

Corporate Crime

in the

Food Industry

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Food Industry Structural Change

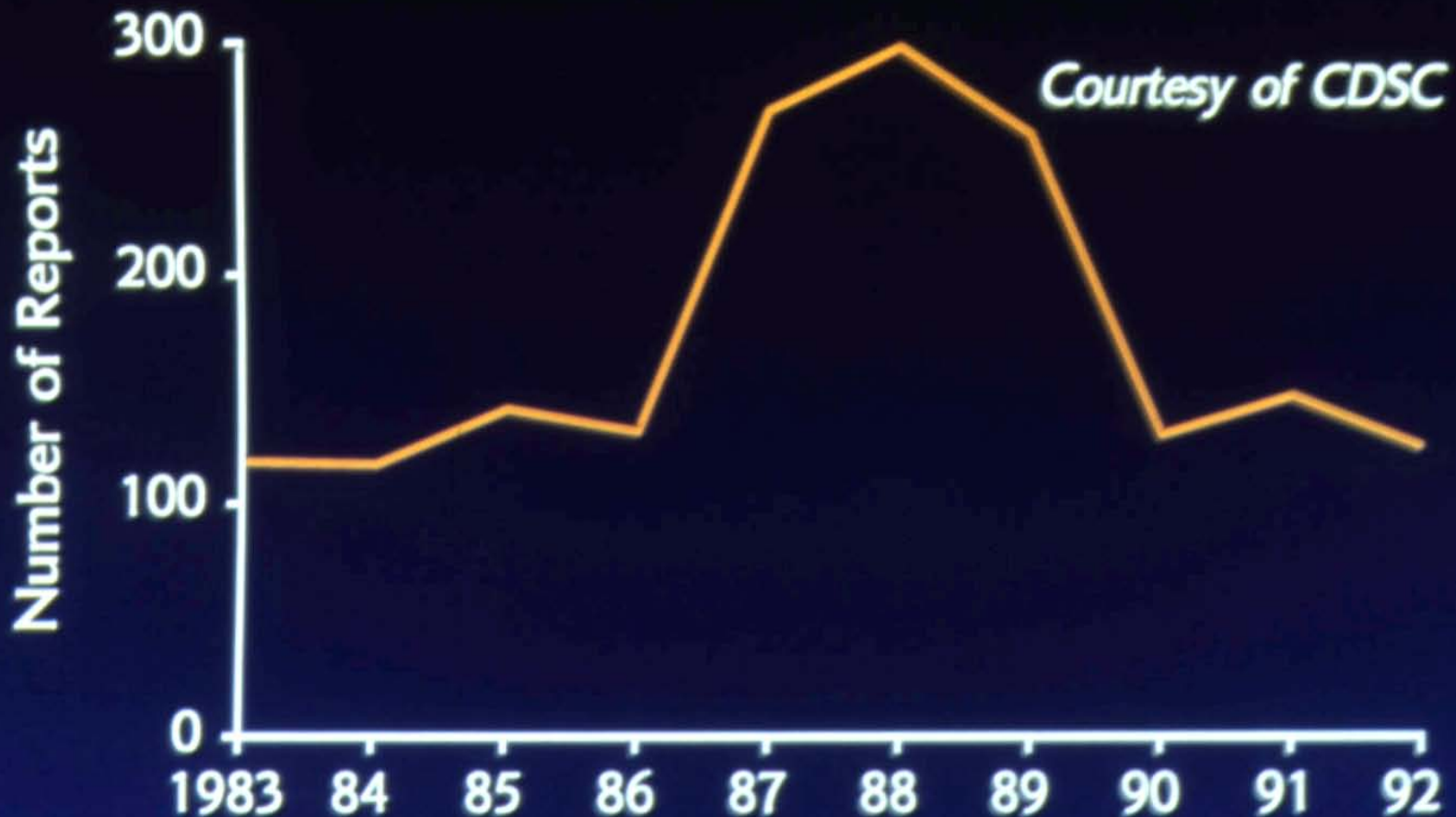
- **1950's** post-war austerity measures lifted
- **1960's** self-service shops open in UK
- **1970's >** supermarkets develop logarithmically
- **1980's >** supermarket o/label chilled foods
 - chilled factories
 - chilled storage depots
 - chilled distribution vehicles
 - chilled display cabinets
 - domestic refrigeration
- **£billions invested in total chilled food 'chain'**

