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Recent headlines over tainted California spinach and e-coli contamination at Taco Bell restaurants have raised many questions about the safety of America’s food supply. With an alphabet soup of federal, state and local agencies regulating food safety from the farm to the table, most Americans presume that their food isn’t dangerous. Join us on this edition of Justice Talking as we ask what must be done to keep the food supply safe.

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MARGOT ADLER: This is Justice Talking, the public radio show about law and American life. I’m Margot Adler. In recent months, Americans have been warned against eating spinach, lettuce. And lately there’s been salmonella found in some peanut butter. Before that, there was fear of ecoli in fast food hamburgers. Nearly 5,000 people die each year from something they eat. With so many government agencies involved in a web of complicated regulations, how safe is the food we eat?

We visited a local market in Philadelphia and asked people if recent food scares have them worried about the safety of their food.

UNIDENTIFIED FEMALE: I always think about how safe the foods are. I don’t think they’re safe at all. Because of it could be safe when it actually leave the plant, but because it’s, you know, touched by so many hands, so it can be picked up anything.

UNIDENTIFIED MALE: There’s certain levels of risks that kind of we all take everyday when we go to the supermarket and want that to be a manageable risk. But, it’s very difficult to worry about everything you eat.

UNIDENTIFIED FEMALE: There used to be a time that I would believe--I would believe what was said by the FDA or by CDC. I think I’m kind of skeptical right now.
UNIDENTIFIED FEMALE: I mean, when they had the spinach that was tainted, you know, we waited for a while. And then once we saw it back in the stores, we went and got it.

UNIDENTIFIED MALE: How many times have you bought that stuff and eaten it with no problem? It’s probably no dirtier than your house, you know?

UNIDENTIFIED FEMALE: So you would have to do the best you can do, you know, with your fruits and vegetables, you know, trying to wash them off and do the best that you can do.

UNIDENTIFIED MALE: Now when I buy food, I’m more careful about what I’m buying. I look and see if it’s organic. I look to see how far it’s shipped from.

UNIDENTIFIED FEMALE: Yesterday, I went looking for Peter Pan peanut butter. And I was very, very damn upset that it was not on the shelf. And I don’t think I’ll get worried until I get sick from eating Peter Pan peanut butter. Then I’ll say, you know, those folks had a point. So once you get sick, it does affect you. Until you get sick, it really doesn’t affect you as much.

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MARGOT ADLER: Getting sick from eating contaminated food happens more than you think. On our show today, we’ll look at food safety, from what our food supply was like in the days of Upton Sinclair’s “The Jungle” to whether cloned meat may be in our future. We’ll talk with the nation’s food-borne illness lawyer and find out why he won’t eat certain foods. Later, we’ll hear from a public relations pro who tells us how he would get peanut butter manufacturers out of their sticky situation. And we’ll spend the day with an L.A. health inspector who points out where the danger lurks in restaurant kitchens.

But first, to find out how America’s food is regulated and the history behind it, I talked with Dr. Maureen Storey. She is the director of the Center for Food Nutrition and Agriculture Policy at the University of Maryland, College Park. Welcome to Justice Talking.

MAUREEN STOREY: Thank you, very much.

MARGOT ADLER: Can you tell us when and why the government first got into the business of regulating the nation’s food?

MAUREEN STOREY: Well, the U.S. government got into the business of regulating food a very long time ago. Back in 1906, the first national food law was signed into law by President Theodore Roosevelt. So our food system or our food safety system in the United States is quite old.

MARGOT ADLER: There were actually some early food manufacturers who were in favor of food regulation. I’m wondering if you could tell us about their thinking during that time.
MAUREEN STOREY: Sure. The H.J. Heinz Company, their founder, H.J. Heinz, was known to produce a very high quality horseradish. However, his competitors were producing lesser quality horseradish, and they were putting in sawdust in order to extend that product. So what H.J. Heinz did was to always package his horseradish in clear bottles so that his consumers could see for themselves that his horseradish was pure. And he thought that if there was a national food law that prevented adulteration of food products like horseradish that he would have a competitive advantage.

MARGOT ADLER: Today, as I understand it, there are 35 separate laws on food safety and twelve different government agencies that make sure these laws are obeyed. Give us a sense of who exactly does what when it comes to ensuring the safety of our food.

MAUREEN STOREY: Well, our food safety system is very complicated, as you indicated. There are five cabinet-level departments that have different responsibilities for regulating our foods. The U.S. Department of Agriculture is one of them. The Department of Health and Human Services, which actually houses the Food and Drug Administration, is another department, cabinet-level department, that has responsibility. There’s also responsibility in the Department of Commerce with regulation of seafood. There’s also within the Department of Treasury the responsibility for regulating alcohol. And then the Department of Homeland Security, which is very new, has responsibility for coordinating many of the activities, particularly as it relates to food defense. Now having said that, the Food and Drug Administration regulates virtually all of our food products except for fresh meat, poultry and egg products. And those products—fresh meat, poultry and egg products—are regulated by the U.S. Department of Agriculture and the Food Safety and Inspection Service, which is within the USDA.

