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Article

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Cogent Business & Management

Provided in Cooperation with:

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Suggested Citation: Richardson, Rickey E.; Gordey, Laura L.; Post, Kyle C. (2018) : Tainted food—Do managers really go to jail?, Cogent Business & Management, ISSN 2331-1975, Taylor & Francis, Abingdon, Vol. 5,
<https://doi.org/10.1080/23311975.2018.1450817>

This Version is available at:

<https://hdl.handle.net/10419/206057>

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Received: 10 December 2017
Accepted: 07 March 2018
First Published: 13 March 2018

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Reviewing editor:
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MANAGEMENT | RESEARCH ARTICLE

Tainted food—Do managers really go to jail?

Rickey E. Richardson^{1*}, Laura L. Gordey¹ and Kyle C. Post¹

Abstract: The Centers for Disease Control and Prevention (CDC) estimates that, in the United States, “each year 48 million people get sick from a foodborne illness, 128,000 are hospitalized and 3,000 die”. In recent years, causes of such illnesses have been traced to tainted fresh produce, peanut butter, ice cream, cheese, meats, flour, frozen foods, raw milk, nuts, and a wide variety of other foods. The primary responsibility to keep the food supply safe in the United States rests with the United States Department of Agriculture (USDA) and the Food and Drug Administration (FDA). In serious cases of tainted food, an investigation may result in criminal charges being pursued by the United States Department of Justice (DOJ). Prosecutions may be against a business entity, individuals working for the entity, or both. This research focuses on prosecutions reported between 1 January 2012, and 31 August 2017. Content analysis was used to analyze CDC data, press releases of the USDA, FDA, and DOJ, and court cases. Results of this study may increase awareness of managers of the potential criminal consequences of their decisions related to food production, processing, and sales, as well as more ethical business decisions.

Subjects: Criminal Law & Practice; Food & Catering Law; Business & Company Law; Business, Management and Accounting

Keywords: management; business law; foodborne illness; DOJ; CDC; FDA; USDA; ethics

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Research interests of the authors include business law, business ethics, taxation, management decision making, leadership, public health issues, and consumer protection.

From a broad perspective, the research reported in this paper relates to management decision making, manager and employee liability, legal issues in business, ethical issues in business, consumer protection, and product safety.

PUBLIC INTEREST STATEMENT

Worldwide, hundreds of millions of people are sickened each year from foodborne illness and thousands die. In the United States alone those numbers are estimated to be 48 million who become ill and 3,000 who die. Strict regulations and laws apply to the commercial production and sale of food. The potential consequences to businesses determined to be the sources of contaminated or adulterated food can include reputational harm, diminished sales, stock price declines, product liability lawsuits, business interruption, government fines and even bankruptcy. Criminal prosecution of the business entity, individuals working for the entity, or both, can also occur. Results of this study may increase awareness of food industry managers of the potential criminal consequences of their actions related to food production, processing, and sales, as well as more ethical business decisions and fewer people becoming sick and dying.

1. Introduction

In recent years, Peter Pan peanut butter, Blue Bell ice cream, and Chipolte Mexican Grill restaurants, have all been determined to be the source of significant foodborne illness outbreaks. The difference between them, so far, is that the manufacturer of Peter Pan, ConAgra Grocery Products, LLC, has been criminally prosecuted while the others have not been. At least not yet.

The Centers for Disease Control and Prevention (CDC) (2017a, November 1) estimates, that every year in the United States, “48 million people get sick from a foodborne illness, 128,000 are hospitalized and 3,000 die” (para. 1). For those that could be identified, origins of previous outbreaks include a wide variety of sources, including, but not limited to farms, homes, community gatherings, manufactured products, commercial food preparation establishments, and restaurants. Just as varied as the origins of the outbreaks are the types of food involved, which in recent years have included fresh produce, peanut butter, ice cream, cheese, meats, flour, frozen foods, raw milk, nuts, and a wide assortment of others.

At the federal level, the primary responsibility to help prevent food from becoming contaminated and to keep the food supply safe, rests with the United States Department of Agriculture (USDA) and the Food and Drug Administration (FDA). Each agency attempts to accomplish its mission through regulations, education, inspections, and investigations. The CDC becomes an integral partner when foodborne illness outbreaks occur. In such cases, the CDC attempts to identify the type of illness, contaminants, and the source of the outbreak in an effort to limit the spread. In serious cases, the United States Department of Justice (DOJ) may become involved by prosecuting the businesses and/or individuals responsible for the contamination.