Food Industry Structural Change

The total chilled food chain had created

- ...the perfect conditions for
- ...the selective survival
- ...and growth
- ...of any human pathogen that
- ...had evolved naturally to
- ...favour chilled environments
- ...this is the paradigm shift...

A SHARED RESPONSIBILITY: THE LISTERIA STORY IN THE UK



Sudan 1; Criminal Adulteration

- May 03 found in food in France
- Oct 03 28 Brands 94 Products
- Sept 04 80 Brands 230 Products
- Feb 05 > 100 Brands 600 Products

- 2007-10 an occasional contaminant

Source RASFF

Sudan 1; Patterns of Criminal Adulteration;

Discovered in	Products	Supplied by
France, Lithuania	Chilli Powder	India
Norway	Curry & Pasta	UK
Germany, Denmark	Pesto & Spices	Italy
Germany	Paprika	Turkey
Germany	Spice Mix	Syria
UK, Belgium	Harissa Paste	France
France	Sweet Pepper	Spain
Slovakia	Hot Sauce	Poland
Italy	Curry Powder	Jordan & UK
Spain	Turmeric	Arab Emirates
Spain	Pepper	Uzbekistan
Portugal	Paprika	Venezuela

Source; RASFF

The Food Supply Network

- The food industry no longer had a **food chain**.
- Even the term food chain was misleading... language constrains our thinking.
- What we now have is a **food supply network**.
- The www was the best illustrative example. When the twin towers collapsed in 9/11, at least three major internet hubs were instantly destroyed.
- But the www did not collapse. It slowed down a little as internet traffic automatically re-routed through other hubs.
- **Sudan 1**; If a point source was identified and closed down, the material was re-routed by criminals and it must also be said, by negligent management, through other food business outlets.

Corporate crime

Organisational Crime

Occupational crime

... developed from Sutherland's early concepts of ..

'White Collar Crime'...

...now an obsolete term.

Criminal Culpability

4 levels of culpability...

Intent highest

Recklessness

Knowledge

Negligence lowest

Seriousness = culpability + harm

How many deviant and/or criminal acts?

- Intentional contamination of food?
- Reckless falsification of temperature records?
- Management knowledge and denial with 'unofficial' training programmes ?
- Negligence with Unrealistic work schedules?
- The same deviant acts in two separate and competitive companies? Coincidence?

...in just six minutes in two supermarkets

Dynamics of Corporate crime

1. Management denial
2. Better and faster analytical detection
3. More robust enforcement training
4. More severe sentences
 - Mr Yusuf @ 4.5 years (FSA June 2010)
 - Mr Yusuf was also pursued under **POCA**

Carbon copy E. coli cases ?

- **J. Barr, Scotland, 1996**
- **272 confirmed cases**
- **18 deaths**
- **Pennington Report ; 1998**
- **W. Tudor, South Wales, 2005**
- **157 confirmed cases**
- **1 death**
- **Pennington Report ; 2009**

W Tudor; Why the delay ?