MARGOT ADLER: There’s talk in Congress now of passing an act that would consolidate all the agencies involved in food safety into one body, creating a position for a food safety administrator who would oversee everything. Is that feasible? Would it be better? Sometimes reforms don’t do what they’re supposed to do. What do you think about that?

MAUREEN STOREY: I think the consolidation of all of the food regulatory systems into a single food agency—it’s been studied for a number of years now and in fact the National Academy of Sciences recommended that back in 1998. The Government Accountability Office has done probably 40 different studies on the food safety regulatory system in the United States, and they have consistently come out and called for a single food safety agency. I don’t know if it will fix the problem. I know that Denmark and Canada are giving it a go with regard to consolidation of the different responsibilities. But I think that whatever we do, if we do try to consolidate into a single food safety agency, it is going to be a mammoth task.

MARGOT ADLER: Dr. Maureen Storey is the director of the Center for Food Nutrition and Agriculture Policy at the University of Maryland, College Park. Thank you so much for talking with me.

MAUREEN STOREY: Thank you.
MARGOT ADLER: Thanks to technological advances, there are many things that are done to our food to keep it safe. To talk with me about some of the things that happen to food before ending up on grocery store shelves is Chris Waldrop. He is the director of the Food Policy Institute at the Consumer Federation of America. Welcome to Justice Talking.

CHRIS WALDROP: Thank you very much. I’m glad to be here.

MARGOT ADLER: We want to talk with you today about technology and food. How is technology being used in food in ways the average consumer may not know about?

CHRIS WALDROP: Well, a lot of the current technologies that are sort of hidden from consumers are those used in processing meat, poultry products, processing fruits and vegetables, things like that, like maybe antimicrobial sprays, certain elements that are attempts to make food safer before it gets to the consumer.

MARGOT ADLER: Give me a couple of examples.

CHRIS WALDROP: One example is, as I said, antimicrobial spray, which they spray on meat products in very low concentrations, low levels. But it will protect the meat from microbial bacteria such as e-coli or salmonella or listeria. Other examples are in nanotechnology. The idea here is to change the, for example, food packaging, so that it could be used in different ways. For example, if the temperature around or inside the packaging changed or went below a certain level, then the packaging itself might change color, and that would alert either supermarket workers or the consumer that something had happened to that packing and maybe they shouldn’t buy it.

MARGOT ADLER: Let’s talk about genetically engineered foods.

CHRIS WALDROP: Sure.

MARGOT ADLER: First of all, what are they?

CHRIS WALDROP: Genetically engineered foods are altering the genetic material of a particular food. So, for example, changing the genetic DNA of corn so that it would give you a higher yield, or adding some kind of genetic material to soybeans so that they would be resistant to pesticides or herbicides.

MARGOT ADLER: I gather the industry scientists are attempting to modify pigs and cows so they will have more good fats and not as much bad fats. Tell us about this.

CHRIS WALDROP: That’s called transgenic animals. And what that does is it inserts the gene from another organism which has a desirable trait that you want into an animal gene. So, for example, you could grow pigs that have omega 3 fatty acids in them which are good for our
health. We’re supposed to eat more of them. But pigs don’t normally have them. So this would be a way to get that kind of nutrient into pork products.

MARGOT ADLER: Is it a good thing? I mean, when I think about omega 3 fatty acids, I think that’s very good for us.

CHRIS WALDROP: Well, it depends on what that engineering does to the end result and then what that does to consumers when they eat it. So it’s definitely something that we’d want to watch very closely and hopefully have the FDA regulate it very closely.

MARGOT ADLER: Let’s talk about irradiation. What exactly is it? And should we be wary of it?

CHRIS WALDROP: Sure. Irradiation is taking a food and exposing it very briefly to electron beams or gamma rays which kill any kind of bacteria that’s on the food itself. The FDA has approved this for meat and poultry, for fresh fruits and vegetables, and for spices, which I don’t think many people are aware of, that most of our spices have been irradiated.

MARGOT ADLER: Another thing I learned in preparing for this show is that carbon monoxide is often sprayed on meats to make it pink and tasty looking. That’s pretty gross.

CHRIS WALDROP: Right. That’s been the comment of a lot of people that I talk to on this. So carbon monoxide reacts with the meat and keeps it this bright red color that we all associate with freshness. However, it keeps it red well past the time of spoilage. And the problem or the concern is that when the consumers are in the grocery store, they can’t tell the difference between fresh meat that’s definitely fresh--it’s only a day or so old--and meat that’s been sitting on the shelf for longer than that but still looks as fresh as the day it was packaged.

MARGOT ADLER: Chris Waldrop is the director of the Food Policy Institute at the Consumer Federation of America. Thank you so much for talking with us, Chris.

CHRIS WALDROP: My pleasure.

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MARGOT ADLER: Coming up on Justice Talking: a debate over whether cloned animals should be raised for meat and dairy consumption.

UNIDENTIFIED MALE: Decades of research has shown that cloned animals are as healthy as conventional animals and those conceived through other forms of assisted reproductive technology.

