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ZERO TOLERANCE WITH CHANGING TECHNOLOGY IN THE CANNING INDUSTRY

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We are all well aware that through the lawmaking process, government continues to become more and more involved in shaping the social and economic directions of American life. As a result, this government managerial establishment now must be viewed as a new institutional force on American life. It ranks in comparable influence to our historically recognized religious, educational, economic, and lawmaking institutions.

What sets it apart from other institutions is that its performance is essentially free from critical examination by the public or its congressional representatives. This is a profound difference, because the dynamic process of public acceptance or rejection of either ideas or products is the vital force that moves our traditional institutions to relevancy with contemporary society.

In the case of administration of federal law, competence in performance takes on far greater meaning than whether taxpayers are getting their money's worth. There is substantial evidence that in the absence of systematic critical examination of bureaucratic performance, mismanagement can distort and even subvert the intended objectives of underlying public policy.

As a participant within the food system, I am profoundly aware of the genuinely frightening counter-productive economic burdens that continue to grow in the private sector. These result from forced compliance with regulatory requirements established by the bureaucracy. They are so regressive and damaging as to appear contrived to discredit underlying policy.

Ominous problems are expanding like a cancer in the producing segments of our economy. This is because of the persistent failure of congress to provide a critical overview of bureaucratic performance in terms of public costs and public benefits. California's fruit and vegetable canning industry is the greatest concentration of this form of food preservation in the world.

It is an economic misfortune of this industry that it is now impacted by an expanding number of new federal laws that relate

to workmen's safety, environmental concerns, consumer considerations, and energy allocations. Because of these requirements, enormous sums have been spent and invested by this industry in recent years and at an accelerating annual rate. These non-productive capital demands compete with productivity and modernization investments to such an extent that it now seems certain there will continue to be substantial capacity abandonment without replacement.

It was within the context of this economic environment that officials of the Federal Food and Drug Administration conducted a series of meetings with cannery representatives during the winter 1974-75 to advise there would be intensified surveillance of industry sanitation practices in the following processing season.

It was made clear that a new emphasis for determining cannery compliance with the agency's prescribed good manufacturing practices would be a microscopic search of finished products for the detection of geotrichum mold. As is readily acknowledged by the FDA, geotrichum is a totally harmless mold. Its spores are omnipresent in the summertime atmosphere and its development is favorably nurtured by fruit sugars and warm temperatures. Obviously, this is a combination impossible to avoid in summer season fruit canning operations, just as it is in household kitchens where the mold also commonly appears.

Nevertheless, the agency representatives made it evident that if this mold were detected in products obtained at the time of an inspector's visit, preceding production also could be examined to determine if condemnation actions would apply to production not personally observed by the inspector. Since applicable regulations contain no tolerance for this mold, the effect of the agency's announcement was to mandate that a zero tolerance could be enforced. It would be, of course, at the agency's sole discretion.

I asked our technical services people to determine what, if anything, could be done to assure compliance with enforcement of zero tolerance requirements. Their response, confirmed by outside scientific consultants, was that nothing could be done short of limiting daily production intervals to periods that would be economically impossible to maintain.

Finally, since it would be impossible to assure the complete absence of geotrichum from canned fruits, our best strategy would be to intensify cleaning operations. Thus it would seem evident to inspectors that we were making an exaggerated effort to achieve compliance. To do this required a hard-to-swallow decision: as

opposed to our standard practice of operating around the clock with three seven-hour shifts, we would have to change to two shifts working nine to ten hours each.

Under our old system, we employed sanitation crews continuously. We also deployed them for intensive clean-ups with high pressure cleaning equipment on operating equipment during the down time provided by three one-hour lunch breaks and the six 15-minute relief breaks of the three shift operations. At least once a week a longer period was dedicated to across-the-house cleansing operations.

With the proposed change, these sanitation crews would provide this intensive cleaning during two one-hour lunch periods and the four 15-minute relief breaks. An additional four to six hours daily would be used for redundant cleansing of the idle plants. The only way we could compensate for the lost daily production hours would be to increase our dependency on costly cold storage to lengthen our processing season and to schedule seven-day production weeks instead of our normal six-day weeks.

Aside from the obvious economic burden, I was appalled at the employment consequences to the Modesto community where our fruit canning plants are located. The elimination of our third shifts meant the loss of 1,800 seasonal jobs in a rural community already suffering from excessive unemployment.

