



25 years after Jack-in-the-Box - from a lawyer's perspective - A Bit(e) of History

MARLER CLARK

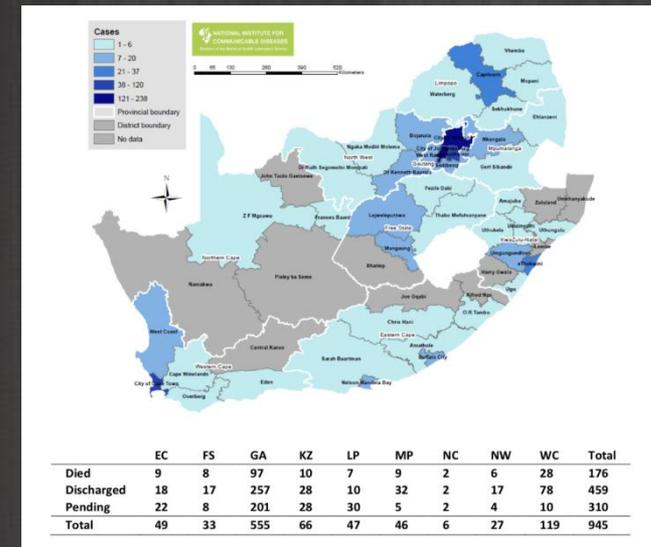
THE FOOD SAFETY LAW FIRM

First off – I am Sorry



A South African Tragedy

- 948 cases have been reported since January 2017.
- 743 cases were reported in 2017.
- 205 cases in 2018.
- Females account for 55% cases where gender is reported.
- Ages range from birth to 92 years.
- 180 patients are known to have died.



Post Upton Sinclair “The Jungle”



The “poke and sniff” system was designed to prevent rotten, blemished, or damaged meat from entering the food supply.

Cuts of meat with lesions, growths and abrasions were found by inspectors, who used their sense of smell and touch to identify contaminated meat from clean cuts.

The “command and control” approach meant that the USDA inspectors were in control of the facility and meat safety was the responsibility of U.S. Government.



Following the public outery, meat packers tried to create a better image of conditions in their plants and of the thoroughness of government inspection. In fact, when this picture was taken in 1906, postmortem inspection as shown here had not been at all common. (Library of Congress)

A History of Food Safety and Litigation

“In construing both the Wholesome Meat Act and the Wholesome Poultry Products Act we are mindful that the presence of salmonellae can be detected only by microscopic examination. No one contends that Congress meant that inspections should include such examinations. We think it follows therefore that Congress did not intend the prescribed official legends to import a finding that meat and poultry products were free from salmonellae.”

“The American consumer knows that raw meat and poultry are not sterile and, if handled improperly, perhaps could cause illness.” In other words, American housewives and cooks normally are not ignorant or stupid and their methods of preparing and cooking of food do not ordinarily result in salmonellosis.”

APHA v. Butz, 511 F.2d 331, 334 (1974).

A Warning Ignored

In 1983 the New England Journal of Medicine reported two outbreaks of an unusual gastrointestinal illness that affected at least 47 people in Oregon and Michigan in February through March and May through June 1982 in Oregon and Michigan that affected at least 47 people. The outbreaks were associated with eating at restaurants belonging to the same fast-food restaurant chain in Oregon and Michigan.

E. coli O157:H7 was isolated from 9 of 12 stools collected within four days of onset of illness in both outbreaks and from a beef patty from a suspected lot of meat in Michigan.



“The Beef Industry’s 911”

From November 15, 1992, through February 28, 1993, more than 600 laboratory-confirmed infections with *E. coli* O157:H7 and four associated deaths occurred in four states: Washington, Idaho, California, and Nevada. In Washington, as a result of publicity and case-finding efforts, during January-February 1993, 602 patients with bloody diarrhea or HUS were reported to the state health department. Onsets of illness peaked from January 17 through January 20. Of the patients, 30% were hospitalized; 30 developed HUS, and three died. The median age of patients was 7.5 years.



Idaho

In Idaho, following the outbreak report from Washington, the Division of Health, Idaho Department of Health and Welfare, identified 14 persons with culture-confirmed *E. coli* O157:H7 infection, with illness onset dates from December 11, 1992, through February 16, 1993. Four persons were hospitalized; one developed HUS.