- In 1996; (J Barr) two years to report
- In 2005; (W Tudor) four years to report
- The Police had intervened
- A charge of Gross Negligence Manslaughter was considered

Recap

- Food Hygiene/Safety offences are prosecuted by
- Food Safety Law Enforcement Officers
- = EHOs..the new title is significant
- The Police or Crown Prosecution Service are not involved

Recap

- Gross Negligence Manslaughter is prosecuted by
- The Police
- The Crown Prosecution Service are involved
- In fact the CPS make the final decision

Recap

- Gross Negligence Manslaughter is a Common Law offence
- ...like murder
- The Crown Prosecution Service have a protocol based on a legal test case
 - Mr Adomako
- In fact the CPS make the final decision

THE PUBLIC INQUIRY INTO THE SEPTEMBER 2005
E COLI OUTBREAK IN SOUTH WALES

CROWN PROSECUTION SERVICE REPORT



[REDACTED]
25/05/2005 09:56

To: [REDACTED] Bville/Confy/CadSchw@CadSchw
cc: [REDACTED] Bville/Confy/CadSchw@CadSchw Subject:
[REDACTED] retests all clear - stock may be released:!

[REDACTED]

As we have just discussed, all 22 [REDACTED] retests were clear for Salmonella. With the 3 original clear samples, this gives us 25 negatives, generating a most probable number of <0.082 cells per 100g, well below our reject limit. Therefore this production may be released.

We tested 18 [REDACTED] covering the affected period, with all samples negative. However, this is insufficient to clear the product, because if we take into account the original 3 samples from this time (with 1 positive), this gives us a most probable number of 0.098 cells/100g, with an upper limit of 0.69/100g (our upper limit is 0.5/100g). I will see [REDACTED] tomorrow and discuss with him the issue of the "missing" 5 pallets of work that have been packed into selection boxes. If he agrees that the risk is low enough not to recall this product, I will arrange for further tests of the 6 loads that have already been tested, to provide enough confidence to allow us to release the held [REDACTED] stock (I will ask the Bournville lab to initiate this testing today, to save time).



regards
[REDACTED]

The Texas Sharpshooter



Is this the dumbest e-mail ever written?
Or the smartest?

Guilty vs. Not Guilty?

- Not Guilty Plea  Trial
- Guilty Plea  Sentencing Hearing
- Evidence presented non-adversarially
- *An early Guilty Plea always gains a 33% reduction in sentence severity.*

Guilty Plea Sentence Reduction

- The 33% reduction is on that sentence which would have been passed in Trial
- There is no implication of reduced submission of evidence in total
- The prosecution decides what evidence to present at a sentencing hearing
- Learned Counsel must listen to their client's decision

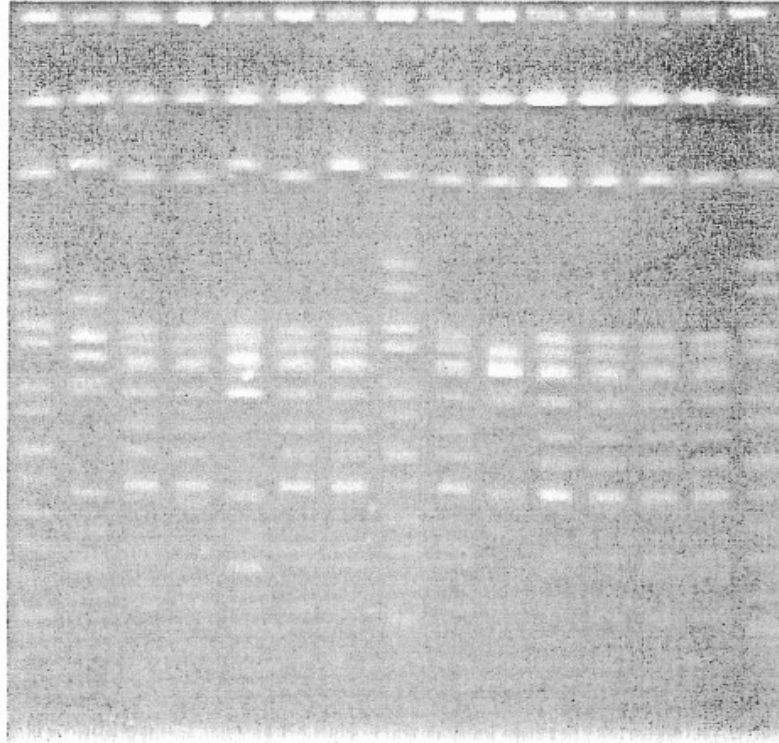
Guilty Plea Sentence Reduction

- The sentencing Hearing transcript of this case includes no reference to the foregoing redacted email.
- However... the transcript does refer to ***'some 40 odd people – and there is a small dispute as to the number.... became ill as a result'***.

