

A Produce Nightmare at Retail

A leading U.S. food safety lawyer amalgamates cases he has worked on, warning what can happen if food safety is not prioritized.

by BILL MARLER

Your father had a great idea for a restaurant when he was still alive. After 20 years of working seven days a week, he built an impressive chain of ten restaurants. The restaurants were the place where first dates bloomed, where engagements happened, where anniversaries and birthdays were celebrated, and where, in the overflowing banquet rooms, passings were celebrated. Business deals were made over long lunches, and a few affairs began and ended in the leather-seated bars. Your father's restaurants reflected him, but more importantly, they reflected a high standard of quality within the community. All the reviews were glowing. The restaurants set a standard that competitors could only envy.



Your father cared about the safety of the food he served his customers. For the most part, it was because he saw his customers as friends and family. However, he also understood how a sickened customer (or customers) could, with one meal, ruin the brand he had worked tirelessly to create. He paid attention to the cleanliness of all his restaurants and the training of his employees. Your father was at times an annoying stickler as to the quality of all the food that entered his restaurant. He took pride in never having a negative health department inspection.

A Caesar salad has been one of your father's restaurants' signature dishes. He took pride in the table-side preparation. All the ingredients were hand-selected



from nearby farmers and suppliers that your father had known since the first restaurant opened. The heads of romaine were stripped of the outside leaves and thoroughly washed just before the lunch rush with the same process repeated shortly before dinner. Your father always worried about the raw eggs in the dressing even though he knew the farmer that supplied the eggs. However, he was a quick adapter when pasteurized eggs became available.

Growing up, at times you were annoyed when your father talked about the risks of hepatitis A due to inadequate employee handwashing, or Salmonella from undercooked eggs, the dreaded E. coli in undercooked beef, or a growing problem of leafy greens and E. coli. A

Jack in the Box was never considered a toy. By the time you began working in the restaurants in high school you were well-steeped in food safety, the cold chain, and third-party audits.

When your father died in the middle of your second year in college as an English major, you did not hesitate to come home to try and step into his very large shoes. Your mother had died a few years earlier and your siblings had no interest in the business, save for what it did to fund their education and lifestyles.

Your father's memorial service was enormous; all expertly catered by the general managers of each of the ten restaurants. A senator gave the eulogy. Stories were told about the meaning of the restaurants to the

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communities they served. The foodbanks and homeless shelters came forward with how many times your father provided gourmet food to those less fortunate.

As you said your goodbyes and thank yous, the managers hung back. Sitting in the very first restaurant's bar, the enormity of your task was becoming more and more apparent. You now realized that you not only were responsible for your father's legacy and the tens of thousands of customers, but the ten managers and the hundreds of employees and their families. Feeling a bit unprepared, you listened to the managers offering both their condolences and their support. You thanked them and after they left, you sat there for some time wishing your father would walk through the door.

You learned a long time ago that the restaurant business is 24/7/365 – almost. From overseeing the expanded purchasing staff to hiring and firing decisions, things came at you like a firehose. At the best of times, you only had time to make a snap decision on a supplier change or to rely on the managers to manage. At two in the morning, you were often awakened by the decisions that needed to be made the next day and the days after.

You were exhausted, but you also wanted to make the business more profitable. One day, when a new salesperson somehow got a meeting with you, she pitched a brand of romaine that would supposedly equal the quality of your father's signature salad but for a lower price. Intrigued, you ordered a box and asked a trusted manager to test the product. The results were glowing – the same look, taste and shelf life as the other product, and all while providing savings for the business. With the decision made, you forgot to do your due diligence and ask about the

supplier's food safety credentials. You let the other romaine suppliers know that their product was no longer needed.

And then the unthinkable happened. The Friday after a holiday Monday, the local health department called to say that there were a handful of patients – mostly older, but some children – who were hospitalized with E. coli, two in kidney failure, who seemed to have a connection to meals served at three of your restaurants in the prior week. Testing was still being done, and other states were also reporting E. coli cases. Thus far, no product had been identified.

Your heart sank. Over the next few days, various local, state, and federal health agencies found that nearly 100 people were sickened in several states, but that nearly 35 people were linked to your restaurants, including now two dead children, at least six more with acute kidney failure, and a dozen of others hospitalized. Thus far, still no product had been identified.

You immediately closed all restaurants, threw out all perishable foods, and began a thorough cleaning. The health authorities then announced that the likely source of all the infections was romaine that you recently purchased. The traceback to the growing location showed that the lettuce was grown within a stone's throw of a cattle feedlot, which was the likely source of the E. coli.

Even after you shut the restaurants for a week (still paying all employees) and the health authorities said salad was safe to eat, the fact that your father's restaurants were linked to severe illnesses and deaths kept customers away. Sales were down between 70 to 80%. Every day, the news talked about the struggles of the victims and how it was clear that the romaine was grown in an unsafe place. As the days and weeks wore on, sales did not improve. The decision was made to close three restaurants, but the news picked that up, and sales in the other seven stores dropped further. Within three months, still paying both employees and suppliers, it became apparent that more restaurants would need to close. Then, the lawsuits started.

Sitting in the bar in the last remaining restaurant, you thought back on the decision to order the different brand of romaine. As you sat there, you wondered what your father would say if he walked through the door. **V**

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