UNIDENTIFIED MALE: So the FDA admits that a huge, huge percentage, a huge majority of cloned animals are not appropriate for meat, are not appropriate for dairy. But they assure us that they will, along with the USDA, through their examination of these animals, be able to cull
out all of the sick animals and make sure that we only get the meat and dairy from the small percentage that are healthy.

MARGOT ADLER: Should the FDA rule that it’s okay to eat meat from cloned cattle? Stay with us.

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MARGOT ADLER: This is Justice Talking. I’m Margot Adler. We’re talking about food safety on today’s show. The FDA is in charge of regulating new advances in food and drugs. And one of the big controversies on the horizon is cloning meat for food. The department recently said that products from healthy animal clones and their offspring don’t pose an increased risk to consumers. After accepting public comment on the issue for the next few months, the FDA will decide whether cloning meat for food is okay.

Joining me to debate whether cloning meat for food is a good thing are Andrew Kimbrell and Jim Greenwood. Andrew Kimbrell is the executive director of the Center for Food Safety, a watchdog group on food and agricultural issues. Jim Greenwood is president and CEO of the Biotechnology Industry Organization--or "BIO"--which represents biotechnology companies around the country. Welcome, both of you.

JIM GREENWOOD: Good to be here.

ANDREW KIMBRELL: Good to be with you, Margot.

MARGOT ADLER: We’re going to spend this segment of the show debating the pros and cons of cloning animals for consumption. First, Jim, I’d like you to explain how cloning meat for food would work.

JIM GREENWOOD: When a farmer decides that what he or she would like to do is to reproduce a milk cow, for instance, or beef cattle, the cloning company takes a somatic cell, perhaps a cell from the cheek, inside the cheek of that animal, and then takes an egg, a donated egg, from a cow, takes the nucleus out of the cow egg and then puts essentially the nucleus with the DNA from the animal to be cloned, in this case beef cattle. And then an electrical charge stimulates cell division. And once that cell begins the process of becoming a blastocyst, it’s then implanted into the uterus of a cow where throughout the normal gestation period it develops into a calf and is born.

MARGOT ADLER: And what do you see as the benefits of this?

JIM GREENWOOD: Well, the same benefits are desired from this kind of reproduction as from other kinds of what we call assisted reproduction that farmers have been using for a long time. So very unromantically, most of the meat that we get at the grocery store was not produced through romantic episodes and passions as much as it was through using artificial insemination or embryo transfer the farmers use in order to make sure that the products that they’re producing are most what the consumer wants. That is, for instance, in meat, that it’s lean and yet tender.
And they’re trying to produce cows that produce maximum quantities of milk. So this is the latest and most current way of producing the prize cows, bulls, hogs, that consumers are looking for.

MARGOT ADLER: Andrew, why do you think this is such a bad idea? Do you think there are health risks to eating cloned meat and dairy?

ANDREW KIMBRELL: Yes. And the FDA agrees with me. This story’s been pretty badly reported. If you read what the FDA actually wrote, they admit that over 90 percent of these clones, this cloning technology that Jim described, has a very, very low success rate, sometimes under two percent, and that well over 90 percent of clones—and this is according to the FDA now—suffer major errors in genetic reprogramming, physical defects, metabolic derangements. And even if they appear normal, according to the FDA, they have some clinical physiological defects that do make their meats and/or dairy products unfit for human consumption. So the FDA admits that a huge percent, a huge majority, of cloned animals are not appropriate for meat, are not appropriate for dairy. But they assure us that they will, along with the USDA, through their examination of these animals, be able to cull out all of the sick animals and make sure that we only get the meat and dairy from this small percentage that are healthy.

Now, we’re talking about the current FDA, which is understaffed, undermanned, and this broken food safety system that we see with the FDA, which is not protecting us from e-coli or salmonella—now says that they’re going to go into the fields of America and somehow use this sophisticated genetic testing and physiological examinations required to separate out the 90-plus percent we shouldn’t be eating or that we shouldn’t be getting dairy products from, the two percent that are healthy. That is simply not credible.

MARGOT ADLER: Okay, Jim. How would you respond to what Andrew said? Now, you clearly say that--

JIM GREENWOOD: I would say that was a brilliant diversionary route through mythology. There are no health risks associated with eating products from cloned animals, nor from their progeny. That is what the FDA said precisely. And it’s not surprising that they said that, because that is precisely what the science concludes. Even scientists who I’ve debated on this issue immediately grant that there are no safety issues in consumption.

MARGOT ADLER: Jim, the Pugh Initiative on Food and Biotechnology did a survey and 64 percent of people surveyed said they were uncomfortable with animal cloning. First of all, Jim, why do you think people feel this way? And how do you go about changing public opinion about this?

