

He built a better egg cracker, and the regulators beat a path to his door.

BREAKING MR. MAYNARD

by James Taranto

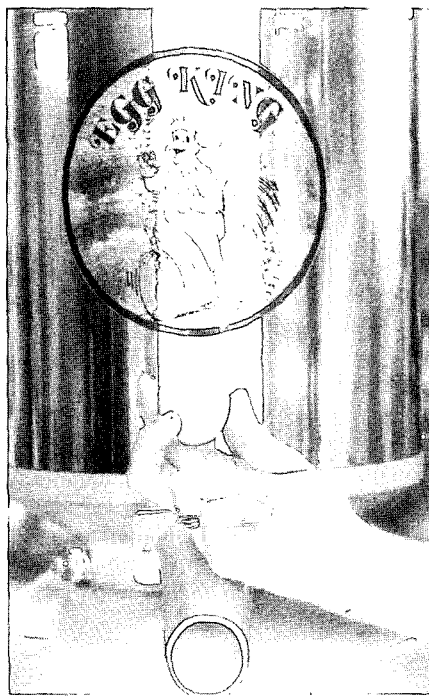
As a baker in the Navy in the 1960s, Mike Maynard broke thousands of eggs. Cracking them by hand was a tedious process, and he figured there had to be a better way.

When Maynard left the military and went into business distributing food-processing equipment, he kept the egg-breaking problem in the back of his mind. "Over the years I played with it here and there," he recalls. Working during his spare time, by 1982 he had completed his brainchild, a machine that can crack 30 dozen eggs in one minute. He began marketing the Egg King.

Five years later, the 45-year-old inventor sits in his office in an industrial section of Santa Ana, California. Puffing on a cigarette, he remembers the elation of his early success—and the frustration that followed.

Bakers, his first customers, were "just absolutely ecstatic," Maynard says, producing a stack of testimonials. A handwritten note from Betty Fedorczyk of Betty's Cakery in East Brunswick, New Jersey, is typical: "Using fresh eggs instead of canned frozen eggs gives a product an extra special touch."

Though Maynard sold the Egg King as baking equipment, he soon discovered



that his machine filled a much larger gap in the marketplace than he had imagined. "We started to do trade shows, and it blossomed way beyond the baking industry. The machine is now in everything from hospitals to fast-food restaurants. Colleges, the military. It's aboard ship, it's aboard cruise lines. There's not an area of food service today that you will not find one of these machines in." Maynard's company, MiSa Manufacturing, sold about 50 machines—\$120,000 worth—the first year, and by 1984 sales had increased

more than fivefold.

Many commercial egg users had turned away from fresh eggs because they couldn't afford to pay workers to break hundreds of eggs. Their alternatives were processed frozen, powdered, and liquid eggs—the real scum of the egg world, according to Egg King supporters.

St. Louis baker Don McArthur's description of frozen eggs is not for the squeamish: "When I remove the lid from a can of frozen eggs and see this red liquid (that I know is blood) floating on top of this curdled mass that resembles orange cottage cheese more than it does eggs, I'm told I must mix this mass well with a whip.... This wouldn't be too bad if all you had to do was dip the blood off the top of the orange cottage cheese, but most of the time you can't mix them too well because of the smell and you are in a hurry to get your nose away from the can."

And though frozen eggs are inferior, they can cost nearly twice as much as fresh eggs, which need not go through an expensive preparation process. The Egg King, retailing at \$3,700, will pay for itself in savings in a year, Maynard claims, if the machine breaks an average of 30 dozen eggs a day. In a free marketplace, one would expect the Egg King to



Mike Maynard: "It's not a question of whether the Egg King survives or doesn't."



be a smashing success, while Maynard's competitors in the processed-egg industry would lay an egg.

But we don't have a free marketplace, as Maynard soon discovered. We have a marketplace in which a small businessman with a new way of doing things can expect to find a formidable foe in large industries that do things the old way. Fair enough. But we also have a marketplace in which government regulations provide such foes a golden opportunity to squelch upstarts like Maynard.

