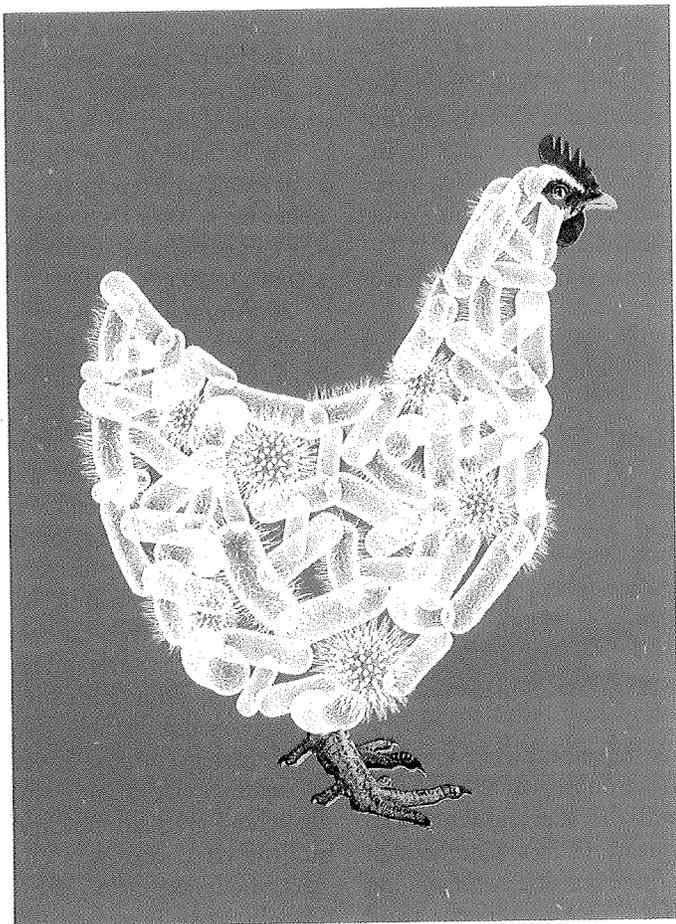


A BUG IN THE SYSTEM

Why last night's chicken made you sick.

BY WIL S. HYLTON



Late one night in September of 2013, Rick Schiller awoke in bed with his right leg throbbing. Schiller, who is in his fifties, lives in San Jose, California. He had been feeling ill all week, and, as he reached under the covers, he found his leg hot to the touch. He struggled to sit upright, then turned on a light and pulled back the sheet. "My leg was about twice the normal size, maybe even three times," he told me. "And it was hard as a rock, and bright purple."

Schiller roused his fiancée, who helped him hobble to their car. He dropped into the passenger seat, but he couldn't bend his leg to fit it through the door. "So I tell her, 'Just grab it and shove it in,'" he re-

called. "I almost passed out in pain."

At the hospital, five employees helped move Schiller from the car to a consulting room. When a doctor examined his leg, she warned him that it was so swollen there was a chance it might burst. She tried to remove fluid with a needle, but nothing came out. "So she goes in with a bigger needle—nothing comes out," Schiller said. "Then she goes in with a huge needle, like the size of a pencil lead—nothing comes out." When the doctor tugged on the plunger, the syringe filled with a chunky, meatlike substance. "And then she gasped," Schiller said.

That night, he drifted in and out of consciousness in his hospital room. His

temperature rose to a hundred and three degrees and his right eye oozed fluid that crusted over his face. Schiller's doctors found that he had contracted a form of the salmonella bacterium, known as *Salmonella* Heidelberg, which triggered a cascade of conditions, including an inflamed colon and an acute form of arthritis. The source of the infection was most likely something he had eaten, but Schiller had no idea what. He spent four days in intensive care before he could stand again and navigate the hallways. On the fifth day, he went home, but the right side of his body still felt weak, trembly, and sore, and he suffered from constant headaches. His doctors warned that he might never fully recover.

