

who are the most well off think that they have a monopoly on knowing the best way for the poor to avoid their problems. Yet this myopic approach totally ignores the needs of the poor and what is the best way to go about correcting them. Let's face it—some in government will never care. Bluntly, we should write them off. What is needed, is action now. As lawyers, the first step we should undertake is an education of those who are on the borderline or unsure as to what can be done. Tell them the problem as this Report does. Show them the pictures, as this Report does. One who is truly neutral or unaware, who reads this Report, cannot help but become educated and gain understanding; and with understanding comes compassion; with compassion comes passion; and with passion in the final analysis, comes results.

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THE CHEMICAL FEAST—*Ralph Nader's Study Group Report on the Food and Drug Administration*, By James S. Turner, New York: Grossman Publishers, Inc., 1970, \$6.95, (Paperback, pp. 273, 95¢).

In 1906, the condition of the American meat supply was vividly depicted for the people of this country in a book entitled *The Jungle* by Upton Sinclair.¹ Mr. Sinclair became one of the best known of that group of writers called the "muckrackers," men of social conscience who used their mastery of the literary art to expose various social, political, and economic ills. *The Jungle* has become a classic of American literature, and is widely reputed to have been the catalyst which stimulated passage of this country's first pure food and drug act.²

The fate of the various pure food and drug acts which have followed since 1906, and more importantly, of the Food and Drug Administration (FDA), a regulatory agency created to enforce those acts, is the subject of a new book called *The Chemical Feast* by James S. Turner. Like Upton Sinclair, Mr. Turner is a member of a group of socially aware people dedicated to the protection of the

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1. U. SINCLAIR, *THE JUNGLE* (1906).
2. Federal Food and Drug Act of 1906, 21 U.S.C. § 1 *et. seq.* (1964) has been superceded by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.* (1964).

American citizen via exposure of the ills of our society. This group is popularly known as "Nader's Raiders," or more formally as the Center for Study of Responsive Law.³ Mr. Turner is a lawyer by training, and, although his prose falls somewhat short of that of Sinclair, he has written a creditable book.

Mr. Turner has chosen to set forth his revelations in a nonfictional elaboration of the accumulated research data gathered by members of the Nader Summer Studies Project during the summers of 1968 and 1969. His goal is not entertainment, but rather exposure—exposure of the failure of the FDA to carry out its primary function—protection of the consumer. Toward this end, his literary technique is successful, while not perfect. The most serious fault is a reliance upon a repetition of several key incidents and criticisms to help make his point. While this is annoying at times, it is easily overcome by the compelling nature of the revelations set forth.

The stated purpose of the book is to "examine . . . how the quality of the American diet has been allowed to deteriorate."⁴ The FDA, a part of the Department of Health, Education, and Welfare (HEW), has the primary *governmental* responsibility for food protection. The *primary* responsibility, of course, rests with the food industry itself.⁵ But it was the failure of the food industry to carry out this responsibility that long ago led to the passage of various pure food and drug acts, and to the creation of the FDA. However, *The Chemical Feast* clearly demonstrates that government regulation also has failed to provide adequate protection. Mr. Turner states that

the FDA has found its meager although sometimes well-intended efforts continually neutralized by the powerful forces of special interests that include the large, well-funded efforts of Washington law firms, massive trade associations . . . , and a small group of industry-dependent "food scientists" who . . . routinely produce scientific studies that support the most recent industry marketing decision.⁶

3. As noted on the book jacket, "[c]ontributions to further this work are tax-deductible and may be sent to the Center at 1908 Q Street, NW, Washington, D.C."

4. J. TURNER, *THE CHEMICAL FEAST* 1 (1970).

5. The \$125 billion food industry is more than six times as large as General Motors, America's largest industrial corporation. J. TURNER, *THE CHEMICAL FEAST* 3 (1970).

6. *Id.*

The bias of the author clearly emerges as the book progresses—an unshaking belief that Big Business is amoral and unethical, that business motive is inimical to the public welfare.

