Them's Fightin' Words

by **WES ISHMAEL**

"A food poisoning lawsuit was filed today in the enormous egg recall and Salmonella outbreak tied to two Iowa egg farms …"

"Settlements for victims of the 2008 peanut butter Salmonella outbreak were approved today by the United States District County for the Western District of Virginia, Lynchburg Division …"

"Maricopa County, Arizona, resident Annette Sutfin filed an E. coli *lawsuit today against Bravo Farms Cheese, LLC, the cheese manufacturer that produced and distributed Gouda cheese that has been identified as the source of an* E. coli *O157:H7 outbreak among Costco Wholesale customers in the southwestern United States ..."*

"An E. coli *lawsuit was filed today against Baugher's Orchard and Farm, the Westminster, Maryland, farm that recalled its unpasteurized apple cider products after they were identified by Maryland public health authorities as the source of an* E. coli *O157:H7 outbreak among at least seven state residents ..."*

"The family of Shirley Almer, one of nine people who died after consuming products made with Salmonella-contaminated peanuts produced by Peanut Corporation of America, filed a lawsuit against Kanan Enterprises of Solon, Ohio, maker of King Nut peanut butter, last week ..."

"A food poisoning lawsuit was filed in Bexar County District Court today against San Antonio-based Sangar Fresh Cut Produce. The lawsuit was filed on behalf of the family of a man who died from a Listeriosis infection he contracted after eating celery produced by Sangar. The man, Hermillo Castellano was one four people who died as a result of consuming the contaminated celery ..."

Those are the leads for some of the lawsuits involving food safety filed by Marler Clark since August. According to its own press, Marler Clark is the nation's leading law firm representing victims of foodborne illnesses such as *E. coli*, Salmonella, and Hepatitis A. The firm was established in 1998 by the top attorneys for the plaintiffs and defendants in the landmark litigation arising from the 1993 Jack in the Box *E. coli* outbreak.

In 2010, there were 38 food recalls, according to the Food Safety Inspection Service (FSIS); most of them involving meat or fish, or products containing meat or fish. Recalls listed at the FSIS site are for everything from mislabeling to spoilage and adulteration to undeclared allergens to *E. coli*, Salmonella and *Listeria*.

The grayest area

Folks can wax philosophically about their economic well-being relative to other contentious issues such as the myth of global warming; the misguided efforts of activists to hamstring the very technology that makes today's agricultural production more environmentally friendly than not using it; the ignorance of lawmakers trying to legislate markets in the name of helping producers, though it does the opposite.

But, there is perhaps no other intersection between agricultural producers and their consumers as rife with raw emotion and misinformation as the one marked food safety. Here, the discussion is about well-being. Period. It's about potential life and death, rather than the economics surrounding it.

None of us want to be sickened by something we eat or drink in moderation. No producer wants to think that beef from cattle he or she raised could be the conduit of a pathogen like *E. coli* or Salmonella because of management, processing or preparation that occurs beyond their ownership.

As consumers, we like to view food safety in black-and-white terms — either it's safe to consume or it isn't. That's true even if we realize no one on this earth can guarantee complete safety in any endeavor. When it comes to food safety, however, the facts and possibilities exist in shades of gray.

Though seldom painted in such stark terms, the fact is that safety of any kind, providing protection against injury or loss of life, revolves around things like the value of human life relative to the cost of preserving it, as well as the statistical probabilities of things ultimately unknowable.

How safe is it?

Up front, being the patriotic and provincial sort, I'll take my chances with food produced and processed in this country. Though the headlines seem more boisterous these days, the fact is that U.S. food is among the safest in the world.

I'd say the safest, but so many things go into defining and measuring such a broad qualification.

Consider the 2010 Food Safety Performance World Ranking produced by the Johnson-Shoyama Graduate School of Public Policy (SGSPP) at the University of Saskatchewan and the University of Regina.

The ranking was designed to facilitate identifying the strengths and weaknesses of Canada's food safety performance. In doing so, researcher Sylvain Charlebois, associate director of SGSPP, scores and ranks Canada, as well as the 16 other nations that are members of the Organization for Economic Cooperation and Development. By and large, think here of the economically developed countries, including the United States, England, Australia and Japan.

According to the report, each nation receives a grade (superior, average or poor) for the categories of:

- **Consumer affairs** — measuring policies and outcomes that assess how well countries connect with their consumers, as well as surveillance efforts, including hygiene practices and information accessibility.
- **Biosecurity** — considering a nation's capacity to contain all relevant risks related to food safety. This includes the rate of agricultural chemical use and bioterrorism strategy.
- **Governance and recalls** — considering the effectiveness of domestic regulations and governance related to food safety. As an example, the report cites the existence of risk-management plans and the number of food recalls.

Traceability and management — measuring a country's ability to identify the location of food items and its knowledge of a food item's history.

Though anyone can argue at the subjectivity of the criteria and subsequent scoring, it's hard to quibble over the breadth and depth of the assessment.

When all was said and done, the United States was graded "Superior" overall, as were Canada (tied with the U.S. for ranking 4th), the United Kingdom (ranked 3rd), Australia (ranked 2nd) and Denmark (ranked 1st). Incidentally, the United States ranked higher than it did in 2008 when it was graded "Average."

Regulating and legislating

Even with such sterling marks, the either-or food safety druthers of consumers makes it easy to understand why legislation aimed at presumably increasing safety is usually such an easy sell.

For instance, in 2010, the Senate and House both approved their respective versions of the Food Safety and Modernization Act by overwhelming majorities. President Obama quickly signed the lame duck legislation in January 2011.

On its surface, the intent of the legislation seems admirable enough, though a lot of questions remain even now about whether funding will be available for the increased auditing and surveillance for which it calls.

