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Food liability lawyer tells farmers to clean up their act

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For many in the Salinas Valley, Bill Marler is Public Enemy No. 1.

The Seattle attorney represents the families of 95 people sickened or killed during last year's E. coli outbreak. For months, produce industry leaders have grouched about "the E. coli guy" or "that attorney" as Marler collected plaintiffs for suits against Natural Selection Foods and Dole, and challenged the industry to improve its practices.

So when a committee of agriculture leaders invited Marler to come to Salinas on Wednesday and expound on food safety for a standing-room only crowd of growers and shippers, each paying \$35 to hear him and eat spinach salad, some were caught off guard.

"I have to admit, I was a little surprised by today's guest," said Salinas Mayor Dennis Donohue at Wednesday's luncheon.

Brad Sullivan, an attorney for Lombardo and Gilles, which represents many local agribusinesses -- including one Marler is now suing -- deadpanned, "I can't say I've had the pleasure of working with him."

The title of Marler's talk? "Put Me Out of Business -- Please."

"I don't laugh all the way to the bank, but I do go to the bank often," Marler said. "Unfortunately, this industry has kept me in business and it's really time to get me out of business."

Since 1995, Marler told the crowd -- which included a CNN camera crew and a reporter from USA Today -- there have been 21 E. coli outbreaks related to fresh produce sickening more than 1,000 people and killing seven.

During that time, he estimated he's earned \$25 million from produce-related foodborne illness settlements, many involving local companies.

Short of saying the agricultural industry should be federally regulated, Marler said he thought the meat industry's turnaround after its E. coli outbreak troubles was a good example of how the local industry could tackle its own challenges.

That industry, he said, came around in part because of mandatory, government-regulated

standards and in reaction to pressure from retailers.

"They put on their boots. They slowed down their processes. They made processes cleaner," he said. "They haven't completely eliminated the problem, but when was the last time we had a hamburger meat recall?"

Marler said that in addition to making every attempt to prevent outbreaks from occurring through their practices, growers and shippers should be prepared to work with the public quickly and transparently in the event of an outbreak involving their produce.

"At the risk of offending Natural Selection's PR team," Marler said, "I thought their approach stunk. They spent too much time pointing fingers and they let Dole get a free ride without ever saying they were sorry."

Several times during his talk, Marler referred to last year's outbreak as the Dole E. coli outbreak, explaining that it was bagged Dole baby spinach that his clients ate before they became ill and E. coli samples matching their stool samples have been found in 13 bags. He said Dole's attorney had told him this was not a Dole outbreak.

"'Hell it isn't,' I said," Marler recounted. "'It's your bags.'"

He continued, "What I do is really unfair to industries because I don't have to prove fault. I don't have to prove that you're bad or good."

All he has to prove under strict liability law, he said, is that his clients ate a product that contained something that made them ill.

"Unfair or not, those are the rules of the game," Marler said. "All I have to ask is how much -- how much are you and your insurance company going to pay?"

At the end of Marler's talk -- when he told the group he hoped in all sincerity that he never saw them again -- he received strong applause.

"I expected him to be a little more cocky," said Dale Huss, a production manager for Castroville-based Ocean Mist Farms, who sat at the front and asked Marler several questions. Huss said he left feeling that Marler provided him with helpful information.

"It was a message that everyone here needed to hear," said Jim Bogart, president and general counsel of the Grower-Shipper Association of Central California and a member of the committee that invited Marler.

Removing a CNN microphone from his lapel and loosening his tie in the nearly empty ballroom, Marler said he thought the talk had gone better than he expected.

"It shows the industry is taking it seriously to invite me to break bread with them," he

said, adding, "Nobody booed me."

Marion Nestle, a nutrition professor at New York University known for challenging the food industry and advocating for healthful food policies, said she thought Marler was loud and clear.

"I think they should get the message clear: If something goes wrong, they are going to get their butts sued off," Nestle said.

Nestle, who was recently invited by Ocean Mist Farms executives to visit their headquarters and talk about food safety, said she believes there should be federally mandated food safety regulations from farm to table.

The reason those regulations aren't in place yet, she said, is politics.

"It's going to cost money and nobody wants to do it if it costs money," Nestle said. "The industry should be screaming for it."

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