Three weeks later, Schiller received a phone call from the Centers for Disease Control and Prevention. An investigator wanted to know whether he had eaten chicken before he became sick. Schiller remembered that he'd bought two packages of raw Foster Farms chicken thighs just before the illness. He'd eaten a few pieces from one of the packages; the other package was still in his freezer. Several days later, an investigator from the U.S. Department of Agriculture stopped by to pick it up. She dropped the chicken into a portable cooler and handed him a slip of paper that said "Property Receipt." That was the last time Schiller heard from the investigators. More than a year later, he still wasn't sure what was in the chicken: "I don't know what the Department of Agriculture found."

Each year, contaminated food sickens forty-eight million Americans, of whom a hundred and twenty-eight thousand are hospitalized, and three thousand die. Many of the deadliest pathogens, such as *E. coli* and listeria, are comparatively rare; many of the most widespread, such as norovirus, are mercifully mild. Salmonella is both common and potentially lethal. It infects more than a million Americans each year, sending nineteen thousand victims to the hospital, and killing more people than any other food-borne pathogen. A recent U.S.D.A. study found that twenty-four per cent of all cut-up chicken parts are contaminated by some form of salmonella. Another study, by *Consumer Reports*, found that more than a third of chicken breasts tainted with

A lawyer is leading the fight to keep contaminated food off the supermarket shelf.

salmonella carried a drug-resistant strain.

By the time Schiller became infected by salmonella, federal officials had been tracking an especially potent outbreak of the Heidelberg variety for three months—it had sent nearly forty per cent of its victims to the hospital. The outbreak began in March, but investigators discovered it in June, when a cluster of infections on the West Coast prompted a warning from officials at the C.D.C.'s PulseNet monitoring system, which tracks illnesses reported by doctors. Scientists quickly identified the source of the outbreak as Foster Farms facilities in California, where federal inspectors had discovered the same strain of pathogen during a routine test. Most of the victims of the outbreak confirmed that they'd recently eaten chicken, and many specifically named the Foster Farms brand. On August 9th, investigators joined a conference call with Foster Farms executives to inform them of the outbreak and its link to the company.

Identifying the cause of an outbreak is much simpler than trying to stop one. Once officials have traced the contamination to a food producer, the responsibility to curb the problem falls to the U.S.D.A.'s Food Safety and Inspection Service, or F.S.I.S. In the summer of 2013, as the outbreak spread, F.S.I.S. officials shared the C.D.C.'s conclusion that Foster Farms meat was behind the outbreak, but they had no power to force a recall of the tainted chicken. Federal law permits a certain level of salmonella contamination in raw meat. But when federal limits are breached, and officials believe that a recall is necessary, their only option is to ask the producer to remove the product voluntarily. Even then, officials may only request a recall when they have proof that the meat is already making customers sick. As evidence, the F.S.I.S. typically must find a genetic match between the salmonella in a victim's body and the salmonella in a package of meat that is still in the victim's possession, with its label still attached. If the patient has already eaten the meat, discarded the package, or removed the label, the link becomes difficult to make, and officials can't request a voluntary recall.

As the Heidelberg outbreak continued into the fall, F.S.I.S. investigators tracked down dozens of patients and asked them to search their homes for

contaminated chicken. In some cases, they discovered Foster Farms chicken that tested positive for salmonella—but they could not find a genetic match. David Goldman, who oversees public health at the F.S.I.S., told me, "We started about a hundred and forty trace-back efforts. And we failed in every case."

Meanwhile, Foster Farms was still producing chicken. By mid-September, on the week that Schiller checked into the hospital, at least fifty new patients had been infected—the most of any week since the outbreak began. On October 8th, the C.D.C. issued its first warning to the public: two hundred and seventy-eight patients had now been infected with Heidelberg in seventeen states, the agency reported, and Foster Farms chicken was the "likely source" of the outbreak. On November 15th, the C.D.C. raised the number to three hundred and eighty-nine victims in twenty-three states. By early July, 2014, there were six hundred and twenty-one cases. Scientists estimate that for each reported case twenty-eight go unreported, which meant that the Foster Farms outbreak had likely sickened as many as eighteen thousand people.

