hot Time in the Old Town Tonight" plays in the background. It aired during *Laugh-In* and confused some viewers, who called the network to complain about its inclusion in the show. For this history and copy of the ad, see Museum of the Moving Image, "1968, Nixon vs. Humphrey vs. Wallace," "The Living Room Candidate: Presidential Campaign Commercials, 1952-2012," http://www.livingroomcandidate.org/commercials/1968.

[10] Edward Jay Epstein, *Agency of Fear: Opiates and Political Power in America*, revised edition (New York: Verso, 1990), 61.

[11] Richard Bergholz, "Nixon Will Not Curb Issue of Law and Order: Rejects Bid by Humphrey to Declare Moratorium on Problem in Campaign," *Los Angeles Times*, September 17, 1968, 3.

[12] Richard Bergholz, "The Candidate's Day: Law, Order, Narcotics: Nixon Has Plan to Curb Drugs," *Boston Globe*, September 17, 1968, 1. For additional coverage of this speech see Robert B. Semple, Jr., "Narcotics Laxity Alleged by Nixon: He Blames the Democrats—Visits Boyhood

During the tenure of President Nixon, federal drug policy underwent two significant changes that have characterized the subsequent war on drugs – one rhetorical and one legislative. Nixon's emphasis on drugs and crime evinced the former. Over the previous decade, debates about new controls for drugs were discussed in the language of consumer protection. From President John Kennedy's Commission on Narcotic and Drug Abuse to the passage of the Drug Abuse Control Amendments, new policies were sold as a means to protect consumers from dangerous medicines and unscrupulous distributors, whether they be street pushers or town doctors. In turn, the language of consumer protection was a hallmark of mid-century liberal governance – a means to talk about broader issues like affluence and equality and to justify expansions of federal regulation in a number of domestic spheres.

With protests against the Vietnam war escalating, more inner cities catching flame each summer, and reports of violent crime increasing, many Americans were receptive to Nixon's talk of law and order. Many were also enticed by the subtext of racial conservatism he appropriated from Alabama Governor George Wallace, who was threatening to take votes from the Republican candidate with his independent run for President.[13] Nixon's rhetoric re-framed debates about drug policy, while new initiatives against drugs became a way for Nixon to demonstrate his commitment to law and order. This mutually constitutive process coincided with the institutional reorganization of domestic drug regulation in the Justice Department. Together,

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Home and Hails Youth Support," *New York Times*, September 17, 1968, 1; Howard Seelye, "More Than 3,000 Greet Nixon on His Return to Birthplace," *Los Angeles Times*, September 17, 1968, 1; Casey Bukro, "Nixon Vows a War to End Use of Drugs: He Acts After Plea by Girl Addict," *Chicago Tribune*, September 17, 1968, 9.

[13] Dan T. Carter, *The Politics of Rage: George Wallace, The Origins of New Conservatism, and the Transformation of American Politics*, 2nd ed. (Baton Rouge: Louisiana State University Press, 2010).

these developments refashioned and reinforced the divide between policing illegal drugs and regulating potentially dangerous medicines.

Policing illegal drugs was Nixon's primary focus and stemmed from dual motivations related to his broader law and order vision. In pledging to fight crime, Nixon reinvigorated the paradigm that drug abuse caused crime – especially the violent assaults and property crime featured in his campaign commercials. That view was inextricable from the reinvigorated speculation that removing heroin addicts from the streets would lower crime rates. On the other end of the spectrum from heroin, marijuana held important symbolic value for Nixon in his quest to restore *respect* for the law. By 1968, many in Washington and the rest of the country accepted the relative harmlessness of smoking marijuana, or at least acknowledged that more evidence was necessary to justify the draconian sentences meted out by the Marijuana Tax Act. Not Nixon. He understood that smoking pot was the drug of choice for his political detractors and imagined, every time they lit up, potheads socking it to both the laws of the United States and him personally.

With the creation of the Bureau of Narcotics and Dangerous Drugs in 1968, the main federal drug regime moved to the Justice Department, where it would stay. However, Johnson and Nixon still sought to revamp federal drug laws, and that project took on new impetus when the Supreme Court struck down the federal marijuana law. Amid intense Congressional debate, the Nixon administration was able to use the statutory authority invested in pharmaceutical legislation to construct a new legal regime for regulating all drugs – licit and illicit. Passed in 1970, the Controlled Substances Act (CSA) was the keystone in a complex hodge-podge of liberal reform initiatives and heightened federal authority to police even simple possession of illegal drugs. In fact it was only one Title in an omnibus bill – the Comprehensive Drug Abuse

Prevention and Control Act of 1970. To get that legislation passed, Democratic majorities in Congress forced Nixon to accede to many pre-existing plans for rehabilitation funding and other medically oriented solutions. Despite these debates and mixed motivations, however, the CSA contained the definitive features of the modern war on drugs, such as "no-knock" raids and civil asset forfeitures. More important, it provided the legal basis for all future escalations of mandatory minimum sentences and policing power.

Reframing this story complicates or deepens much of the historiography on Nixon and the origins of the war on drugs.[14] The debates into which Nixon waded had been raging for the previous decade and were reflected in the "big tent" of the Controlled Substances Act.[15] The construction of what would become the United States' modern war on drugs began well before the Nixon presidency, and, more important, the debates driving that construction predate any subsequent bipartisan policies that ramped up the war on drugs.[16] Highlighting the contentious construction of the foundational launching pad for those punishments, in turn, refocuses attention

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[14] The two most consistent journalistic accounts remain Epstein, *Agency of Fear*, and Baum, *Smoke and Mirrors*. Much scholarship has built on this research and the work of David F. Musto, first published in 1973; for coverage of Nixon, see especially, Musto, *The American Disease: Origins of Narcotic Control*, 3rd ed. (New York: Oxford University Press, 1999), 247-57; and Musto and Pamela Korsmeyer, *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse* (New Haven: Yale University Press, 2002), chapters 2-4. For a reappraisal of overblown fears about addicted soldiers returning from Vietnam that nonetheless focuses on the Nixon administration as a point of origin for federal drug policy, see Jeremy Kuzmarov, *The Myth of the Addicted Army: Vietnam and the Modern War on Drugs* (Amherst: University of Massachusetts Press, 2009).

[15] For two historians' analysis of the Controlled Substances Act and its "big tent" qualities, see Joseph F. Spillane, "Debating the Controlled Substances Act," *Drug and Alcohol Dependence* 76 (2004): 17-29; and David T. Courtwright, "The Controlled Substances Act: how a 'big tent' reform became a punitive drug law," *Drug and Alcohol Dependence* 76 (2004): 9-15.

[16] For a recent attempt at explaining this bipartisan support see Michael Javen Fortner, *Black Silent Majority: The Rockefeller Drug Laws and the Politics of Punishment* (Cambridge, MA: Harvard University Press, 2015); for a more nuanced analysis of the same developments see Donna Murch, "Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs," *Journal of American History* 102 (June 2015): 162-73.

on the moment when the future of our national drug regime was actually contested. Many of the first historians to question Nixon's precise role in launching the war on drugs did not so much look at earlier periods as focus on either the 1970s boom in rehabilitation and treatment programs or "limitless social tolerance" of drugs during the early years of the Carter administration.[17] This chapter will demonstrate that many of these diverse interpretations stem from an ongoing tendency to conflate Nixon's personal goals and policies with longstanding debates about drug policy reform that had been brewing in many congressional and executive department offices over the previous decade.

The chapter also revaluates how Congress forced Nixon to live with funding that Title I of the 1970 Act mandated for treatment and rehabilitation. More important, it shows how his administration executed that portion of the bill with the unstated of goal of undermining rehabilitative solutions and making opposition to law enforcement expansion a politically unfeasible option.[18] Despite those private proclivities, Nixon gave regular lip service to treatment options and publicly opposed mandatory minimums. Those stances were intended to assuage the concerns of the white middle-class families, who may have thought Nixon was the one but still

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[17] Michael Massing notes Richard Nixon's endorsement of treatment programs, over jail time, and support of the newly created National Institute on Drug Abuse; Massing, *The Fix* (New York: Simon & Schuster, 1998). According to Philip Jenkins, the election of Jimmy Carter portended the fullest expression of the seeming "limitless social tolerance" of drugs that had arisen in the 1960s and early 1970s, until Carter had to distance himself from decriminalization after charges of drug abuse were made against two of his chief advisors; Jenkins, *Decade of Nightmares: The End of the Sixties and the Making of Eighties America* (New York: Oxford University Press, 2006), 125-9.

[18] This becomes a key feature of the ongoing ramping up of the drug war, but scholars should not forget how recent a development it is to have politicians once again willing to openly challenge punitive solutions, which was the case until the mid/late-1970s. The standard historiography explanation for this is Bourne's cocaine taking at the NORML party during the Carter administration; see for example, Jenkins, *Decade of Nightmares*. However, reframing how Nixon remade the politics of mandatory minimums and rehabilitation, in turn, changes our understanding of subsequent political debates.

did not want to see their own children's futures jeopardized by a petty drug arrest.[19] Whether political or paradoxical, those actions sparked demands from the left for fairer across-the-board treatment of drug users but at the same time undermined the public's faith in rehabilitative options.[20] With faith in government waning and a new day dawning in Reagan's America, politicians from both parties had little left to do but push for mandatory minimum sentences and then compete over who could drive them higher.

Roadmap for Action

As Dick Nixon made his way from the 1968 Republican Convention to his first official California campaign event in the shadow of Disneyland, his advisors and speech writers scrambled for something substantive to say about either crime generally or drugs specifically. Following his nomination, according to Edward Jay Epstein, Nixon "ordered his chief speech writers to develop law and order into a major theme of his campaign." Patrick J. Buchanan, a 31 year-old journalist from St. Louis, worked as Nixon's main scribe for law and order issues. Buchanan recognized the brewing public belief that "lawlessness could be dealt with by a more determined effort of the federal government." But what should those efforts be? According to

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[19] For the latest exploration of how this differentiation between white victims and non-white predators was backed into federal drug laws, see Matthew Lassiter, "Impossible Criminals: The Suburban Imperatives of America's War on Drugs," *Journal of American History* 102 (June 2015), 126-40.

[20] Many historians have noted how Nixon played politics with drug policy, but fewer have examined how Nixon's particular drug policies reflected his broader political strategy of leaning into pre-established projects he did not favor, appearing to support them while subtly reshaping them to his political advantage. Scholars have analyzed this strategy in relation to diverse issues such as school busing, affirmative action, or even funding for the National Endowment for the Arts; see, for example, Jefferson Cowie, *Stayin' Alive: The 1970s and the Last Days of the Working Class* (New York: The New Press, 2010); Robert O. Self, *All in the Family: The Realignment of American Democracy Since the 1960s* (New York: Farrar, Straus and Giroux, 2012); or Bruce J. Schulman*, The Seventies: The Great Shift in American Culture, Society, and Politics* (New York: Di Capo Press, 2002).

Epstein, an early chronicler of this period, "Nixon's speech writers had little specific knowledge about the characteristics or causes of crime and disorder," and they "were not yet fully conversant with the vocabulary of dread" that could be used to "exploit the drug issue." Working on Nixon's Anaheim speech in early September, Buchanan sent a harried message to campaign headquarters, insisting it was "vital that we get some background on the narcotics problem in this country." Lawyers working for the campaign, including John W. Dean III, immediately set about drafting memos outlining all of the issues with law enforcement or rehabilitation programs, but those details were "far too specific for Nixon."[21] Short on details, Nixon's campaign speech in Anaheim was instead steeped in symbolism and tough talk.

Like a modern Rip Van Winkle who fell asleep in 1962 and awoke again six years later, Nixon's speech minimized not just details but recent history. As Dean and the other campaign staffers' memos indicated, the previous six years produced reams of reports and studies of every aspect of drug abuse and drug control. President Kennedy's White House Conference and subsequent Commission on Narcotic and Drug Abuse initiated a two-year study on all aspects of federal drug policy and the situation nationally.[22] Reproduced by Johnson's own task forces on

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[21] Buchanan quoted from background interviews with Edward Jay Epstein, Epstein, *Agency of Fear: Opiates and Political Power in America*, revised edition (New York: Verso, 1990 [Originally published by Putnam in 1977]), 61. Much of this history was originally published by Epstein in an article for *The Public Interest* in the spring of 1975, which was based on extensive interviews with Krogh and White House files provided by Krogh and his assistant Jeffrey Donfeld, see Epstein, "The Krogh File – The Politics of Law and Order," *The Public Interest* 39 (Spring 1975): 99-124. In his book, Epstein notes the potential problems with "basing research on the available files of one person," but it does have its merits as Krogh worked directly under chief domestic policy advisor, John Ehrlichman and was in charge of all federal law enforcement policy. For Epstein's discussion of Krogh's files and his research, see Epstein, *Agency of Fear*, 275-6.

[22] Although the work of the President Kennedy's Commission on Narcotic and Drug Abuse may have been minimized in Nixon's public pronouncements, his staffers continued to track how Nixon's actions were fulfilling the twenty-five recommendations presented in the Commission's

crime and drugs, the recommendations of Kennedy's Commission launched a series of more detailed studies, generated new legislation, created a new Food and Drug Administration bureau, and escalated jurisdictional turf wars among executive departments and their respective congressional allies. Little of that work would have been evident in a history that starts with Nixon's Anaheim speech.

Addressing a crowd of over three thousand people at the Anaheim Convention Center, Nixon began with a vivid description of a letter he just received from a young woman. According to Nixon, the letter described "her involvement with narcotics from the time she was sixteen years old," explained "how many of her teen-age friends had also become hooked on drugs," and detailed "the gruesome things they did to support their habit." The young lady concluded by asking what Nixon "could do to help her generation." Dismissing the many recent federal attempts to understand the full scope of the issue, Nixon flippantly insisted, "This was not some statistic that sent me this letter." He continued, "in a letter like this the evil of narcotics comes through a good deal clearer than it does from reading statistics or a local newspaper." Comparing drug abuse to the plagues and epidemics of old, Nixon outlined his plans to stamp out "narcotics… the modern curse of American youth."[23] Those proposals included more customs officers at the border, more civil commitments of addicts under the 1966 Narcotics

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1963 Report. An October 1969 cover memo from Charles "Bud" Wilkinson to John Dean, asked, "Please see how many of these recommendations have been acted upon," and Jeff Donfeld responded on Dean's behalf. Bud Wilkinson to John Dean, October 7, 1969; and Jeff Donfeld to Bud Wilkinson, October 15, 1969, Folder: "Administration Drug Bill [V] [2 of 4]," Box 30: "Administration Drug Bill [III] [1 of 5] – Dupont-Glore-Forgan," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

[23] "Statement by Richard M. Nixon, Republican Presidential Nominee, Anaheim, California," Republican National Committee Press Release, September 17, 1968, available in Folder: "Administration Drug Bill [IV] [5 of 5]," Box 30: "Administration Drug Bill [III] [1 of 5] – Dupont-Glore-Forgan," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

Rehabilitation Act, and instructions for his future Attorney General to call a national convention to address the problem.

Nixon never directly mentioned the fledgling Bureau of Narcotics and Dangerous Drugs, and, more important, he rolled back much of the nuance that had developed in understandings of drug abuse over the previous decade. Again, the pejorative term "narcotic" became a stand-in for all drugs even though, ironically, "all drugs" now implied heroin, marijuana, and LSD but largely overlooked the pharmaceuticals, such as amphetamines, barbiturates, and tranquilizers, which remained far more accessible for young Americans.[24] Focused entirely on the importation of illegal drugs, Nixon also turned attention away from strict regulation of the billions of potentially dangerous pills produced annually within the United States. In short, Nixon's speech did not so much begin a new era in federal drug policy as it minimized all of the diffuse work that had been done over the previous decade and, at the same time, re-established a strict border between illegal drugs and licit medicines.