The potential consequences to businesses determined to be the sources of contaminated or adulterated food can include reputational harm, diminished sales, stock price declines, product liability lawsuits, business interruption, government fines, and even bankruptcy. Criminal prosecution of the business entity, individuals working for the entity, or both, can also occur. This research focuses on the analysis of criminal prosecutions reported between 1 January 2012, and 31 August 2017. Since there is delay between offending conduct and prosecution, this five-year plus period was used to allow sufficient enough time for the commencement of legal proceedings, while still achieving timeliness of research. Results of this study may increase the awareness of business managers and their employees of the potential criminal consequences of their decisions, encourage more ethical business decisions, and prevent fewer people from becoming sick or dying.

2. Literature review

Tainted food is referred to legally as “adulterated food.” Food becomes “adulterated if, among other things, it is contaminated with a substance that may make someone sick, or if it was prepared, packed or held under insanitary conditions” (United States Department of Justice, 2015a). “Actual contamination is not required, it is sufficient that there exists a reasonable possibility of contamination” (*United States of America v. Chung’s Products LP, et al.’s*, 2013, para. III).

The USDA, FDA, CDC, and DOJ play key roles in helping to ensure food safety in the United States. Their roles range from preventative efforts designed to avoid food from becoming adulterated, to identification of the contamination source and controlling its spread if a foodborne illness outbreak occurs, to prosecution in those cases in which it is warranted.

2.1. United States Department of Agriculture

One of the earliest attempts to regulate the US food industry came in 1906 with the passage of the Federal Meat Inspection Act (FMIA) and the Food and Drugs Act. The USDA is responsible for enforcing the FMIA and later related Acts. Within the USDA, the Food Safety and Inspection Service (FSIS) “ensures that meat, poultry, and processed egg products are safe, wholesome and accurately labeled” (United States Department of Agriculture, 2014). To fulfill its duties, the FSIS utilizes inspections, risk assessments, and education, as well as working cooperatively with the FDA.

2.2. United States Food and Drug Administration

Congress charged the FDA to enforce the Food and Drugs Act. To address the limited coverage of the Act, the Food, Drug, and Cosmetic Act (FDCA) was passed in 1937. Since then, a number of other laws have been enacted which, along with its other regulatory duties, direct the FDA's focus on its food-related activities to center on "dietary supplements, bottled water, food additives, infant formulas" and "other food products ... although the US Department of Agriculture plays a lead role in regulating aspects of some meat, poultry, and egg products" (United States Food & Drug Administration, 2017b, para. 2).

The Office of Criminal Investigations (OCI) is the FDA's criminal law enforcement branch and is commonly referred to as the "food police." The OCI's charge is to "protect the American public by conducting criminal investigations of illegal activities involving FDA regulated products, arresting those responsible, and bringing them before the Department of Justice for prosecution" (United States Food & Drug Administration, 2017c, para. 1). These investigations sometimes require the specialized expertise of the CDC.

2.3. Centers for Disease Control and Prevention

The CDC works in cooperation with the USDA and FDA to promote food safety, but once there is an illness outbreak linked to food, the CDC takes the lead role in identifying the source. Researchers have discovered more than 250 diseases linked to tainted food, with underlying causes that include bacteria, viruses, parasites, toxins, and chemicals (Centers for Disease Control & Prevention, 2017a, November 1). Illness symptoms and consequences range from diarrhea, fever, nausea, stomach cramps, vomiting, chronic arthritis, brain damage, nerve damage, and kidney failure, to death in severe cases. Although anyone can contract a foodborne illness, groups particularly susceptible are pregnant women, children younger than five, adults 65 and older, and those suffering from weakened immune systems (Centers for Disease Control & Prevention, 2017a, November 1).

If an outbreak, which is defined as "the occurrence of two or more cases of a similar illness resulting from a common exposure," is small and confined to a single state or territory, local public health departments typically investigate and report their findings to the CDC (Centers for Disease Control & Prevention, 2016, September 9). The CDC enters active investigations or begins its own investigation when the outbreak spans multiple states, is particularly large, or when its assistance is requested. The CDC works to identify the illness, its source, understand the scope, help stop the spread and manage communications. However, many foodborne illness outbreaks go unreported at the local level every year due to poor training, limited resources, and the voluntary nature of reporting. Additionally, isolating the source can be challenging due to the inability of those affected to identify exactly what they ate and/or the outbreaks ending before the source can be identified (Centers for Disease Control & Prevention, 2017b, September 5).