JIM GREENWOOD: Well, it doesn’t—that’s not surprising that people would be uncomfortable with it, because far more than—far fewer than 64 percent of people know what cloning is. There’s no reason that they should necessarily. But cloning has been the subject of science fiction. And it’s been the subject of political debates about human cloning and therapeutic cloning and that sort of thing. So one thing should be said, by the way, that it’s not that anyone’s thinking we’re going to clone animals and then slaughter those animals and take them to the
grocery store. It’s much too expensive to do that. What would happen is a prized steer or a cow, hog, would be cloned. And then undoubtedly, its semen would then be collected and used to reproduce in hundreds of other cows and so forth. So it wouldn’t--it would never be very likely that anyone would be eating a cloned animal as opposed to the progeny of cloned animals.

MARGOT ADLER: Andrew.

ANDREW KIMBRELL: I think there’s a reason why people are concerned about this. And the first is the kind of animal suffering involved. Even Dolly, who we thought was normal, Dolly the sheep who was cloned, was not normal. She died prematurely. And each of these clones have to put into a surrogate mother animal, every clone, and has to be brought to term. And over the years, we’ve seen tremendous problems, as the FDA notes, in gigantism and birth defects, in premature deaths, and animals who are born with enormous defects. So those who are the concerned with animals suffering have every reason to say they don’t want to see this particular technology.

And additionally, as Jim made very clear in his discussion of cloning, he was absolutely right: what we were doing is creating identical, genetically identical, animals. And most of us understand that diversity isn’t just something we celebrate among humans. It’s something we need to celebrate among our crops and among animals whose diversity gives us strength. Should there be an animal disease or a plant disease for plants? If we have a large diversity of animals, different kinds of varieties within species, they’re able to resist those diseases. They’re able to resist either a corn blight or an animal virus. And by cloning, which is sort of monoculture on steroids, we’re creating so many identical animals that should there be a disease, we will have almost no resistance to that. You will see a susceptibility among all of the clones because they’re identically the same. So diversity is something we also need to protect and that cloning works against.

MARGOT ADLER: Okay, Jim. Your turn.

JIM GREENWOOD: Decades of research has shown that cloned animals are as healthy as conventional animals and those conceived through other forms of assisted reproductive technology. What Mr. Kimbrell seems to do is he wants to confuse in our minds the notion that not all embryos come to fruition, as is true with all forms of reproduction, and act as if that’s somehow the death of animals. It’s not the case. And the fact of the matter is that the animals produced through cloning are as healthy as animals produced through artificial insemination, as healthy as animals produced through embryonic transfer. And the food that comes from them is precisely the same.

MARGOT ADLER: Maryland Senator Barbara Mikulski has introduced legislation to require labeling of food from cloned animals. Do you have a problem with that, Jim?

JIM GREENWOOD: I do have a problem with that. First off, the purpose of putting a label on a food product, as the FDA is clear about, is to provide the consumer with useful information that has to do with the safety values of that food. It has to do with the content of the food and additives in the food. No one would want to go to the grocery store I don’t think and see a steak
that is labeled this is a steak that was born--that was taken from an animal, that was produced through normal mating.

MARGOT ADLER: Why not? Isn’t it perfectly reasonable for us to know everything about our food? To know we know all the ingredients, to know where it comes from, to know if something’s irradiated. I mean, what’s the difference with cloning?

JIM GREENWOOD: Well, my question is do you want your package to say this steak was produced through artificial insemination? This steak was produced through embryo transfer. This steak was produced from a cow produced through normal reproduction, but its father or its grandfather was produced through artificial insemination. The question is what do you do with all of that information? And the answer is there’s nothing you can do with that information because there’s nothing internal to the product that’s different one from the other.

MARGOT ADLER: Well, I guess you could argue that we’d be informed consumers. Andrew, what’s your view?

ANDREW KIMBRELL: I think whenever you have a novel technology, and I certainly don’t--I mean, I worked on a dairy farm for four years. I find nothing obviously wrong with artificial insemination. These are useful techniques. But cloning is a radically new technique. So on both ethical grounds and human health grounds I think we should let the consumer decide. If these clones are so much better, if they provide the better meat and dairy products that Jim talks about, they should be proud to make sure that they’re labeled. If they present hazards and if they present unique ethical concerns, then the consumer has the right to know that their food was created through this controversial technology.

MARGOT ADLER: Can cloned animals ever produce organic meats, Jim?

JIM GREENWOOD: Well, it depends upon what definition you want to use for organic. Organic farming is really all about what chemicals are applied to crops, both in fertilization and with regard to things like pesticides. And since there are no added chemicals involved in the milk or the meat from these products, I think they are absolutely organic. I think the FDA, or the USDA I should say, is probably going to go the other way and agree to not have it called organic. But it certainly doesn’t violate the fundamental definition of what is organic, because if you take the steak from a cloned cow and you take the steak from a cow made through artificial insemination and you put them under any kind of microscope, any kind of analytical testing, you cannot tell one from the other. So there is nothing more or less organic about one than the other.

MARGOT ADLER: Andrew, can a cloned animal ever be an organic meat or dairy?