Since President Kennedy first gave a national platform to debates about the proper response to drug abuse in the fall of 1962, more and more national politicians had accepted that the problem required solutions in which the national government must have a role. Nixon's speech may have confidently minimized the serious disagreements over the nature of that role, but they were evident in the ongoing dispute over pending legislation to criminalize possession of LSD and other BDAC-controlled pharmaceuticals, then making its way through the Senate. Evincing the new boundaries rising between "medical-sociological" and "law enforcement"

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[24] Numerous contemporary commentators and subsequent scholars have demonstrated how the Nixon White House sought to conflate the widespread use of marijuana with the far more limited group taking heroin and how they were overjoyed when the press wrote panicked stories about the drug crisis that did the same. See numerous examples from Epstein, Baum, Massing, Musto, and others.

approaches, that legislation was intended to revise provisions of the Food, Drug, and Cosmetic Act – the foundational law for the Food and Drug Administration – but the regulation of LSD and other pharmaceuticals was now handled by the Justice Department and BNDD. Although Congress had completed the institutional restructuring of drug control, arguments over the proper approach still raged, as revealed in ongoing debates about how to handle individual drug users, whether through arrest, rehabilitation, or preventative education.

On full display in the yearlong dispute over new possession laws for LSD, amphetamines, and barbiturates, neither these disagreements nor a strict law enforcement approach originated with the election of Richard Nixon. Under the long tenure of Commissioner Harry Anslinger, the Treasury Department's Bureau of Narcotics served as the federal government's drug enforcers and perfected a pejorative narrative of criminal addicts. While penalties meted out by the Bureau of Narcotics continued to ramp up throughout the 1950s, reformers began to recognize the limits of a law enforcement approach to ending drug abuse. That recognition helped spawn the movement, endorsed by President Kennedy, which widened the scope of drug policy and reframed it as a consumer protection and public health issue. Johnson adopted the same view and helped to inscribe it into law with the creation of the FDA's Bureau of Drug Abuse Control. However, as the previous chapter described, Johnson grew frustrated with the seeming ineffectuality of a balanced approach, which appeared unable to stem the rising tide of youth drug use.

Despite opposition from many – including some of his own executive department chiefs – that it would criminalize a large swath of otherwise-innocent American youth, Johnson started pushing for a law against even the simple possession of LSD. Many suggested that educating about the dangers of certain drugs and medically treating those that succumbed to such dangers

was both the most humane and most effective approach. Instead, Johnson and many law-and-order Congressmen believed that "tougher penalties for violators could decrease illegal use of drugs."[25] If social opprobrium and horror stories of mental breakdown didn't do the trick, maybe the threat of jail would. Thus, while Nixon was still out on the campaign trail, it was the Johnson administration that dug up the failed strategy of trying to arrest, punish, and scare their way out of this problem.

Johnson proposed this legislation in February 1968, and the House Interstate and Foreign Commerce Committee began hearings later in the month, which quickly revealed the discord among federal agents, politicians, and outside experts. FDA Commissioner James Goddard gave his tepid support for the bill but only after expressing his personal "position that law enforcement should concentrate on illegal traffic, that it would be unwise to provide penalties which might mark a large number of young people just entering adulthood as criminals because they were found in possession of a small amount of drugs for personal use, and that such a penalty was unnecessary at this time." Struggling for a compromise, the Committee did not report the bill to the full House until June and only after adding a provision "permitting a suspended sentence for first offenders as a compromise between conflicting views on penalties for possession."[26]

Senator Thomas Dodd's Juvenile Delinquency Committee also held hearings on the bill and its final report further revealed the divergent attitudes about how to deal with drug abuse. Citing law enforcement officers' preference for penalties against possession, the Committee argued, "Not only does the presence of such a penalty in the law operate as a deterrent, penalties

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[25] "Drug Abuse Control," *CQ Almanac 1968*, 24th edition (Washington, DC: Congressional Quarterly, 1969), 7-541 – 7-543.
[26] All quotes cited in "Drug Abuse Control," *CQ Almanac 1968*, 24th ed. (Washington, DC: Congressional Quarterly, 1969), 7-541 – 7-543.

for possession serve greatly to aid in law enforcement" because it was easier to prove possession than trafficking. On the other hand, the Committee described the "medical-sociological attitude," noting, "a number of physicians feel that possession for personal use should be controlled through education programs" because "the adverse effects, particularly on the young, of arrest and prosecution, with the possibility of consequent criminal records, overweigh the adverse effects of drug abuse." In mid-October, almost ten months after LBJ proposed the legislation, Congress finally sent it to his desk for signature, but not before it had to make some compromises that would also foreshadow Nixon's roadmap for success with his own legislation. In addition to opportunities for suspended sentences, the final bill limited the penalties for first and second offenses. Further appeasing the other side, the law also "declared it the sense of Congress that priority should be given to federal information programs designed to educate the public, especially young persons, regarding the dangers of drug abuse."[27]

Although penalties against the possession of LSD were settled, disagreements persisted throughout Nixon's first term in office and undermined considerations of any major revision of federal drug laws and policy. The *Congressional Quarterly Almanac* of 1969, best summed up the situation, writing, "Congress in 1969 investigated a variety of problems involving drugs but did not clear any major legislation dealing with the matter." The *Almanac* explained, "Congressional action was complicated by a jurisdictional question of whether to consider drug abuse a health problem or a law enforcement issue and whether the Justice Department or the Health, Education and Welfare (HEW) Department should have primary responsibility."[28]

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[27] All quotes cited in "Drug Abuse Control," *CQ Almanac 1968*, 24th ed. (Washington, DC: Congressional Quarterly, 1969), 7-541 – 7-543.
[28] "Congress Investigates Drug Abuse, Effect, Prices," *CQ Almanac 1969*, 25th ed. (Washington, DC: Congressional Quarterly, 1970), 871.

Richard Nixon and his staff never overcame or settled these debates and had to work within them. As a candidate and President, Nixon gave lip service to the need for educational programs and also sought to differentiate between the innocent (white) children of his supporters, who needed to be protected from harsh penalties, and those (non-white) traffickers who deserved to have the book thrown at them.[29] Legislatively, the Nixon administration was forced to accept the position of many in Congress even if those liberal priorities were to be forgotten when the law was applied. In short, if the Nixon White House wanted stricter punishments for drug law violators it also had to accept some measure of rehabilitative treatment and education.

To achieve its drug policy goals the Nixon White House triangulated a public position that straddled the line between rehabilitation and enforcement, but internal documents revealed where the administration's allegiances lay. In late 1963, President Kennedy's Advisory Commission on Narcotic and Drug Abuse released a report with twenty-five recommendations for a complete retooling of federal drug policy. At its core, the Report included four controversial proposals that would have resulted in the complete reorganization of the drug control regime – moving the policing of the illegal distribution of all narcotics, cocaine, marijuana, and pharmaceuticals to the Justice Department and strengthening the regulation of the legal distribution of all such drugs in Health, Education and Welfare Department's Food and Drug Administration. Pouring gasoline on smoldering bureaucratic turf wars, the recommendations were controversial and the Johnson administration first avoided any action except creating the FDA's Bureau of Drug Abuse Control to regulate potentially dangerous

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[29] Matthew Lassiter traces the longer history of this tradition of differentiated application of drug laws based on space, race, and class in a forthcoming book as well as his recent article, Lassiter, "Impossible Criminals: The Suburban Imperatives of America's War on Drugs," *Journal of American History* 102, no. 1 (June 2015), 126-40.

pharmaceuticals.[30] However, mounting evidence of youth drug taking, campus ferment, and a growing role of organized crime in the drug trade all prompted calls for reorganization and rationalization of the federal drug regime. As a result, in 1968 Johnson proposed a Reorganization Plan to move all regulation of drugs to the Justice Department and create the Bureau of Narcotics and Dangerous Drugs.

A year later, Nixon staffers returned to the Kennedy Commission's recommendations and considered the proposal to keep HEW involved in the fight against drug abuse, but they came to a simple conclusion. Implicitly rejecting HEW's preference for education, regulation, and rehabilitation, the White House's point man for domestic drug policy, Jeffrey Donfeld, wrote, "Functions remain under the supervision of BNDD. These functions are intertwined and <u>have become law enforcement questions</u>. BNDD recommends they remain with Justice."[31] It may have lacked a sense of direction at the outset, but the Nixon administration had a clear destination in mind for their drug policy. To get there, however, the White House would have to walk the same road that the two previous administrations, a variety of interested congressmen, and at least three executive departments had not only traversed but also constructed.

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[30] "Implementation of the Preview of Recommendations Contained in the Final Report of the President's Advisory Commission on Narcotic and Drug Abuse," August 25, 1965, Executive Folder: "HE 4 – Medicines – Drugs – Serums, 8/24/64," Box 15: "Ex HE 4, 8/24/64," WHCF, LBJ Library.

[31] Jeffrey Donfeld was a deputy for Egil Krogh and in charge of domestic drug policy. Krogh, in turn, was deputy to White House domestic policy advisor John Ehrlichman. Jeff Donfeld to Bud Wilkinson, October 15, 1969, Emphasis added. Folder: "Administration Drug Bill [V] [2 of 4]," Box 30: "Administration Drug Bill [III] [1 of 5] – Dupont-Glore-Forgan," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

Contrary to popular memory, Nixon was not just responding to the sins of the counterculture when he allegedly declared a "war on drugs."[32] The tendency to see Nixon as the progenitor of the country's drug policy has been perpetuated for two interrelated reasons. Over the previous decade, presidential administrations took a larger hand in guiding federal drug policy, but department heads continued to handle much of the planning and all of the execution of those policies. The Nixon White House, shaped by all of the personal and political forces that defined their leader's tenure, moved much of this activity in-house. Starting with the records of the Nixon administration thus gives the false impression that his advisors originated many of the long-lasting programs launched under their watch. Relatedly, many scholars start with those records because numerous programs *were* first initiated while Nixon was in office – from expanded federal funding for methadone treatment centers to the creation of the Drug Enforcement Administration (DEA), a superagency designed to handle all aspects of the federal campaign against drug abuse.

While continuing to focus on the White House's internal actions, the remainder of this chapter revaluates the motivations for those actions. Although executive departments, especially the Department of Health, Education, and Welfare, struggled to keep a seat at the table, Nixon repeatedly sought to move as much as possible under his direct control. In fact, the President acknowledged as much when announcing the creation of the Special Action Office for Drug Abuse Prevention (SAODAP), an agency designed to give his people control over federal spending on rehabilitation and treatment. After making his infamous declaration that "America's public enemy number one in the United States is drug abuse," Nixon argued, "I consider this

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[32] Most scholars still fail to recognize that Nixon never actually said the phrase "war on drugs," despite its ubiquity in popular memory. For the historical significance of this rhetorical detail see Michael Sherry, *Go Directly to Jail: The Punitive Turn in American Life* (Forthcoming).

problem so urgent… that it had to be brought into the White House… directly reporting to me, so that we have not only the responsibility but the authority to see that we wage this offensive effectively and in a coordinated way."[33]

Nixon's domestic policy advisors, such as Bud Krogh, have admitted that SAODAP and its sister agency, the Office of Drug Abuse Law Enforcement (ODALE), were designed "in that final year prior to the election" of 1972 in order to "support a presidential platform of accomplishment in drug abuse and crime control."[34] This chapter demonstrates how those programs were equally intended to wrest control of drug control away from the president's executive bureaucracies and how this altered the direction of federal drug policy.

Operation Intercept

The Nixon administration's struggles to nail down an actionable plan to fight lawlessness continued after the inauguration. President Nixon and his chief law and order spokesman, Attorney General John Mitchell, had to overcome a plethora of divergent demands for action against drug abuse while they also faced the seemingly sacrosanct tradition of the federal government's limited role in policing crime. Appointed Deputy Counsel to the President, where he worked under John Ehrlichman, his childhood neighbor; Egil "Bud" Krogh recalled a meeting

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[33] Richard Nixon: "Remarks About an Intensified Program for Drug Abuse Prevention and Control," June 17, 1971. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=3047.

[34] Shortly after the end of his jail sentence for his role in the Watergate cover-up, Krogh spoke with Edward Epstein about the political motives behind SAODAP and ODALE and acknowledged their "political dimension." At the same time, Krogh was unable to confirm speculation that Attorney General John Mitchell was excluded from planning for ODALE, but others insisted that neither the head of the Justice Department nor the Treasury Department Secretary knew of these plans "at least in the early stages." Unstated by Epstein is how that exclusion was motivated by the actual intent of ODALE, which was to usurp those two departments' authority in the drug abuse field, see Epstein, "Chapter Notes," *Agency of Fear*, 302-3.

in the Cabinet room just a couple weeks after the inauguration. "It was communicated directly to me," Krogh remembered, "the President viewed law and order as his principal domestic issue." According to Bud Krogh, "Armed robbery and burglary were the two crimes the President talked about as the ones that instilled the greatest fear." But there was a problem, because many in the room, including Nixon, recognized that this was not "a directly manageable problem from the White House; street crime was something that had to be handled by local police departments."[35] Instead of trying to reverse this tradition, at first the Nixon administration sought to work around it. First, in attempting to fight domestic crime – the sort of issues featured in Nixon's campaign commercials, such as muggings, rape, and murder – policy advisors started "where the President did have some authority" – Washington, D.C. Even at that first January meeting, Krogh insisted, "there was a dimly perceived idea that if we were to show a specific reduction in crime, it had to be in the District of Columbia."[36] This was a calculation purely based on jurisdiction, because, at that moment, the federal government still had responsibility for the local governance of Washington, D.C.[37]

In addition to these constitutional limitations, Nixon's advisors also faced the same logistical issues that experienced federal regulators had long recognized. The scale of the job

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[35] Krogh quoted in Epstein, "The Krogh File – The Politics of Law and Order," *The Public Interest* 39 (Spring 1975), 102.
[36] Epstein, "The Krogh File," 102.
[37] Until the 1973 District of Columbia Home Rule Act, which provided for the first elected D.C. mayor and city council, Congress handled primary governance of the District – a practice that had existed since reconstruction. Even during debate over the 1973 act, dissenting House Republicans, such as Congressman Nelsen of Minnesota insisted that law enforcement in the district "should certainly be under the command of the President." Nixon never took a public stance on the issue, but the work of Nelsen and others ensured that the President at least maintained the power to take over control of the local D.C. police in case of emergency; "Congress Grants Nation's Capital Limited Home Rule," *CQ Almanac 1973*, 29th ed., (Washington, DC: Congressional Quarterly, 1974), 734-41. http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/cqal73-1227529.

limited the federal government's ability to get involved at the local level in any kind of comprehensive way. This was especially evident in the realm of drug policing. Foreshadowing a tactic that many scholars have associated with New York's Rockefeller Drug Laws, Nixon's advisors submitted a confidential report for the President-elect, which outlined a comprehensive crime program and included support for "legislation that would permit federal law enforcement officers to stop and frisk on reasonable suspicion."[38] As many now recognize, stop and frisk laws have become a steady source of arrests for drug possession and its uneven application has furthered racial disparities in contemporary prison populations.[39]

Nixon continued to pursue this power until his resignation, but the manpower to enforce it would have limited its application, especially at the outset of his time in office. At the end of 1969, the Justice Department's Bureau of Narcotics and Dangerous Drugs had 1,463 total personnel with just over 1,200 agents.[40] Budgets and manpower continued to grow, and this was still an increase over the combined manpower of the BNDD's two predecessor agencies, which totaled less than a thousand agents combined. By 1975 the DEA employed 2,135 special agents with 111 based in Chicago, but to put those numbers in perspective, in 1969 the city of Chicago

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[38] Richard Velde, Donald Santarelli, Brian Gettings, and John W. Dean, III, "Part II: Improving Law Enforcement, A Federal 'Stop and Frisk Law,'' 20, "Confidential Report: A Crime Program for the Nixon Administration," Emphasis in original. Available in Folder: "Confidential Report for the President-Elect RE Crime [I] [1 of 6], Box 26: "Corrections [Criminal Rehabilitation, 1969-70] [3 of 8] – Confidential Report… [II] [3 of 6], Staff Member Office Files – John W. Dean, Subject File, 1969-73, White House Special Files, Nixon Presidential Papers.