Because of the heavy negatives with this two-shift alternative, I chose to delay a final decision and sought to achieve assurances of other than zero tolerance guidelines. When this proved impossible, I reluctantly made the decision to move to the two-shift schedule. We then issued a public statement to inform the Modesto community of the reasons for our action. We believed this announcement necessary because of the significance of cannery employment to local residents and to avoid any implication that this action had been forced by any past sanitation failures in our canneries.

Nevertheless, when agency officials were contacted by the local press, the published response was to the effect that no change was required if our previous operations were in compliance. There we were: hung by what amounted to a "when did you stop beating your wife?" allegation!

Shortly after our public announcement, one of our canneries that does not process fruit was visited by an FDA inspector. His mission, we learned, was to determine if our labeling of a formulated

tomato juice cocktail drink was in conformity with a new agency interpretation of labeling standards for this product.

The agency's new objective was to assure that any dehydrated ingredients added for flavoring would be prominently identified as such. Also that the labels applied to our product and the labels' vignettes would not include the word "juice" if any dehydrated ingredients were used in the manufacturing process.

This is a relatively small volume product for our company. It is produced principally to accommodate the assortment needs of our private label customers. Thus, our problems in responding to these new labeling requirements were compounded not only by the necessity to advise customers of label changes, but also because of our inability to fulfill a substantial volume of orders on hand which include this product as a minor component of each ordered shipment.

More than a month's time was required to clarify our situation, to notify customers of necessary label changes, and to resume shipments. Even more significantly, we lost hundreds of thousands of dollars in sales because of our inability to fill orders during the involved period.

We remain perplexed as to why we were selected for this attention from among a large group of manufacturers of this product. We are especially curious as to why the manufacturer of the principal advertised brand — which is estimated to supply more than 75% of national consumption — apparently has not been required by the agency to change its labeling practices as we were last year.

Why, indeed, would an insignificant producer like Tri-Valley be so forcefully brought into compliance with the new requirements? Was it a form of bureaucratic retaliation for our public announcement of the reason for the elimination of 1,800 jobs in Modesto? We don't know.

What we do know is that two days into our resumption of canning operations this past summer, after an 11-day strike by cannery workers against industry employers, back to our cannery came an agency inspector for meticulous and time consuming examination of our past year's compliance with the labeling practices uniquely enforced on our firm's tomato cocktail drink. This was at a time obviously when all plant and technical management were heavily absorbed in the incredibly difficult tasks imposed by this loss of critical production time.

Since this visit did not require an inspection of production operations, we also wonder why it could not have been scheduled during the highly publicized industry-wide strike. Are all of these rather strange actions intended to be a reminder that it's unsafe to irritate Big Brother?

Returning to the actual fruit canning operations of last summer, our operating results were even more economically disastrous than we had anticipated. As best we can sum up, our total price tag of excessive costs for this adventure was at least \$2 million. To TriValley, it meant closing our fiscal year a half million dollars in the red as compared to what otherwise would have been a modest profit on nearly \$160 million in gross sales.

Here are some other experiences. Our industry's canneries are subject to overlapping inspections by the state and federal food and drug agencies. In recent years, both have increased the frequency and intensity of their examinations. It is no longer uncommon for us to have inspection teams from both agencies in our plants at one time, or in back-to-back intervals.

In apparent concert with their federal counterparts, the state agency also discovered an interest in geotrichum last year, and produced a record number of work stoppages for clean-ups of industry canneries. Their diligence was further demonstrated through issuance of an unprecedented number of nine industry citations, all of which required judicial proceedings.

In Tri-Valley's case, our plants were inspected by federal and state agencies a total of 23 times. This compares to 16 inspections in 1974, and 6 in the preceding year. It was Tri-Valley's good fortune that none of these led to either product condemnation or citation.

These sanitation inspections frequently cover the better part of two days' time and in all instances require involved management to submit written responses to the critiques. Because of the disposition of inspectors to request information to which they are not legally entitled and because of the necessity to confirm cited incidents, they must be accompanied at all times by top production and technical services management. This results in a critical dilution of top management attention to the dynamic events associated with perishable commodity processing.

In view of the increasing frequency of inspections and their time demands on management, we are giving serious consideration to new staff positions intended to deal exclusively with agency inspection teams.

This would probably require one individual for each of our six cannery locations, since inspection teams insist upon immediate entry and oftentimes are conducting simultaneous examinations at different locations. We are already committed to an annual budget approaching a million dollars for employees and industry representatives who dedicate most, or all of their time, interfacing with such diverse federal departments and agencies as the USDA, EPA, FEA, EEOC, OSHA, IRS, and the Fish and Wildlife Service as well as the FDA, together with seemingly countless duplications at the state level.