2.4. United States Department of Justice

If an outbreak occurs or a food regulatory agency deems it warranted, the business and/or individuals involved may be referred to the DOJ for potential prosecution or the DOJ may undertake its own independent investigation. According to the DOJ, "Congress has made the prohibition on introducing adulterated food into interstate commerce a strict liability offense, meaning a company violates the law when it distributes adulterated food whether or not it intended to do so" (United States Department of Justice, 2015a). The imposition of strict liability is typically limited to those situations involving public welfare and "places the burden of compliance on those uniquely positioned to ensure the safety of our food, drugs, water, air and workplaces, not innocent consumers and workers" (United States Department of Justice, 2016a). Supporting this proposition, in the case of *United States of America v. Quality Egg, L.L.C., et al.* (2015) the court stated,

the accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities. (para. C3)

Individuals and businesses alleged to have violated food safety laws can potentially face civil actions, criminal penalties, or both. Civil enforcements generally seek court ordered injunctions prohibiting further distribution of adulterated food, correction of the cause, and compliance with regulatory actions. In such civil actions, courts have broad latitude in finding against a defendant, and may base their ruling on the proposition that “past misconduct is highly suggestive of the likelihood of future violations” and if there is a history of legal violations the court “has significant discretion to conclude that future violations of the same kind are likely.” (*United States of America v. N.Y. Fish, Inc., et al.*, 2014, para. III). Before instituting a court action though, the DOJ may seek to negotiate an agreement with the offender calling for the same sanctions an injunction would accomplish. This can be a time and cost savings measure for both the offender and government, while still allowing court action if the agreement is violated.

Criminal charges can be either misdemeanor or felony. Prison time and monetary fines are possible under both, with felony penalties being the greater of the two. When deciding on the type of action to pursue, prosecutors “evaluate the nature and seriousness of the offense, the deterrent effect of the prosecution and the culpability of the individuals or entities involved,” (United States Department of Justice, 2016e). In recent years, the DOJ has announced their efforts to focus on prosecuting the individuals involved in adulterated food cases, as well as the business entity. According to the DOJ, “we long have known that one of the most effective ways to ensure corporate accountability and deter future misconduct is by pursuing the individuals through which corporations act” (United States Department of Justice, 2015b). In such cases, the DOJ has observed, “a common thread in many of the cases ... is that multiple people within an organization saw red flags of unsafe practices and chose not to act” (United States Department of Justice, 2015b).

3. Methodology

The CDC Foodborne Outbreak Online Database was utilized primarily to determine if tainted food was a continuing significant issue during the period of 1 January 2012, to 31 August 2017. In cases in which criminal prosecution was reported against alleged food safety violators, press releases of the USDA, FDA, and DOJ, issued during the same time frame, were analyzed to identify and determine outcomes if available. Database searches were also conducted to identify federal cases in which food safety was an issue. The case searches were conducted using WestlawNext and the University of Virginia Law School’s Corporate Prosecution Registry. WestlawNext is a primary search tool of comprehensive legal databases comprised of federal and state court cases, regulations, legislation, and other related source documents. The University of Virginia Law School’s Corporate Prosecution Registry “provides information on federal organizational prosecutions in the United States” (University of Virginia School of Law, 2017, para. 1).

Once relevant source documents were obtained, qualitative content analysis was utilized to manually review each document. Content analysis reduces data volume and subjectively interprets text data to arrive at patterns and themes (Hsiu-Fang & Shannon, 2005; Patton, 2002). It has been observed that findings arrived at through content analysis may have reliability issues when there is one reviewer of the data, while on the other hand multiple reviewers may sacrifice “research design and rigor” (Morris, 1994, p. 907). The expertise and qualifications of the reviewer can positively impact validity and diminish reliability issues (Morris, 1994, p. 907). To address these potential concerns, the researcher who performed data analysis has an earned law degree and substantial law practice experience. This researcher performed additional sample reviews of source documents and conclusions to aid in findings consistency.

