

Salmonella Trial Shows Food Safety Relies on Honor System

RUSS BYNUM, Associated Press

ALBANY, Ga. (AP) — Jurors at the nation's first federal criminal trial stemming from a deadly outbreak of food-borne illness are learning a disconcerting fact: America's food safety largely depends on the honor system.

Witnesses say Stewart Parnell and others at Peanut Corporation of America knowingly shipped salmonella-tainted products, and that they sent customers lab results from other clean batches rather than wait for tests to confirm their products were free of deadly bacteria.

Defense lawyers correctly noted for the jurors that salmonella tests aren't even required by federal law.

Parnell and his two co-defendants face long prison sentences if convicted of knowingly shipping the contaminated peanut products linked to a nationwide salmonella outbreak that killed nine people and sickened 714 across 43 states in 2008 and 2009.

Their plant in rural Blakely, Georgia, was shut down and the company went bankrupt. Long after consumers ate contaminated peanut butter, ice cream, energy bars and other products, the outbreak prompted one of the largest food recalls in U.S. history.

But Stewart Parnell, his brother and food broker, Michael Parnell, and quality assurance manager Mary Wilkerson aren't charged with killing anybody. In fact, prosecutors agreed not to mention the death toll to the jurors.

The 76-count indictment instead accuses the Parnell brothers of defrauding customers that used Peanut Corporation's contaminated products as ingredients. Stewart Parnell and Wilkerson are charged with concealing information from federal investigators.

Only some customers — such as Kellogg's — required the plant to ensure its shipments were salmonella-free.

"If they didn't require it, it did not get tested," Samuel Lightsey, who managed the Georgia plant during the outbreak, told jurors Friday.

Lightsey pleaded guilty to seven criminal counts in May and agreed to testify in exchange for a lighter sentence.

Food and Drug Administration investigators ultimately discovered that lab tests had

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showed contamination in the plant's chopped nuts, peanut butter or peanut paste 12 times during the two years before the outbreak.

FDA inspector Janet Gray walked the jury through documents showing at least eight of those salmonella-tainted lots were shipped to customers anyway.

"There is no legal requirement for testing at all for salmonella," Tom Bondurant, Stewart Parnell's defense lawyer, told jurors during opening statements Aug. 1. "There wasn't then, and there's not now."

That's true and it could be a problem for prosecutors in the case, said Jaydee Hanson of the Center for FoodSafety.

But defense lawyers have a problem of their own — and that goes back to the honor system.

"The problem is that the company committed big-time fraud," Hanson said.

Public outcry over the peanut case and several other outbreaks of food borne illness led Congress to pass the Food Safety Modernization Act of 2011, which was supposed to give the FDA more resources and enforcement power.

Three years later, most of its rules have not been published, and the FDA still doesn't require that products be free of salmonella when shipped, said Hanson. His organization sued the FDA and won a federal consent decree ordering the agency to implement the law by next year.

Salmonella causes an estimated 1.2 million illnesses every year in the United States, with about 23,000 hospitalizations and 450 deaths, according to the U.S. Centers for Disease Control and Prevention. The bacteria can cause severe diarrhea and vomiting, with infections that spread throughout the body, killing people who aren't quickly treated with antibiotics. The elderly, infants and people with compromised immune systems are particularly vulnerable.

The CDC says it has tracked salmonella outbreaks since 1962. It even has an interactive map with county-by-county information on the impact. And while many sources are never discovered, dozens of food producers have been identified through the years. Some egregious incidents have resulted in fines, and victims have found private attorneys to file civil lawsuits that often get settled out of court. But illnesses, and deaths, continue.

"Could all these people have been charged criminally with something? The answer is, hell yes," said Bill Marler, an attorney who claims to have won \$500 million for victims of food-borne illnesses over the past two decades.

Three other cases — a salmonella outbreak traced to eggs in Iowa, a listeria outbreak blamed on dirty cantaloupes in Colorado and an E. coli outbreak linked to Odwalla juices in California — resulted in federal plea deals without prison time. This is the first to go to trial, Marler said.

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"I'm a firm believer in using the civil justice system to hold people accountable. But these criminal prosecutions have really got people's attention," said Marler. "It's a completely different viewpoint that these CEOs and managers have when they're facing jail time and fines that aren't insured."

Meanwhile, the FDA lacks the resources to regularly inspect food producers, and when outbreaks happen, they largely depend on their goodwill to find the source.

FDA investigator Bob Neligan testified that when he first arrived at the Georgia plant on Jan. 9, 2009, he immediately asked for any information or records related to positive salmonella tests. Lightsey told inspectors that the plant's only brush with salmonella had turned out to be a false-positive test, Neligan said, and Stewart Parnell offered no further information.

"Records are voluntary," Neligan told the jury. "It has been my experience in my 25 years (with FDA) that, when there is a concern regarding a nationwide food-borne illness, a firm is usually more than willing to hand over as many records as they can to resolve the issue quickly."

But in this case, it took five days of pressing before Lightsey said there had been three confirmed tests for salmonella, Neligan said, and only when investigators repeatedly asked for more information did he reveal two others. He said it took a rare FDA order demanding two full years of production, shipping and microbial testing records within 24 hours to come up with the rest.

Lightsey now says he should have spoken up after discovering the company was lying about its salmonella tests, but didn't take it seriously enough at the time.

"I never would have shipped anything that I thought would hurt someone," he testified. "In my mind, I wasn't intentionally hurting anyone."

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