



"What were they thinking?"

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On why every public manager needs to focus on

## Purposeful Judgment not Bureaucratic Rules

Nothing hurts the credibility of government more than the formal but silly application of a legally defensible but hardly helpful bureaucratic rule.

Yet the personal incentives under which public officials labor often push them to enforce a formal rule in a situation for which the rule is at best inappropriate, at worst silly.

Unfortunately, by enforcing the rule, a public official invites both organizational and personal ridicule. Although I know of no example of this, those who have been subjected to the rule's sanction can easily retaliate by leaking to the press this example of bureaucratic absurdity.

That may be what happened when the U.S. Food and Drug Administration sent a "warning letter" to the Nashoba Brook Bakery in Concord, Massachusetts.

In the category of "Adulterated Foods," the FDA found a number of violations. For example: "Your firm failed to maintain buildings, fixtures, and other physical facilities in a sanitary condition and keep [them] in sufficient repair to prevent food from becoming adulterated."

This violation sounds serious. I think I'll avoid buying my sourdough bread or granola from this bakery.

These unsanitary conditions were not, however, what inspired National Public Radio, *Bloomberg News*, *USA Today*, the BBC, and the Australian News Service to cover FDA's letter.

Rather, it was a violation under the category of "Misbranded Foods" that got journalists' attention:

"Your Nashoba Granola label lists ingredient 'Love.' Ingredients required to be declared on the label or labeling of food must be listed by their common or usual name [21 CFR 101.4(a)(1)]. 'Love' is not a common or usual name of an ingredient, and is considered to be intervening material because it is not part of the common or usual name of the ingredient."

This complaint about "misbranded foods" made the FDA look silly. (It

also makes the FDA official who signed the letter look silly, so I am not naming him.) Indeed, there are two reasons why this complaint is silly.

First, almost no one reads the list of ingredients anyway. And those who do read it are not seeking to decide whether they like the taste of the combination of ingredients. Primarily, they want to know if the list includes their personal allergen.

Second, anyone who did read the list of ingredients would not be confused by the one called "love"—though they might chuckle a little.

Of course, the FDA officials who did the inspection and the one who signed the warning letter were obligated to include this "violation." If they failed to do so, they could receive an official reprimand that might damage their careers.

Still one or two of those who were involved in this inspection report may have wondered whether what they were doing made any sense. Some

In government, an apparently reasonable rule always rules. Even when a specific application of a generally reasonable rule flunks the "common-sense test," this rule still rules. The primary result is to undermine the government's credibility

might even have worried that complaining about the "Love" ingredient would make the FDA look silly.

Certainly any enterprising journalist would think so. This was a great story, an iconic story, another example of the absurdity of how government implements its regulations.

The regulation itself wasn't bad. But FDA's implementation flunked the common-sense test. And every journalist wanted in on the joke.

If, however, you are a level-headed public servant looking to achieve public purposes, the story had to

make you cringe. It wasn't going to help you do your job. It was only going to make your own job harder. Citizens who had read the love-isn't-an-ingredient story might easily assume that their next encounter with a government official could produce a similarly ridiculous ruling.

In the private sector, a bureaucrat who enforces the firm's *own* rules may—but doesn't have to—behave the same way. Yes, some people (as a colleague once observed) like to "play office." But a thoughtful person could recognize that the rule doesn't make sense in this particular situation and ask a superior for support in ignoring it. And the superior, recognizing that the rule accomplishes nothing, could authorize a waiver. Even if this "violation" is reported to superiors and two employees are reprimanded, customers won't boycott the firm's products or services.

Nashoba's "misbranding" of its granola actually helped the bakery. FDA gave it a lot of free—and positive—publicity. What's not to love about a bakery that lists "love" as one of its ingredients?

In government, however, the incentives are different. The rules rule. They cannot be challenged. Even when the formal implementation of a rule clearly fails to accomplish its underlying public purpose, even when it exposes the organization to ridicule, it cannot be ignored.

Was FDA legally obligated to call out Nashoba Bakery for misbranding its granola. Maybe. But it didn't help FDA accomplish its mission. If anything, it undermined it. **B**

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