[39] Julilly Kohler-Hausmann, "'The Attila the Hun Law': New York's Rockefeller Drug Laws and the Making of a Punitive State," *Journal of Social History* 44 (Fall 2010), 71-95.

[40] House Committee on Appropriations, "Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1971 Part I: The Judiciary and Department of Justice," February 17-18, March 2-5, 9-11, 1970, 924.

had over 15,000 total personnel and just over 12,000 police officers on the street.[41] These logistics have continued to force federal agents to apply their power unevenly and focus on selected localities, now characterized as "High Intensity Drug Trafficking Areas."[42] Before the passage of the Controlled Substances Act, however, both numbers and constitutional limitations forced Nixon to focus on one particular locality – Washington, D.C.

On January 31, less than two weeks into his presidency, Nixon addressed the crime problem in the capital. He portrayed D.C. as "the Federal City" and insisted, "the Federal Government cannot evade its share of responsibility for the conditions of life in the district." Nixon acknowledged that crime in America was "a primary local responsibility" but insisted, "Here in the District, the Federal Government bears a special responsibility and has a unique opportunity."[43] Seizing that opportunity, Nixon executed a series of "emergency measures, including a drastic reorganization of the city's courts, the appointment of new judges and prosecutors, and the hiring of 1,000 new cops."[44] Six months later, Attorney General Mitchell sent Congress a "model anticrime program for the District of Columbia," which included a package of at least four Senate bills. In addition to legislation for court reorganization and a new

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[41] Drug Enforcement Administration, "History of the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration, 1970-1975," 4; Baum, *Smoke and Mirrors*, 91; Federal Bureau of Investigations, *Uniform Crime Reports for the United States, 1969* (Washington, DC: US Government Printing Office, 1969), 153.

[42] The High Intensity Drug Trafficking Areas (HIDTA) Program was created with the passage of the Anti-Drug Abuse Act of 1988. As of 2015, there were 28 designated HIDTA's covering "approximately 17.2 percent of all counties in the United States and a little over 60 percent of the U.S. population." See Office of National Drug Control Policy, "High Intensity Drug Trafficking Areas (HIDTA) Program," https://www.whitehouse.gov/ondcp/high-intensity-drug-trafficking-areas-program (accessed January 31, 2016).

[43] Richard Nixon: "Statement Outlining Actions and Recommendations for the District of Columbia.," January 31, 1969. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=2053.

[44] Massing, *The Fix*, 99.

public defender program, the bills contained a number of controversial provisions, including "pretrial detention" and "no-knock" warrants. Opposition to those policies ensured a long and contentious debate over the passage of the D.C. crime bill.[45] Significantly for federal drug laws, much of this debate occurred at the same time as Congress was debating the Controlled Substances Act, and controversial provisions – especially the "no-knock" rule – ended up in the final versions of both bills.[46]

At the same time, research on crime in D.C. justified much of the White House's soft policies on drug abuse. Doubling down on the connection between drugs and crime, "local treatment expert" Robert DuPont's research also helped to convince Nixon advisors that methadone maintenance programs might break that cycle without the need to address all of the attendant social issues that seemed to complicate liberal treatment programs.[47] A Harvard trained psychiatrist, DuPont went to D.C. to work for the National Institute of Health before taking a job as director of community services for the District's Department of Corrections. Recognizing the current political climate, DuPont sought his own data on the connections between drugs and crime. Starting in the summer of 1969, DuPont interviewed 229 inmates and got urine samples from 129. DuPont discovered forty-five percent of those interviewed either admitted or tested positive for heroin. Notwithstanding the small sample size and inability to correlate whether criminals used drugs or drug addicts became criminals, DuPont was off and running with the

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[45] "Congress Clears Controversial D.C. Crime Control Bill," *CQ Almanac 1970*, 26th ed., 05-208-05-219. Washington, DC: Congressional Quarterly, 1971. http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/cqal70-1292937.
[46] For a full discussion of these connections see the analysis of Senator Thomas Dodd below. "'No-Knock' Raids Backed," *Bridgeport Post*, January 30, 1970, included in "Daily Digest, Senate Proceedings, Thursday, February 5, 1970," *Congressional Record* 91st Congress, 2nd Session, 2523-4.
[47] Massing, *The Fix*, 101.

evidence that soon attracted the attention of Nixon advisor, Jeff Donfeld.[48] When DuPont "gushingly described the success he was having with methadone, especially in reducing crime," Donfeld's boss, Bud Krogh, found the funds to open the Narcotics Treatment Administration (NTA) in D.C. in February 1970. Forgoing decades of federal opposition to opiate maintenance programs, the NTA offered methadone and a variety of other treatments to more that 2,000 D.C. residents. Krogh made explicit his vision for Washington's role in developing a new national drug policy, recalling, "The District of Columbia became a laboratory in my mind."[49] As it went national, however, "the political success of methadone rested on the argument that it would bring down crime," which minimized the humanitarian and rehabilitative motivations as well as any concern for "the moral or even socioeconomic progress of drug users."[50]

Even before many of its provisions were baked into federal drug legislation, Nixon's fight against crime in the District still deployed the authority of the federal drug regime. Nixon instructed the Bureau of Narcotics and Dangerous Drugs "to increase significantly its role in the District of Columbia in enforcing the narcotic and dangerous drug laws." He also reasserted the broader implications of this policy, arguing, "many armed robberies, assaults, and bank holdups are directly related to narcotics use."[51] A few weeks later, the White House published an official memorandum from the President to the Attorney General detailing the administration's desired actions in the District. Those instructions evinced the administration's vision of using Washington as a launching pad for more policing in other localities. The memo suggested

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[48] Baum*, Smoke and Mirrors*, 17-20.
[49] Massing, *The Fix,* 102. For more on DuPont and Donfeld, see also Massing, *The Fix*, 97-104.
[50] Claire Clark, "'Chemistry in the New Hope': Therapeutic Communities and Methadone Maintenance, 1965-71," *Social History of Alcohol and Drugs* 26 (Summer 2012): 210.
[51] Richard Nixon: "Statement Outlining Actions and Recommendations for the District of Columbia.," January 31, 1969. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=2053.

employing additional BNDD agents "for enforcement in the District and those cities which represent the major sources of supply for the District."[52] Attorney General John Mitchell's budget request for the 1971 fiscal year made this connection explicit. Touting the work of BNDD task force, which operated in D.C. from April through September 1969, the budget argued, "the task force is a sound concept and enough manpower is being requested to field several of them during the year without crippling normal operations."[53]

The administration sought to overcome similar jurisdictional limitations in its first national actions against drug abuse. Almost entirely foregoing a focus on domestic distribution, Mitchell and Nixon turned to an area where the federal government had unquestioned authority – protecting national borders. This meant new political capital for the Customs Bureau, which was the only area of drug policing remaining in the Treasury Department after LBJ's 1968 Reorganization Plan. The Nixon administration thus began its tenure at the helm of federal drug control by again minimizing the many developments that reshaped national drug policy over the previous decade. Just as many reformers had succeeded in their quest to convince the nation that the Treasury Department had failed in its overly punitive practice of policing drugs, Nixon again leaned on the last vestiges of that traditional authority. The fullest expression of these tactics was the failed Operation Intercept, a border action overseen by Customs and staffed by FBI and BNDD agents that went into effect in September 1969.[54]

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[52] Richard Nixon: "Memorandum on the Narcotic and Dangerous Drug Traffic in the District of Columbia," February 22, 1969. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=2406.

[53] House Committee on Appropriations, "Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1971 Part I: The Judiciary and Department of Justice," February 17-18, March 2-5, 9-11, 1970, 928.

[54] For details on Operation Intercept see Epstein, *Agency of Fear*, 81-5; Baum, *Smoke and Mirrors*, 23-4; for more information see, Richard B. Craig, "Operation Intercept: The

Insisting that stopping the international flow of drugs would reduce domestic drug abuse, Nixon created the Special Presidential Task Force Relating to Narcotics, Marihuana, and Dangerous Drugs, which submitted its recommendations in early June 1969. Unsatisfied with the Mexicans' unwillingness to cooperate, Nixon formed an "Action Task Force" and charged it with implementing "a 'frontal attack' on border narcotics traffic."[55] This task force "combine[d] the talents of the Bureau of Narcotics and Dangerous Drugs and the Customs Bureau for a joint operation against Mexican smugglers." Deputy Attorney General Richard Kleindienst and Eugene Rossides, Assistant Secretary of the Treasury in charge of enforcement, chaired the group. However, primary responsibility for planning was given to Rossides' aide, who had previously proved himself a passionate drug enforcer while serving as a Westchester County District Attorney and conducting raids against Timothy Leary in the mid-1960s. G. Gordon Liddy and others bureaucrats from the Treasury and Justice Departments thus drew up the plans that became known as Operation Intercept and were designed to pressure the Mexican Government into taking its own actions against trafficking.[56]

To bend the Mexican government to its will, the Nixon administration asserted its full authority in two areas where it had clear jurisdiction. In early September 1969, the military declared Tijuana, Mexico off-limits to all personnel. At the same time, two thousand federal agents took their posts along the Mexican border and began searching nearly every truck and automobile crossing northward. This effectively shut down traffic in and out Mexico and quickly

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International Politics of Pressure," *The Review of Politics* 42 (Oct 1980): 556-80; and for analysis and a collection of important sources, see Kate Doyle, "Operation Intercept: The Perils of Unilateralism," *The National Security Archive*, April 2003, http://nsarchive.gwu.edu/NSAEBB/NSAEBB86/.

[55] Craig, "Operation Intercept," 560.

[56] Epstein, *Agency of Fear*, 82.

resulted in protests from leaders on both sides of the border. By mid-October, the White House could no longer withstand the critiques, which were now coming from all corners, including its own State Department. The task force agents were withdrawn. Operation Intercept was re-christened Operation Cooperation and then abandoned altogether.[57]

A Bureau of the Budget report on Operation Intercept made clear the problems that arose when Nixon strategists minimized the mounting public health data about drug abuse in favor of a politicized policy divorced from such knowledge. Normally responsible for reviewing the costs and legality of all executive actions, no one at the Budget Bureau had been contacted to review the Special Task Force Report or the plans for Operation Intercept. The Bureau's review of the Operation thus criticized Nixon's plans on a number of fronts, concluding, "The Report served as a grossly inadequate basis for Presidential decision, and the policy line laid down in the Report seems likely to result in embarrassment to the President in an area of extreme importance to him." In addition to souring relations with Mexico and sparking a backlash from border communities, the plan had no cost estimates and "asked the President to make a major commitment of funds and prestige to the fight against marihuana without looking at the alternative of a fight against the hard drugs."[58] The Bureau of the Budget's report also confirmed

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[57] Epstein, *Agency of Fear,* 82-5.

[58] Tom Whitehead to Bud Krogh, "Proposed Major Program Issue on Marihuana Policy," September 29, 1969, Box 30, Egil Krogh Office Files, White House Special Files, Nixon Presidential Papers, cited in Kate Doyle, "Operation Intercept: The Perils of Unilateralism," *The National Security Archive*, April 2003, http://nsarchive.gwu.edu/NSAEBB/NSAEBB86/, *Emphasis in Original*. Many commentators at the time and since have also noted how Operation Intercept actually encouraged the "gateway drug" paradigm that Nixon and others had long touted as a reason to protect innocent white youth from drug abuse. Doyle notes, "As marihuana becomes scare [sic], the Budget Bureau argued, harder drugs would be used as substitutes." Citing interviews with numerous college-age Americans, Edward Beecher demonstrates that this transfer did happen but most went from smoking pot to LSD or other hallucinogens, Edward M. Brecher, *The Consumers Union Report on Licit and Illicit Drugs* (Published by Consumer

public speculation that cutting off the supply of marijuana encouraged many recreational users to turn to "the hard drugs." This was especially problematic, the Bureau of the Budget argued, "since the problem of substitution is known to anyone interested in the drug problem, [and] the failure to alert the President to the risks of the proposed policy is surprising."[59]

Although short-lived, this Operation was significant for a number of reasons. It portended some of the problems with politicizing drug policy. It also launched a new era in the foreign policy of federal drug policing as Nixon applied more American power to stopping international drug supplies – a recurring trend that, perhaps more than anything else, erased considerations of domestic production of pharmaceuticals from the conversation about drug abuse.[60] However, as a resounding failure that undermined U.S. diplomacy and may have actually encouraged more use of harder drugs, Operation Intercept also revealed other problems that have continued to undermine the U.S. drug war. In fact, even the short-term success of the Operation led to more problems in the long term. In 1975 the Mexican government finally acceded to the United States' pressure tactics and started spraying marijuana crops with paraquat, an herbicide. As scholars have acknowledged, this "systematic destruction of the Mexican harvests" allowed growers from Columbia "to leap into the US cannabis market." To lower the costs of transport, the Columbians

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Reports Magazine, 1972), Ch. 59, http://www.druglibrary.org/schaffer/Library/studies/cu/cu59.html.

[59] Tom Whitehead to Bud Krogh, "Proposed Major Program Issue on Marihuana Policy," 1-2.

[60] For more on the international applications of U.S. power to police drugs, see William B. McAllister, *Drug Diplomacy in the Twentieth Century: An International History* (New York: Routledge, 2000); Johann Hari, *Chasing the Scream: The First and Last Days of the War on Drugs* (New York: Bloomsbury, 2015); and Kuzmarov, *Myth of the Addicted Army*.

started including cocaine in their shipments, thereby launching a new era in U.S. drug consumption.[61]

Finally, Nixon's establishment of task forces to work in Washington, D.C. and on the Mexican border evinced the traditional limitations to federal policing power. Federal authority to police the domestic traffic in illegal drugs had always been limited by a number of factors – including the size of the Bureau of Narcotics and the worldview of its commissioner – that were inextricable from the states' traditional primacy in drug policing. Nixon's efforts to demonstrate his commitment to law and order and do something about drugs were further undermined when even the limited authority of the federal drug regime came into question. In fact, while promoting the work of BNDD's Washington, D.C. task force in the summer and fall of 1969, the Attorney General only cited arrests for cocaine and heroin.[62] Arrests for marijuana were probably not worth reporting because the federal government actually had no marijuana law to enforce during that time. As Nixon, Mitchell, and White House policymakers were designing their plans for the District and the border with Mexico, the Supreme Court issued a ruling that threatened the entire basis for domestic drug control.

Curing the "Leary Defect"

In December 1965, Timothy Leary took a trip. Along with a couple friends and his two children, Leary set out from New York for the warmer climes of Acapulco. Crossing the International Bridge at Laredo, Texas, the former Harvard Professor was turned away at the

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[61] Julius Gylys, "Cocaine Industry and Demographic Patters of Consumption," *International Social Science Review* 63 (Spring 1988): 78-83. See also Lina Britto, Forthcoming. Special thanks to Robert Cignoni for bringing this source to my attention.