One contentious element of the law is exemptions to the regulations given to producers with annual sales of less than $500,000, as well as exemptions for producers based on geographic distance from the end user — 275 miles. In other words, whether it was the intent or not, the law makes size rather than science a criterion for food safety.

Similarly, continued Congressional debate over the judicious use of antibiotics in livestock production is sure to rage on. Rep. Louise Slaughter (D-NY) has repeatedly introduced a bill named the Preservation of Antibiotics for Medical Treatment ACT — or PAMTA. Though it failed in the last session of Congress, she has introduced it again with numerous co-sponsors, and there is a companion bill in the Senate, as well.

According to Congresswoman Slaughter, "Unfortunately, over the past several years, the widespread practice of using antibiotics to promote livestock growth and compensate for unsanitary, crowded conditions has led to the emergence of antibiotic-resistant strains of bacteria and other germs, rendering many of our most powerful drugs ineffective. PAMTA will limit the use of antibiotics on our livestock to ensure that we are not inadvertently creating antibiotic-resistant diseases that we can't fight with modern medicine."

Her website lists more than 300 organizations that endorse the legislation.

"Unfortunately, there are a lot of misconceptions and outright misrepresentations out there about why and how antibiotics are used in the cattle industry," said Mike Apley, a veterinary clinical pharmacologist at Kansas State University (K-State). "The truth is cattle producers and veterinarians utilize many tools, including vaccines, herd health

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management, genetics and animal nutrition to avoid the need for antibiotics.

"They must adhere to strict, science-based guidelines in the use of antibiotics to treat, prevent, and control disease in livestock," he continues. "These antibiotics have passed a stringent FDA-approval process, which has demonstrated they are safe and effective."

Apley made those comments in 2010 after visiting with Slaughter and Congressman Leonard Boswell (D-IA) to discuss the proposed PAMTA legislation.

Boswell was part of a congressional delegation trip to Denmark that examined the impacts that nation's antibiotics ban had on the country's swine population.

"In Denmark, we heard from farmers who saw increased mortality and illness, in addition to higher production costs, soon after the ban was put in place," Boswell said. "In fact, many small Danish farmers who raised pigs went out of business after the ban. Only the farmers who could afford to implement the ban did survive the transition."

"Prevention of disease is a cornerstone in both human and animal medicine," Apley explained. "Veterinarians and producers are intent on fulfilling their obligations to both human and animal health, and our current regulatory process provides methodologies for further evaluating the use of antibiotics in food animals. It would be a tragedy to lose any valuable tools for preventing animal disease without substantial evidence for a benefit to human health."

In lieu of legislation, the Food and Drug Administration (FDA) issued draft guidance in the summer of 2010 aimed at outlining the FDA's current thinking on strategies to assure that antimicrobial drugs important for therapeutic use in humans are used judiciously in animal agriculture. The FDA acknowledged the efforts by various veterinary and animal producer organizations to institute guidelines for the judicious use of antimicrobial drugs, but said it believed additional steps are needed. Among the steps FDA suggests is limiting the use of antimicrobials in livestock production that are considered medically important for humans, as well as increasing veterinarian oversight of the administration of antibiotics.

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Moreover, on Jan. 4, the FDA announced an order that prohibits certain uses (extra-label or disease prevention) of the cephalosporin class of antimicrobial drugs in cattle, swine, chickens and turkeys — effective April 5, 2012.

In 2008, the FDA issued and ultimately revoked an order that prohibited extra-label uses of cephalosporins in food-producing animals with no exceptions. Under the 2010 order, veterinarians will still be able to use or prescribe cephalosporins for limited extra-label use as long as they follow dose, frequency, duration and route of administration instructions on the label.

"We believe this is an imperative step in preserving the effectiveness of this class of important antimicrobials that takes into account the need to protect

the health of both humans and animals," said Michael Taylor, deputy commissioner for foods.

The comment period on this new order will close March 6. In the meantime, other guidance documents under development by the FDA for 2012 include Final Guidance for Industry — Judicious Use of Antimicrobial Drugs in Food Producing Animals.

Jim Pettigrew, University of Illinois professor of animal sciences and a member of the Federation of Animal Science Societies (FASS) Science Policy Committee, served as the lead coordinator for the FASS policy statement on antibiotics.

"The body of knowledge now available shows that all uses of antibiotics, whether in people or in animals, can contribute to the spread of antibiotic resistance in bacteria. It's important to limit the use of these very beneficial products as much as feasible," Pettigrew said. He's quick to add, "A broad prohibition on use of antibiotics to prevent disease has, in some cases, increased the amount used for disease treatment and has not minimized total antibiotic use. This can be detrimental to animal welfare and to efficiency of resource use."

Elizabeth Parker, National Cattlemen's Beef Association (NCBA) chief veterinarian explains, "Antimicrobial resistance is a multifaceted and extremely complex issue that cannot be adequately addressed by solely focusing on the use of these medications in animal agriculture. Only by carefully evaluating antimicrobial resistance in a comprehensive manner that evaluates all of the peer-reviewed science related to all animal use, human use and industrial use will we effectively address this important issue …"

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Tracking what you can't find

Whether it's finding the source of antibiotic residue or the source of a pathogen like *E. coli* (see "UNL to Lead *E. coli* Research Effort," beginning on page 154), one reality that continues to hamstring U.S. food safety efforts for meat is the simple fact that there is no national standardized livestock identification system.

This is one notion some cattle producers have wailed vehemently against, of course.

In fact, even with the stillborn death of the National Animal Identification System (NAIS), there are still some taking every chance to equate animal identification with all kinds of unrelated ills. Consider the news release from one organization that took Australia's national system to task for asking producers to utilize the system to report and relocate livestock lost during the flooding there last year.

Good grief.