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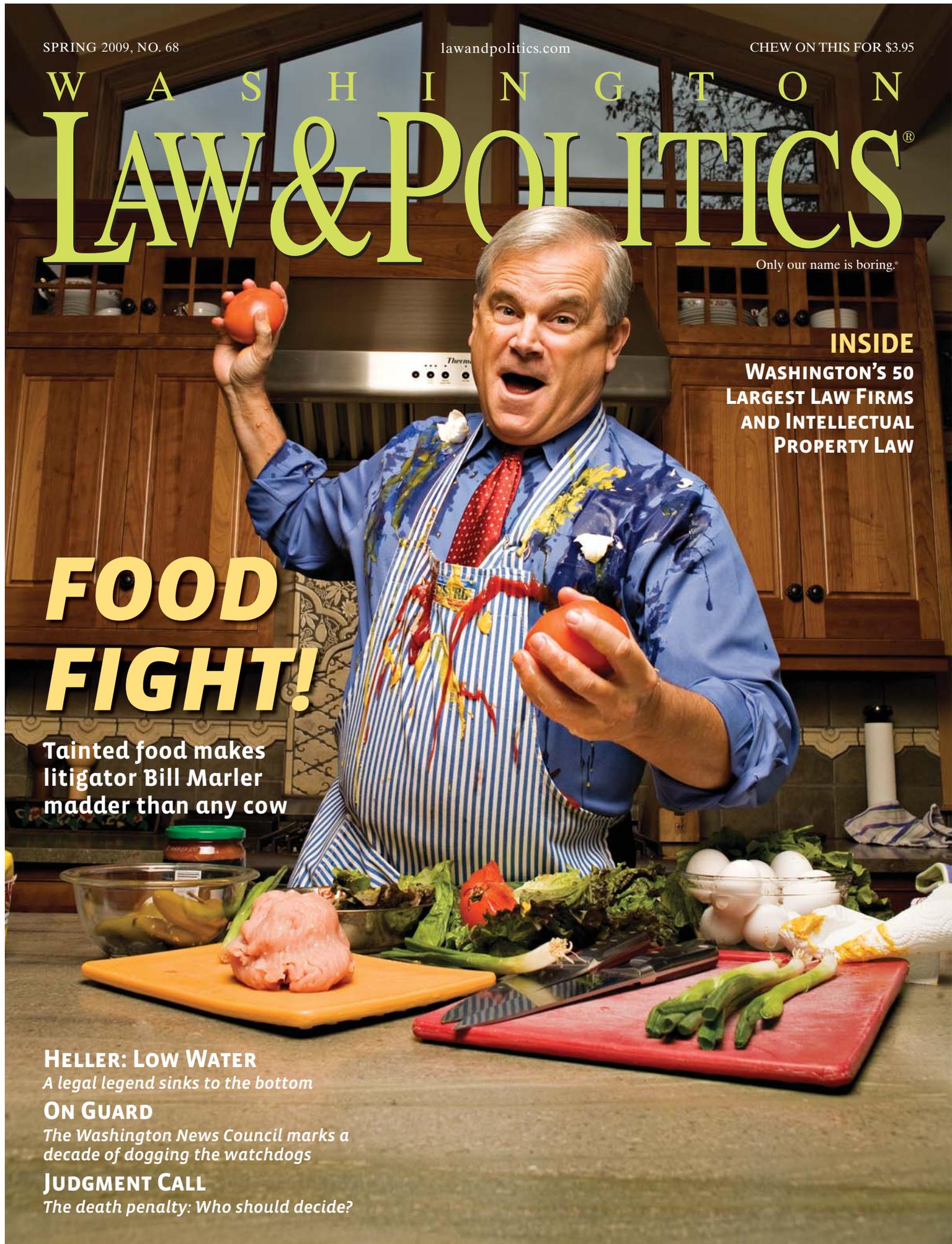
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Bill Marler is the ultimate kitchen crusader.