Nevada – Gambling with your Health

In Nevada, after receiving a report of a child with HUS who had eaten at a Jack-in-the-Box restaurant, the Clark County Health District issued a press release requesting that persons with recent bloody diarrhea contact the health department. Of 58 persons whose illnesses met the case definition nine were hospitalized; three developed HUS. The median age was 30.5 years.



California – A Missed Opportunity

In late December, the San Diego County Department of Health Services was notified of a child with *E. coli* O157:H7 infection who subsequently died. After the Washington outbreak was reported, reviews of medical records at five hospitals revealed an overall 27% increase in visits or admissions for diarrhea during December 1992 and January 1993 compared with the same period 1 year earlier. Illnesses of 34 patients met the case definition. The outbreak strain was identified in stool specimens of six patients. Fourteen persons were hospitalized, seven developed HUS, and one child died. The median age of case-patients was 10 years.



Where is the Beef?

A meat traceback by a CDC team identified five slaughter plants in the United States and one in Canada as the likely sources of carcasses used in the contaminated lots of meat. The animals slaughtered in domestic slaughter plants were traced to farms and auctions in six western states. No one slaughter plant or farm was identified as the source.



Litigation as Incentive – 25 Years Later

Jack in the Box



Worthless Excuse No. 1

“I never read the memo.”

If a document contains damning information, the jury will assume you read it, understood it, and ignored it





TO: MANAGER, OPERATIONS SERVICE AND MAINTENANCE, SAN DIEGO

FROM: Wendy Cocharella

TITLE/POSITION: Shift leader

RESTAURANT: 8466

PHONE: (602) 435-3178

DATE: 6/10/92

IN THE SUGGESTION BOX

Type of suggestion: (Check)

Restaurant Procedure (POS, Admin, Maintenance, etc.)

Quality Improvement (Procedure, Equipment, System)

CHECK STANDARDS

New Product

Other

Describe change/new Product idea I think regular patties
should cook longer. They don't get done and
we have customer complaints

RECEIVED
JUN 23 1992

Describe change/new Product idea I think regular patties
should cook longer. They don't get done and
we have customer complaints

Describe benefit/new Product build If we change this we
will be making our burgers done and edible.

Wendy Cocharella
Signature

6/10/92
Date

ORIGINAL COPY TO: MANAGER, OPERATIONS SERVICE AND MAINTENANCE, SAN DIEGO

SECOND COPY KEPT AND BY INITATOR

EXHIBIT
605

REV. 8/88

FORM NO. 1788



July 24, 1992

Wendy Cocharella
Shift Leader
JACK IN THE BOX #8466
3818 172nd. St. N.E.
Arlington, WA 98223

Dear Wendy:

We have received your suggestion regarding increasing the cooktime for our regular patties.

Your suggestion is currently being researched within the Corporate Office. You will again be notified with more detail as soon as a decision has been made regarding this suggestion.

We would like to acknowledge the time and effort you have taken to contribute to the success of JACK IN THE BOX by enclosing this pen/highlighter. Each person submitting suggestions is eligible to receive one gift per quarter with their first suggestion.

Sincerely,

Randell J. Hoggan

RAJH

We would like to acknowledge the time and effort you have taken to contribute to the success of JACK IN THE BOX by enclosing this pen/highlighter. Each person submitting suggestions is eligible to receive one gift per quarter with their first suggestion.

----- ranchin
Mike McQuitty
Janice Eubank, Restaurant Manager J8466
Ed Mulhausen - Northwest
Rex Lynch - Northwest

suggest/jad/suggest

A Division of
Foodmaster, Inc.
10000 Irvine Avenue
San Diego, CA 92126-0100
Mailing Address P.O. Box 765
San Diego, CA 92113-0765
(619) 573-2123



August 28, 1992

Wendy Cocharella
Shift Leader
JACK IN THE BOX #3466
3818 172nd. St. N.E.
Arlington, WA 98223

Dear Wendy:

Thank you for your suggestion that we increase the cooktime for our regular patties.

We have researched your suggestion and determined that with the variability of our grill temperatures (350° - 400°) the two-minute cooktime is appropriate. If the patties are cooked longer than two minutes, they tend to become tough. To ensure that you are meeting quality expectations for regular patties, please ensure that the grill temperature is correct and grill personnel are using proper procedures.