Salmonella Montevideo

Code

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15
 CONTROL PRODUCT CONTROL PRODUCT PATIENTS CONTROL



- 1 Control
- 2 Other type
- 3 *SmvdX07* - Patient 1994
- 4. Other type
- 5 Other type
- 6 ***SmvdX07* - Product**
- 7 ***SmvdX07* - Product**
- 8 Control
- 9 ***SmvdX07* - Product**
- 10 Other type
- 11 *SmvdX07* - Patient 2006
- 12 *SmvdX07* - Patient 2006
- 13 *SmvdX07* - Patient 2006
- 14 *SmvdX07* - Patient 2006
- 15 Control

Lanes 1, 8, 15: *S. Braenderup* (control)

Lanes 6, 7, 9 : Product

Lanes 11 – 14 human isolates 2006

Outbreak pattern: *SmvdX07*

This is Exhibit 100

JF/2
eM/Rout

CONCLUSION: Patient isolates and product isolates same subtype

Risk Modelling

Professor Paul Hunter
University of East Anglia

This is EH/PH/02
Exhibit:
Signed P. Hunter
Dated: 15/3/07
Referred to in my statement

Most authorities accept 1 fatality per million people per year as being the level below which further reductions in risks are unlikely to be justified. Over the course of one year, and assuming 1 million people eat one 100g portion of chocolate per week with an average concentration of Salmonella of 0.3 organisms/100g, there would be $71 \times 52 = 3692$ infections. Given the known fatality rate from Salmonella one would expect between one and 11 deaths.

Sequela

- Laws upon patient confidentiality forbid UK epidemiologists from accessing NHS records to follow up the longer term effects of food poisoning cases.
- Danish law permits this and is the most authoritative source;
- Helms, M, Simonsen. J, Molbak, K. (2006) Foodborne Bacterial Infection and Hospitalization; A Registry-based Study. CID 2006:42 (15 February)

Sequelae; Danish Study

- All IFD bacteria cause sequelae of some kind.
- IFD **sequelae can arise for up to 10 years or longer**
- Typically **up to 14% of victims hospitalized within 90 days**
- **Long-term sequelae in 1.7% (up to a year and longer)**
- **IBS** ; Irritable Bowel Syndrome
- **IBD**; Inflammatory Bowel Disease
- **Intestinal perforation**
- Haemolytic Uraemic Syndrome (**HUS**)(E. coli 0157)
- [**HUS causes severe renal problems** even requiring transplant]
- **Reiter's** Disease/reactive arthritis (Salmonella, Campylobacter)
- **Guillain-Barre** syndrome (paralysis) (Campylobacter)

Judicial Sentencing

1. Offence category; corporate crime
2. Foreknowledge
3. Seriousness [Culpability + Harm]
4. Totality of harm caused
5. Legal importance of documentary evidence
6. Inadequate systems and procedures
7. Rejection of imputed contributory negligence by local EHOs.