Bill Marler's Beef

If there's bad hamburger, lethal lettuce or a tainted tomato to be found, Seattle's food-safety guru is probably hot on the trail

By David Volk • Photography by Rick Dahms

After a run of multimillion-dollar settlements, there was a four-year period during which William Marler thought he might have litigated himself right out of a job. One minute he was jousting with Jack in the Box, humbling Hormel and cowing ConAgra; the next, his food-safety cases slowed to a trickle.

And he couldn't have been happier.

"I actually thought in the summer of 2003, 'Oh my gosh, they [food processors and

restaurant chains] finally paid attention,'" he says. Marler had good reason for the optimism. Not only had his firm, Marler Clark, had no E. coli hamburger cases that summer, but the number of E. coli and other food-borne illness outbreaks dropped 48 percent in 2003. It remained down through spring 2007.

As odd as it sounds, Marler says he would love it if food companies put him out of the food-safety business. His actions match his words. He helped create Outbreak, a non-profit consul-

tancy that publicizes and encourages food-safety measures; he testifies before Congress, urging reforms in the food-processing industry; and he typically gives several speeches a month on food safety, both in this country and internationally. Marler estimates he handles about 90 percent of the work in tainted-food cases nationwide.

But anyone who has followed the news lately knows any hopes for the demise of Marler Clark's food-safety-centered practice are premature. In February 2007, in an outbreak fore-

shadowing the more recent one, more than 700 people in 39 states fell ill after eating peanut butter tainted with salmonella. A few months later, contaminated frozen pot pies sickened 211 people in 34 states. By 2008, the headlines were filled with stories about contaminated beef, hot dogs, tomatoes, peppers and lettuce. Meat recalls went from a total of 156,235 pounds in 2006 to 30 million pounds in one year.

What most casual observers don't realize is that those numbers are now the rule, according to Marler. Statistics from the Centers for Disease Control in Atlanta indicate 76 million Americans are sickened by food-borne illness every year. Of those, 320,000 require hospitalization and 5,000 die. And that doesn't include people who didn't visit a doctor or whose physicians neglected to test for food-borne contaminants. For every victim counted, Marler estimates 20 to 40 aren't.

"The numbers are pretty overwhelming if you think of [this being] a first-world food system," Marler says. "That we poison a quarter of our population every year is pretty humbling."

It would be easy to blame the increase in food safety cases on the Bush administration's focus on industry self-regulation, but it's not that simple. For starters, food safety has actually come under increased scrutiny as a result of concerns about bioterrorism, says attorney Chuck Routh with Garvey Schubert Barer in Seattle. Routh, who specializes in international trade, has given speeches and advised clients about protecting the food chain. The results have been mixed, he says, because the Bush administration's focus was on sabotage rather than accidental contamination. And many of the incidents are just that: accidents.

Much of the increase can be traced to unintended consequences of unrelated developments. Increased interest in ethanol is a good example, Marler says. Because grain that once fed livestock is now being diverted to fuel production, many farmers are feeding their animals a waste byproduct from the distilling process. As it turns out, the feed is highly acidic and increases the amount of *E. coli* in the animal's stomach.

Stepped-up immigration enforcement has also made a difference, Marler says, because immigration raids on slaughterhouses have forced the industry to replace illegal aliens with legal workers. While the development might have been good news for U.S. citizens looking for work, it has forced some companies to hire inexperienced locals who aren't necessarily familiar with all the safety procedures.

Processors are also getting squeezed because many of the big-box stores are pushing them to keep costs down. An easy way to do that is to cut

corners on safety procedures. That doesn't mean a meat-packer won't test animals or steam-clean some carcasses—they just might do a little less of it.

With such a huge volume of processing going on, you have a recipe for larger outbreaks, agrees John Sobba, who focuses on consumer-product safety at Foster Pepper. "The more units you put into the marketplace, the greater the risk one could be defective," Sobba says. "When people are manufacturing in the volumes they are these days, *E. coli* happens."