Finally, on July 3, 2014, more than a year after the outbreak began, officials at the F.S.I.S. announced a genetic match that would allow the agency to request a recall. Foster Farms executives agreed to withdraw the fresh chicken produced in its California facilities during a six-day period in March of that year. All other Foster Farms chicken would remain in distribution.

A few days later, I stopped by the office of Representative Rosa DeLauro, a Democrat from Connecticut and one of the most vocal advocates for food safety in Congress. After twenty-five years in the capital, DeLauro is not easily surprised, but when I mentioned the Foster Farms outbreak she slammed a fist on the table. "They're getting a tainted product out!" she said. "What in the hell is going on?"

Rick Schiller wondered the same thing. Last spring, as his leg healed and the headaches faded, he searched newspapers for signs of a recall. Then he started calling lawyers. Eventually, he found Bill Marler.

During the past twenty years, Marler has become the most prominent and

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powerful food-safety attorney in the country. He is fifty-seven years old, with neat gray hair and a compact physique; he tends to speak in a high, raspy voice, as though delighted by what he's about to say. His law firm, on the twenty-eighth floor of a Seattle office building, has filed hundreds of lawsuits against many of the largest food producers in the world. By his estimate, he has won more than six hundred million dollars in verdicts and settlements, of which his firm keeps about twenty per cent.

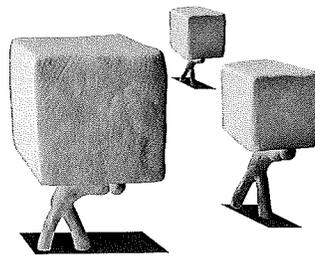
Given the struggles of his clients—victims of organ failure, sepsis, and paralysis—Marler says it can be tempting to dismiss him as a “bloodsucking ambulance chaser who exploits other people’s personal tragedies.” But many people who work in food safety believe that Marler is one of the few functioning pieces in a broken system. Food-borne illness, they point out, is pervasive but mostly preventable when simple precautions are taken in the production process. In Denmark, for instance, after a surge of salmonella cases in the nineteen-eighties, poultry workers were made to wash their hands and change clothing on entering the plant and to perform extensive microbiological testing. Sanctions—including recalls—are imposed as soon as a pathogen is found. As a result, salmonella contamination has fallen to less than two per cent. Similar results have been achieved in other European countries.

In the U.S., responsibility for food safety is divided among fifteen federal agencies. The most important, in addition to the F.S.I.S., is the Food and Drug Administration, in the Department of Health and Human Services. In theory, the line between these two should be simple: the F.S.I.S. inspects meat and poultry; the F.D.A. covers everything else. In practice, that line is hopelessly blurred. Fish are the province of the F.D.A.—except catfish, which falls under the F.S.I.S. Frozen cheese pizza is regulated by the F.D.A., but frozen pizza with slices of pepperoni is monitored by the F.S.I.S. Bagel dogs are F.D.A.; corn dogs, F.S.I.S. The skin of a link sausage is F.D.A., but the meat inside is F.S.I.S.

“The current structure is there not because it’s what serves the consumer best,” Elizabeth Hagen, a former head of the F.S.I.S., told me. “It’s there because it’s

the way the system has grown up.” Mike Taylor, the highest-ranking food-safety official at the F.D.A., said, “Everybody would agree that if you were starting on a blank piece of paper and designing the food-safety system for the future, from scratch, you wouldn’t design it the way it’s designed right now.”