Maynard's troubles began in 1983 when one of his customers, a pasta plant in St. Louis, sought approval from the U.S. Department of Agriculture (USDA) to use the machine in its production. The USDA's Food Safety and Inspection Service (FSIS) has jurisdiction over equipment in plants that process meat and poultry. It approved the machine after a 120-day field test verified that it met the government's sanitary requirements.

Enter the United Egg Producers, an industry group that represents egg processors and producers. Recognizing the economic threat posed by the Egg King, it started marshaling the force of government against the competition.

First, UEP went to another arm of the USDA, the Agricultural Marketing Service, which regulates the processed egg industry. Soon its bureaucrats were putting pressure on the bureaucrats in the Food Safety division, and in March 1984 Maynard received a letter from Royal Oyster—not a seafood dish but an FSIS bureaucrat—informing him that the earlier approval had been rescinded because federal regulations require eggs to be broken individually and inspected for wholesomeness.

Of course, Oyster cited "the law"—the Egg Products Inspection Act passed in 1971 amid concern about unsanitary practices in the egg industry. The act imposed very stringent restrictions on official egg-breaking plants—the only facilities legally permitted to process undergrade eggs for human consumption. Undergrade eggs require individual inspection so that rotten and other inedible eggs can be removed.

But the act explicitly exempts food-processing plants, restaurants, and bakeries from its inspection requirements, provided they break only eggs of Grade B and above. That's just what the Egg

King's instructions specify. Yet the regulations were applied anyway.

"You can't do that," Maynard fumes. "You can't borrow a regulation from the milk industry and use it in the apple industry."

Egg King opponents say they can and should bring this regulation down on Maynard's machine. They say there's a health threat. Though USDA-graded eggs must be sterilized, bacteria embedded deep in the pores of the shell can survive the sterilization process, according to a study by USDA scientist W. A. Moats. And because the Egg King allows eggs to come in contact with shells (it breaks eggs through the centrifugal force of a spinning cylinder and then filters out the shells), the egg producers and their friends at USDA insist that it poses a danger of salmonella poisoning.

Moats himself places little stock in this argument. When Maynard wrote to the scientist asking for clarification of his study, Moats replied: "Bacteria embedded in the shell cannot be dislodged by rinsing the shell surface and for this reason, casual contact of the egg liquid with the shell surface or fragments of shell is unlikely to be a problem." And even if eggs should become contaminated, Egg King users are instructed to break only eggs that will be cooked—and cooking ought to kill any remaining bacteria.

It would not have been so bad that his opponents prevailed—Maynard could no longer say his machine was USDA-approved, and he lost a small segment of his market. But bakeries and restaurants were still free to use the Egg King, and no federal bureaucracy could stop them. The United Egg Producers, however, wouldn't leave it at that.

The UEP's next move was to enlist the aid of Rep. Lindsay Thomas (D-Ga.), whose district includes the UEP's Decatur headquarters. Thomas obligingly tacked onto other legislation an amendment that would have banned the use of centrifugal egg-breaking machines outright—on the grounds that they are a threat to public health. Actually, it would have banned the processing of eggs in *any* way that did not allow examination of the contents of individual eggs—so hard-boiled eggs could have been outlawed!

Maynard found out he was about to be legislated out of business only because Karen Darling, a USDA bureaucrat, tipped

live, it's a question of right and wrong."

him off. "She doesn't like our system of egg breaking," explains Maynard. "It doesn't seem right to her. But it also didn't seem right to her to outlaw me out of business without telling me about it." Darling, for her part, says she doesn't remember tipping Maynard off and that she still opposes the machine.

By the time Maynard found out about the amendment, Thomas had pushed it through the Agriculture Committee without debate. So Maynard contacted his representative, Robert Badham (R-Calif.), who introduced an amendment on the House floor to kill the Thomas amendment. Maynard hired a lobbyist to persuade enough legislators to vote his way, and though he was up against an industry association with its own political action committee, Maynard prevailed. After a sparsely attended 45-minute floor debate in October 1985, the Badham amendment passed by 29 to 20.