ANDREW KIMBRELL: Well, the USDA, the National Organic Program, has already tentatively ruled that they will not accept that as a method in organic--for organic meat or organic dairy. They’ve said that meat or dairy from clones, from the cloned animals themselves, are not acceptable as organic. So that decision looks like it’s already been made. As far as the offspring of clones, that’s something that the National Organic Program is currently examining along with the National Organic Standards Board, which is the group that decides on whether it will be
acceptable as organic or not. So right now, meat and dairy from clones: not acceptable organic. The progeny of such clones is still pending. We don’t know. We don’t know what that will look like.

MARGOT ADLER: If cloning is approved and once cloning is approved, how big of an industry do you think this is going to become, Jim?

JIM GREENWOOD: Well, I think that it will be widely accepted by farmers who for the same reason that artificial insemination and other breeding, enhanced breeding technologies, have been widely accepted: because it enables them to provide the consumers with the kinds of foods that consumers want. And once I think the scare campaigns are completed, and once the science is allowed and rational thinking is allowed to prevail, people will realize that, as I said, insofar as no one will be able to tell the difference between these products. Because, in fact, they are identical in every single way down to the molecule and the atom. It would be hard to imagine a rational reason for anyone doing anything except accepting them, just as they have all other assisted technologies after the initial controversy like this controversy.

MARGOT ADLER: Andrew, if the FDA approves cloning of animals, how big of an industry do you think this is going to become?

ANDREW KIMBRELL: Well, I think that’s the irony of it, Margot. I don’t think it’s going to be a very big industry at all. I think that as the FDA notes, the extremely low success rates that often have to go through 200 surrogate parents being--trying to give birth to these animals, and then many of them dying very young and having all of the physical defects that they talk about in this report, the FDA’s report. You can’t have a technology where you have a one or two percent chance of success and think that’s going to be successful financially. That’s why I’m a little confused on why the FDA even is considering this with all of the other problems that they have.

MARGOT ADLER: Andrew, what’s happening in other countries?

ANDREW KIMBRELL: Well, generally, we’re the only country that’s looking at approving this. And I think it’s because, again, if one actually studies what the FDA said, we’re looking at studies that involved about 38 animals, so we’re very, very preliminary in our view on the success of this technology and the potential safety of meat or dairy products coming from it. It’s a very new technology. Its success rate is infinitesimal compared to IBF or other more traditional assisted reproductive technologies. And the FDA admits that. And I think other countries are going to wait until they really have enough data, until they really have enough information and they have some scientifically valid peer-reviewed studies so they can show that this technology (a) works, is efficient, and (b) that it’s safe.

And additionally, I think they want to look at other questions like what about the general impacts of this technology on the diversity of animal species. Is it a good idea for us to try and create all cows that are alike, all sheep that are alike, particularly given the number of animal diseases out there? Isn’t diversity a better thing for food security in the future?
MARGOT ADLER: Jim, why do you think other countries have been slower on the uptake in regard to this?

JIM GREENWOOD: Well, first off, I have to correct some things. There’s not--it’s ridiculous to say that only 36 animals have been studied. Animal cloning has been rigorously studied for decades going back into the late ’70s and the early ’80s. There’s been dozens and dozens of scientific studies, 400 scientific references and 658-page FDA reviews. Hundreds of thousands of data points were analyzed over a period of more than five years. So this has been thoroughly studied. Now, the question is why has this not been adopted in other countries? Well, it hasn’t even been adopted here. It is state of the art, brand new technology. And as long as people fan other people’s fears about new technology, there will, of course, be a reluctance in certain markets to take the risk. Because they don’t want to lose sales because of fear-mongering. And that’s unfortunate. But I think some of us still have to adhere to the science and say as long as the science continues to say the meat and dairy from cloned animals is precisely at cellular level, at the genetic level, at the molecular level, the same thing, can’t tell the difference one from the other, then I think it’s only rational to conclude that this is perfectly safe.

MARGOT ADLER: Jim Greenwood is president and CEO of the Biotechnology Industry Organization or BIO. Andrew Kimbrell is the executive director of the Center for Food Safety. Thank you both for talking with me today.

JIM GREENWOOD: My pleasure.

ANDREW KIMBRELL: Thank you, Margot.

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MARGOT ADLER: Coming up on Justice Talking: Are Los Angeles restaurants getting cleaner because the health department makes them post a letter grade in the restaurant window? Celebrity chef Anthony Bourdain says a little dirt in a restaurant isn’t always a bad thing.

ANTHONY BOURDAIN: Now, if I walk into some big-box, Asian-fusion joint where they’re whacking me $18 for a chocolate martini, I guess I’d rather not see blood and hair on the wall of the bathroom. That would be a bad sign. But if, you know, you’re selling humble, local indigenous food, I’m not frightened off by the sight of livestock or a little filth.

MARGOT ADLER: What goes on in restaurant kitchens and an interview with the country’s top food-borne illness lawyer who can help you sue if you get sick from eating there--stay with us.