[62] House Committee on Appropriations, "Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for 1971 Part I: The Judiciary and Department of Justice," February 17-18, March 2-5, 9-11, 1970, 928.

Mexican border and headed back for the United States, where his car was stopped. U.S. customs agents searched the car, discovered marijuana, and arrested Leary and his daughter, Susan, who was hiding "three ounces" of pot in her underwear. Although smuggling charges were dismissed when Leary admitted he acquired the pot before leaving New York, a federal court found Timothy and Susan Leary guilty of violating the Marijuana Tax Act because they failed to pay a tax on the drugs in their possession. Dr. Leary was also convicted of illegally transporting the drug after failing to pay the appropriate tax and sentenced to thirty years in prison. Out on bail pending psychiatric evaluation, Leary appealed his charge, eventually getting an audience with the Supreme Court in December 1968. There, over two days, Leary's attorneys argued that the Marijuana Tax Act violated his Fifth Amendment right against self-incrimination.[63]

Between 1966 and 1968, as Leary's case worked its way through the courts, the doctor became the mythic pied piper of psychedelics and bedeviled President Lyndon Johnson in the process. Although he was arrested on marijuana charges, Leary and his public endeavors became synonymous with LSD-25. At the same time, LSD inspired President Johnson's pursuit of more stringent federal drug control. It also was the reason that both the FDA and Johnson agreed to move the Bureau of Drug Abuse Control (BDAC) from the Food and Drug Administration to the Justice Department. Of course, the merger of BDAC and the Bureau of Narcotics further complicated the legality of federal drug policing as the new Bureau of Narcotics and Dangerous

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[63] "Ex-Prof. Leary Gets 30 Years in Dope Trial, Daughter Convicted on Marijuana Charge," *Chicago Tribune*, March 12, 1966, 4; United States Supreme Court, "Leary v. United States (1969)," No. 65, *FindLaw*, http://caselaw.findlaw.com/us-supreme-court/395/6.html.

Drugs "had the odd task of enforcing laws with different constitutional bases, classification schemes, regulatory procedures, and penalty structures."[64]

While seeking to rationalize and streamline federal drug enforcement, this merger further stooped the shaky foundations of illegal drug laws. As legal scholar O. Hayden Griffin III notes, neither the Harrison Narcotic Act nor the Marijuana Tax Act had ever been beyond reproach, and, over time, these laws "exposed many of the limitations of federal efforts to control drugs." This problem was compounded during the 1950s and 1960s as "new drugs were being rapidly created and/or discovered that required regulation."[65] According to Griffin, the Drug Abuse Control Amendments of 1965 (DACA) were a step in the right direction, but many pharmaceutical industry representatives resented the fact that all of the substances under the FDA's control were treated equally. Many also complained that there was no mechanism for differentiating the stringency of regulation, which would be the case with the scheduling system established in the Controlled Substances Act.[66] Shortly after the birth of their Bureau, BNDD officials recognized the limitations of both DACA and their new institutional arrangement. As such, historian Joseph Spillane notes, "BNDD officials quickly formulated plans to create a uniform system of regulation based on the control of interstate commerce (rather than on the taxing power of Congress)." Following protocol that had long been the model for FDA legislation, the Justice Department shared drafts of a new control model with pharmaceutical

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[64] David T. Courtwright, "The Controlled Substances Act: how a 'big tent' reform became a punitive drug law," *Drug and Alcohol Dependence* 76 (2004), 10.
[65] O. Hayden Griffin III, "The Role of the United States Supreme Court in Shaping Federal Drug Policy," *American Journal of Criminal Justice* 39 (2014): 669.
[66] Griffin, "The Role of the United States Supreme Court in Shaping Federal Drug Policy," 670.

industry representatives in September 1968 but nothing made it through Congress before the election.[67]

Like ending the war in Vietnam, a new era in the federalization of drug laws was delayed until the Nixon administration. Unlike the politicized quest for "peace with honor,"[68] however, some form of immediate redress remained essential because federal drug enforcement was being undermined on a number of fronts, including confusion at the state level, where responses to increasing reports of drug use also differed. In August 1969, a BNDD lawyer told *The New York Times* he was "afraid that the contradictory [state] laws will hinder rather than help Federal narcotic enforcement." Since the start of the year, at least twenty states had either passed new drug laws or amended old ones and another twenty "seriously debated legislation." However, out of that number, 10 or more states "softened or are planning to soften their narcotic laws." State drug laws had generally gotten stricter over the previous decade and New York was only one example of how legislation continued in this direction. A Texas court had just sent away for fifty years a defendant convicted of selling and possessing a small amount of marijuana, while Indiana lawmakers approved a measure that banned "addicts" from working for public schools and mandated that all employees undergo yearly physicals to prove their temperance.[69]

At the same time, other states were softening the penalties in their drug laws and calling for more treatment and rehabilitation alternatives to prison. According to *The New York Times*,

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[67] According to Spillane, BNDD's chief counsel, Donald Miller, shared drafts of such legislation with the pharmaceutical industry representatives in the fall of 1968; Joseph F. Spillane, "Debating the Controlled Substances Act," *Drug and Alcohol Dependence* 76 (2004), 21.
[68] Richard Nixon: "Address to the Nation Announcing Conclusion of an Agreement on Ending the War and Restoring Peace in Vietnam.," January 23, 1973. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=3808.
[69] Matthew Arnold, "Varied Drug Laws Raising U.S. Fears: Justice Agency Dismayed as Some States Crack Down While Others Ease View," *New York Times*, August 17, 1969, 1.

however, "it was not because the legislatures believe the problem was easing or because they wanted to ease the punishment of violators." Instead, much like debates inside the Beltway, state lawmakers simply differed over the proper response to increasing evidence of drug abuse. Many groups, such as the California Medical Association, the Parent-Teacher Association, and the Los Angeles Chamber of Commerce, supported alternatives to punishment; and an overlapping but more expansive contingent believed "softening the laws was the way to get more convictions and at the same time protect the experimenting teen-ager from a life-long felony record." Thus, new laws in South Dakota, North Carolina, and New Mexico were just a few examples of shifts that frequently "involved lowering the penalty for marijuana possession and raising the penalty for pushers."[70]

These divergent actions showed the persistence of deep divisions preventing any consensus on the future of drug policy, whether at the state or federal level. They also compounded roadblocks on Nixon's drive for more law and order. With another national dispute clouding the skies, May 19 was certainly a dark day in the Nixon White House. As Baltimore school students took the day off to honor the birthday of Malcolm X and many others in Vietnam and the U.S. celebrated the birth of Ho Chi Minh, Nixon received the Supreme Court's ruling on the Timothy Leary case.[71] Finding a violation of Fifth Amendment protections against self-incrimination, the Court dismissed the charges in *Leary* and the *United States v. Covington*, a

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[70] Matthew Arnold, "Varied Drug Laws Raising U.S. Fears: Justice Agency Dismayed as Some States Crack Down While Others Ease View," *New York Times*, August 17, 1969, 1. For a historical analysis of the racial and spatial motivations for how the rhetorical differentiation between urban, non-white "pushers" and the white and suburban "experimenting teen-ager" influenced this type of legislative action, see Lassiter, "Impossible Criminals."

[71] Stephen J. Lynton, "82,000 Pupils Take Off, But Skip Rally: Ceremony in Honor of Malcolm X Draws Only 100 to 300," *The Baltimore Sun*, May 20, 1969, C26; Baum, *Smoke and Mirrors*, 21.

similar case. The Court did uphold the conviction of another appellant who sold pot to an undercover cop, but new protections now existed for "people who only possessed marijuana."[72] With some states also decriminalizing possession, the Nixon administration thus finished its first year with parts of the nation having no law against pot smoking – the symbolic symptom of the country's disrespect for law and order.

Although the Supreme Court reversed Leary's conviction and questioned the viability of continued application of the Marijuana Tax Act, Justice John Marshall Harlan II wrapped up the majority opinion with an opening for drug warriors. He concluded, "nothing in what we hold today implies any constitutional disability in Congress to deal with the marihuana traffic by other means."[73] Shortly after the ruling, the administration began considering "a stopgap measure," but the proposed bill simply altered the Catch-22 nature of the older Act. It now required only "legally qualified" persons to pay the special tax, meaning "a future Mr. Leary" could be found guilty for possession without a tax stamp but a lawyer could not argue that he was forced to pay the tax and thereby incriminate himself under state law, where simple possession was actually illegal. If it sounds convoluted, it was; and many, including the General Counsel for the Bureau of the Budget, doubted it would "accomplish what is intended."[74]

In December 1969, the House Ways and Means Committee held hearings on the "Amendment to the Marihuana Tax Act to Cure the Leary Defect," and Justice Department

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[72] The case involving sale to an undercover police officer was *Minor v. United States* (1969), for analysis of these rulings, see Griffin, "The Role of the United States Supreme Court in Shaping Federal Drug Policy," 669.

[73] U.S. Supreme Court, *Leary v. United States* 395 U.S. 6 (1969), No. 65, Argued December 11-12, 1968, Decided May 19, 1969, *Justia*, https://supreme.justia.com/cases/federal/us/395/6/.

[74] Paul W. Kuggers to The Director, Bureau of the Budget, June 13, 1969, Folder: "Administration Drug Bill [IV] [4 of 5]," Box 30: "[Administration Drug Bill [III] [1 of 5] – Dupont-Glore-Forgan," Files of John W. Dean, WHCF, 1969-73, Nixon Presidential Papers.

officials testified against the measure, reasserting the administration's "strong preference for prompt consideration of [a] comprehensive drug bill" instead of "piecemeal" fixes.[75] A memo to the Attorney General – likely written by John Dean or an assistant – reiterated "the need for one codified narcotic and dangerous drug law." The document also explained why simply fixing the application of the "Taxing Power" would not suffice. "In the eyes of many people, especially the public at large," it argued, "there is real skepticism [to] using tax penalties for marihuana and narcotic violations." The writer feared that continuing with the traditional basis for federal drug laws "smacks of 'deviousness' and creates more of [a] credibility gap in this already emotionally charged area." The Supreme Court also continued to send strong signals "that the predicate for the system of control could stand revision and be updated and placed on a firmer constitutional base."[76]

Staffers in the Nixon White House and in Congress set out to find that "firmer constitutional base" and quickly settled on a recent model – the Bureau of Drug Abuse Control's regulation of dangerous drugs under the Constitution's Commerce Clause. As earlier chapters have analyzed in detail, all previous narcotics laws were enforced by the Treasury Department and, therefore, based on the federal government's authority to raise revenue.[77] On the other hand, the Food, Drug, and Cosmetic (FDC) Act of 1938 authorized the actions of the Food and Drug

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[75] Hugh M. Durham to John W. Dean, III, Associate Deputy Attorney General, "Executive Session of the House Ways and Means Committee to Consider H.R. 14799 (Amendment to the Marihuana Tax Act to Cure the Leary Defect," December 4, 1969, Folder: "Administration Drug Bill [IV] [2 of 5]," Box: "[Administration Drug Bill [III] [1 of 5] – Dupont-Glore-Forgan," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

[76] "Memorandum to the Attorney General on the need for one codified narcotic and dangerous drug law," undated, Folder: "Administration Drug Bill [IV] [3 of 5]," Box: "[Administration Drug Bill [III] [1 of 5] – Dupont-Glore-Forgan," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

[77] As analyzed in more detail elsewhere, at this time the term "narcotics" – especially when referring to laws – was still used as reference for not just opiates, but also cocaine and marijuana.

Administration and depended on Congress's constitutional power to regulate interstate commerce.

Lawyers who cut their teeth during the New Deal continued to supervise and train the lawyers of the New Frontier and Great Society, ensuring interpretations of the commerce power were expanded and applied to a growing range of federal initiatives. Most famously, the Court upheld the Civil Rights Act of 1964 and its ban on discrimination in hotels and restaurants. That law could only be enforced through regulation of strictly local commerce. However, the Court reasoned even a "single local event, when added to many others of a similar nature, may impose a burden on interstate commerce by reducing its volume or distorting its flow."[78] Adopting the same logic, a year later, the Drug Abuse Control Amendments expanded the power of the FDC Act and became the first federal drug laws wherein Congress claimed the right to regulate *intrastate* commerce.

Justice Department attorneys rehashed this history in their communication with the Attorney General and argued differences between the two regulatory mechanisms had their "routes [sic] in history not in reason." According to the memo to Mitchell, the decision to use "the Taxing Power for the marihuana and narcotic laws" was based on "concern in 1914 and 1937 as to whether or not the Commerce Clause could be extended to cover the Federal control of these drugs." Implicating everything from the Civil and Voting Rights Acts to pharmaceutical regulation, the memo argued, "The Supreme Court's development and extension of the Commerce Clause clearly lays to rest the original worries as to its applicability." It made the connection even more explicit, concluding, "The passage of the Drug Abuse Control

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[78] *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); and *Katzenbach v. McClung*, 379 U.S. 294 (1964).

Amendments of 1965, based on the Commerce Clause, shows Congressional acceptance of the Commerce Clause as a proper constitutional basis."[79]

Laws that had been passed to protect consumers from dangerous or potentially habit-forming medicines thus became the basis for policing the illegal use of all drugs. The Commerce Clause was at the heart of many New Deal-era regulations and became associated with a number of liberal reform initiatives by the 1960s. At the same time, that liberal reform vision challenged an older, more punitive policy towards illegal drug users and reflected increasing public support for rehabilitation and treatment alternatives to jail time. As such, Nixon adopted the constitutional reasoning of mid-century liberalism as the foundation for his administration's new drug laws. However, the White House would also have to accept some associated liberal reforms to ultimately secure their new power and complete the federalization of drug laws.

Bipartisan Leadership

In July 1969, President Nixon gave an extensive address to Congress on the nation's drug problems and the need for a new codified drug law. A day later, Senator Everett Dirksen, on behalf of Attorney General John Mitchell, presented the administration's bill – the Controlled Dangerous Substances Act of 1969 – to Congress. The bill was referred to Senator Thomas Dodd's Juvenile Delinquency Subcommittee of the Senate Judiciary Committee, which began hearing testimony in September.[80] At the first hearing, Mitchell argued the bill was "vital;" noted that it "base[d] federal jurisdiction over narcotics and dangerous drugs solely upon the power to

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[79] "Memorandum to the Attorney General on the need for one codified narcotic and dangerous drug law," undated, Folder: "Administration Drug Bill [IV] [3 of 5]," Box: "[Administration Drug Bill [III] [1 of 5] – Dupont-Glore-Forgan," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

[80] "Crime – Goal – III. Narcotics and Dangerous Drugs," ca. late January 1970, Folder: "Crime Analysis – (Campbell)," Box 23: "Alpha Subject/Crime," Files of Egil "Bud" Krogh, White House Subject File, 1969-73, Nixon Presidential Papers.

control interstate commerce;" and described its overall purpose "to consolidate, rationalize and modernize existing federal narcotics legislation." Despite this glowing praise, however, more hearings held during the next two weeks revealed the deep discord in Congress and professional circles over the future of drug policy. In October, Bureau of Narcotics and Dangerous Drugs (BNDD) Director John Ingersoll acknowledged the proposed bill's initial penalties were too harsh and requested that the Committee revise certain sections. According to the *CQ Almanac*, "the Administration moved to soften the original provisions of its bill after criticism had been leveled at its provisions which retained mandatory minimum sentences for possession… and which treated possession and use of marijuana and hallucinogenic drugs as felonies" – again revealing the ongoing influence of treatment and rehabilitation options.[81]

With debate continuing, the White House held a Bipartisan Leadership Meeting in mid-October to publicize "the need for immediate action on the Administration's narcotics and dangerous drugs legislation."[82] In addition to pressing for enactment of the new drug control law, White House officials wanted "to remove the misconception that we have become 'soft' on narcotics control by recommending lesser penalties for first-offense marijuana users."[83] The administration thus sought to reassure congressional leaders and the invited press representatives that its new legislation was "tough but fair." To be tough, however, Nixon needed a new basis

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[81] "Drug Control," in *CQ Almanac* 1969, 25th ed., 707-11. (Washington, DC: Congressional Quarterly, 1970), http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/cqal69-1246757.