4. Research and discussion

CDC data of foodborne illness outbreaks was available for 1 January 2012, through 31 December 2016, but not for 2017. Even though the partial final year of the study period was not accessible, the available data was considered sufficient to recognize trends as to whether or not tainted food is a continuing problem from a health safety viewpoint. Table 1 shows the number of reported outbreaks and their related illnesses, hospitalizations and deaths for 2012 through 2016. During the study

Table 1. Foodborne illness outbreaks

CDC reported totals	2012	2013	2014	2015	2016
Outbreaks	833	824	872	897	832
Illnesses	14,995	13,431	13,295	15,018	13,776
Hospitalizations	859 (5.7%*)	1051 (7.8%*)	722 (5.4%*)	923 (6.1%*)	810 (5.9%*)
Deaths	20 (0.1%*)	14 (0.1%*)	23 (0.2%*)	14 (0.1%*)	16 (0.1%*)

*Percent of illnesses.

period, the numbers for each category were reasonably consistent year over year, with spikes occurring in deaths in 2012 and 2014. It is important to note the data reflects only outbreaks (i.e. two or more cases of a similar illness resulting from a common exposure) not all of the foodborne illnesses and deaths occurring in the United States during a particular year. Equally important is the fact that many cases related to an outbreak are likely not reported.

One example of these points is the Peanut Corporation of America (PCA) case. The PCA fact pattern was particularly troubling. Defendants knowingly shipped peanut butter base contaminated with salmonella which resulted in thousands of illnesses and nine deaths. In trial testimony, estimates provided by the CDC expert reflected, “thirty unreported cases of salmonella linked to the PCA outbreak for every one reported case due to the likelihood that individuals infected with salmonella would not go through the entire process of identifying the strain of salmonella” (*United States of America v. Stewart Parnell, et al.*, 2016, para. 5).

We searched and reviewed the USDA press releases and FDA press releases related to inspections, compliance, enforcement, and criminal investigations for the study period (United States Food & Drug Administration, 2017a). Only one USDA press release during the entire study period pertained to a food-related prosecution and the subject matter of the release was covered in a DOJ release. Results of our FDA press release review are shown in Table 2. The vast majority of releases were regarding drug violations, with only a few concerning food-related criminal prosecutions. Each of the releases that did mention food-related criminal prosecutions were also mentioned in a corresponding DOJ release.

The DOJ enforces a wide variety of both civil and criminal federal laws. Cases of significance, along with important speeches made by high-level Department executives, are included in press releases issued by the DOJ on a yearly basis. Table 3 reflects the total number of releases the DOJ issued related to prosecutions for the study years, as well as the number that were “food related.” All food-related releases were individually reviewed.

Our research also incorporated searches of both WestLaw Next and The Corporation Prosecution Registry. Our WestLaw Next search used the search terms—food, tainted food, United States, USA, Food Drug and Cosmetic Act, and others. In total, these searches yielded only one case that was not identified by our review of USDA, FDA, and DOJ press releases. Finally, our search of The Corporation Prosecution Registry yielded four cases that were not identified by our review of USDA, FDA, and DOJ press releases.

Table 2. FDA—press releases related to food prosecutions

	2012	2013	2014	2015	2016	2017*
Total # of press releases	86	75	97	116	88	67
Food prosecutions related	0	0	2	4	2	0

*1 January 2017–31 August 2017.

Table 3. DOJ—press releases related to food prosecutions

	2012	2013	2014	2015	2016	2017*
Total # of press releases**	1,582	1,407	1,580	1,869	1,724	1,146
Food prosecutions related	45	60	41	76	51	41

*1 January 2017–31 August 2017.

**Excluding speeches.

Table 4. Unique prosecutions related to food*

Civil	19
Criminal	14

*1 January 2017–31 August 2017.

We reviewed all of the results of our research and distilled findings into DOJ civil and criminal actions related to tainted food. Table 4 provides a recap of such actions for the time period under study. The recap reflects “unique prosecutions” by which we mean cases involving different incidents. In most cases, there were several defendants per prosecution (e.g. business entity and individual(s)). Some of the cases are still being pursued, while others have concluded.

Among the most notable of the criminal cases found in which final verdict had been rendered by the court, were ConAgra Grocery Products, Jensen Farms, Oasis Brands, Quality Egg, Roos Foods, and Peanut Corporation of America. These cases were particularly egregious and the facts of each are discussed in detail below.