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MARGOT ADLER: This is Justice Talking, where we make the connection between law and American life. I’m Margot Adler. We’re talking about food safety in America. In the past years, people have become ill from eating contaminated beef, lettuce and spinach. Thousands of people have died after eating contaminated foods, and one Seattle lawyer has taken on the industry by suing companies responsible.
Bill Marler is a personal injury and products liability attorney. He has won many food-related lawsuits, including suits against Jack in the Box, Chili’s, Chi-Chi’s, Odwalla, Wendy’s and many other companies. He’s building class-action lawsuits in several states due to a recent outbreak of peanut butter related to salmonella poisoning. Welcome to Justice Talking.

BILL MARLER: Thank you very much, Margot.

MARGOT ADLER: Bill, tell us about this recent salmonella outbreak with peanut butter. I understand your phone has been ringing off the hook from thousands of people who say they’ve been affected. You say it’s one of the strangest outbreaks you’ve seen. Why?

BILL MARLER: Well, one of the things about a normal food-borne illness outbreak is that it’s generally a perishable item. It’s like hamburger, spinach, lettuce. So when people get sick, they usually get sick almost all at the same time or within a relatively short period of time. So what is odd about this is that this is really a nonperishable item. Peanut butter sits on people’s shelves for months and months and months. And what you saw and what we’re seeing is people getting sick and repeatedly getting sick. Getting sick and getting better. Then eating peanut butter and getting sick again. And it got spread over months and months and months, which ultimately made it very difficult for public health officials to make a determination that there was an outbreak to begin with.

MARGOT ADLER: You know, I’ve gotten sick from eating food. I mean, almost everybody I now has gotten sick from eating food sometime. And in most cases, it’s a temporary thing. It lasts a day. It lasts two. It would never occur to me to sue unless I was at death’s door or had long-term effects from it. So what does one gain from suing for a food-related illness?

BILL MARLER: Well, most of the time, you know, I would completely agree with you. I mean, I think if I got sick, from eating food of course, I don’t think very many people would be sympathetic if I got sick from eating food.

MARGOT ADLER: Why not?

BILL MARLER: Well, it’s funny. I’m going to give a speech. I’m going to be speaking to the growers and shippers of leafy greens. So I’m their luncheon speaker. And apparently, they’re having a spinach lunch. And then they’re going to give out bumper stickers saying "I Love Spinach." I think everybody’s coming there to see if I’ll actually eat the spinach.

MARGOT ADLER: And will you?

BILL MARLER: Oh, yeah. You know, I’ll eat the spinach. I may think about it a lot while I’m eating it. And I’m sure my wife wants to know that my life insurance is, you know, paid up. But, you know, the reality is that most people absolutely never figure out what made them sick. I mean, there are 76 million Americans that get a food-borne illness every year in America; 325,000 hospitalized and 5,000 deaths. We see on average in our law firm, you know, maybe
1,000, 1,500 people on average in a year. And we’re the only law firm in America that does this stuff full time. So we’re only seeing a very small slice of people that actually file lawsuits.

MARGOT ADLER: So knowing what you know about all the things that can make you sick, what foods won’t you eat?

BILL MARLER: Well, I don’t eat raw oysters.

MARGOT ADLER: You don’t?

BILL MARLER: No. I think that--

MARGOT ADLER: I love them.

BILL MARLER: I know, I know. But, you know, if you got sick from eating a raw oyster, and even if you got deathly sick, and I’m sure you’re a very nice person, but I wouldn’t take your case. Because I think frankly, you know, intelligent adults who eat raw food that is used as a filtering unit for our ocean, which that’s what oysters do--

MARGOT ADLER: So you don’t eat muscles. You don’t eat clams.

BILL MARLER: Well, I eat them if they’re cooked.

UNIDENTIFIED MALE: But you don’t eat raw clams, clams on the half shell, sushi?

BILL MARLER: Nope.

MARGOT ADLER: All my favorite foods.

BILL MARLER: Well, I’m surprised you’re not--haven’t been a client. But sprouts, I would not eat sprouts.

MARGOT ADLER: And why not?

BILL MARLER: Actually, the FDA warns not to eat sprouts because they have been known to be contaminated by e-coli, salmonella, and they’re very, very difficult to do anything with. Unpasteurized juice, I wouldn’t drink unpasteurized juice.

MARGOT ADLER: And what changes have all these lawsuits brought about?

BILL MARLER: I’ve been really blessed to be able to do the kind of work that I do. You know, I think it is a bad idea to poison your customers. And I think companies need to be responsible. And I think I have something to say about what they need to do to make their product safer. I’m not going to take full credit for suing companies into doing the right thing, but I think it’s a combination of consumers standing up, I think it’s a combination of some of the work that I’ve
done in my nonprofit, I think it’s a combination of kind of a political pressure that has been brought to bear on these industries.

MARGOT ADLER: Bill Marler is a personal injury lawyer in Seattle who concentrates on food safety issues. Thank you so much for joining us.

BILL MARLER: Thank you.

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MARGOT ADLER: We’ve just talked with a personal injury lawyer. He’s the guy you call when you’ve been affected by a food-borne illness. But what if you’re the company whose food is making people sick? You might turn to Gene Grabowski. He is senior vice president of Levick Strategic Communications, a public relations firm. His job is to neutralize potentially negative publicity. He’s worked on a number of food-related PR campaigns and recently helped the spinach industry recover from bad publicity during the e-coli outbreak.