[82] Bud Krogh memorandum for The President, "Bipartisan Leadership Meeting, Cabinet Room – October, 23, 1969 – 8:30 A. M.," October 22, 1969, Folder: "Bipartisan Leadership Meeting – October 9, 1970," [Sic, actually 1969], Box 22: "Alpha Subject/Drugs," Files of Egil "Bud" Krogh, WHCF, 1969-73, Nixon Presidential Papers.

[83] Bud Krogh memorandum to "Thursday Morning Leadership Meeting File," Folder: "Bipartisan Leadership Meeting – October 22, 1970," [Sic, actually 1969], Box 22: "Alpha Subject/Drugs," Files of Egil "Bud" Krogh, WHCF, 1969-73, Nixon Presidential Papers.

for his drug law enforcement and had Bureau of Narcotics and Dangerous Drugs Director John Ingersoll speak about this necessity. Using notes prepared by BNDD Deputy Counsel and Nixon ally, Michael Sonnenreich, Ingersoll informed the group, "In the light of recent Supreme Court decisions, possession counts for marihuana and cocaine [could] no longer be enforced." He noted, the Supreme Court was also reviewing "the legality of the possession and sale laws relating to heroin." Ingersoll thus urged "prompt action… on the Administration's proposal" and warned, "should [current] law ultimately be found to be constitutionally deficient, the Federal Government, for all practical purposes, would be out of the narcotic and marihuana enforcement business."[84]

Mindful of those problems, most attendees were on board with the exclusive law enforcement focus of the administration's drug bill.[85] Secretary Robert Finch, speaking more for Nixon than his Department of Health, Education, and Welfare, acknowledged the bill's "enforcement thrust" and admitted, "It certainly does not pretend to cover, and we are not covering now, the educational aspects and the research aspects and the rehabilitation aspects. I

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[84] Michael Sonnenreich, Deputy Chief Counsel, Bureau of Narcotics and Dangerous Drugs, memorandum to Egil Krogh, Jr., Deputy Counsel to the President, October 21, 1969, Folder: "Bipartisan Leadership Meeting – October 22, 1970," [Sic, actually 1969], Box 22: "Alpha Subject/Drugs," Files of Egil "Bud" Krogh, WHCF, 1969-73, Nixon Presidential Papers; see also Richard Nixon, "Remarks at a Bipartisan Leadership Meeting on Narcotics and Dangerous Drugs," October 23, 1969. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=2280.

[85] This perception of necessity had repeated consequences for the ultimate outcome of the Controlled Substances Act and its related Titles. Throughout the year and a half of debates, substantial evidence emerges for how certain invested groups "bludgeoned" others into compromises with threats to hold up passage and thereby keep the nation without an effective drug law. See for example, Dodd's statement on the floor of the Senate in October 1970 decrying the failure to include Librium or Valium in the final bill, cited in "Comprehensive Drug Control Bill Cleared by Congress," *CQ Almanac 1970*, 26th ed., (Washington, DC: Congressional Quarterly, 1971), 531-39.

don't think we should kid ourselves that we are."[86] At that meeting, Nixon had allies who supported the "law enforcement thrust" of the bill, but there were others who intended to focus federal resources on aspects the White House never wanted to cover, namely treatment and rehabilitation. On one side was the law and order crowd, characterized by Senator Thomas Dodd, and on the other were supporters of treatment and education, such as Congressman Paul Rogers. Embodied in such disputes between Democrats, those debates far preceded Nixon and this bill, but now he had to wade in and appease both sides to get his new drug law passed.

If any single person was actually responsible for taking liberal visions of national power and using them to create our modern war on drugs, it was Tom Dodd. The Senator from Connecticut first made a name for himself as a U.S. prosecutor at the Nuremberg Trials. He spent two terms in the House before running for the Senate in 1956 and losing to Prescott Bush, progenitor of his own political dynasty. Two years later, Dodd won the other Senate seat for Connecticut. By 1967, he faced accusations of campaign finance violations and alcoholism, and he earned the distinction of becoming the first Senator since Joseph McCarthy to be censured by the U.S. Senate. Throughout these peaks and valleys, however, Dodd maintained control of the Juvenile Delinquency Subcommittee of the Senate Judiciary Committee and thereby kept a direct hand in the development of federal drug policy. He investigated amphetamines and barbiturates in the early 1960s, introduced the legislation that became the Drug Abuse Control Amendments

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[86] Richard Nixon, "Remarks at a Bipartisan Leadership Meeting on Narcotics and Dangerous Drugs," October 23, 1969. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=2280. Finch was a longtime, close associate of the President; helped run Nixon's presidential campaign in 1960; was, by some accounts, a top choice for Vice President in 1968; and only served as Secretary of HEW for 2 years before becoming a Counselor for the White House.

in 1965, and now was responsible for reporting the administration's new drug bill for a full Senate vote.[87]

Dodd's shifting attitudes about drugs over the 1960s also reflected how the Vietnam War and its consequences for domestic disorder, in turn, shaded understandings of drug use and proper responses. Like many politicians, the Senator started to see a direct connection between the problems in Vietnam and U.S. soldiers' drug use, even going so far as to suggest the My Lai incident resulted from "marijuana toxic psychosis."[88] Dodd also never shied away from domestic police power, but a 1970 speech reveals how the war in Vietnam and on the streets of America had taken Dodd's views to new extremes. Addressing the "Menace of Moral Pollution," Dodd decried how the "anti-war issue" had allowed "New Left militants" to "take into tow hundreds of thousands of innocent and idealistic young people." He feared this group's belief "that the entire purpose of life is self-gratification," and he argued, "in their never-ending quest for self-gratification they take to marijuana and pep pills and LSD and heroin." Dodd thus supported "measures to control the spiritual and moral pollution of American society" and touted the White House's legislation "to assist our law enforcement authorities in cracking down on the

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[87] As the Bipartisan Leadership Meeting, Dodd assured his fellow Senators and the President that his "subcommittee [would] report the bill out within a week," Nixon, "Remarks at a Bipartisan Leadership Meeting on Narcotics and Dangerous Drugs," October 23, 1969. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=2280. For details on Dodd's censure, see Anne M. Butler and Wendy Wolff. *United States Senate Election, Expulsion, and Censure Cases, 1793-1990*. S. Doc. 103-33, (Washington, DC: Government Printing Office, 1995).

[88] Senate Subcommittee to Investigate Juvenile Delinquency, Press Release, March 16, 1970, Box 212, Thomas J. Dodd Papers, University of Connecticut, Storrs, CT. For a full analysis of this phenomenon, see Jeremy Kuzmarov, *The Myth of the Addicted Army: Vietnam and the Modern War on Drugs* (Amherst: University of Massachusetts Press, 2009).

pushers."[89] Sticking to his guns, Dodd helped guide the administration's bill through the Senate, keeping it focused on law enforcement and a revision of the drug laws. A few days after the Senate unanimously voted in favor of the bill and sent it to the House, Dodd proudly read an article from the *Bridgeport Post* into the Senate Record. Dodd's humble brag sought praise from "the people who are decent human beings and obey the law" for his ability to keep a controversial "no-knock" provision in the Senate version of the bill.[90] The bill had changed since Mitchell first presented it six months earlier – a title dealing with rehabilitation had been added and then removed, for example – but the Controlled Dangerous Substances Act was "still supported by the Administration."[91]

Things got more complicated when the bill went to the House of Representatives. First, the constitutional basis for legislation also had implications for the Committee in charge of conducting hearings on that legislation. Because the new drug law eliminated narcotics control based on taxation, that portion of the bill had to be referred to the House Ways and Means Committee. Working with the White House, that Committee created a Title, which would override all previous drug laws and forgo their basis in the revenue raising power of the Constitution. The remainder of the bill was refereed to the House Commerce Committee's Subcommittee on Public Health and Welfare, and that was where the Nixon administration ran into trouble. "Mr. Health," Democrat Paul Rogers challenged major portions of the bill,

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[89] Senator Thomas J. Dodd, "The Menace of Moral Pollution," Text of Speech at the Brainard Masonic Temple Order of the Eastern Star, New London, CT, February 6, 1970, Box 212, Thomas J. Dodd Papers, University of Connecticut, Storrs, CT.

[90] "'No-Knock' Raids Backed," *Bridgeport Post*, January 30, 1970, included in "Daily Digest, Senate Proceedings, Thursday, February 5, 1970," *Congressional Record* 91st Congress, 2nd Session, 2523-4.

[91] "Comprehensive Drug Control Bill Cleared By Congress," *CQ Almanac 1970*, 26th ed. (Washington, DC: Congressional Quarterly, 1971), http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/ cqal70-1293935.

including the authority to determine which drugs the new law should control and how. When Roger Egeberg – another Nixon ally installed as Assistant Secretary of HEW – "apparently caved in" to the White House's desire to have the Justice Department control such decisions, Rogers went on the offensive, giving "Justice and H-E-W witnesses their first taste of outright hostility." Flustering Egeberg with his questions, Rogers insisted, "H-E-W must be involved… the basic determination as to what drugs are listed must come from H-E-W."[92] Despite Rogers's protests, the final version of the law gave the Attorney General the authority to determine how drugs were scheduled and left HEW only some advisory power over whether or not drugs ought to be controlled.[93]

Despite the White House and its supporters' success in keeping determinations of drug danger out of the hands of the government's health experts, the Public Health Committee still had support for non-punitive treatment of drug users. Thus, when the bill passed the House and returned to the Senate, it had become the Comprehensive Drug Abuse Prevention and Control Act and now had three major Titles. Title II of the Comprehensive Bill was the Controlled Substances Act – the new drug control system based on the power to regulate commerce, and Title III was the House Ways and Means portion of the law that struck down the outdated taxation laws. Whi1e Titles II and III contained "in essence, all of the provisions" that the Nixon administration desired, Title I established new funding for treatment, rehabilitation, and education and expanded the authority of HEW to treat drug abuse. A White House staffer noted

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[92] "Rogers Fears Empire Building by a Future Attorney General," *F-D-C Reports*, February 8, 1970, 4-6, available in Folder: "Administration Drug Bill [III] [3 of 5]," Box 30: "[Administration Drug Bill [III] [1 of 5] – Dupont-Glore-Forgan," Files of John W. Dean, WHCF, 1969-73, Nixon Presidential Papers.

[93] "Comprehensive Drug Control Bill Cleared By Congress," *CQ Almanac 1970*, 26th ed. (Washington, DC: Congressional Quarterly, 1971), http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/ cqal70-1293935.

derisively, "Congressman Paul Rogers was naturally the main moving force in the inclusion of this title."[94] To secure a new drug control regime, the Nixon administration thus tapped into the public's growing concerns about lawlessness and disorder but still needed to overcome the many voices insisting that the misuse of drugs was not a matter for law enforcement.

Contesting Control

The White House found a trusted ally in Senator Tom Dodd, but lost control when their drug bill went to the House of Representatives. Nonetheless, the Nixon administration did not accept the House's amendments without a fight, and John Dean assessed the White House's options before the bill went back to the Senate for a final vote. He noted a number of necessary changes, such as the re-inclusion of Valium and Librium to appease Dodd. He also detailed the possibility of striking the new Title I, which Congressman Paul Rogers inserted during Committee hearings. Dean told the Attorney General, "it would be to our advantage to have it removed." Evincing the administration's priorities and planning, Dean feared, "it establishes a program of Federal drug rehabilitation that we have not thought through sufficiently." He thus continued to search for "an appropriate soldier to offer the amendment to strike Title I."[95]

Dean never found that soldier and the final version of the Comprehensive Drug Abuse Prevention and Control Act was sent to the President in October 1970 with Title I intact, authorizing a total of $189 million over the next three years for treatment, rehabilitation, and

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[94] Wallace H. Johnson, Associate Deputy Attorney General to the Attorney General, "Administration's Drug Control Legislation," September 10, 1970, "Administration Drug Bill [II] [8 of 8]," Box 29: "Draft Recovery Act of '72 – [Administration Drug Bill] [II] [8 of 8]," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

[95] John Dean memorandum for the Attorney General, "Drug Bill – Background for Leadership Meeting," September 10, 1970; Folder: "Administration Drug Bill [II] [8 of 8]," Box 29: "Draft Recovery Act of '72 – [Administration Drug Bill] [II] [8 of 8]," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

education.[96] If the Nixon administration could not stop this mandate, it would attempt to wrest control of spending away from HEW. To aid in that effort, the White House launched the Special Action Office for Drug Abuse Prevention (SAODAP) out of the Executive Office of the President in June 1971. The history of SAODAP reflects how Nixon officials inflated their D.C. crime initiatives in the administration's broader drug policy. It also reveals how Nixon sought to undermine the HEW role in the drug abuse field by creating an internal office to handle much of the new funds for rehabilitation, most of which went to methadone maintenance.

White House officials' opposition to Title I of the Comprehensive Drug bill provides a Rosetta stone for sharpening historical understandings of the administration's intentions. John Dean's memo insisted, "drug rehabilitation should be developed at the State and local level," and Dean therefore opposed "an increasing Federal role."[97] Even more, however, the White House had serious issues with HEW and its National Institute of Mental Health (NIMH), which was the intended distributor of the majority of funding for treatment and rehabilitation in the 1970 law. In the spring of 1971, the White House conducted an internal investigation of the perceived anti-administration activities of NIMH Director Bertram Brown. Perturbed by Brown's "lack of responsiveness" and opposition to cuts for mental health funding, the White House considered implicating Brown's advocacy as "lobbying" even if staffers did not believe their "evidence"

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[96] "Comprehensive Drug Control Bill Cleared By Congress," *CQ Almanac 1970*, 26th ed. (Washington, DC: Congressional Quarterly, 1971), http://library.cqpress.com.turing.library.northwestern.edu/cqalmanac/ cqal70-1293935.

[97] John Dean memorandum for the Attorney General, "Drug Bill – Background for Leadership Meeting," September 10, 1970; Folder: "Administration Drug Bill [II] [8 of 8]," Box 29: "Draft Recovery Act of '72 – [Administration Drug Bill] [II] [8 of 8]," Files of John W. Dean, White House Subject File, 1969-73, Nixon Presidential Papers.

was "strong enough."[98] Attorney General Mitchell also "strongly supported putting [any new agency] outside NIMH" because "he did not feel that a drug institute within NIMH would have credibility."[99] Egil "Bud" Krogh, Jr. and his childhood neighbor, now boss, chief domestic policy advisor, John Ehrlichman, continued to plot the advantages of keeping a tight fist around drug control. Both men opposed putting any "'new' institute within NIMH," and, Krogh argued, "If new money is available for drug treatment centers, this can be used as a negotiating tool with members of Congress who may want a center in their district." The President's men thus concluded, "an agency head answerable to the White House could guarantee that responsiveness."[100]

By the spring of 1971, Bud Krogh and his chief assistant on drug policy, Jeffrey Donfeld, began outlining plans to implement the new drug bill and propel Nixon to re-election in 1972. In May, Krogh and Ehrlichman met with Nixon, and Krogh outlined a series of detailed plans for "substantive" action designed to "retain the President's current lead in drug control." First on his list: "Withdraw drug programming from HEW." He suggested, "Creation of a Narcotics Special Action Office - - outside HEW - - with responsibility for rehabilitation, prevention, education, and research." Expounding on the plan, Krogh recommended, "That all identifiable non-law enforcement drug abuse programs be centralized into one new super agency outside of HEW

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[98] Fred Malek memorandum for John Ehrlichman, May 26, 1971; and Bill Horton to John Dean, "Memorandum on Bert Brown," Folder: "Bert Brown [Internal to Meeting with President]," Box 32: "Alpha Subject/Drugs," Files of Egil "Bud" Krogh, WHCF, 1969-73, Nixon Presidential Papers.