Mr. Turner begins his analysis with a case history of the cyclamates fiasco which made headlines in late 1969 and early 1970. Specifically, this chapter portrays the inadequacy of the FDA to effectively protect the consumer from chemical additives. Casting serious doubt on the adequacy of FDA procedures is the revelation that serious health dangers were associated with cyclamates by a 1950 laboratory test, known to the FDA, almost 20 years before the additive was withdrawn from the market. Yet, the additive was declared safe and was widely used in a variety of foods for that entire period. Further, from 1950 on, the FDA received numerous additional warnings that the safety of cyclamate usage was questionable. Mr. Turner concludes from this data that the internal procedures used by the FDA are seriously inadequate, and that the FDA has placed itself in the position of doing what the food industry wants at the expense of the consumer. In this last regard, it is interesting to note that following the complete cyclamate ban originally announced by HEW Secretary Finch, the order was modified a number of times to delay the withdrawal of, and limit it to, certain types of products containing the additive, in order to allow the food industry to cut its economic loss. Nevertheless, a survey of food stores conducted one week after the withdrawal was to be effective, and after the delays had expired, revealed that cyclamates were still on the shelves.⁷ “The agency [FDA] has made no inspections yet for cyclamates. Spokesmen said the government is relying on the voluntary compliance of the food industry.”⁸

“Voluntary compliance” is one of many FDA official policies which come in for sharp criticism by Mr. Turner. This particular policy is part of the cornerstone of FDA thinking. After reading this book, however, one is convinced that the all-important profit motive of the food industry is inimical to the voluntary compliance concept, and makes a mockery of the regulatory function of the FDA. It is impossible to serve two masters which have such diverse interests as those of the food industry and the consumer. Mr. Turner makes a convincing argument for his belief that the FDA has forsaken the latter under the intense pressure brought to bear by the former, and strikes hard at the fact that many FDA decisions

7. A survey of 36 stores in 8 cities across the nation reported by the Associated Press showed that 21 still displayed food products of various types containing cyclamates. The government ban was supposed to be effective on 1 September 1970. San Diego Union, Sept. 11, 1970, at E-1, col. 4.

8. *Id.*

are made after consultation with representatives of the food industry, but that there is no spokesman for the consumer and therefore no guarantee that his interests will even be considered. Moreover, the fact that there is a strong tendency for former FDA officials to accept lucrative positions within the food industry following their employment by the FDA certainly does not lead toward objectivity. The manifestations of the decisions thus made clearly indicate that any doubts are resolved in favor of the food industry.

Another FDA policy which is subjected to critical appraisal is the assumption that "consumer interest and producer interest are inseparable, and that practices adverse to consumer interest are likewise adverse to the interest of industry"⁹ Mr. Turner, criticizing the wisdom of that assumption, argues that the producer wants high profits, which means highest possible prices with lowest possible costs of production, while the consumer wants high quality and value, which means the lowest possible prices and greater emphasis on product improvement. The inevitable result is well-illustrated. Orange juice and other beverages are watered; fat and cereal are added to processed meat; unsafe chemical additives are placed in food to change its color, taste, or to make it last longer. But this information is hidden from the consumer by food industry-sponsored regulations adopted by the FDA. Not only have attempts to require accurate labeling reflecting all ingredients and quality failed, but some particularly well-placed producers have succeeded in having regulations adopted which *prohibit* their competitors from honestly labeling their products for fear that their own products will look bad in comparison. The result is that honest producers cannot call attention to tangible advantages of their products regardless of whether they are safer, healthier, or more nutritious.

Even those regulations which would be effective if enforced, however, do not protect the consumer because of inadequate enforcement practices. Mr. Turner's discussion indicates that the FDA, like so many other entities today, has had a difficult time developing a system of priorities. He cites examples to support his claim that the wrong regulations are enforced against the wrong people at the wrong time. This lends some support to the notion that the FDA does not know what it is supposed to do, who it is to protect,

9. J. TURNER, *THE CHEMICAL FEAST* 82 (1970).

or who its masters are. He cautions against granting the FDA their requests for more money and more personnel as the cure-all for their ills, arguing that you cannot carry sand in a torn sack.

