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STICKING TO THE SCARE SCRIPT: ACTIVISTS LOOK TO COURTS, MEDIA TO CIRCUMVENT ACCOUNTABLE LAWMAKING

by
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Nearly 20 years ago, *60 Minutes* reporter Ed Bradley looked into the camera and told America that apples were deadly poison. *How A PR Firm Executed the Alar Scare*, WALL ST. J., Oct. 3, 1989, at A22. This was not the plot line from Snow White, but rather was based on a report from the Natural Resources Defense Council (NRDC) on a pesticide (Alar) some apple growers had used. The NRDC Report labeled Alar “the most potent cancer-causing agent in our food supply.” Michael Fumento, *Alar Revisted: Greens Still Trying to Salvage their Alar-Stained Reputation*, AMERICAN OUTLOOK MAG., Spring 1999. Bradley went on to report that children were especially at risk “because they drink so much apple juice.” *Media Myth: Nine Worst Business Stories (Of the Last 50 Years)*, <http://www.businessandmedia.org/specialreports/2008/MediaMyth/NineWorstStoriesFull2.asp>.

The results of the story were predictable. Congressional hearings were convened, apples were banned at many schools, the value of the apple crop dropped by more than half. *Media Myth, supra*; *How A PR Firm Executed the Alar Scare, supra*. Family farmers that had grown apples for generations were driven into bankruptcy. The damage done to the industry would take years to repair. Timothy Egan, *Apple Growers Bruised and Bitter After Alar Scare*, N.Y. TIMES, July 9, 1991.

The only problem, however, is that the apple story was half-baked. First, Alar was only used on a tiny percentage of the apples sent to market – and was not used on the apples in juice or other apple products. Environmental Toxicology Newsletter, Cooperative Extension, University of California, Vol. 9, No. 2, May 1989. Further, scientists in government and the University of California criticized the NRDC study as bad science. *Id.* Notwithstanding the media hype, neutral scientists concluded that Alar’s “status as a carcinogen is questionable.” Indeed, food safety experts later concluded “that the hazards from not eating fruits and vegetables because of the fear about the effects of pesticide residues ... far exceed the potential dangers posed by ingesting the residues.” *Id.*

Although the NRDC and its publicist claim that it was not their intent to see apples banned from school lunches, the report and the *60 Minutes* broadcast did fulfill other goals. The story was a public relations goldmine for NRDC. There were two segments on *60 Minutes*, cover stories in *Time* and *Newsweek*, appearances on *Today*, *Good Morning America*, network newscasts, and multiple stories in major newspapers. Most important, the report and the publicity generated “substantial, immediate revenue” for NRDC. *Media Myth, supra*; *How A PR Firm Executed the Alar Scare, supra*.

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Given the fundraising and public relations success that NRDC achieved with the Alar story, some may wonder if we are in for another scare story – this time focused on the plastics we use for children’s toys, medical tubing, garden hoses, and many other common, everyday products.

NRDC has recently filed a lawsuit against the United States Consumer Product Safety Commission for the Commission’s refusal to hand over records related to a family of chemicals (phthalates) used to make plastic soft and flexible. *Natural Resources Defense Counsel v. United States Consumer Product Safety Commission*, No. 1:08-cv-01312 (D.C. Dist, 2008). NRDC filed a Freedom of Information Act (FOIA) request with the Commission demanding records regarding the Commission’s regulation of these chemicals, the Commission’s assessment of health risks associated with their use, and the Commission’s communications on these matters with manufacturers of plastic products. While NRDC’s lawsuit demands that the Commission waive all fees associated with the request – and that taxpayers pick up all the costs – the real question is whether the request had any merit in the first place.

The timing of the lawsuit and the FOIA request are suspect. The suit was filed the same day that the House of Representatives passed, by an overwhelming margin, the Consumer Product Safety Improvement Act (CPSIA) of 2008, Public Law 110–314. The CPSIA, among many provisions, will temporarily prohibit high molecular weight phthalates in some toys pending further scientific review of these chemicals and their alternatives from a Chronic Hazard Advisory Panel (CHAP) convened by the Commission.

This will be the second CHAP study on phthalates in recent years. A 2001 CHAP study concluded that the phthalate most commonly used in children’s toys (DINP) was safe for children. The Commission staff also indicated in 2007 that they had kept up with the research conducted since their 2001 study, and did not see any need to change their position. Nonetheless, having the government convene a panel of independent scientists to study the safety of this, or any other chemical we deal with in daily life, isn’t a bad idea. Sound science should drive decisions on product safety. But sound science may not make good copy.

NRDC is clearly dissatisfied with the 2001 CHAP study. The question, however, is whether this FOIA litigation is a means of pressuring the agency to come to a different “scientific” conclusion. Using litigation to affect the outcome of a scientific study, however, undermines the basic principles of scientific truth and objectivity. NRDC has itself complained about “political interference” with scientific judgment. Press Release, “EPA Must Propose a Science-Based Fuel Rule that Advances Innovation and Protects the Environment, Groups Say, Nov. 10, 2008 (<http://www.marketwatch.com/news/story/EPA-Must-Propose-a-science/story.aspx?guid={C27A23AD-CAB3-4ED6-A73E-23D0918BFD63}>). Yet, NRDC does not appear interested in an objective study. It has already made up its mind, and any disagreement is chalked up to “siding with the chemical industry.” Rosenberg, 6 Priorities for Obama on Chemical Policy, Nov. 26, 2008, (<http://www.thedailygreen.com/environmental-news/community-news/obama-chemicals-88112604>).

Hyping scare studies, or attempting to influence the Commission through litigation will not promote consumer safety or good science. The Commission ought to be free to convene its scientific panel and conduct its study free from intimidation and special interest influence. The result may not make a thrilling story line for television, but it will secure our safety and economic well-being.