Both the F.S.I.S. and the F.D.A. are also hampered by internal tensions. The regulatory function at the F.S.I.S. can seem like a distant afterthought at the U.S.D.A., whose primary purpose is to advance the interests of American agriculture. “We’re the red-headed stepchild of the U.S.D.A.,” one senior F.S.I.S. official told me. When regulation fails, private litigation can be the most powerful force for change. As Marler puts it, “If you want them to respond, you have to make them.” Robert Brackett, who directed food safety at the F.D.A. during the George W. Bush Administration, told me that Marler has almost single-handedly transformed the role that lawsuits play in food policy: “Where people typically thought of food safety as this three-legged stool—the consumer groups, the government, and the industry—Bill sort of came in as a fourth leg and actually was able to effect changes in a way that none of the others really had.” Hagen said the cost that Marler extracts from food makers “can be a stronger incentive or disincentive than the passing of any



particular regulation.” Mike Taylor called litigation such as Marler’s “a central element of accountability.”

Bill Marler lives with his wife and three daughters on Bainbridge Island, just west of Seattle. He commutes to work on a public ferry and spends the time walking in circles. He leaves his briefcase with friends in the cabin, climbs to the upper level, and steps outside, into the mist of Puget Sound. By the time the ferry reaches Seattle, forty minutes

later, Marler has usually logged about two and a half miles. A few years ago, realizing that most of his clients were too sick or too far away to visit him at work, he stopped wearing office attire, leaving on the wicking fabrics he wears on the ferry. It can be jarring for a first-time visitor to pass through the wood-paneled lobby of his firm, down a long hallway of offices filled with paralegals and junior attorneys, only to discover a small man in damp gym clothes reclining at Marler’s desk.

Marler rarely uses the fiery rhetoric one might expect from a lifelong litigator. His preference is the soft sell, the politician’s lure—cajoling insurance adjusters, health officials, microbiologists, and opposing counsel. He developed his coaxing manner early on. In 1977, as a sophomore at Washington State University, in the small town of Pullman, he ran for the city council on a whim, and won by fifty-three votes. During the next four years, he sponsored a fair-housing bill, tightened snow-removal laws, established a bus service for drunk drivers (critics called it Bill’s Booze Bus), and helped to manage the seven-member council’s six-million-dollar budget.

“All these skills that I use every day—how to deal with the media, how to deal with complex interpersonal relationships to try to get a deal done—I learned between the ages of nineteen and twenty-two, when everybody else was smoking dope,” he told me. Jeff Miller, an attorney in New York, recalled the first time he faced Marler in federal court, on a day that Miller had to leave early for a charity event. The judge was notoriously thorny and Miller was terrified to request an early dismissal, which seemed like an invitation for Marler to object and score points. Miller told me, “And as I was in court, telling the judge that I needed to get out of there, Bill just cut a significant check and said, ‘Bring this with you.’”

Marler became involved in food safety in 1993, as a thirty-five-year-old lawyer at a big Seattle firm, when a client called with a food-poisoning referral. An outbreak of *E. coli*, seemingly caused by contaminated burgers from Jack in the Box, was spreading through the state. Marler’s client had a friend whose daughter had become ill, and Marler took her case. During the next several months, the outbreak sickened more than five

TELL US A STORY, GRANDMA

I wonder which ones I will remember:
That I loved my boyfriend's best friend?
That I rode the lonely train to Boston?
That I could never hold myself together?
Maybe I should just tell them
Milk was \$2.89 a gallon and bread was \$3.29
And an iPhone was \$200
In 2010, when I was 22.

—Natalie Wise

hundred Jack in the Box customers. Four children died. Marler plunged into microbiological research on *E. coli*. After reading scientific papers and talking to experts, he discovered that the bacterium, which typically lives in the intestines of cattle, can enter the food supply in meat or when vegetables are contaminated by fecal matter. The outbreak had been caused by a variant of the bug known as O157:H7, which secretes a powerful toxin in a victim's body. In some cases, the toxin can induce a reaction called hemolytic-uremic syndrome, in which the individual's face and hands swell, bruises cover the body, and blood begins to trickle from the nose. One in twenty patients dies. The only way to kill the bacteria in food is to cook it thoroughly.