[99] Unsigned, likely Bud Krogh, "AG Views regarding new drug initiatives," ca. May 25, 1971, Folder: "AG/Richardson (1971) [Internal to Meeting with President, Top Civilian and Military Leaders, Thursday, June 3, 1971]," Box 32: "Alpha Subject/Drugs," Files of Egil "Bud" Krogh, WHCF, 1969-73, Nixon Presidential Papers.

[100] Bud Krogh memorandum for John Ehrlichman, "Drugs," May 14, 1971, Folder: "Drugs-Domestic Council Study Memorandum (1 of 2)," Box 33, Files of Kenneth Cole, WHCF, 1969-73, Nixon Presidential Papers.

with complete budgetary and management authority."[101] Nixon approved this project. On June 17, Nixon met with Congressional leadership and sent a special message to Congress, which proposed the creation of the Special Action Office of Drug Abuse Prevention, "located within the Executive Office of the President and… headed by a Director accountable to the President." Unwilling to wait for Congressional approval, Nixon promised, "Until the Congress passes the legislation giving full authority to this Office" its new Director would "institute to the extent legally possible the functions of the Special Action Office."[102]

Although he apparently did not know it when leaving Chicago to meet with Nixon and attend the President's press conference, Dr. Jerome H. Jaffe was Nixon's choice for SAODAP Director. Monitoring the progress of methadone research, Krogh and Donfeld considered Jaffe "the undisputed leader in America in narcotic addict treatment programs."[103] Reflecting the recent state-level boom in alternatives to punishment, in 1968 Jaffe launched the Illinois Drug Abuse Program (IDAP) – the first of its kind in the state. Jaffe adopted a "multimodality" system, as he called it, and the IDAP offered "a therapeutic community, a methadone clinic, and

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[101] Bud Krogh memorandum for The President, via John D. Ehrlichman, "Meeting with John Ehrlichman and Bud Krogh," May 27, 1971, Folder: "[Drug Abuse] [Internal to Meeting with President]," Box 32: "Alpha Subject/Drugs," Files of Egil "Bud" Krogh, WHCF, 1969-73, Nixon Presidential Papers.

[102] Richard Nixon, "Special Message to the Congress on Drug Abuse Prevention and Control," June 17, 1971. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=3048; for Nixon's announcement to the press that declared drugs "public enemy number one" and is regularly credited in popular history as the start of the war on drugs, see Richard Nixon, "Remarks About an Intensified Program for Drug Abuse Prevention and Control," June 17, 1971. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=3047.

[103] Bud Krogh memorandum for John Ehrlichman, "Drugs," May 14, 1971, Folder: "Drugs-Domestic Council Study Memorandum (1 of 2)," Box 33, Files of Kenneth Cole, WHCF, 1969-73, Nixon Presidential Papers; for Nixon's surprise request of Jaffe and his inability "to say no," see Baum, *Smoke and Mirrors*, 55-8.

a detox unit followed by outpatient care."[104] The Nixon administration, however, was only interested in the methadone maintenance strategy. Krogh and Ehrlichman recognized methadone was "not the answer to heroin addiction," but nonetheless believed, "it is the most effective technique now available for reducing heroin and criminal recidivism." The domestic policy advisors, therefore, "made clear that the preferred treatment is methadone."[105] Further forcing the administration's hand, however, officials at "NIMH were inclined to move more slowly and cautiously with respect to methadone." According to Elaine Sharp, "the creation of SAODAP was an organizational strategy to ramrod change in the drug treatment field." Sharp argues that Nixon's creation of the Office of Drug Abuse Law Enforcement (ODALE) a few months later was a similar attempt "to circumvent" existing bureaucracy.[106] Both SAODAP and ODALE, she argues, "were created because the existing bureaucracy was resistant to particular new initiatives that the Nixon administration wished to pursue."[107] As the case of SAODAP and its focus on

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[104] Massing, *The Fix*, 92; for a full analysis of Jaffe's work at IDAP and the White House, see Massing, *The Fix*, chapters 7 & 8.

[105] Bud Krogh memorandum for The President, via John D. Ehrlichman, "Meeting with John Ehrlichman and Bud Krogh," May 27, 1971, Folder: "[Drug Abuse] [Internal to Meeting with President]," Box 32: "Alpha Subject/Drugs," Files of Egil "Bud" Krogh, WHCF, 1969-73, Nixon Presidential Papers.

[106] Elaine B. Sharp, *The Dilemma of Drug Policy in the United States* (New York: Harper Collins College Publishers, 1994). Citing the work Richard P. Nathan, Sharp argues, "Nixon has often been portrayed as being at odds with the existing permanent bureaucracy and as responding with attempts to circumvent it by creating units within the White House that would be more readily controllable." She thus concludes, "In this respect, the creation of SAODAP was simply the drug policy equivalent of a more general pattern in the Nixon presidency." See also Richard P. Nathan, *The Plot That Failed: Nixon and the Administrative Presidency* (New York: Wiley, 1975). Sharp is correct to place this strategy within a broader pattern, but as with most other historians, her work misses the important long-term reasons why Nixon adopted such a strategy in this particular case.

[107] Missing the relative newness of such power, Sharp still argues, "In the case of ODALE the new initiative was simply the escalation of arrests against street-level dealers," Sharp, *Dilemma of Drug Policy*, 26. For a complete analysis of ODALE, see the dissertation's conclusion.

methadone maintenance makes clear, most of that resistance resulted from the administration's practice of placing political considerations ahead of policy effectiveness.

Laying bare the political symbolism of their overall drug policy, Nixon and his staffers also loved cooperative celebrities and jumped at the chance to have well known Americans endorse the President's drug programs and sway "the young people." After leaving jail, in fact, Krogh wrote a whole book about Elvis Presley's famous December 1970 visit to the White House to claim what he allegedly saw as a free pass for carrying guns and pills – a badge from the Bureau of Narcotics and Dangerous Drugs.[108] Elvis was just a passing phase, but television host Art Linkletter became a staunch Nixon ally, always willing to "say the darndest things" about his daughter's suicide and its connections to her use of LSD.[109] While Linkletter was invited to attend White House events, such as the October 1969 Bipartisan Leadership meeting, Nixon tapped former college football coach, Charles "Bud" Wilkinson to be the first captain of his drug team. Not least because he was still flying out to announce college football games on television each weekend, the old ball coach was quickly overwhelmed and quietly shuffled off until Jaffe could take his place.[110] During their preparations for the rollout of SAODAP, Krogh's

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[108] The book is also prominently displayed in the Nixon Library gift shop along with other souvenirs commemorating this event, Egil Krogh, *The Day Elvis Met Nixon* (Bellevue, WA: Pejama Press, 1994); Elvis actually wanted to give the President a gun, and had a practice of collecting badges and guns and using the former to justify the latter, for more on the meeting see National Archives and Records Administration, "When Nixon Met Elvis," Nixon Presidential Materials, https://www.archives.gov/exhibits/nixon-met-elvis. Accessed August 31, 2014; for more on Presley's habits, see Peter Guralnick, *Careless Love: The Unmaking of Elvis Presley* (New York: Back Bay Books, 2000).

[109] Epstein, *Agency of Fear*, 152-4. Linkletter hosted the radio and television show *House Party*, where he hosted a regular segment of "Kids Say the Darndest Things" – the same basic idea rehashed by Bill Cosby in the late 1990s as a standalone television program. BRIEFLY explain tenuous connections between the tragedy of daughter's death and her last use of LSD approximately a week earlier. SOURCE.

[110] Massing, *The Fix*, 97-101.

staff also talked with Sammy Davis, Jr. about a possible television special, featuring Davis and the President. When presenting the idea to the Nixon, Krogh argued, "through the testimony -- in song, speech and acting -- of celebrities (Elvis Presley, Johnny Cash, etc.) the show would suggest that meaningful life comes from pursuing life without the crutch of chemicals." Krogh also took the longer view and predicted that opportunities for Nixon "to associate" with "top entertainers" could "be sustained for 1972 campaign purposes."[111]

In October 1972, the President met with the new National Advisory Council for Drug Abuse Prevention, his coup de grâce in symbolic drug action less than three weeks before the election. Nixon appointed the council to advise Jaffe "on drug abuse prevention policy" and, thankfully, its Chairman, Professor James Q. Wilson, would have the professional expertise of not just Art Linkletter and Sammy Davis, Jr. but also professional football player Gale Sayers. Unfortunately for Nixon's publicity hopes, neither Davis nor Linkletter attended the event.[112] Whether it was unqualified celebrities or new operations in the Executive Office Building, Nixon always elevated politics over performance when executing his drug policies.[113]

Like Sharp, many historians have recognized how Nixon played politics with his Executive Office operations and quite a few quote Bud Krogh admitting as much. When

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[111] Egil Krogh, Jr. memorandum for the President, via John Ehrlichman, ca. May 1972, Folder: "AG/Richardson (1971) [Internal to Meeting with President, Top Civilian and Military Leaders, Thursday, June 3, 1971]," Box 32: "Alpha Subject/Drugs," Files of Egil "Bud" Krogh, WHSF, 1969-73, Nixon Presidential Papers.

[112] Egil Krogh, Jr. memorandum for The President, "Meeting With National Advisory Council for Drug Abuse Prevention," October 16, 1972, Folder 10: "Ex FG 348 – Nation Advisory Council for Drug Abuse Prevention," Box: "FG 346, FG 347, FG 348, FG 349, FG 350," Subject Files, White House Central Files, Nixon Presidential Papers.

[113] Edward Jay Epstein provided a still-accepted analysis showing how Krogh changed the way drug statistics were calculated and then subsequently changed them back before the election, thus creating the perception of a larger problem and then the equally false perception that the President's actions had solved the problem, Epstein, *Agency of Fear*, 177. See also Sharp, *Dilemma of Drug Policy*, 31-2.

discussing SAODAP many of those scholars acknowledge its political purposes but cite its actions as a sign of Nixon's ambivalence about responses to drug abuse. The picture changes, however, if the focus expands to examine the administration's attempts to cut Title I as well as Nixon's boldfaced plans to usurp authority from HEW and NIMH. That added perspective, in turn, alters understandings of the motivations for SAODAP, which is better understood as an action taken *in opposition to* effective treatment and rehabilitation programs.

The creation of SAODAP and appointment of Jaffe – despite his reluctance – added more scientific authority to the pre-existing, and now foundational, paradigm of the Nixon White House's drug policy that heroin users are criminals and drug abuse causes crime. A "Fact Sheet" on SAODAP's program goals and objectives made this point clear, listing the "Major Issues" to be tackled by the new office. The first two appealed to both sides of the cops and docs debate, noting that drug abuse was "rapidly increasing" in all parts of the nation and that such abuse "seriously impairs" both the individual and society. The third bullet point, however, injected Nixon's punitive perspective into SAODAP's programs, declaring, "Drug abuse, especially heroin addiction, substantially contributes to crime." The White House's new Special Action Office was thus charged with increasing "the number of individuals treated by methods proven to be effective," and, implicitly, keeping a tight reign on how those methods were determined and deployed.[114]

Since the Kennedy administration first popularized the concept of "drug abuse," politicians, drug reformers, and industry representatives had all progressively accepted the

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[114] "Major Program Fact Sheet," Attachment 2 in "Guidelines For Development of Performance Measurement and Operating Plan," undated, circa January 1972, Folder: "Performance Measurement," Box 5: "NIMH and OEO info," Jeffrey E. Donfeld Collection, Subject File, Nixon Presidential Library.

difference between stamping out the illegal traffic in drugs and humanely treating the victims of drug abuse. With the formation of SAODAP, Nixon could thus credibly argue that he was continuing with the recognition that, "Control of drug abuse requires the development of a comprehensive, coordinated long-term Federal strategy that encompasses both effective law enforcement against illegal drug traffic and effective health programs to rehabilitate victims of drug abuse."[115] However, this rhetoric did not reflect reality, and White House memos about the planning for SAODAP reveal how the Nixon administration's actions undermined any coherent or comprehensive program. In fact, the White House's ongoing attempts to wrest control from its own executive departments and propensity for politically expedient policymaking garnered criticism from both department heads and administration staffers.

Those treatment and rehabilitation programs, which were intended to wrest control from "liberal" Departments, like Health, Education, and Welfare, also suffered from the compounded problem of their underlying crime-fighting purposes, which inherently made their goals not only political but also punitive. In fact, a SAODAP policy statement acknowledged that "abuse potential [was] a health problem," but insisted BNDD – not the National Institute for Mental Health – keep control over launching investigations into the dangers of new drugs. Of course, this statement still sought to usurp the authority of both BNDD and NIMH, mandating, "the need for such studies should be brought to SAODAP's attention by BNDD before work is started."[116]

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[115] "Major Program Fact Sheet," ca. January 1972, p. 2, Jeffrey E. Donfeld Collection, Subject File, Nixon Presidential Library.

[116] Bob Garlock, Special Action Office for Drug Abuse Prevention, Executive Office of the President, to Jim Gregg, "SAODAP Policy/Strategy Statements," "SAODAP Policy Statements – Bureau of Narcotics and Dangerous Drugs," January 4, 1972, Folder: "SAODAP, J Donfeld Files, 1972 SAODAP Policy Papers," Box 5: "NIMH and OEO info," Jeffrey E. Donfeld Collection, Subject File, Nixon Presidential Library.

A few days after a SAODAP staffer circulated this detailed statement of the office's policy and strategy, White House Fellow Dick Klass, sent a sharply critical memo to Jeff Donfeld. Klass called the paper "difficult to understand" and insisted, "it is certainly not a coherent or useable document [and] simply does not fit together."[117] He also listed "a number of specific problems," such as the lack of a policy section for the Department of Defense and inclusion in the section for the Veterans Administration, "as well as other spots," outdated references "to regional urine testing labs, a scheme abandoned long ago." Continuing his rant, Klass cited a major "contradiction--or confusion" in the section on the Scope and Content of SAODAP operations. The second part of that section proposed, "to develop ways of using 'conventional or new Federal, particularly health care, delivery systems to combat drug abuse.'" The preceding portion, however, set a deadline "for phasing major T&R [treatment & rehabilitation] capability away from the feds to state, local and private." Although it is certainly possible, Klass did not speculate if that former part had been written when John Dean was still maneuvering to remove Title I from the Comprehensive Act or if it was drafted after that failed. Nonetheless, his memo got to the literal and metaphorical heart of the problem when he summarized the need for "a major effort to rationalize and integrate SAODAP's activities over the past months into a coherent document--not a quick cut and paste job."[118]

This analysis has held during reexamination, and historians, such as Claire Clark, have continued to evaluate the influence of "crime as the bottom line" in the Nixon administration's

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[117] According to his bio as a board member for The Center for Arms Control and Non-Proliferation, Colonel Klass served in the U.S. Air Force, flying combat missions in Vietnam, before becoming a White House Fellow in the Executive Office of the President, see http://armscontrolcenter.org/about/meet-our-experts/#RKlass. Accessed February 2, 2015.