ConAgra Grocery Products, LLC (ConAgra), a subsidiary of ConAgra Foods, Inc., manufactures Peter Pan peanut butter, among other products. Peter Pan was linked to a 2006 through 2007 nationwide outbreak of salmonella poisoning that sickened at least 625 people in 47 states. ConAgra shipped the tainted peanut butter even after two separate tests confirmed the presence of salmonella. The president of the company entered a guilty plea on behalf of the company to a single misdemeanor count of shipping adulterated food. As part of the verdict rendered in 2016, ConAgra agreed to pay an \$8 million fine plus \$3.2 million in cash forfeitures, which is the largest criminal fine ever in a US food safety case. No individuals were prosecuted (United States Department of Justice, 2016b).

Brothers Eric and Ryan Jensen owned and operated Jensen Farms which was located in Granada, Colorado. The Jensen’s grew, picked, packaged, sold, and shipped cantaloupe. In 2011, they installed a washing system designed for potatoes but didn’t activate a chlorine spray feature which would have helped kill bacteria found on the exterior of the cantaloupes. In 2011, a listeria outbreak was traced to Jensen cantaloupes by the CDC and FDA. The outbreak affected people living in 28 states and resulted in at least 147 hospitalizations, 33 deaths, and a miscarriage. As a result of their guilty pleas, each brother was sentenced to five years probation including in-home detention for the first six months. They were each also ordered to pay \$150,000 in restitution and perform 100 h of community service (United States Department of Justice, 2014).

Christian Rivas was the owner of Oasis Brands, Inc. which manufactured and distributed cheese products. In 2014, cheese distributed by Oasis was discovered to be contaminated with listeria. The CDC and FDA began an investigation and Rivas initially agreed to stop production, cease additional shipments, and clean the production facilities. However, contrary to the agreement, Rivas resumed production of inventory in progress and distributed the finished products. There were five illnesses and one death linked to adulterated Oasis cheese. At trial, Rivas admitted to knowingly selling cheese contaminated with listeria and was sentenced to 15 months in prison (United States Department of Justice, 2016d).

Austin DeCoster was the owner of Quality Egg LLC, and his son Peter DeCoster was the chief operating officer. Quality Egg produced and distributed eggs, which were linked to a 2010 nationwide outbreak of salmonella poisoning resulting in 1,939 reported consumer illnesses in multiple states and a recall of millions of eggs. In 2015, Quality Egg LLC pled guilty to one count of bribery of a public official, one count of introducing a misbranded food into interstate commerce with intent to defraud, and one count of introducing adulterated food into interstate commerce. The company was fined \$6.79 million and sentenced to three years probation. Austin DeCoster and Peter DeCoster each pled guilty to one count of introducing adulterated eggs into interstate commerce and each were fined \$100,000 and sentenced to three months in prison followed by one year supervised release (United States Department of Justice, 2015d).

Roos Foods, Inc. distributed a variety of cheeses. In 2014, the company's cheeses were associated with an outbreak of listeria. A total of eight people became ill and one of those died. The DOJ pursued both criminal charges against the company and civil charges against its owners. In 2016, the company pled guilty to a misdemeanor violation of the FDCA and was fined \$100,000. Additionally, the firm's principals, Ana A. Roos and Virginia Mejia, agreed to a permanent injunction which provided that if the company resumes business, it must notify the FDA and take certain food safety steps (United States Department of Justice, 2016c).

The Peanut Corporation of America (PCA) produced industrial peanut butter and peanut base. Its products were used by manufacturers of consumer products containing peanuts. In 2009, a salmonella outbreak in 46 states was traced to PCA products. An estimated 22,000 illnesses and nine deaths were caused by the company's tainted products. Upon investigation, it was discovered that responsible individuals fabricated documents and testing results, knowingly shipped tainted products, and lied to customers and investigators. Samuel Lightsey, a former operations manager, was sentenced to three years in prison plus three years of supervised release. Daniel Kilgore, also a former operations manager, received a six-year prison sentence plus three years of supervised release. Mary Wilkerson, a quality assurance manager, was sentenced to serve five years in prison plus two years of supervised release. Michael Parnell, PCA's food broker and brother of owner Stewart Parnell, received a 20-year sentence plus three years of supervised release. Stewart Parnell, former owner and president of PCA and instigator of the scheme to lie and deceive in order to maximize profits, was sentenced to 28 years in prison plus three years of supervised release. At the time of sentencing in 2015, Stewart Parnell was 61 years old. In effect, he received a life sentence (United States Department of Justice, 2015c).