Attorneys for Jack in the Box responded to Marler's lawsuit by sending him more than fifty cardboard boxes of discovery material. Marler moved the boxes to his firm's conference room and spent nights and weekends sifting through every page. He found letters sent by the Washington State Department of Health to Jack in the Box, announcing a new, mandatory cooking temperature for ground beef. He discovered that the chain had not followed the new standards, undercooking its meat, and he studied suggestion forms submitted by employees to corporate headquarters indicating that Jack in the Box executives knew they were cutting corners.

Marler spent the next two years immersed in discovery and settlement negotiations. He turned down multimillion-dollar offers, and demanded a hundred-million dollars, an unprecedented sum at the time. He courted food and health reporters at major news organizations and

publicly accused the company's executives of killing children. To defuse the tension, he would meet the Jack in the Box attorneys at a hotel bar and buy them drinks. (Hours later, he might call a reporter to pass along gossip he had gleaned.) As the outbreak became national news, more than a hundred victims came forward to be represented by Marler. The settlement, of more than fifty million dollars, included \$15.6 million for a ten-year-old girl named Brienne Kiner, who spent forty days in a coma. It was the largest individual food-poisoning claim in American history.

Prompted by public outrage, federal officials took a dramatic step. On September 29, 1994, at a convention of the American Meat Institute, Mike Taylor, at that time the administrator of the F.S.I.S., announced that his agency would adopt a zero-tolerance policy toward *E. coli* in ground beef. There would be no acceptable level of contamination; anytime the agency detected the bacterium, it would remove the product from distribution. To do so, Taylor would classify the outbreak strain of *E. coli* as an "adulterant," which in meat and poultry is normally reserved for toxic industrial chemicals. It was the first time that the agency had applied the designation to a food-borne microbe. Although a consortium of meat producers and retailers sued the U.S.D.A. that December, a federal court affirmed the change. Five years later, officials expanded the rule to banish the same strain of *E. coli* in other beef products. In 2011, they declared six additional strains of *E. coli* to be adulterants. The lesson, Taylor told me, is that "having accountability for prevention in the government regulatory system works." Yet, twenty years

after Taylor's landmark *E. coli* decision, officials at the F.S.I.S. have failed to declare any other food-borne pathogen to be an adulterant in raw meat.

People who work with Marler are accustomed to e-mails landing in the night, with links and attachments and an abundance of exclamation points. At least twice a month, he flies across the country to speak with advocacy groups and at food-industry events. He will not accept payment from any food company, and has turned down thousands of dollars to deliver a short lecture, only to pay his own way to the venue and present the speech for free. Sometimes, when Marler takes the stage, members of the audience walk out. At a meeting of the Produce Manufacturers Association, in the summer of 2013, he approached the lectern as loudspeakers blared the Rolling Stones song "Sympathy for the Devil."

Marler rarely has trouble getting companies to concede when their product has caused illness, but occasionally one of his cases involves more complicated legal questions. In 2011, thirty-three people died of listeriosis after eating cantaloupe produced in Colorado by Jensen Farms. *Listeria* is a rare but deadly bacterium. It infects about sixteen hundred U.S. residents per year, and kills one in five victims. The disease can take up to seventy days to manifest symptoms, and, when it does, the initial signs—a sudden onset of chills, fever, diarrhea, headache, or vomiting—can resemble those of the flu. Since the nineteen-eighties, it has caused three of the deadliest food-borne outbreaks on record.