[118] Dick Klass memo for Jeff Donfeld, January 7, 1972, "SAODAP Policy/Strategy Statements," January 7, 1972, Folder: "SAODAP, J Donfeld Files, 1972 SAODAP Policy Papers," Box 5: "NIMH and OEO info," Jeffrey E. Donfeld Collection, Subject File, Nixon Presidential Library.

drug strategy. Reflecting on the potential benefits of both methadone and therapeutic treatment, Clark argues, "When outcome measures were reduced to criminal recidivism, however, much of the creative potential that came with moving addiction treatment out of the criminal justice system was lost."[119] In 1969, the National Institute for Mental Health undertook a study of 52 treatment programs across the country. According to the study, drug treatment "had the greatest effects on welfare enrollment, opiate use reduction, maintaining employment, and decreasing alcohol use, non-opiate substance use, and illegal activities." Despite that influence on illegal activities, the NIMH concluded, "Treatment effects on arrests and jail were negligible."[120] Still, when taken national under the auspices of SAODAP, those programs were justified and judged based on their ability to solve the nation's crime problem and were ultimately found wanting. First methadone is also an addictive opiate. Moreover, as scholar Elaine Sharp argues, "because heroin addicts in publicly funded programs were disproportionately poor and black, methadone treatment raised the specter of deliberate, permanent drugging of the ghetto underclass." Not surprisingly, this led to public outcries against methadone clinics as well as the criminalization of rhetoric about their patients.[121] Those developments also foreshadowed a similar process in the nation's war on drugs from the 1980s until the 2000s, when policing urban gang violence

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[119] Clark, "Chemistry in the New Hope," 206.
[120] Saul B. Sells, ed., *Studies in the Effectiveness of Treatments for Drug Abuse, Vol. I* (Cambridge: Ballinger, 1974), 170; quoted in Clark, "Chemistry in the New Hope," 206.
[121] Sharp, *Dilemma of Drug Policy*, 28. Sharp also uses the work of David J. Bellis, who cited the following quote from "a minority group at a 1971 conference": "The white 'power structure' encourages methadone maintenance because it affects mainly those who have the most to gain from 'revolution,' weakening their will to resist 'illegitimate authority.' …Methadone maintenance programs expose clients to constant surveillance. Since methadone is highly addictive, addicts on the programs remain under 'life-long government supervision,'" Bellis, *Heroin and Politicians: The Failure of Public Policy to Control Addiction in America* (Westport, CT: Greenwood Press, 1990), 61-2.

overwhelmed considerations of treating the user and conditions of use, and the outcomes of such policing reflected deep racial and class biases.[122]

A decade earlier, however, SAODAP not only skewed judgments of its own programs but narrowed the possibilities for future experiments with treatment and rehabilitation. While Nixon refocused drug policy on crime prevention and passed on solving the causes and consequences of misuse, the administration also limited the potential for considerations of other non-punitive measures. Perhaps the starkest, and therefore well-known, example of this cause and effect was Nixon's response to the recommendations of the National Commission on Marijuana and Drug Abuse, often called the Shafer Commission for its chair, former Pennsylvania Governor Raymond Shafer. In a familiar compromise, the Commission was created by the 1970 Comprehensive Drug Bill, which mandated that the President appoint a commission to study marijuana and its tentative placement in Schedule I of the Controlled Substances Act. It was therefore both in line with the ongoing research tradition of the health reform crowd and also an incentive for support from the many in Congress who opposed the irrationality of regulating marijuana just like heroin.[123]

The Commission consisted of four congressmen, selected by their peers, and nine additional members appointed by the President, with Shafer in charge of avoiding any findings

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[122] For a recent example that demonstrates this point, see Donna Murch, "Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs," *Journal of American History* 102 (June 2015), 162-73.

[123] Unless otherwise noted, this analysis of the Shafer Commission is largely based on Eugene Hillsman, "The National Commission on Marijuana and Drug Abuse: A Symbol of the Times," Draft of paper presented at the *Alcohol and Drugs History Society Conference*, June 2015, copy of paper in my possession with special thanks to its author.

or recommendations that "would in any way embarrass [Nixon] or the Administration."[124] Regardless of that charge and the White House's ability to stack the deck with favorable members, Shafer could not deliver a report that satisfied the President. The Commission released its report in March 1972 and reactions were polarized but predictable – student groups praised its findings and law enforcement officials decried its recommendation to decriminalize possession of marijuana. The Shafer Commission argued that penalties should remain in place for trafficking, cultivation, and use in public, but it nonetheless concluded that the drug was relatively harmless, equating it to alcohol more than "harder" drugs such as heroin, LSD, or cocaine. Nixon had long made clear his opposition to anything that smacked of "legalization" and refused to address or act on the Commission's recommendations. He refused to hold a public ceremony and, as Eugene Hillsman summarizes, "never accepted or rejected the findings of the commission. Rather, he thanked the commissioners for their hard work and quickly tabled the report."[125]

This was thus another example of Nixon obfuscating his duty to execute certain mandates of the Comprehensive Drug Bill – portions the White House had only accepted to secure passage of its desired law enforcement package. It may not be surprising that Nixon would refuse to decriminalize marijuana during an election, but the decision still had effects beyond its political immediacy. Rejecting the Shafer report, Nixon could kick dust on widespread informed opinion – represented by his opponent, George McGovern – and, at the same time, make himself seem

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[124] Richard M. Nixon, Raymond P. Shafer, Jerome H. Jaffe, and Egil G. Krogh, Jr., Oval Office Conversation, September 9, 1971, 3:03-3:34PM, Nixon White House Tapes, Transcription by Common Sense for Drug Policy, http://www.csdp.org/research/nixonpot.txt. Accessed December 15, 2015.

[125] Hillsman, "The National Commission on Marijuana and Drug Abuse: A Symbol of the Times," 40.

tougher in comparison. The ultimate success of this strategy further relegated the Shafer Commission's findings to an earlier era that many deemed dead and gone with McGovern's defeat in November.

The War *Against* Acid, Amnesty, and Abortion

In 1972, Nixon ran for re-election and faced liberal Democrat George McGovern. An outspoken critic of the Vietnam War, Senator McGovern appealed to those disenfranchised by the debacle in Chicago four years earlier. According to his critics, however, the sources of that support could be boiled down to McGovern's stance on three issues – "acid, amnesty, and abortion" – all kindling for the lurking blaze of the culture wars. Widely considered "the most decent man in the Senate," McGovern began racking up primary victories, and after the Senator's triumph in Massachusetts, columnist Robert Novak decided to call some Democrat insiders for comment.[126] Novak has since then revealed he talked that night with Missouri Senator Thomas Eagleton.[127] McGovern subsequently chose Eagleton as his running mate before the press discovered Eagleton underwent electro-shock therapy and McGovern replaced him in favor of Sargent Shriver.[128] At the time, however, Novak and his writing partner Roland Evans published Eagleton's thoughts anonymously, writing, "One liberal senator… feels McGovern's

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[126] For a recent analysis of McGovern's "most decent" history and the impact of his politics, see Jeffrey J. Volle, *The Political Legacies of Barry Goldwater and George McGovern: Shifting Party Paradigms* (New York: Palgrave Macmillan, 2010); for a broader history of the political shifts of the period that also takes into account McGovern's presidential campaign, see Jefferson Cowie, *Stayin' Alive: The 1970s and the Last Days of the Working Class* (New York: New Press, 2012).

[127] Novak only revealed the source of the quote after Eagleton's death, writing about it in his memoir, Robert D. Novak, *The Prince of Darkness: 50 Years of Reporting in Washington* (New York: Three Rivers Press, 2007).

[128] For more on the McGovern-Eagleton-Shriver debacle, see Joshua M. Glasser, *The Eighteen-Day Running Mate: McGovern, Eagleton, and a Campaign Crisis* (New Haven: Yale University Press, 2012).

surging popularity depends upon public ignorance." Eagelton, who remained unnamed until after his death, told Novak, "The public doesn't know McGovern is for amnesty, abortion and the legalization of pot." Over the summer of 1972, this quote was regularly repeated and took on the alliterative "acid" in favor of the more pedestrian concern about "pot."[129]

A number of commentators have since evaluated the validity of these accusations. As Timothy Noah notes, "McGovern did indeed favor amnesty for Vietnam draft resisters, but so, prior to the 1972 campaign, had Nixon."[130] Additionally, McGovern had a "nuanced" position on abortion and actually "balked" when Democratic activists tried to insert a strong "pro-choice" plank into the party's 1972 platform. According to *The American Conservative*, McGovern "was broadly in favor of letting states set abortion policy, a stance that aligned him with pro-choice activists before *Roe* v. *Wade* but is more closely aligned with pro-lifers today."[131] Nonetheless, the drug charge was the most dishonest and likely the most damaging. Some have speculated that the charge was a sly reference to the Senator's daughter, Teresa, who had been arrested for marijuana possession in 1968. However, McGovern did not support legalization, and, Bruce Miroff argues, McGovern's proposals "disappointed those who favored a more liberal approach

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[129] Roland Evans and Robert Novak, "Behind Humphrey's Surge," *The Washington Post*, April 27, 1972, A23; for one of the many analyses of the sources and impact of Eagleton's quote, which were written upon McGovern's death in 2012, see for example, Timothy Noah, "'Acid, Amnesty, Abortion": The Unlikely Source of a Legendary Smear," *The New Republic*, October 21, 2012, https://newrepublic.com/article/108977/acid-amnesty-and-abortion-unlikely-source-legendary-smear. Accessed March 7, 2016.

[130] Noah, "'Acid, Amnesty, Abortion.'"

[131] W. James Antle III, "George McGovern's Pro-Life Paradox: He never meant to lead the party of 'acid, amnesty, and abortion,'" *The American Conservative*, October 22, 2012, http://www.theamericanconservative.com/articles/george-mcgoverns-pro-life-paradox. Accessed March 11, 2016.

to personal experimentation with 'soft' drugs."[132] Of course, it wasn't those people whose opinion mattered for Nixon's election. With a similar disregard for the facts, Nixon's Vice President, and political attack dog, Spiro Agnew sarcastically promised, "There'd be no crime" if McGovern were elected. "There'd be plenty of pornography, however, and plenty of pot" because – Agnew declared with a dig at the underlying basis for liberal reform – "in the Potporn Society there are no criminals, only root causes of crime."[133]

Despite Agnew and other Nixon allies' protestations to the contrary, McGovern espoused an approach to drugs that was in line with the majority of informed opinions. It was also colored by his personal experience with the complexities of substance issues as he struggled to support his daughter through her own battles with addiction. Teresa "Terry" McGovern was canvassing for her dad's 1968 Senate campaign in Rapid City, South Dakota when a motel housekeeper found marijuana in her bags.[134] Marijuana may have threatened to land her in jail, but alcohol was Terry's real problem. On the campaign trail in 1972, she was an audience favorite but also reportedly drinking on a daily basis. In 1995, after multiple cycles of relapse and recovery, Terry checked herself out of a treatment center. A few days later, she was found dead in a Madison, Wisconsin alleyway, where she had passed out in a snow bank with a blood alcohol level over .3

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[132] Bruce Miroff, *The Liberal's Moment: The McGovern Insurgency and the Identity Crisis of the Democratic Party* (Lawrence: University Press of Kansas, 2007), 138.
[133] Haynes Johnson, "Agnew Lashes Out At McGovern as Radical Candidate," *The Washington Post, Times Herald*, July 1, 1972, A8. Needless to say, Agnew did not mention that two weeks earlier, on June 17, five men working for the Committee to RE-Elect the President were arrested for breaking and entering into the Democratic National Committee's Headquarters at the Watergate hotel.
[134] Glasser, *The Eighteen-Day Running Mate*, 19.

percent.[135] Still two decades before this tragedy, McGovern likely was already worried about the dangers of addiction, and, at least one scholar has suggested, even in 1968, McGovern "felt partly responsible for Terry's troubles."[136] Thus, he certainly did not want to see his daughter go to jail for possessing a small amount of pot but neither did he have any illusions about the innocence of substance use.

Again, this view was not that different from the policies Nixon publicly espoused during his introduction of SAODAP. But, as with the Shafer Commission report, Nixon also worked behind the scenes to undermine those rational and inclusive policies in favor of a punitive approach guided less by effective principles than political symbolism. With such symbolism on his side, Nixon and his allies' hardline tactics helped the incumbent president secure a landslide victory, winning forty-nine states, including McGovern's home state of South Dakota. Two decades later, Newt Gingrich still found pejorative value in perceptions of McGovern's drug libertinism and jumped at the chance to characterize the pot-smoking (but not inhaling) Governor of Arkansas as just another "countercultural McGovernik."[137]

The triple-A quote was therefore wholly inaccurate, but its reverberations and McGovern's response revealed the success of Nixon's efforts to preclude considerations of non-punitive drug policies. A McGovern campaign commercial evinced this shift. Standing with a group of workers on a factory floor, McGovern responded to a question about drugs. Despite – and perhaps also because of – his reputation for libertinism, McGovern doubled down on the connection between crime and drug use, declaring, "You're never going to get on top of crime in

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[135] "For a Former Senator's Daughter, a Solitary Death in the Snow," *The New York Times*, December 18, 1994; Laura Blumenfeld, "Teresa McGovern: A death in the cold," *Washington Post*, February 5, 1995.
[136] Glasser, *The Eighteen-Day Running Mate*, 19.
[137] Gingrich's statement about Bill Clinton is quoted in Miroff, *The Liberal's Moment*, 291.

the United States until you get on top of drugs, because half of all the crime in this country is caused by the drug addict." He continued, "They'll kill, they'll steal, they'll do anything to get that money to sustain that drug habit. And we've got to have a program that's better than the one we have now, to deal with drugs, if we're going to get on top of the crime problem."[138]

Dogged by Eagleton's alliterative allegation and his handling of the VP nomination, McGovern's tough talk and implications of law enforcement solutions proved too little too late. But his strong stance on the connections between drugs and crime revealed how the paradigm for understanding drug control had changed irrevocably over the previous few years. Seen as a repudiation of modern liberalism, McGovern's defeat also reflected a new political reality, whereby even the appearance of being soft on drugs or crime could be a political death sentence and nuanced debate became another "third rail of American politics."[139] For politicians of both parties, all that remained was a punitive race to the bottom – competing over who could get tougher, support more cops, and protect the most middle-class families. At the same time, improving the conditions that caused drug misuse, not to mention caring for those who misused drugs, receded into the background. From the perspective of many on Capitol Hill, therefore, other than the new acceptance of methadone maintenance, feasible political options probably did not seem that different from the mid-1950s when Congress approved death sentences for heroin dealers. Unlike the Anslinger era, however, the federal drug regime now had exponentially bigger budgets and manpower, a unified approach, and extensive new powers. With such an

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[138] George McGovern Campaign, "Crime and Drugs," 1972, for full video and transcript see, Museum of the Moving Image, "The Living Room Candidate: Presidential Campaign Commercials, 1952-2012," http://www.livingroomcandidate.org/commercials/1972. Accessed December 15, 2015.

[139] William Safire, "Third Rail," *The New York Times Magazine*, February 18, 2007, http://nyti.ms/1LWLpR1. Accessed March 11, 2016.

arsenal at their disposal, it was only a matter of time before enterprising politicians started to use or abuse it.