You’re a spin doctor, Gene. When something goes bad, you’re called in to fix it. You were there when spinach hit the fan. You worked to make Chi-Chi’s edible again. Let’s take one example. Let’s take the e-coli in spinach outbreak that happened last year. Walk us through what happened.

GENE GRABOWSKI: Well, we had a report that broke on Thursday night that the Centers for Disease Control had a number of reports from health departments around the country in different states that a number of people were reporting illness. And the connecting point, if you will, the common denominator, was the fact that they’d all eaten raw spinach. And there was one linked death to it. So immediately, the industry, recognizing that this could be ruinous, gathered together, put some smart people in the room and decided: What’s our strategy moving forward, getting as much information as we can from the web and from the news media so that we can react in real time?

MARGOT ADLER: And what was your strategy?

GENE GRABOWSKI: Well, the strategy was to make sure that we were on the right side. We were trying to get to the bottom of the matter, as were the regulators and lawmakers immediately. So we immediately cooperated with the FDA officials in the field, health officials, making sure that our growers and packers in the industry were cooperating with regulators in the field to run this down as soon as possible. Because as long as there’s uncertainty in the marketplace, as long as the consumers in the supermarket or the restaurant think that there’s a bit unknown out there, that creates heightened anxiety. So the sooner we find out what the source of the contamination is, the specific farm, the greater chance we have for that anxiety to be reduced.

MARGOT ADLER: Wendy’s had a nightmarish PR experience a while ago when someone claimed to find a finger in their chili. Tell us what their solution was.
GENE GRABOWSKI: The digit in question--I think it was a thumb actually--was planted by an individual, as it turned out. But, of course, for weeks, we didn’t know that. And again, as long as they’re unknowns, people are wary of a product. And I think Wendy’s probably did the best they could do under the circumstances. Perhaps they could have used a different spokesperson. I believe their CEO was out front on this speaking on the issue. And I think perhaps in this case it would have been better to have a food safety expert speaking. And then once we found out what the source of the problem was, then the company is ready to market itself out of the crisis. And that means, you know, advertising and PR and coupons and such. And I think that Wendy’s probably should have been giving out coupons for something like, oh, perhaps their taco salad or something, or baked potato, rather than for chili.

MARGOT ADLER: Gene, let’s take a very recent example. Peter Pan peanut butter is finding itself in a sort of sticky place right now because of claims of salmonella poisoning among several thousand people. How would you advise the company to handle the situation?

GENE GRABOWSKI: What a company needs to do in that situation is explain how the product is made. Explain how this could have happened. Explain the safeguards that are in place. Explain what went wrong. Explain how you’re never going to let that happen again and what safeguards you’re putting in place to prevent that. And then once you sense in the marketplace that anxiety is dying down, that’s when you market your way out of it. It’s almost like driving a car into a curve. That’s when you accelerate and start doing more PR and more advertising and get that customer back.

MARGOT ADLER: Americans have a very short-term memory. Is it true that given a few months people will forget what product was tainted and which fast food joint made people sick?

GENE GRABOWSKI: Eventually they do. Even though jokes may linger. I mean, some of the audience may recall Jack in the Box years ago had an e-coli scare. People still remember that. But the brand bounces back. You can win back your reputation over time if you have the patience and resources, and you’re committed to it.

MARGOT ADLER: How long does it take?

GENE GRABOWSKI: It depends on how big of an outbreak you had, how much damage was done. But, in general, people--American consumers are forgiving. But you have to do three things right off the bat. You have to admit that you did wrong. You have to ask for forgiveness. And then you have to commit to fixing the situation. You have to commit to making sure the consumers understand and trust that you’re doing the right thing for them. If you can do those things, people will forgive you.

MARGOT ADLER: Gene Grabowski does crisis public relations and is senior vice president of Levick Strategic Communications. Thank you so much for being on our show.

GENE GRABOWSKI: You’re welcome. Thank you.
MARGOT ADLER: Any PR professional would agree that a top rating in Zagat’s can mean a boon for restaurant business. But in Los Angeles, restaurants are getting a different kind of grade: a letter--A, B, C or D--based on a health department review of their establishment. From Los Angeles, Heidi Pickman reports.

HEIDI PICKMAN: Evan Kleiman owns Angeli Café, a rustic Italian restaurant in Los Angeles. And she’s host of a local radio show called "Good Food." When she first heard about the grading system, her thought was:

EVAN KLEIMAN: How inelegant. I just imagined the letter. All of a sudden, I had this vision of all of these storefronts with all of these letters.

HEIDI PICKMAN: Restaurateurs may not like the aesthetics of the system, but it works. A study out of Stanford University found that since the system’s been in place, Los Angeles County has seen a significant decrease in food-related hospitalizations. And restaurants have improved.

PETER KASHISHIAN: The number of facilities that are able to get an A went from 57, 58 percent to over 80 percent now. And the number of facilities that weren’t even able to achieve the very minimum of a C, which is at least 70, was in the neighborhood of five to six percent. Now the number has dropped down to only .2, .3 percent.