Obviously we are reluctant to add further to this non-productive expense in company counterparts to the bureaucracy and will do so only out of a decision of absolute necessity.

Recently a congressional source supplied us with copies of "minutes" produced by food and drug officials of two meetings in which I participated last year, and of a memorandum by agency officials to Commissioner Schmidt as a report on our industry's objections to the geotrichum witch hunt.

The word "minutes" is the operative term here, because by so identifying these memoranda, these unilaterally prepared documents take on the aura of records agreed to by all participants as factual summaries of the discussions. Nothing could be further from the truth.

In fact, none of us from industry who participated in these meetings were ever given the opportunity to review these so-called minutes before they were circulated by the FDA. Secondly, these so-called minutes placed words in my mouth that only in moderation can I describe as misrepresentations.

Thus, I was more than amazed to learn that I was recorded in the so-called minutes of an August meeting in San Francisco as acknowledging that my decision to shorten daily production hours was really to avoid processing surplus fruit, and that Tri-Valley simply used its public statements of concern regarding the geotrichum inspection procedure as a smoke screen to conceal this intention!

This fictional misrepresentation was a critical move by agency bureaucrats, because it subsequently became a vital self-serving reference in the memorandum to Commissioner Schmidt reassuring him that industry criticism of the agency's actions was without merit. Later, this fiction was repeated in a letter from the agency to a member of congress which carried the following statement:

You will also note that at the San Francisco meeting, one of the participants, (Mr. William Allewelt, Jr., President, Tri-Valley Growers) stated that the main reason his company changed to a two-shirt operation was because of the economic situation facing the California peach canning industry which had a large carryover from 1974 and an over-abundant 1975 crop.

Finally, copies of the agency's so-called minutes of our San Francisco meeting and the memorandum to Commissioner Schmidt apparently were distributed to concerned congressmen and other government agencies. This was what I view as a systematic effort to discredit the credibility of our industry and more specifically of my company and of me. That these representations are pure fiction can be confirmed by the production records of our company for the two years in question and by the witness of non-agency individuals who participated in the San Francisco meeting with me.

Well, where are we now? First, after surveying the economic wreckage of our fruit processing operations of last summer, we concluded that it would be necessary to return this year to three daily shift schedules. We preferred to assume risk attendant to this decision not to schedule purposeless and redundant cleansing operations.

To minimize the risks of punitive reactions by agency inspectors, we have made substantial physical alterations during the off-season. To facilitate our continuous cleansing operations, we have installed additional high pressure cleansing equipment. We have also added and intensively trained employees assigned to the sanitation operations, and we have continued to require highest level supervision of this effort.

With these substantial commitments and added costs, we have gone well beyond every precaution necessary to assure the wholesomeness of our canned fruits by any rational standard. But we cannot be assured that geotrichum will not be detected microscopically in our products. Thus, so long as we continue to can fruit we will never be safe from the threat of seizure.

Consumer safety never was a factor here. So, if the agency has accomplished anything on behalf of the consumer, it has acted to make the presence of a totally harmless, microscopically detected mold trace more scarce than it has been at any time since fruits were first canned and consumed. This has been accomplished at the expense of an appalling increase in the production costs of

California's canned fruits, which means that consumers must absorb these added costs in higher retail prices.

If they refuse to do so, fruit canning will decline in California as the result of the economic disincentives of the marketplace. The ultimate losers will be the growers with the loss of cannery sales for their farm products, and cannery workers with the loss of job opportunities.

Now, we all recognize that adjustments to the laws of supply and demand are natural events of the marketplace. The question that needs to be asked is: Should consumers, farmers, employees, and manufacturers be subjected to destructive manipulation of these economic laws simply because a government agency capriciously concludes on its own initiative to enforce a non-sensical, theoretically established standard of perfection, where neither product safety nor wholesomeness is a factor?

Consider the broader implications of this experience, the truly awful powers for destruction of our nation's productive capabilities that reside within a tunnel-visioned bureaucracy that functions without effective overview and serves neither the master of intellectual inquiry nor of the marketplace.

My concerns with this example of an expanding tyranny over the enterprise of America, and thus over its people, are best expressed by Plato's ancient words:

The people always have some champion whom they set over them and nurse into greatness. . . . This and no other is the root from which a tyrant springs; when he first appears he is a protector.