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The Opinion Pages | OP-ED COLUMNIST

# Of Peanuts and Prosecutions

Joe Nocera SEPT. 25, 2015

Salmonella poisoning is an awful affliction. It is marked by diarrhea, abdominal cramps, dehydration and fever that can last as long as a week. Many people wind up in the hospital. Others develop something called reactive arthritis. And in a small number of cases, the victims die.

A major outbreak of salmonella poisoning took place in America in 2008 and 2009, when nine people died and over 700 others were reported ill. The outbreak was traced to a peanut processing plant in Georgia, owned by the Peanut Corporation of America, a \$30 million company whose chief executive was a man named Stewart Parnell.

The plant was soon shuttered and the company liquidated. Eventually, Parnell, 61, was indicted and prosecuted. Found guilty, the former C.E.O. received a stunning sentence earlier this week: 28 years in prison.

A serious auto accident is also a terrible thing to endure. We know now that the faulty ignition switch installed in General Motors-made Cobalts, Saturn Ions and other cars manufactured between 2003 and 2007 resulted in at least 124 deaths. In addition, 275 people were injured badly enough to be awarded compensation — some in the millions — by Kenneth Feinberg, the well-known lawyer G.M. hired to run its victims' compensation fund. At least 20 of the injured, including a young boy, will require 24-hour care for the rest of their lives.

And yet, a few days before Parnell's sentencing, Preet Bharara, the top federal prosecutor in Manhattan, announced a settlement with G.M. that included a \$900 million fine and a three-year deferred prosecution agreement — but not a single indictment of a G.M. employee. (Several remain under investigation.)

How can this be? How is it possible that the executive of a company whose product killed nine people gets a lengthy jail sentence yet the executives of a company whose product killed 124 people get off scot free?

Bharara's explanation — and there is some truth to it — is that it is unusually difficult to prosecute auto industry executives. It is not a crime “to put into the stream of commerce a defective automobile that might kill people,” he said during his briefing with the media. What's more, thanks to auto industry lobbying, the nation's auto safety laws generally call for punishing corporate, rather than individual, malfeasance.

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Another reason is specific to the ignition issue: For years, G.M. executives didn't realize that when the ignition shut down, the airbags also lost power. Thus, G.M. officials didn't view the problem as a safety issue. In winning cases against individuals, prosecutors have to show criminal intent.

But here's one of the big surprises about the Parnell case, which was brought by Mike Moore, a federal prosecutor in Georgia. Moore relied as much or more on plain old fraud charges as he did on food safety laws, which do allow for individual prosecutions. The fact that the salmonella outbreak caused nine deaths wasn't even part of the trial. Instead, the focus was on whether Parnell committed fraud by knowingly introducing tainted peanut butter paste into interstate commerce. The fraud conviction is what brought that eye-popping sentence.

There are plenty of people — people who genuinely understand the law — who believe that Bharara could have done the same thing with G.M. executives who knew about the faulty ignition but said nothing to the government, even though they were required to do so within five days of learning about a safety problem. In their view, Bharara's cautious reading of the law is far too narrow.

"The fraud in the peanut butter case is that it was contaminated and they knew it," said Clarence Ditlow, who runs the Center for Auto Safety. "What did G.M. executives do? They knowingly sold a defective car." Rena Steinzor, a law professor and author of "Why Not Jail?," about the legal consequences of industrial mishaps, said that in the prosecutors' statement of fact they specifically noted that G.M. was assuring the public that the cars were safe when people inside the company knew they weren't.

Sen. Richard Blumenthal, a Connecticut Democrat and a former attorney general of that state, has co-authored a bill that would make it easier to prosecute auto executives. But he also had little patience with Bharara's explanation.

"It's a crime to make a false statement to the government," Blumenthal said. "18USC1001," he added, citing the law. "If you submit a false statement to a federally insured bank in connection with a \$500 loan, prosecutors can go after you. G.M.'s false statements are just as much a violation of the law."

I've seen it written recently that the urge to prosecute corporate executives is little more than an exercise in schadenfreude. But it's not. It is instead the single most powerful deterrent imaginable — far more powerful than a fine, which is meaningless to a company like G.M.

“I guarantee you,” says Blumenthal, “one sentence like [Parnell’s] would change auto safety dramatically and enduringly.”

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