Because *listeria* can grow in cold temperatures, it is perfectly suited to the era of prepared foods. "One of the reasons that we still have a lot of food-borne illness is because we've created these environments of convenience," Marler told me one morning, as we barreled down the highway in his pickup, a 1951 Chevy with the license plate "ECOLI." The truck rattled and reeked of gasoline; his golden retriever, Rowan, slept in the truck bed. "Bagged salad, refrigerators with secret drawers that are supposed to keep things fresh for longer," Marler said, shaking his head. "We get so wrapped up with production and convenience, and nobody pays any attention to bacteriology."

Indeed, at the Jensen Farms plant,

where the contaminated cantaloupes originated, a mechanized system had been washing the melons with tap water, rather than the antimicrobial solution recommended by the F.D.A. The C.D.C. counts a hundred and forty-seven victims in the cantaloupe case. Sixty-six have filed suit, and forty-six of them have hired Marler. He is using a novel legal argument that could set a precedent in food law.

Unlike the F.S.I.S., the F.D.A. does not have a large army of inspectors for the products under its purview. Years can elapse between official inspections at a given food producer. In place of federal inspections, most reviews are conducted by private companies known as auditors. These audits are demanded by retailers who want to be sure they are buying clean food. In the case of the 2011 listeria outbreak, auditors had actually been inside the plant just a few days before the first contaminated cantaloupes were shipped. Subcontractors working for the company PrimusLabs noted the absence of antimicrobial wash but gave the facility a rating of "superior" and a score of ninety-six per cent.

Marler has filed suit against Jensen Farms and retailers like Walmart and Kroger, but he is also suing PrimusLabs on behalf of listeria victims. There is no clear legal basis for doing so. Because PrimusLabs is a private company, hired by another private company for a private purpose, its lawyers contend that its only legal duty is to the producer that commissioned its audit—not to the consumers who bought a cantaloupe several steps down the supply chain. Attorneys for PrimusLabs have tried repeatedly to have Marler's lawsuit dismissed. In most jurisdictions, they have failed.

Marler says that the PrimusLabs attorneys have made a strategic blun-

der. An early settlement would have kept the outbreak relatively quiet, he told me, but each time the court rejects a motion by Primus to dismiss the case a precedent is set. "There was an empty desert between us, and I wasn't even sure they were there," he said. "Then they started leaving bread crumbs. They're creating a road map for how to try a case against them."

Privately, officials at the F.S.I.S. say that they would like to take a more aggressive stand on salmonella. But an agency ruling like the one twenty years ago on *E. coli* would almost certainly fail in court today. In the past forty years, federal judges have severely limited the agency's power. That history began, by most accounts, with a 1974 lawsuit in which the American Public Health Association sued the U.S.D.A. to demand that it print bacterial warnings on raw meat. An appellate court ruled that the warnings were unnecessary, because customers already knew that meat carries bacteria. "American housewives and cooks normally are not ignorant or stupid," the judge wrote.

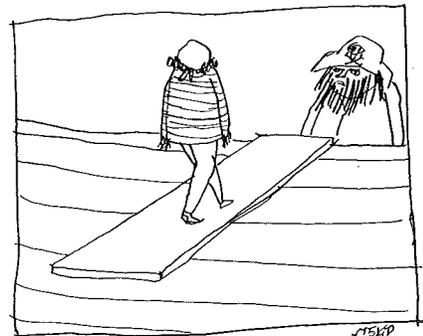
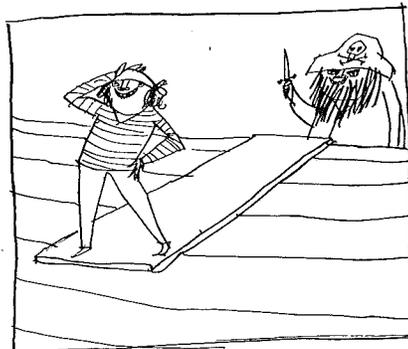
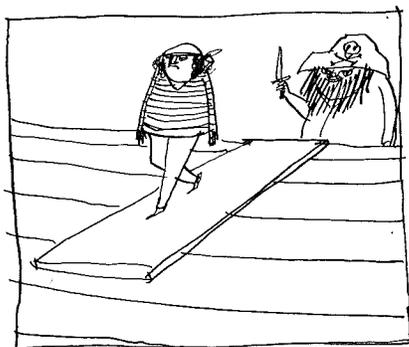
When another court ruled in favor of the F.S.I.S. decision to declare *E. coli* an adulterant, the ruling included a passage to prevent the F.S.I.S. from applying the same label to other bacteria: "Courts have held that other pathogens, such as salmonella, are not adulterants." In response to that decision, in 1996 the F.S.I.S. enacted a series of new rules to curb pathogens like salmonella. For whole chickens, the salmonella "performance standard" was set at twenty per cent, meaning that one in every five bird carcasses could be contaminated. That standard has since been lowered to 7.5 per cent, but the performance standard for salmonella in ground chicken is much