HEIDI PICKMAN: Peter Kashishian is a restaurant inspector for the county’s health department.

PETER KASHISHIAN: The first thing that we do is when we come in we want to go ahead and wash our hands. So we set a good example.

HEIDI PICKMAN: Today, he’s inspecting a Chinese restaurant in midtown, run by a wife/husband team. He’s mostly checking for cleanliness and food temperatures. The buffet steam table holds your typical Chinese fare.

PETER KASHISHIAN: Okay. So, this is fine. This is 159 for chow mien. We’ve got broccoli beef, very good, 158, 159.

HEIDI PICKMAN: Cooked food has to be at least 135 degrees Fahrenheit in order to prevent organism and bacterial growth.

PETER KASHISHIAN: We have spicy chicken: very good, 178, 179, 180, 181, good.

HEIDI PICKMAN: We have spicy chicken: very good, 178, 179, 180, 181, good.

PETER KASHISHIAN: And the refrigerator temperatures have to be under 41 degrees so food doesn’t go bad. Besides the food temperatures, Kashishian looks in the corners and under the equipment for signs of dark cockroaches and rat droppings. He didn’t see any in the dining room. So he went into the kitchen. For the most part, it was pretty clean. But Kashishian found several no-nos: a spoon in a bowl of cooked rice that someone might grab with an unclean hand;
a plastic grocery bag that could have been in any number of dirty places that was used to cover cooked vegetables; then in a refrigerator, the possibility of contamination.

PETER KASHISHIAN: We have raw chicken. And we also have pulled shell eggs. The pulled shell eggs are stored open, raw, above ready to eat vegetables. And that is a violation.

HEIDI PICKMAN: In this case, he knocked off four points for improper food storage. But it could have been six points if the eggs had dripped onto the vegetables. Next we check the hot water. It’s required to be at least 120 degrees.

PETER KASHISHIAN: At this point in time, the hot water is only measuring 103.

HEIDI PICKMAN: The health department closes the restaurant if the water’s under 110 degrees. Kashishian gives them a chance to raise the temperature. The potential closure doesn’t faze him.

PETER KASHISHIAN: This is part of the job, really. There’s no emotions one way or the other. It’s just--you do feel bad because, you know, it’s the person’s livelihood. That’s how they put food on their table. That’s how they make money. My responsibility is to the public.

HEIDI PICKMAN: Kashishian says that for a restaurant to stay open, they have to follow the rules. Restaurant owner Evan Kleiman says the health department inspections force her to be more systematic about maintenance.

EVAN KLEIMAN: I know that I’m going to be forced into making some sort of upgrade at least twice a year. And often when they come around and you have to spend this money, it seems to be the worst possible time. But in the end, it’s better for everybody.

HEIDI PICKMAN: Celebrity chef Anthony Bourdain doesn’t want to see an A, B or a C. He’s written books on the nasty things that go on in restaurant kitchens.

ANTHONY BOURDAIN: If I’ve learned anything in my recent travels around the world, a little honest dirt is seldom an impediment to a great meal. And I don’t want to know exactly how dirty. I mean, can’t you get a sense of that yourself just by walking in a place? I thin a pass/fail system is just fine.

HEIDI PICKMAN: Bourdain is the host of the Food Network’s “No Reservations.” While most shun C restaurants, he’s eaten one of his best meals in Los Angeles at one, Sal’s Coffee Shop in Thai Town.

ANTHONY BOURDAIN: Magnificent. I really don’t care whether they’re keeping sheep in the kitchen. It was delicious. Now, if I walk into some big-box, Asian-fusion joint where they’re whacking me $18 for a chocolate martini, I guess I’d rather not see blood and hair on the wall of the bathroom. That would be a bad sign. But if, you know, you’re selling humble, local indigenous food, I’m not frightened off by the sight of livestock or a little filth.
HEIDI PICKMAN: Surprisingly, Bourdain is not the only one who would eat at a C. L.A. County Health Inspector Peter Kashishian says you need to read the report to find out what’s behind the letter grade.

PETER KASHISHIAN: Four of these violations, which are four points each, are so easily avoidable they could have a 93 instead of 77. Don’t wait for the Health Department to come in and say, hey, you know, you’re out of paper towels. That’s four points. So you asked me would I eat here? Yeah, because I know the bulk of the stuff really is easily fixable stuff. So, yes. You heard that from the health inspector. I would eat at a C facility.

HEIDI PICKMAN: And that was enough to end the debate between my stomach and my head. For $1.75, the spicy chicken was the best meal deal I’ve eaten in a long time. For Justice Talking, I’m Heidi Pickman.

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MARGOT ADLER: To see if your kitchen would get an A from the L.A. Health Department, take their quiz. Go to our website, justicetalking.org. While you’re there, you can find out more about our guests and let us know what you think about food safety. You can also check out our new blog, where many of the nation’s leading commentators give their views on law and American life. And you can podcast our show too. Thanks for joining me. I hope you’ll tune in next week. I’m Margot Adler.

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