



The Courage Of Our Convictions

The government's handling — or mishandling — of the current *Salmonella Saintpaul* outbreak reveals a deep conceptual divide between the way regulators perceive food safety and the reality of fresh field-grown produce. This situation builds on previous outbreaks to give evidence of the *de facto* power of the Food and Drug Administration (FDA) to destroy individual businesses or whole industries.

We can critique FDA mistakes, we can propose improvements in the systems it uses to make decisions, and we can have hearings held to evaluate the actions of the FDA and petition that expert reports be written. Through these methods, we may achieve some improvements, but we will not solve the problem.

It is now the fate of our industry not merely to demand a more reasonable food safety system but to be the catalyst of a movement to reign in the arbitrary exercise of power by the state.

The power of the FDA to protect the public health is not the power to crush innocent businesses. It is quite possible the Courts would rule this right now, but two unfortunate facts keep that question from coming before the court.

First, because FDA exercises its powers by discretionarily inspecting one plant and not another, stopping one producer's product for testing and not another's, FDA effectively intimidates and prevents producers from filing lawsuits against the FDA.

Second, the nature of perishable products requires a producer to seek the route most likely to quickly lift an FDA "recommendation not to consume" or an "import alert." It will do a producer little good to file a lawsuit against FDA and win five years later if it has lost the ability to sell five crops in the interim.

So individual companies will take the expedient path in the hope of staying in business, and the expedient path is to do whatever the FDA says — justified by law, science or nothing at all. With individual companies sidelined, our communal institutions, especially the trade associations, must speak for us. Here is what they should say:

1) We recognize that in electing to sell processed product with a representation to consumers to eat without washing, members of the trade take on the role of food processors and ought to be subject to the rules other processors must conform to.

2) We acknowledge that raw produce can pose special risk for those with immature or compromised immune systems. We have adjusted our Web sites and those of industry promotional organizations and, when product is packaged, we have adjusted the packaging to reflect this message.

3) We are committed to delivering safe food. It must be noted, however, that just as cars are generally "safe" and airplanes are generally "safe" — nobody interprets this to mean that there will be no auto accidents or plane crashes — so, the fact that fresh produce is generally "safe" does not mean that nobody can or will get sick from eating

fresh produce.

4) We grow fresh produce, generally, in soil; it is exposed to rain and wind, to animals and people. It is the natural state of such a product to occasionally contain pathogens that can make people sick. Much, but not all, of this risk can be avoided by consumers and restaurants playing their part in food safety and carefully washing all produce. In any case, the risk of illness, especially serious illness with long-term effects, is very small.

5) Scientific efforts to advance food safety continue and the industry supports such science financially. We encourage the government to accelerate progress in this area with additional financing.

6) With current science, each enhancement of food safety increases the cost of the product. So we can put animal traps at every 100 feet or every five feet or anywhere in between. Each step is believed to enhance safety, but each step costs money. There is no correct

food-safety answer. It is a political decision how much society is willing to increase the cost of these foods in exchange for higher levels of safety, just as it is a political decision to what extent cars should have 15-mph bumpers or 25-mph bumpers.

7) It is the responsibility of Congress and the FDA to express that political choice through laws and regulations. Just as the law may require a 15-mph bumper, so the law for the produce industry may require set buffer zones, soil amendments, etc.

8) The FDA, working with state departments of agriculture, its own personnel or third-party auditors, shall define a regimen of inspection and testing that suppliers can follow to be certified as compliant with food-safety laws and regulations.

9) It shall be the option of the government to decide if non-compliant companies can continue to produce and market product.

10) Farms and other production facilities certified as compliant shall be presumed to be producing safe food unless specific evidence implicates a particular farm or facility. In the absence of specific evidence, they shall be exempt from any "recalls," "recommendations not to consume" or other health messaging.

Basically, we are now all in agreement that safety cannot be inspected at the end. Instead, we need to build safety into the production of our crops. Because there is no set level of activity — buffer zone, water tests, etc. — that guarantees safety, the government must decide what level of safety investment it wants to mandate.

The occasional pathogen in the system must be viewed as normal, and although tracking back a problem to its source is reasonable, mass blanket recommendations not to consume product of infinitesimal risk make no sense at all and give the government too much discretionary power.

Our industry has to stand up for reasonable food-safety systems and for clear rules of conduct taking the place of discretionary authority.

It is now the fate of our industry to be the catalyst of a movement to reign in the arbitrary exercise of power by the state.