

Criminal Prosecutions Get Serious as the Regulatory System Sinks to Its Knees

BY **RENA STEINZOR** | AUGUST 27, 2015

OPINION

The food industry was rocked by last month's news that the U.S. Probation Office for the Middle District of Georgia has recommended a life sentence for Stewart Parnell, former CEO of the Peanut Corporation of America (PCA), following his multiple-felony conviction for knowingly selling tainted peanut butter that ended up killing nine people. Some are evincing shock and dismay at the harshness of the proposed penalties — a reaction that perfectly reflects the insulated world of white collar crime. But it's unwarranted given the facts of this disturbing case.

Whatever happens with Parnell, we're likely to see many more such cases. The refusal of Congress to adequately fund the Food Safety Modernization Act has created a vacuum that makes criminal prosecution the only alternative for public officials determined to police the worst actors in an industry plagued by practices that lead to foodborne illness.

Just who are the people who would send the well-heeled (if unsympathetic) Parnell to jail for life? The U.S. Probation Office provides the only investigative resources available to district court judges who try cases involving federal crimes. Its personnel routinely prepare sentencing reports that consider both the facts of the crime and the broader context of the defendant's life. They are civil servants who act independently of prosecutors. Their recommendations in the peanut case were harsher than what most observers thought possible. **Food Safety News** reported that if Judge W. Louis Sands adopts the recommendation, the sentence would be the most severe ever imposed in a case involving tainted food. Indeed, if the judge hands down sentences that require the defendants to serve more than a handful of years in prison, the case could become the bellwether of a new day for white collar prosecutions involving health and safety violations.

Comparing the recommendation to other white collar convictions ignores the scope of the crime. A more balanced perspective would be to consider the divide between the sentences given to people who commit street crimes and what usually happens to white collar defendants. Consider, for example, the plight of children younger than 18 sentenced to life without parole because 26 states mandate such onerous sentences for anyone accused of certain crimes. According to a study by Human Rights Watch, about 60 percent of the children so sentenced did not have a previous criminal conviction. About a quarter were convicted of "felony murder," an offense that involves participation in a crime like robbery, even if another person pulls the trigger.

Few would argue that children should walk free when they participate in a potentially violent crime. But study after study has documented that teenagers simply don't have the mental capacity to evaluate the risks of such outcomes. In contrast, Parnell and his fellow defendants had both the maturity to assess risk and the reckless frame of mind not to care who got hurt.

Rodent droppings, dead insects, a leaking roof, and broken roasting equipment were just the most obvious problems at the facility Parnell ran in Blakely, Georgia. Fraud was rampant, including the fabrication of the so-called "Certificates of Analysis" provided to Fortune 500 customers. Like his counterparts in Massachusetts, who ran equally contaminated "clean rooms" for the manufacture of sterile drugs, managed to kill 64 people by supplying meningitis-infected injections, and have been indicted for racketeering and second-degree murder — as well as the infamous Don Blankenship, CEO of Massey Energy, owner of West Virginia's Upper Big Branch mine where 29 men were crushed to death in a preventable mine collapse — the Parnells and their employees were so preoccupied with pushing product that they even communicated their instructions to ignore safety in writing.

The criminal law serves three purposes: punishment, deterrence, and the reinforcement of core community values. All three goals justify long sentences for the Parnells. As Peter Hurley, a Portland, Oregon, police officer and the father of a child who got *Salmonella* poisoning from Parnell peanut paste, told Congress: "If someone is convicted of a felony in the criminal justice system, they go to prison and are not allowed to vote. But, if you poison Americans via their food supply what are the consequences? You pay a fine and keep producing? Is this



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right: IS THIS WHAT WE AS AMERICANS WANT?

Criminal prosecutions in such cases are multiplying. Associate Attorney General Stuart Delery, the third-ranking official at the U.S. Justice Department, was a featured speaker at the recent industry-sponsored [American Food Manufacturing and Safety Summit](#), where he [warned the audience](#) that such prosecutions should stand “as a stark reminder of the potential consequences of disregarding danger to one’s customers in the name of getting a shipment out on time — of sacrificing what is right for what is expedient.” It would be worth considerably more than a penny to know the thoughts of his audience. Did they shrug his words off as saber-rattling, confident that due diligence at their companies was well under control? Or did they feel real discomfort at the thought that the worst could happen at their plants and that they might be called to account if it did?

In theory, of course, enactment of the Food Safety Modernization Act in 2010 was intended to revitalize the prevention of such hazards and, for that reason, was supported by everyone from the Grocery Manufacturers Association to the Center for Science in the Public Interest. But as a [penetrating analysis](#) by POLITICO recently demonstrated, the law is rapidly becoming symbolic and is perhaps the most stunning example of regulatory failure caused by polarized Washington politics. FDA has not managed to issue *any* of the rules needed to implement its provisions, largely because of politicized foot-dragging by the White House and Republican efforts to de-fund the agency. Public interest groups have lobbied both ends of Pennsylvania Avenue to little avail. That makes prosecutions of this sort more likely. How many might it take for the food industry to join in urging sensible regulation is anyone’s guess, but sooner or later, it needs to happen.

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