higher—44.6 per cent—and for ground turkey it is 49.9 per cent. "Which means that almost half of all your ground chicken that goes off the line can actually test positive for salmonella," Urvashi Rangan, the director of food safety at *Consumer Reports*, told me.

Some products, such as cut-up chicken parts, have no performance standard at all. A hundred per cent of the product in supermarkets may be contaminated without running afoul of federal limits. Rangan told me that she was stunned when she discovered this, just recently: "We've asked the U.S.D.A. point blank, 'So does that mean there aren't standards for lamb chops and pork ribs?' And they said, 'Yeah, we don't have standards for those.'"

When I asked David Goldman, of the F.S.I.S.'s public-health program, why a common product like chicken parts has no contamination limit, he said, "We're in the process of doing just that." Last week, the agency announced plans to establish its first performance standard for chicken parts, limiting salmonella contamination to 15.4 per cent of packages. I asked Phil Derfler, the deputy administrator, why it had taken the agency twenty years. "It's not like there is anybody else in the world who is pursuing what we're doing, and so it is a bit of trial and error," he said. "If there was a font of wisdom that said, 'You should be doing this,' maybe we would be doing it." I mentioned Denmark's success in combatting salmonella, and Derfler said, "I mean, it would be a major kind of almost top-to-bottom kind of thing. And I don't know what the costs would be in economics."

Even when the agency sets a pathogen limit and a producer exceeds it, officials have few options. Under the terms of a 1999 lawsuit, inspectors may not



shut down a facility because of a failure to meet contamination limits. Instead, officials must use indirect measures to put pressure on the company, such as posting news of the violation on the F.S.I.S. Web site, which could embarrass company executives. Derfler told me that the agency's work-arounds have been effective. "We have tried to do it," he said.

In December of 2013, officials at the F.S.I.S. unveiled a new "Salmonella Action Plan." At the heart of the plan was a "poultry-slaughter rule," which would reduce the number of federal inspectors observing the production line at slaughterhouses. Derfler told me that this will allow the agency to place "a greater emphasis on microbiology" and added that the rule also requires plants to do their own testing. Critics of the plan wonder how it is possible to improve food safety by removing inspectors. On March 13th of last year, Representative Louise Slaughter, who is the only member of Congress with a degree in microbiology, and ten other members of the House, including Rosa DeLauro, wrote a letter to the F.S.I.S., calling certain aspects of the new plan "pernicious" and asking that it be suspended. Nevertheless, the fiscal budget for 2015 assumes that it will go into effect, and cuts the funding for several hundred federal meat inspectors.

Marler opposes the new poultry rule, but he says that the real issue is the inspectors' inability to close a plant when they detect high levels of food-borne pathogens. "If you're allowing the product to become contaminated, having more or less inspectors is beside the point," he said. In 2011, the Center for Science in the Public Interest, a nonprofit advocacy group, submitted a petition to the F.S.I.S. arguing that the four most vicious types of salmonella should be declared adulterants, like *E. coli*. The agency issued no response and, in May of last year, Marler consulted with the center on a lawsuit demanding a reply to the petition. On July 31st, officials formally rejected the proposal, claiming that "more data are needed."