Wendy, thank you again for your suggestion. We appreciate and thank your concern for

We have researched your suggestion and determined that with the variability of our grill temperatures (350° - 400°) the two-minute cooktime is appropriate. If the patties are cooked longer than two minutes, they tend to become tough. To ensure that you are meeting quality expectations for regular patties, please ensure that the grill temperature is correct and grill personnel are using proper procedures.

cc: Stephanie Green
Vanessa Fanchin
Mike McQuity
Janice Eubank, Restaurant Manager #3466
Ed Mulhausen - Northwest
Rex Lyoch - Northwest

FOODSST-1/3ad/FOODSST

A Division of
Foodservice, Inc.
4000 Sutter Avenue
San Diego, CA 92123-0200
Tel: 619-594-2200
Fax: 619-594-2200

Historic Shift In USDA Enforcement Policy

“To clarify an important legal point, we consider raw ground beef that is contaminated with *E. coli* O157:H7 to be adulterated within the meaning of the [FMIA]. We are prepared to use the Act’s enforcement tools, as necessary, to exclude adulterated product from commerce. Finally, we plan to conduct targeted sampling and testing of raw ground beef at plants and in the marketplace for possible contamination.”

September 28, 1994

FSIS Administrator,
Michael Taylor, in a
speech to the AMI

Public Outrage Caused Change

MEAT INSPECTION TOTALLY RE-INVENTED:

1. From “Command and Control” Model to HACCP-based Model
2. HACCP placed the responsibility for meat safety on the manufacturer
3. Inspectors are there to confirm that the HACCP plan is in place & working
4. USDA implemented microbiological testing in-plant and at retail

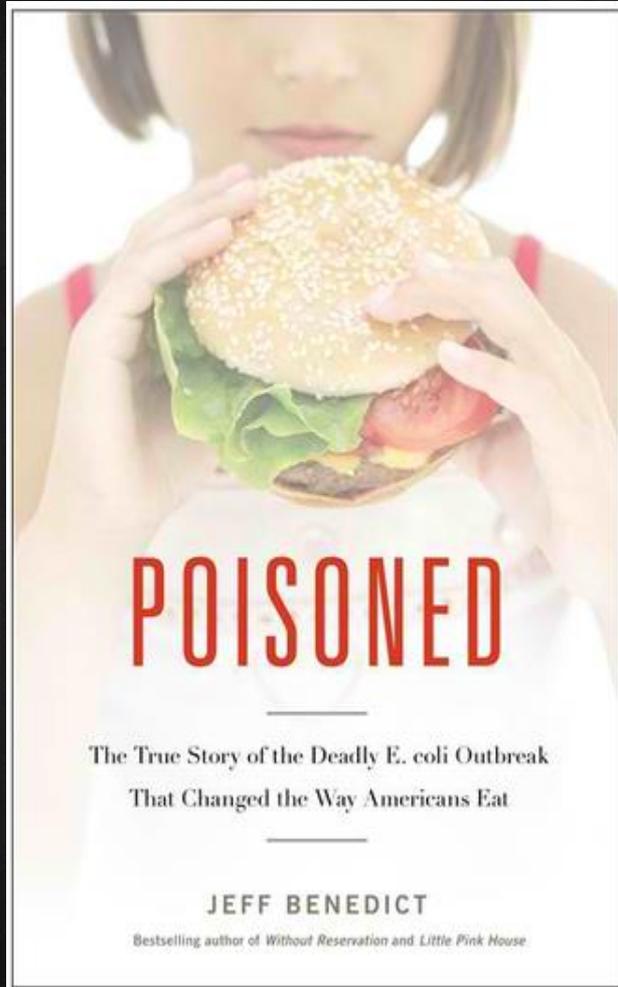
A Positive Tend Line

Marler Clark
Revenue



E. coli
O157:H7

Something for Before Dinner Reading



"A stunningly researched work, "Poisoned" reads as though Clarence Darrow had written "The Jungle."

"Just in time for BBQ season, an investigative journalist traces the path of a devastating outbreak of food-borne illness linked to hamburger meat."

Where Does South Africa Go From Here?



- Put People Under Oath
- Make Industry and Government Accountable
- Keep the Process Transparent
- Work Together – Consumers, Industry and Government
- Keep it Based Upon Science
- Focus on Protecting the Most Vulnerable

Questions