Judicial Sentencing

- 1 Offence category; corporate crime
 - *Your lack of appreciation of the risk that you put your staff and customers to when you do not observe basic hygiene requirements*
 - *A clear example of putting the health of the public at risk for the sake of saving money*
 - *The welcome cost savings of the ...new (MPN) system...of testing...and releasing... unsafe... product*

Judicial Sentencing

2 Foreknowledge

- *...previously identified and reported with having low food safety and premises hygiene standards*
- *A clear example... as an experienced butcher, being well aware of the risks...you knew the risk*
- *The length of time for which the defect existed..and ...the number of such deficiencies*

Judicial Sentencing

3 Seriousness

- *The sheer scale...the tremendous hazard...the largest outbreak of food poisoning in the UK... it is a mercy that nobody died*
- *A graver breach could scarcely be imagined*
- *I consider that these were very serious offences*

- *But Seriousness = Culpability + Harm*

JUDICIAL SENTENCING

CULPABILITY

FOOD INDUSTRY CONTEXT

INTENT

YOU KNEW, AND WE CAN BE SURE YOU KNEW THE INEVITABLE OUTCOME OF YOUR ACTIONS OR INACTIONS AND YOU PERSISTED IN DELIBERATE PURSUIT OF THOSE OUTCOMES.

RECKLESSNESS

YOU KNEW, AND WE CAN BE SURE YOU KNEW WHAT YOU SHOULD HAVE DONE TO PREVENT THE INEVITABLE OUTCOME OF YOUR ACTIONS OR INACTIONS, YET YOU PERSISTED IN COMPLETE DISREGARD.

KNOWLEDGE

YOU KNEW, OR YOU SHOULD HAVE KNOWN WHAT YOU SHOULD HAVE DONE TO PREVENT THE OUTCOME OF YOUR ACTIONS OR INACTIONS, AND YOU FAILED.

NEGLIGENCE

YOU FAILED TO DO YOUR JOB, OR TO FULFIL YOUR RESPONSIBILITIES, TO ENSURE YOU HAD SUFFICIENT KNOWLEDGE AND AWARENESS, TO PREVENT THE OUTCOME OF YOUR ACTIONS OR INACTIONS.

Judicial Sentencing

4 Totality of harm caused

- *The elderly...are at very particular risk..of...fatal illness...one...was an 18 month old baby*
- *Immense...schools closed...education disrupted...victims suffering acute pain..worry to parents of both infected and non-infected children ...general public concern...loss of public confidence in the safety of the food supply... children hospitalised for treatment... **the death of an innocent child and likelihood of serious further complications in future years***

Judicial Sentencing

- 5 Legal importance of documents
- *Confirmed records of notifications...that were plainly matters which must have been of some long standing*
 - *Over 300 records of communications, implemented procedures and failings were presented as critical prosecution evidence*
 - *The gravity of the breach of the relevant provisions...the new system (MPN) marked a distinct departure from previous practice...despite a wealth of contradictory scientific literature*

Judicial Sentencing

- 6 Inadequate systems and procedures
 - *The practices which have been described...by the EHOs who visited...show a basic disregard for proper standards of food hygiene*
 - *‘practice of measures’...were legally significant deficiencies*
 - *Misunderstanding of the relevant science...proceeded without due consideration both in-house and from independent experts and failed to keep appropriate authorities informed of problems*

Judicial Sentencing

- 7 **Rejection of imputed contributory negligence**
- What is disturbing...is that you sought to minimise the breaches of food hygiene regulations
 - Rejected attempted mitigation that the LA had failed to prevent (Mr Tudor) from taking 'all reasonable precautions and exercising all due diligence'...and unequivocally absolved the LA
 - I do not consider it as a satisfactory answer that the defects ... had not been identified in visits by the Local Authority (EHOs).

Summary

- DNA profiling is proving causal links
- Food supply network weakens conventional controls
- Vulnerability to food crime...causes negligence crime
- Disaffected staff + incriminating management records
- Weak technical management controls
- Growing awareness of Sequelae (HUS, Reiter's)
- EHOs are better trained in criminal investigation
- More robust food law enforcement policies
- More severe penalties..CEOs imprisoned
- 2ry legal sanctions (POCA, Gross Negligence)
- Selection of evidence at sentencing hearings
- Judicial sentencing priorities

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