The 14 criminal cases reported over the study period of five-plus years indicate that the risk of criminal prosecution is very low when compared to the number of people who became sick, as well as those who died due to tainted food during the same time period. And, even if criminally prosecuted the risk of responsible individuals actually going to jail is even more remote, as evidenced by only those involved in the Oasis Brands, Quality Egg, and PCA cases being sentenced to prison during the period under study. As revealed in Jensen Farms and Roos Foods, even a death or deaths related to a tainted product doesn't automatically result in prison time for the individuals responsible for making the decisions which led to the adulteration and placing of the product into the marketplace. However, the PCA case does illustrate that going to jail is possible, particularly in cases where there has been a concerted effort to mislead authorities and there was deliberate action to knowingly sell adulterated products with obvious disregard to exposing consumers to potentially deadly consequences.

It should be noted however, that in 2015, the DOJ announced a change in policy which ostensibly could mean more prosecutions of individuals. The policy states,

one of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing. Such accountability is important for several reasons: it deters future illegal activity; it incentivizes changes in corporate behavior; it ensures that the proper parties are held responsible for their actions; and it promotes the public's confidence in our justice system. (United States Department of Justice, n.d., para. 2)

Even if the DOJ has decided to focus on responsible individuals, it will take time before this focus translates into actual prosecutions and verdicts. For example, in the ConAgra case, the first outbreak related to Peter Pan peanut butter occurred in 2006, but the criminal prosecution did not conclude until 2016. And, in the PCA case, the first illnesses were reported in 2009 and the verdicts against the defendants weren't rendered until 2015.

It is also important to note that overall food safety in the United States is still very high. According to the United States Department of Justice (2016e),

there's no question that the overwhelming majority of food produced and consumed in the United States is safe. America's incidence of foodborne illness is below the average in other developed countries and it continues to drop. Americans can be confident in the quality of the food that they buy and eat every day. (para. 8)

5. Conclusion

Consumption of tainted food can lead to illness and in some cases death, but not necessarily criminal prosecution of the entity, managers and/or other individuals responsible for creating the adulterated food. In regards to the question posed in this research "do managers really go to jail", the answer is rarely. Although the risk of criminal prosecution, as well as actually going to jail, is very low, it's important to recognize that it does still exist. With that in mind, the results of this study may increase awareness of business managers and their employees of the potential consequences of their decisions related to the production, processing, and sale of food. Not being criminally prosecuted for the sale of adulterated products may also help the business avoid reputational harm, diminished sales, stock price declines, product liability lawsuits, business interruption, government fines, and bankruptcy. This study may also lead to more ethical business decisions and fewer people becoming sick and dying, if in fact managers realize the potential human and financial toll of placing adulterated food in the marketplace.

However, the risk of criminal prosecution alone may not be enough to accomplish the hoped for impact of this study. Smith, Simpson, and Huang (2007) observed, "formal sanctions may be ineffective, at least in isolation" and there may be a role for ethics, even if there is "highly punitive sentencing of corporate offenders," since "there may be justifiable skepticism of its effectiveness in deterring future corporate misconduct" (p. 633).

There are certain limitations to this study, as well as opportunities for additional research. Our review was limited to federal cases and did not include state court cases. This decision was made because it was thought the DOJ would be the most likely to prosecute and consequently the venue for tainted food prosecutions would be federal court. Additionally, pre-court action negotiated settlements would not have appeared in our searches, so it is possible but seemingly unlikely, that a potential criminal matter could have been settled before a court filing. However, even if such did occur, because of the nature of such agreements, they would not have resulted in prison time for the individuals involved. In light of the DOJ's policy change in 2015 to focus more on the prosecution of individuals, it appears future research is warranted to determine if the risk of criminal prosecution to individuals does in fact increase as time goes on. Perhaps if the decision-makers at Blue Bell ice cream and Chipolte Mexican Grill restaurants are prosecuted for their relatively recent tainted food issues, then there may in fact be an increased risk of criminal sanctions for managers and other responsible individuals.

Funding

The authors received no direct funding for this research.

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Citation information

Cite this article as: Tainted food—Do managers really go to jail?, Rickey E. Richardson, Laura L. Gordey & Kyle C. Post, *Cogent Business & Management* (2018), 5: 1450817.

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