Congress wasn't finished with the issue, however. Six weeks later, the House Subcommittee on Livestock, Dairy, and Poultry held a hearing on...centrifugal egg-breaking machines. Conveniently enough for the UEP, less than a month before the hearing a salmonella outbreak was reported at a hotel in Atlantic City that used an Egg King. Five employees were stricken, and the day before the hearing, Denise Nelson, an Atlantic City health inspector, sent a letter to subcommittee chairman Tony Coelho (D-Calif.) concluding that the Egg King's "implication as a probable cause...cannot be refuted."

But it was refuted, within a week, by Atlantic City Health Officer James Budd. Noting that inspectors are "not qualified epidemiologically to link the regulatory conditions with disease," Budd said there was "no confirming evidence" that the Egg King caused the alleged outbreak. Indeed, it isn't even clear that an outbreak occurred: of the five people who got sick, Budd told REASON, only one tested positive for salmonella. Of the remaining four, one had eaten no eggs and one had pre-existing gastrointestinal problems.

Maynard claims the UEP "coerced the people in Atlantic City to give them the report." Calls to UEP for a response were referred to Fred Frawley, a Lewiston, Maine, attorney representing the group in a lawsuit brought by Maynard. Frawley said depositions had been taken from

those involved in the Atlantic City incident, and "there was no testimony that I am aware of that supports what Maynard is saying."

Budd, however, agrees that there was pressure from outside: "Somehow, our staff people were contacted and, quite frankly, I thought that they were used in some way. They jumped to these conclusions and they were persuaded to write this memo to the government committee. I don't know who persuaded them."

Budd's memo was introduced into the record of the subcommittee's hearing, and no further federal action was taken against the Egg King. The UEP didn't relent, however. It has now taken its fight to the state level.

Nebraska is the home of Henningson Foods, one of the nation's largest egg producers and processors. It is also the home of the University of Nebraska, where Dr. Michael Liewen, a professor of food science and technology, conducted a UEP-funded study in 1985 that found high bacterial levels in eggs broken by the Egg King. (The following year, Maynard commissioned a study by Silliker Labs of Carson, California, which found no significant problem with bacterial contamination. An earlier independent study by the Hawaii Health Department had found the same.)

While Liewen was studying the Egg King, the state Department of Agriculture proceeded to ban it. "It is our opinion that we could make a good argument for or against the use of the machine," said an internal memo. But the regulators cavalierly dismissed the import of banning the invention: "Since there is only one machine being utilized in Nebraska (to our knowledge), it seems that our action is not going to have any direct effects to speak of."

Nebraska generously allowed its residents to own Egg Kings for purposes other than breaking eggs—as paperweights or wall decorations, perhaps. The memo stressed that the machine was not being banned, only the "process" of breaking eggs with it. The memo also noted that banning the Egg King "would endear us to the egg industry to some degree," although Denis Blank, one of the memo's authors, denies that this was a factor in the decision. (He could not explain, however, why it was even mentioned in the memo.)

Georgia, UEP's home state, quickly followed Nebraska's lead, as did New York, New Jersey, Illinois, Michigan, Minnesota, and South Dakota. New Hampshire


reversed itself after instituting a ban.

Sales plummeted—from \$650,000 in 1984 to only \$137,500 in 1987. Would-be customers are understandably reluctant to buy a machine that may soon be outlawed. On the bright side, California decided early this year not to ban the machine, and Maynard hopes this will reverse the trend. So far, he says, 1988 sales are roughly on par with last year's.

The battle against a politically experienced industry group has been a costly one for Maynard. "Every dime of profit the company has ever made has gone into it, plus hundreds of thousands of dollars of my own money," he says wearily. "And all of it because you're fighting an organization that's huge, that's got more money than they know what to do with, and you're digging into their profit."

Maynard has seen MiSa Manufacturing driven into Chapter 11 bankruptcy, after spending close to a million dollars on legal fees, lobbying, and public relations. The company's only remaining asset is a lawsuit against the UEP. Early last year, the suit was thrown out by a U.S. district judge on jurisdictional grounds, but Maynard is appealing in the Ninth Circuit Court. His new company, ADSI, is marketing a modified version of the machine under a different name.