Conclusion

In June 1971, shortly after announcing the formation of SAODAP and making his infamous "public enemy number one" declaration, Nixon became the first president to be publically recorded using a derivation of the phrase "war on drugs." He said "war against drugs," but the point was the same. Maybe more surprising is that he said it in Atlantic City, to a roomful of doctors. And, in doing so, he revealed how much his administration had rolled back the developments of the previous decade. The speech even included a classic Nixon stutter as he struggled to differentiate use from abuse. "We have got to face up to the fact," he declared, "that within this climate it is altogether too easy for the abuse of drugs--not the prescription, now, and the use, but the abuse of drugs will flourish in that kind of a climate, in a climate where individuals believe, because of inadequate education, that they can take a pill for every problem." Perhaps not realizing they had heard the same thing every year from the FDA Commissioner since the days of George Larrick, Nixon told his audience, "Listen to this: The estimate is that 50 percent of the amphetamines and barbiturates were diverted into illegal sales. So there is the problem in terms of education as well as enforcement."[140]

This sentiment was no different from what one would have heard at an FDA hearing in the late 1950s and early 1960s, but Nixon reframed the problem. He dropped any talk of enforcement, made no mention of regulations, and only spoke of education. Instead of a flawed industry, where doctors prescribe too many pills to adults who take too many pills - which would

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[140] Richard Nixon, "Remarks to the American Medical Association's House of Delegates Meeting in Atlantic City, New Jersey," June 22, 1971. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, http://www.presidency.ucsb.edu/ws/?pid=3051.

demand more enforceable regulations – Nixon presented the issue as one of uneducated and impressionable youth. Again replacing substance with symbolism, he proceeded into a discussion of how doctors could help. Instead of accepting more regulation, not writing as many prescriptions, or keeping better records, they could educate the youth like Nixon's old Doctor Thompson used to do back in Whittier. Other than some self-policing by the American Medical Association's Council on Drugs, he made no mention of the potential or even need for more regulation of an industry that was about to be in the throes of dealing with diet pill clinics, Quaaludes, and other "scrip mills."[141]

The blurred lines between pills and drugs, doctors and dealers that defined the early years of "drug abuse" policy had been re-inscribed. Expanding understandings of drug abuse had necessitated a related acknowledgement of the role that doctors played in spreading such misuse. Overprescribing pills and under-monitoring patients, doctors could move psychoactive substances as fast as any street pusher. That was the situation into which the FDA and BDAC inserted themselves with the passage of DACA in 1965. Now, with his speech and its focus on voluntary cooperation, Nixon acknowledged overuse of prescriptions was still a problem but nonetheless sought to remove federal regulators from the equation – foreshadowing the

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[141] Before pivoting to a general discussion about the strength and future of the country, Nixon sketched out, "what [he] would like to call Project USA, a project which would marshal the tremendous energy, the brains, the dynamism, the leadership---the leadership--of the doctors of this country in an all-out battle against drug abuse; and against it in terms of educating particularly the young people of this country about it," Nixon, "Remarks to the American Medical Association's House of Delegates Meeting in Atlantic City, New Jersey," June 22, 1971; David Herzberg, "Busted for Blockbusters: 'Scrip Mills,' Quaalude, and Prescribing Power in the 1970s, in Jeremy A. Greene and Elizabeth Siegel Watkins, *Prescribed: Writing, Filling, Using and Abusing the Prescription in Modern America* (Baltimore: The Johns Hopkins University Press, 2012): 207-31.

conservative and neoliberal movements that hated federal regulations but loved federal power and would further ratchet up the drug war's construction of the carceral state.[142]

The federalization of drug policy and alterations in that policy since Nixon's election, in turn, set the stage for later developments. Despite a brief lull during the Ford and Carter administrations, every subsequent President has expanded the reach of federal drug laws, taking power originally intended to regulate commerce and protect consumers and reapplying it towards policing people. This was not the first time national politicians have sought to expand their reach, but it has become the most successful and consequential use of domestic power in the recent past.

While it was solidified by Nixon and carried on by each President since him, the authority to deploy such power would never have been achieved without a shift in the language of drug policy and its momentary expansion to also focus on pharmaceuticals and consumer protection. That blurring of drugs and medicine, in turn, provided the opening and justification to begin policing drug users with power originally intended to control companies and their commerce. In short, through the use and abuse of government power, laws intended to protect "users" became the legal basis for policing "abusers."

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[142] For analysis of these phenomenon, see for example, David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2007); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001); Philip Jenkins, *Decade of Nightmares: The End of the Sixties and the Making of Eighties America* (New York: Oxford University Press, 2008); and Daniel T. Rodgers, *Age of Fracture* (Cambridge, MA: Harvard University Press, 2011).

EPILOGUE

Prescribing a New Epidemic

Politicians have declared a "war on drugs," many times. But it has never really fought that war, at least domestically. Instead, police power is overwhelmingly, but selectively, focused on the users of drugs, primarily black market drugs and not those made in corporate laboratories for the profit of shareholders. As a result, in the past few decades, the United States has developed another serious drug problem, what many in politics and media are referring to as "the worst drug crisis in American history."[1]

Every day in 2016, an average of 78 Americans died from an opioid overdose, and, according to the Centers for Disease Control and Prevention, "at least half" of all these deaths "involve[d] a prescription opioid." From under-regulated "pill mills" to the trusted family doctor's office, "providers wrote nearly a quarter of a billion opioid prescriptions in 2013" – enough for every adult in the country to have their own bottle. Amid a broader boom in the pharmaceutical market and declining access to quality healthcare, deaths from prescription painkillers have "quadrupled since 1999" as sales of prescription opioids have also "nearly quadrupled."[2] At the same time, the federal government arrested more than 30,000 people a year

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[1] Dan Nolan & Chris Amico, "How Bad is the Opioid Epidemic?" *Frontline: Chasing Heroin*, February 23, 2016, http://www.pbs.org/wgbh/frontline/article/how-bad-is-the-opioid-epidemic. These claims, as with most drug crises, are probably hyperbolic, but the sheer scope of this current problem is relatively unprecedented, with overdoses now apparently killing more people than murders and car accidents combined.

[2] "Understanding the Epidemic: Record Overdose Deaths," (last updated June 21, 2016), and "Prescription Opioids: The Problem," (last updated March 16, 2016), both available at https://www.cdc.gov/drugoverdose/epidemic/index.html, produced by Division of Unintentional

for illegal drug offenses, contributing to an era of mass incarceration that has made the United States the most punitive nation on earth.[3]

One side of this coin was the "American pain revolution," and, according to journalist Sam Quinones, by the 2000s it was complete. In addition to the untold numbers entering a blossoming black market of resold pills, "most of the country's hundred million chronic-pain patients were now receiving opiate painkillers." Overwhelmingly, those prescriptions came from "general practitioners with little time and little training in pain management" – and even less direct oversight or regulation from the federal government.[4]

On the flip side was the punitive turn – also characterized by "a host of practices and attitudes woven into daily life," from police patrolling public schools to private prisons trading stocks on Wall Street.[5] In addition to the millions behind bars, the contemporary carceral state "encompasses the more than eight million people… under some form of state control," including

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Injury Prevention, National Center for Injury Prevention and Control, http://www.cdc.gov/injury, Centers for Disease Prevention and Control; accessed November 11, 2016.

[3] Howard N. Snyder, "Arrests in the United States, 1990-2010," October 2012; and Mark Motivans, "Federal Justice Statistics, 2011-2012," January 2015, (Washington, DC: US Department of Justice Bureau of Justice Statistics). For a foundational call for more historical study of these processes, see Heather Ann Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *Journal of American History* 97, no. 3 (2010): 703-34.

[4] Sam Quinones, *Dreamland: The True Tale of America's Opiate Epidemic* (New York: Bloomsbury Press, 2015), 189.

[5] Michael Sherry, *Go Directly to Jail: The Punitive Turn in American Life* (book manuscript in possession of author), 1. For more on this cultural and political shift, see for example Philip Jenkins, *Decade of Nightmares: The End of the Sixties and the Making of Eighties America* (New York: Oxford University Press, 2006); Anne-Marie Cusac, *Cruel and Unusual: The Culture of Punishment in America* (New Haven: Yale University Press, 2009); and Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007).

parole and probation programs, drug courts, and myriad other monitoring and detention projects.[6]

These processes are deeply interwoven. When the Justice Department, with Congressional approval, created the Drug Enforcement Administration (DEA) it was intended to centralize the control of the licit and illicit trade of all drugs. However, the DEA's war on drugs happened in lockstep with an unchecked explosion in the misuse of prescription painkillers. Congressional appropriations have also reflected and reinforced this uneven commitment to drug control. In 2012, the Department of Justice received over $8 billion for "federal prisons and detention" and $3 billion for the DEA, while the Human Drugs Program – the FDA bureau charged with overseeing all aspects of the vast pharmaceutical industry – operated on a budget of less than $1 billion.[7] At least implicitly, this dissertation has sought to highlight how our current situation might have been avoided and why it ultimately wasn't. It has done so with attention to the history of power, government power to act – whether it be regulating a corporation or policing the illegal drug trade - and how the seeds of such power are planted for one purpose but often grow in unexpected or unintended directions.

Reflecting those fickle fortunes, the Food and Drug Administration was once the crown jewel of the national regulatory state, trusted with protecting consumers and serving industry, but the FDA's power and reputation has waned since the 1960s. The full explanation for this decline

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[6] Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015), 1. For a more expansive history of punishment in the United States, see Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration* (New York: Cambridge University Press, 2006).

[7] Drug Enforcement Administration, Office of Public Affairs, "DEA Fact Sheet," (December 2012); Food and Drug Administration, FY 2013 FDA Budget Request Report, "Human Drugs Program." The total FDA budget was just over $4 billion; Human Drugs Program received $987 million. U.S. Department of Justice, FY 2013 Budget Request, "Prisons and Detention: FY 2013 Overview."

is beyond the scope of this work, but most would cite a few related reasons. First, BDAC and its transfer to Justice was only one of the many duties the FDA lost during the late 1960s and early 1970s. In addition to the Bureau of Narcotics and Dangerous Drugs in the Justice Department, Congress approved the creation of other new agencies, such as the Environmental Protection Agency (EPA). The FDA's myriad pursuits of more power often inspired the creation of these agencies, and many Americans still associated the Food and Drug Administration with the liberal traditions of the New Deal. But that tradition, so powerful in forwarding the consumer protection politics of drug control, opened the FDA up to fresh criticisms and opposition, especially with the resurgence of conservative politics and ensuing "Reagan Revolution." During the 1980s, the FDA's procedures for evaluating new drugs – an arduous bureaucratic process made worse by conservative politicking and industry foot-dragging – raised serious criticism about access to experimental drugs for HIV/AIDS patients.[8] As companies captured the approval process, FDA made just as many mistakes approving bad drugs, such as Vioxx or, many would argue, OxyContin – a key ingredient in the current opioid crisis.

As had been the case with its failure to approve new HIV/AIDS medications, the FDA's contribution to the opioid crisis arose from a continuation of the practices that were part and parcel of its historic project to protect consumers from dangerous drugs. While the DEA maintained its power to police the distribution and possession of painkillers, the FDA still controlled how those drugs were labeled and when they could be brought to market. Sam Quinones and others have documented the story of Purdue Pharmaceuticals. Purdue created and

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[8] For more on failings of the FDA's drug approval process, see Steve Epstein, *Inclusion: The Politics of Difference in Medical Research* (Chicago: University of Chicago Press, 2007); and Epstein, *Impure Science: AIDS, Activism, and the Politics of Knowledge* (Berkeley: University of California Press, 1996).

marketed OxyContin, an extended release opiate that Purdue falsely claimed was less addictive because it reduced the highs and lows of taking multiple traditional release painkillers. Nonetheless, because Purdue could produce research to justify these claims, the FDA "approved a unique warning label for OxyContin," which "no other manufacturer of a Schedule II narcotic" ever received. With that sanction from the FDA, OxyContin's label included the claim that it was less addictive than other painkillers and "became a cornerstone" of Purdue's marketing strategy. Ironically, the FDA failed to appreciate the abuse potential of OxyContin, but its mandated label still "inadvertently" shared how that misuse might be accomplished – "warning patients not to crush the tablets" because it would release all of the dosage at once.[9]

Unwilling to directly challenge the authority of its allies in industry, the FDA also continued to trust professional associations to police unethical marketing practices and, more important, continued to count on doctors to know best what could be safely prescribed to their patients. In 2002, the Pharmaceutical Research and Manufacturers of America (the descendant of the PMA) issued a joint release with the FDA, establishing "voluntary guidelines on marketing opiate painkillers." However, this was far too late for the many doctors who depended on any source of information they could find about a drug. Doctors' time to do their own research was limited, and many well-meaning physicians relied on drug salespeople like Purdue's reps, who "had slides and graphics that presented the startling idea that the company's new drug was virtually nonaddictive." Purdue reps also happily gifted "OxyContin fishing hats, stuffed toys, coffee mugs, golf balls, and pens with a chart converting a patient's dose in other pills to OxyContin." And, like any good drug pusher, Purdue made the first dose free, providing "OxyContin coupons to physicians, who could in turn give them to patients for a onetime free

[9] Quinones, *Dreamland*, 126.

prescription at a participating pharmacy." Revealing how the FDA's reticence to intrude on the legitimate channels of the pharmaceutical industry contributed to this problem, "by the time Purdue discontinued the program, thirty-four thousand coupons had been received."[10]

Those particular failures of the FDA highlight larger lessons to be learned from this current crisis. Increasingly, politicians and police are joining experts in labeling the misuse of opiates "a health epidemic, not a war on drugs." As the *New York Times* recently observed, this shift "marks a stark contrast with the criminal justice system's approach to the crack-cocaine plague, which was met by mass arrests in mostly black and Hispanic communities." However, both the *Times* and the cops they interviewed still imagined the problem in law enforcement terms. "A big fear among police chiefs," the paper reported, "is that increased demand for low-cost, high-potency opioids will lead to more shootings, and murders, as prices drop and drug traffickers organize."[11] Police willing to carry anti-overdose medication and consider alternatives to jail time is a step in the direction, but a failure to conceive of the problems beyond the scope of the black market in turn limits possible solutions.

There are market-based solutions to this crisis, but they involve more policing of licit markets. Focusing on local distribution of fentanyl-laced heroin is also only a partial fix. In fact, we need to start tackling those local distribution networks in tandem with the global pharmaceutical manufacturers always creating fresh customers for themselves and, eventually for some, those illicit markets. We also need to start treating each side of this coin exactly how we have historically treated the other. Illegal drug markets need to be decriminalized and

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[10] Quinones, *Dreamland*, 134.

[11] Al Baker, "When Opioid Addicts Find an Ally in Blue," *The New York Times*, June 12, 2017 (last accessed June 26, 2017), https://www.nytimes.com/2017/06/12/nyregion/when-opioid-addicts-find-an-ally-in-blue.html. Thanks to Alexi Stoker for sharing this article.

regulated, helping to ensure that all users have at least some measure of confidence in the identity and dosage of the drugs they are consuming. At the same time, the government needs to start challenging private industry, perhaps reverting to where modern regulation began and declaring drug companies "public enterprises." Drug reformers have long proposed setting quotas on drug production. Others with more elaborate visions for national healthcare have touted benefits that would come from the centralized production and distribution of all drugs. However it is accomplished, the time is ripe to again consider new, more rational and holistic means of controlling drugs and aiding those struggling with addiction. One thing is certain – building a wall on the US-Mexico border is never going to solve the opiate crisis in New Hampshire.

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