Marler scoffed at the claim. "One part of the meat industry is just ignoring twenty years of progress on the other side," he said. "They're using the same words, the same press releases, the same

language that they used twenty years ago, when they were saying, 'Oh, my God, the sky will fall if you label *E. coli* O157 as an adulterant.'"

When Marler's litigation becomes complicated and protracted, his firm can go months without generating income. Marler routinely lends money to the firm to keep the operation afloat.

One morning, his longtime office manager, Peggy Paulson, stepped into his office with a sheepish look. When Marler glanced up, Paulson said quietly, "I could use a check for half a million bucks." Marler's jaw dropped with feigned horror. "So could I!" he said with a laugh. Then he promised to write a check.

Later, he told me, "That's partly why I don't buy a vacation home. I've never been in a position that I settled a case because I needed the money."

During the past five years, Marler has begun to move from litigation to activism. In 2009, frustrated by the short attention span of the mass media, he founded an online newsletter, Food Safety News, which employs four full-time reporters and costs Marler a quarter of a million dollars a year to underwrite. On July 25, 2014, the editor of the site, Dan Flynn, and two of its employees received subpoenas in a defamation lawsuit against ABC News by the meat producer Beef Products, Inc. The lawsuit also names two former employees of the F.S.I.S., who spoke critically about the company in the ABC segment. Marler is defending those employees pro bono; two weeks ago, he received a subpoena in the case himself. Late at night, Marler also scribbles entries for the MarlerBlog, his personal Web site, where he has posted more than five thousand commentaries on food safety in recent years.

Sometimes, when Marler encounters critics who charge him with having predatory motives, he challenges them to "put me out of business." David Acheson, a former Associate Commissioner for Foods at the F.D.A., told me, "That's just become a bit of a trademark. He doesn't want that." Still, Acheson told me that he has seen an evolution in Marler. "In the early days, Bill was just on a mission to sue large food companies—he was on

a mission to make money," Acheson said. "But I think during the course of that he realized that there are problems with the food-safety system, and I think progressively, philosophically, he changed from just being a plaintiff attorney to being somebody who believes that changing food safety for the betterment of public health is a laudable goal." Acheson added, with no small measure of distaste, "He still sues food companies."

In April, 2014, Marler filed a suit against Foster Farms on behalf of Rick Schiller. On July 31st, the C.D.C. announced that the outbreak "appears to be over." Foster Farms has implemented new controls to reduce salmonella, but Marler hopes that a successful lawsuit will pressure

other producers to take similar precautions. Meanwhile, last summer, an eight-year-old boy in Braintree, Massachusetts, died of complications from *E. coli* after eating ground beef from a Whole Foods market. Six weeks later, an epidemiologist with the Massachusetts Department of Public Health, in an e-mail to the boy's mother, accused Whole Foods executives of "grasping at straws and dragging their feet in an attempt to avoid doing a recall." On August 15th, the F.S.I.S. announced that its testing had "determined that there is a link between ground beef purchased at Whole Foods Market and this illness cluster." The company agreed to issue a recall of three hundred and sixty-eight pounds of ground beef, but it continues to assert that "our thorough and ongoing investigation of the circumstances has not shown any clear link to our business." On December 17th, Marler filed suit against Whole Foods on behalf of the boy's parents.

"Fifteen years ago, almost all the cases I had were *E. coli* linked to hamburger, and now I have maybe two or three," he told me over the phone in mid-January. He was sitting in his office overlooking the Seattle harbor. "It shows how much progress we've made. You might hate lawyers, you might not want us to make money, but look what the beef industry did." Marler said he had recently eaten a hamburger for the first time in twenty years. "Ground beef has learned its lesson—but chicken is still, in many respects, unregulated. So we have to keep fighting." ♦