Maynard is tough, persistent, and abrasive—qualities that no doubt help him withstand the frustration of fighting for the right to compete fairly. Many businessmen in his position would just give up, not bothering to continue what may well be a losing battle. Many innovations have no doubt fallen through the cracks of the regulatory bureaucracy where health and safety inevitably become not scientific but political issues, open to special-interest lobbying.

Maynard is bitter, but determined to press on. For him it is a moral issue: "It's not a question of whether the Egg King survives or doesn't survive, it's a question of right and wrong. Where do we live? Do we live in the Soviet Union or do we live in the United States? Here you're innocent until proven guilty, except if you build an egg machine. Then you're guilty until you can prove yourself innocent, and that's just not our system. It's not the American way." 

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DOES

The war is long over, South Korea's

KOREA

economy is flourishing, democracy is on

NEED

the rise...it's time to make a graceful exit.

Thirty-eight years ago this June, North Korean troops crossed the 38th parallel. Within three days Seoul fell and the South Korean forces were soon almost destroyed.

U.S. troops, along with small foreign contingents under the auspices of the United Nations, intervened, later followed by hundreds of thousands of "Chinese People's Volunteers" on the other side. The front eventually stabilized near the original boundary, and the combatants signed an armistice in July 1953. The war cost America 54,000 dead and at least \$75 billion—5.6 percent of the aggregate GNP between 1950 and 1953.

When discussions over a permanent peace proved fruitless, the United States initiated a mutual defense treaty with the Republic of Korea. The agreement does not itself guarantee military assistance, but the presence of 40,000 American soldiers acts as a tripwire, making U.S. engagement automatic.

While his predecessor proposed withdrawing American forces from the peninsula, President Reagan has strengthened official ties to Seoul. U.S. troops, pledged Defense Secretary Caspar Weinberger in 1983, will remain in South Korea "as long as the people of Korea want and need that presence."

Yet is such a permanent military guarantee really in our interest? The security commitment is expensive—the United States not only maintains an infantry division in South Korea but also earmarks forces located elsewhere in the Pacific for Korea's naval and air defense. All told,

US NOW?

the United States spends nearly \$25 billion annually to defend South Korea, according to defense analyst Earl Ravenal.

Moreover, the tripwire threatens to suck the United States into another bloody conflict far from home. The Korean border, marked by a heavily fortified "demilitarized zone," remains one of the most hostile in the world: almost one-and-a-half million troops face one another across a 155-mile border, in contrast to only two million soldiers across the entire 4,600-mile Sino-Soviet border. The two Koreas are still technically at war, and small but deadly military clashes are common. Since 1953, 90 Americans and more than 1,000 South Koreans have died in border skirmishes. Tensions between North and South flared most recently over the North's bombing of a South Korean airliner.

There is also a political cost to stationing U.S. troops in South Korea. Though the country appears to be moving successfully toward democracy, the U.S. record there has not been a good one: "It's not that we don't like Americans," said one demonstrator last summer, "but

for 37 years you've been supporting the wrong guy here." Only as demonstrations swept South Korea did the Reagan administration soften its support for the military-backed government of Chun Doo Hwan, pressuring it to hold elections.

Thus, despite many positive developments over the last year—particularly a relatively free election, greater press freedom, and increased civil liberties—many student activists remain committed to expunging American influence from their nation. Even many members of the middle class blame the United States for Chun's original military coup and his brutal suppression of a student insurrection in the city of Kwangju in 1980. And if the military again seizes power, the United States inevitably will be seen as collaborating with the oppressors.

Finally, there is no reason to believe a U.S. pullout would lead to a Communist conquest of the South. The disaster of 1950 occurred because the country was not prepared for war. Today the South has twice the population and five times as large an economy as the North; Seoul's military is strong and will eventually outstrip that of Pyongyang.

World War II is the backdrop of U.S. involvement in Korea. It left that nation, like Germany and Austria, divided between East and West, and efforts to unify the peninsula were opposed by South Korean strongman Syngman Rhee as well as the Soviets. So on May 10,

■ BY DOUG BANDOW ■