Marler sees the results of that dangerous recipe every day when he looks at his workload. In November 2008 alone, he finished settling food-safety cases worth around \$100 million and went into mediation with mega food processor Cargill over separate recalls of 2 million pounds and 21 million pounds of contaminated meat.

"We're busier than we've been since Jack in the Box," Marler says, referring to the 1993 case in which he won multimillion-dollar settlements for his clients after undercooked, *E. coli*-tainted meat sickened more than 600 people in Seattle.

"Seriously, I never thought, when I did Jack in the Box, that this is all I would do for the rest of my life. I gotta get a life," he quips. But the calls kept coming, and not just from potential clients. Because Marler took food safety so seriously and did his homework so well, he soon became a world-respected authority. Health departments and food-processing companies—including some he brought suit against—began asking his advice on avoiding outbreaks.

Alan "Al" Maxwell, who heads the food-borne illness group at Weinberg, Wheeler, Hudgins, Gunn & Dial in Atlanta, has faced Marler many times in court. Outside the courtroom, he considers him a friend.

"Bill, very simply, is the preeminent food-borne-illness lawyer pursuing claims on behalf of injured victims, and he is probably the most zealous advocate I've met both in terms of his clients as well as the cause," says Maxwell. "I say that because he truly believes in trying to change food safety policy through not only litigation, but externally to litigation."

For instance, Marler himself is funding tests of ground beef from grocery stores across the country, purchasing burger meat and having it tested by an independent lab. If the results of his tests are any indication, the safety of hamburger hasn't improved much in 15 years. Each sample had a significant amount of Shiga toxin, the bacteria that produces *E. coli*.

"The test results I've just done show it's not completely safe," he says. "I have three kids. I'm not willing to role those dice." Just the day before the interview he talked to a man whose

three daughters contracted *E. coli*. He notes, "Other than the fact that my daughters have never eaten hamburger, the exact same thing could have happened to them."

He's so strict about food safety, he got upset when his wife allowed their children to drink unpasteurized apple juice at a harvest festival. When he and opposing counsel on a food-safety case went out to a steakhouse in New York City, he ordered his steak well done, as always on the rare occasions when he eats meat in restaurants.

Marler believes the government should make a number of fixes to improve overall safety.

For starters, more money should be spent on surveillance, which includes food-safety inspections and medical tracking of the cases. Requiring more testing by first responders, such as doctors and health departments, would allow the government to detect food-poisoning outbreaks earlier and prevent widespread outbreaks. Public-safety experts believe bio-terrorism would look a lot like a food-poisoning outbreak.

At the same time, more food safety inspectors should be hired. This would not only enable more frequent inspections of domestic plants, it would give the country a fighting chance to inspect imported food for contaminants ranging from *E. coli* to melamine, a toxic chemical that poisoned hundreds of thousands of babies in China last year. At present, only 1 percent of all food imports are inspected.

Marler also thinks the government should encourage food processors to invest in safety procedures and mechanisms, perhaps by providing tax breaks to companies that invest in processes designed to decrease food-poisoning incidents.

Finally, he would meet with big retailers such as Wal-Mart and Kroger to urge them to rethink their buying practices. "These retailers need to understand what their price pressures are doing, and there needs to be some compromise," he explains. "You can't keep squeezing the middle guy on price, which is what these big-box stores do."

He knows the reforms would affect his firm's bottom line, but he says that's OK.

"I attended the funeral of a 2-year-old in the summer of 1998 [and] I attended the funeral of an 82-year-old lady in 2006 who died too soon," he says. "You do something like that and you realize that these things weren't necessary. Certainly, you can't drive this to zero. These kinds of things can happen. You can't irradiate all products, you can't assure that's 100 percent safe, but we could do a lot better. We could try a lot harder." **L&P**

—Adrienne Schofhauser contributed to this article.