The two most revolting chapters from a gastronomical point of view are those dealing with hidden ingredients and food-borne disease. While detailing the many instances of filthy and unsanitary conditions causing health and safety hazards, Turner's discussion demonstrates how miserably the FDA has failed in its function of protecting the public, and how ludicrous it is to adhere to the notion of voluntary compliance.¹⁰ Furthermore, those readers who delight in following logic to an illogical conclusion or in sifting through given premises to discover the hypocrisy of the advocate will enjoy reading about the crazy-quilt pattern of the food standards program implemented at the behest of the food industry. Essentially, the FDA finds itself in the position of having subverted the entire purpose of the package labeling provisions of the law. The purpose was to require truth and honesty in labeling through full disclosure, but the law has been applied in such a way that any ingredient which is considered to be "standard" does not have to be listed on the label. So if you think you know what you are eating, guess again! Other deceptive labeling practices are plentiful; for example, in the process of bleaching flour to make bread white, 24 natural nutritional elements are stripped from the flour; then it is "enriched" by putting 4 of them back in. Turner's message is loud and clear: the food standards program has promoted rather than eliminated consumer ignorance and industrial fraud.

The fact that most Americans are healthy and over-fed is used as a defense mechanism by the food industry to justify the poor nutritional qualities of many products, and to avoid more effective labeling requirements. The additional fact that a smaller but not insignificant number of Americans is suffering from malnutrition is deemed irrelevant. Good sense dictates that those people who cannot afford to avoid malnutrition by the "shot gun" approach of mass over-eating that saves the more affluent from a similar fate

10. A daily reading of the newspapers is sufficient to add further support to these allegations. For instance: "The manufacturer of Oh Henry candy bars moved yesterday to take its products off the market following disclosure by the Food and Drug Administration that about one million bars made in June might be contaminated with salmonella.

"Salmonella is a bacterial germ which causes stomach upsets and diarrhea. . . .

"[T]he firm's candy factory stopped production about Sept. 4 after an FDA inspector reported finding salmonella in samples from two batches totaling approximately one million Oh Henry bars. The candy was all distributed last June." San Diego Union, Sept. 18, 1970, at A-23, col. 4.

must be given the means to obtain the maximum nutritional value for their available food dollar. Accurate labeling and increased education of the public (through truth in advertising) would lead in that direction.¹¹ That is the logical conclusion to be drawn from Mr. Turner's book. And part of that conclusion is his belief that the FDA has failed to provide that protection despite the fact that by law it is charged with that responsibility.

One aspect of the free enterprise system is the theory that defective products will be eliminated from the market through the interaction of competitive products. Why this has not happened in the food industry is one of several additional questions discussed by Mr. Turner. Additionally, he tries to provide answers to such other questions as the following: What are the motives of the food industry in trying to avoid accurate labeling? What is wrong with the administrative organization of the FDA which inhibits its effective operation? What happens to the noble motives of all the new FDA commissioners? Who is the real culprit? The FDA? The food industry? No matter who the real culprit is, the identity of the victim is perfectly clear—the consumer.

Mr. Turner has not attempted to provide a balanced picture of this situation. The curious reader will wonder what effect the expanding field of products liability has had on the food industry. Nonetheless, despite its deficiencies, this is an upsetting book.¹² It is upsetting because we are the consumers who eat the food which we erroneously believe to be both safe and nutritional. But it is upsetting from yet another point of view. *The Chemical Feast* is a graphic example of the failure of the system we are so proud of. It is upsetting because those trained in the field of law helped create the system, helped subvert it, and now stand by without attempting

11. A similar theme was the subject of recent allegations leveled against the dry breakfast cereal manufacturers by Robert Choate before a Senate Commerce subcommittee. While the accuracy of those allegations has not gone unchallenged, they nevertheless performed a function similar to that of *The Chemical Feast*; alarm bells began to ring and the consumer (hopefully) began to sit up and take notice, and perhaps to question the character and substance of his next meal.

12. This topic is catching on in the nation's press, with several articles and books appearing within the past six months. For a different point of view, see "The Chemical Breakfast" by David Sanford in *THE NEW REPUBLIC*, Aug. 29, 1970, at 12 (uncharacteristically moderate for that publication).

to correct it. One group of lawyers—Nader's Raiders—has overcome the inertia and the pursuit of the dollar so characteristic of the legal profession and has exposed a serious defect in our scheme of government regulation. It remains to be seen if and how that situation will be remedied, and by whom.

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