



Written by [Michael Tennant](#) on September 25, 2012

## Jury Clears Minnesota Farmer of Raw Milk Charges

In what his attorney called “a huge victory for food freedom,” a Minnesota farmer was acquitted by a jury of the “crime” of distributing unpasteurized milk to members of a food cooperative.



On September 20, “after a three-day trial and more than four hours of deliberation,” reported the [Minneapolis Star Tribune](#), “a Hennepin County jury found Alvin Schlangen not guilty of three misdemeanor counts of selling unpasteurized milk, operating without a food license and handling adulterated or misbranded food.” Each count carried a maximum sentence of three months’ imprisonment.

“Schlangen, an organic egg farmer from Freeport, Minn., doesn’t produce milk himself but operates Freedom Farms Co-op, a private club with roughly 130 members who buy various farm products, including raw milk,” the paper explained. “Schlangen picks up the milk products from an Amish farm and delivers them to members.”

“The charges are based on commerce and there’s no commerce here,” the 54-year-old Schlangen told the [Star Tribune](#). “It’s a completely different food system than what we are accustomed to.”

Two co-op members testified to the private nature of their arrangements with Schlangen. One, Kathryn Niflis Johnson, [told](#) the court, “As a member we lease/own the animals. We place an order and food products are delivered by Alvin. We pay the proportional amount for labor and overhead it takes to produce the food.” Asked by prosecutor Michelle Doffing Baynes if she had “bought” other products from Schlangen, Johnson replied, “I don’t know if ‘bought’ is the right word, but I usually get eggs and milk and maybe other things in the past... You have to understand that this is a whole new model and that we don’t necessarily have the right words to describe what we are doing.”

The reason Minnesotans must make such complicated arrangements to obtain certain fresh farm products is that state law restricts the sale of these products — raw-milk products in particular — to the farms where they are produced. “Schlangen,” noted the [Star Tribune](#), “called the law ‘absurd,’ since it implies the same batch of raw milk is safe at the farm, but not if sold in the Twin Cities.” James Roettger, a senior inspector for the Minnesota Department of Agriculture (MDA), actually testified that raw milk “should be consumed on the same day it is produced, suggesting that raw milk kept any longer could become dangerous,” according to raw-milk advocate David Gumpert.

Minnesota is “the most oppressive state in terms of freedom of food choice,” [Farm-to-Consumer Legal Defense Fund](#) president Peter Kennedy told the [Star Tribune](#). (Kennedy’s organization paid for Schlangen’s defense.) Schlangen found that out firsthand, [telling](#) Gumpert that on March 9, 2011:

The MDA stopped and illegally seized, searched and confiscated the property carried in the private delivery truck belonging to the Schlangen family farm. This action occurred at the foot of a sports



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stadium at St[.] Paul Macalester College, where a group of students were able to connect with the Schlangen farm for their choice of local sustainable eggs. I was not allowed to deliver the product of my farm to the college group that day. In fact, those very eggs were confiscated, along with fresh farm dairy food that belonged to the members of newly formed Freedom Farms Coop.

The same day, the (food club's leased warehouse space) was raided, food was seized as well as packaging material including empty milk crates, even several gallons of used veggie oil that was potential fuel for the delivery rig. With a wholesale value of more than \$5,000, this was in fact grand larceny, aggravated and pre-meditated, by MDA officers.

During the trial Schlangen testified that agents did not have a warrant to search his van and that while they did obtain warrants for other searches, "a St. Paul officer's name was substituted for a Minneapolis officer's name on one warrant."

As if that weren't bad enough, MDA agents "testified about their activities secretly following Schlangen and monitoring his activities," Gumpert wrote. "All this, even though no one even suggested Schlangen's milk or other products made anyone ill."

Perhaps it was the MDA's overzealous pursuit of a harmless farmer that swayed the jury, or perhaps it was Schlangen's honest testimony about the nourishing food he provides to his club members. Perhaps it was a little of both. Or maybe jurors — concurring with the sentiments of club member Natasha Simeon that "I don't think it's the government's place to tell me what I can and can't eat or feed my family" — simply chose to nullify a law they perceived as unjust. Whatever the case, Schlangen is a free man — for now.

He does, however, face trial in nearby Stearns County on similar charges. But as Gumpert observed, "The prosecution could decide to drop the charges rather than risk rejection by a second jury, or it could decide to call on bigger legal guns and go at Schlangen more aggressively in its court presentation."

Based on the MDA's post-trial [statement](#), which essentially rejected the ruling, it's obvious the agency would like nothing more than to throw everything it has at Schlangen and bring him to heel. The problem, Gumpert pointed out, is that the agency "must depend on public prosecutors to do its dirty work" — and prosecutors hate to lose. Baynes, for example, pointedly refused to comment on the Schlangen ruling.

"A few more outcomes like the Schlangen case, and the prosecutors around Minnesota won't be returning the MDA's phone calls too quickly," Gumpert wrote. "Indeed, prosecutors in other states won't be responding very positively to their ag[riculture] departments with similar cases as Schlangen's."

In fact, he reported, the successful nullification of the Minnesota law — or at least the way it was being applied — by the Schlangen jury is already making its effects known in neighboring Wisconsin. There, supporters of farmer Vernon Hershberger, who is being brought up on similar charges, are waging a [campaign](#) to inform residents in his county, any of whom could end up on the jury deciding his case, of their right to nullify unjust laws. Hershberger's trial begins in January.

"It's a big step in the right direction," Schlangen said of his acquittal. "I have a hard time understanding how this basic freedom has been so hard to maintain."

Freedoms *are* difficult to maintain. Only an informed, engaged citizenry can serve as an effective



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bulwark against government encroachments on them. Schlangen was fortunate to have such citizens deciding his fate.



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