



11350 Random Hills Road, Suite 800, Fairfax, Virginia 22030 Phone (703) 934-6101 Fax (703) 352-3678

[fff@fff.org](mailto:fff@fff.org) [www.fff.org](http://www.fff.org)

## **FDR's Anti-Business Crusade**

**by Jim Powell**

In 1938, after having spent many New Deal years signing laws that banned discounting and established cartels, President Franklin Delano Roosevelt denounced “the concentration of economic control” that many of his laws promoted. He went on the attack against big employers, even though, with unemployment still in double digits, surely the top priority should have been to encourage the creation of private-sector jobs.

To be sure, FDR never made a move to repeal one of his predecessor Herbert Hoover’s biggest blunders — namely, the Smoot-Hawley tariff that fostered concentration by penalizing Americans who wanted to buy from overseas suppliers. So FDR’s latest denunciations didn’t mean he was really concerned about monopoly. Indeed, he established a number of monopolies, including the Tennessee Valley Authority.

In March 1938, FDR appointed Yale University law professor Thurman Arnold to head the antitrust division of the Justice Department. His book *The Folklore of Capitalism* (1937), a satire on antitrust laws, had been a bestseller. He remarked, “The advantage of the antitrust laws is that they are sufficiently vague,” meaning they gave government officials like Arnold a great deal of arbitrary power. Historian Ellis W. Hawley remarked that Arnold “was at first regarded as something of a joke, another Marx brother who had strayed into the government by mistake.”

Arnold soon hired some 300 lawyers to file antitrust lawsuits against businesses. A key part of Arnold’s strategy was to file both criminal and civil lawsuits simultaneously. Government attorneys could offer to drop the criminal charges if the target company agreed to make the changes they demanded and sign a consent decree. Often, too, Arnold launched a case not just against a single company but against an entire industry. There were lawsuits against the milk, oil, tobacco, shoe machinery, tires, fertilizer, railroad, pharmaceuticals, school supplies, billboards, fire insurance, liquor, typewriter and movie industries, among others. Altogether Arnold was responsible for some 99 criminal actions and 22 civil suits. Journalist Joseph Alsop quoted Arnold as saying that he aimed “to hit hard, hit everyone, and hit them all at once.”

He used publicity aggressively in an effort to influence public opinion against the companies and industries he was targeting. To provide an appearance of legitimacy, Arnold urged Congress to establish a body that would conduct a "thorough study of the concentration of economic power." Accordingly, on June 9, 1938, the Senate passed a resolution for the Temporary National Economic Committee (TNEC). There would be 12 members, half from Congress and half from the administration. The House passed this resolution on June 14, and FDR signed it on June 16. The hearings, presided over by Wyoming Senator Joseph O'Mahoney, went on for 18 months. Altogether, 552 witnesses provided some 20,000 pages of testimony, there were 3,300 technical exhibits, and 43 special studies were written.

But neither Thurman Arnold, nor those involved with the TNEC hearings nor anybody else, ever proved that private monopoly was dominant or that it was growing or, for that matter, that private monopoly was worse than the growing sector of government monopoly. Moreover, while the TNEC generated a stupendous amount of data and publicity, it didn't make any clearer what should be done. "The recommendations of the committee were harmless, and no one ever paid any attention to them," Arnold remarked.

Other investigators failed to find evidence that private monopoly was a serious issue. At a 1952 National Bureau of Economic Research conference on "Business Concentration and Price Policy," Harvard economists John Lintner and J. Keith Butters reported: "the best available evidence establishes a rather strong presumption that there has been no increase in over-all concentration over the last fifty-year-period and indicates that there probably has been some decrease in concentration over this period, at least so far as manufacturing is concerned." After studying available data, economists G. Warren Nutter and Henry Adler Einhorn reached similar conclusions that were published in their book *Enterprise Monopoly in the United States, 1899-1958*.

TNEC activities did send a message that the United States continued to be a politically risky place for long-term investments, so the TNEC did its part to prolong the Great Depression. In January 1940, for instance, the TNEC recommended that the Securities and Exchange Commission investigate the investment policies of life insurance companies, but the investigation expanded to cover just about every aspect of their operations. According to *Best's* magazine, which covers the industry, "Many people in the industry already feared that Roosevelt and some members of Congress wanted the federal government to take over life insurance and that they were going to use Social Security to do it. The committee's report, *A Study of Legal Reserve Life Insurance Companies*, did not allay their fears."

Before the TNEC hearings concluded, it had become apparent that the onslaught of antitrust lawsuits wasn't accomplishing much. In Madison Oil, one of the earliest cases, Judge Patrick Stone dismissed all charges against 11 defendants and ordered a new trial for 18 others. The case against Aluminum Company of America dragged on for 13 years, during which its

market share declined as the market expanded. In the paradoxical auto financing case, Arnold went after companies that cut consumer costs. Arnold didn't achieve many victories — in the best-known cases, the big movie studios were forced to sell their theater chains, and the Pullman Company was forced to concentrate on manufacturing sleeping cars and to get out of the business of providing sleeping car services.

One of the most bizarre cases involved Socony-Vacuum Oil Co. (later known as Mobil), Shell Petroleum, Pure Oil, Continental Oil and other companies indicted for having violated the Sherman Antitrust Act between February 1935 and December 1936.

Just three years earlier, in June 1933, FDR had signed the National Industrial Recovery Act that had authorized the establishment of cartel codes. Accordingly, on July 20, 1934, the NRA Administrator for the Petroleum Code wrote Socony-Vacuum Oil Co. Vice President Charles E. Arnott, later a defendant in the antitrust lawsuit: "I am requesting you, as Chairman of the Marketing Committee of the Planning and Coordinating Committee, to take action which we deem necessary to restore markets [i.e. fix prices] to their normal conditions in areas where wasteful competition [i.e. free market pricing] has caused them to become depressed...I am requesting and authorizing you, as Chairman of the Marketing Committee, to designate committees for each locality when and as price wars [i.e. bargain prices] develop...stabilize the price level.

Addressing the jury, Thurman Arnold and his associate lawyers denounced the employers as "the biggest men," "grasping men" and "malefactors of great wealth." The employers were convicted. The case went to the U.S. Supreme Court where FDR's appointee Justice William O. Douglas upheld the conviction.

Entry into World War II effectively ended FDR's antitrust crusade, as war production became the top priority, and big businessmen like Edward R. Stettinius and William Knudsen were recruited to get it done. FDR sent Arnold packing.

If FDR wanted to promote competition, he should have stepped out of the way, eliminating trade restrictions, regulatory restrictions, pricing restrictions, high taxes and other obstacles to enterprise.

*Jim Powell is policy advisor to the Future of Freedom Foundation and a senior fellow at the Cato Institute. He is the author of **FDR's Folly, Bully Boy, Wilson's War, Greatest Emancipations, The Triumph of Liberty** and other books.*

**This article was originally published in April 2009.**