PR WATCH

Public Interest Reporting on the PR/Public Affairs Industry

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ALSO IN THIS ISSUE:

Shut Up and Eat

Food Censorship Arrives in America

On June 19, a British judge ruled that two environmental activists had committed "McLibel" when they criticized the McDonald's restaurant chain for serving fatty, unhealthy foods, damaging the environment, paying low wages and mistreating animals.

Although Justice Rodger Bell acknowledged that there was a factual basis for all of these criticisms, under Britain's reactionary libel law he ruled that activists Helen Steel and Dave Morris were guilty *anyway* and ordered them to pay $96,000 in damages.

In the United States, meanwhile, the food industry is working overtime to enact British-style libel laws that make it easier to silence American activists and journalists. The first target of such a lawsuit in the U.S., ironically enough, is Howard Lyman of the Humane Society of the U.S., who is being sued along with Oprah Winfrey for warning on the Oprah Show about the human dangers associated with England's epidemic of mad cow disease.

Flack Attack

Investigative journalist Nicols Fox, in her important new book *Spoiled*, calls mad cow disease the "Chernobyl" of food safety issues. So far 19 people in Britain are dead or dying from the human version of the disease, which they apparently contracted from eating infected British beef a decade ago. How many more will die? With a disease that takes years to incubate, no one can say. Some scientists predict a couple of hundred deaths; others say the number could reach hundreds of thousands.

Last year *PR Watch* exposed the "PR cover-up" that has lulled the U.S. public into a false sense of security about the possibility that mad cow disease—or something equally dangerous—could emerge here. Govenment officials glossed over human health in order to guard the the vested interests of the the world's largest meat industry. In 1991 officials recognized that stopping cow cannibalism was the best approach to prevent a US outbreak, but concluded "the disadvantage is that the cost to the livestock and rendering industries would be substantial."

No action was taken, in fact, until June of this year when the Food and Drug Administration finally announced a regulation to restrict the feeding of most meat and bone meal from ruminant animals (cows sheep, goats) back to other ruminants. Unfortunately, and predictably, the regulation is filled with loopholes, designed primarily to protect the status quo in the meat industry. It's the kind of law you get when the public is excluded from debates over public policy.

The American public is kept out of the debate by PR management and lousy journalism—and, now, by a massive attack on our most fundamental rights of free speech and self-government. "Food disparagement laws" are the latest technique for intimidating and silencing citizens, activists, academics and journalists who participate in public discussion and decision-making over food safety issues. This "PR cover-up." may not be as dramatic as Richard Nixon's Watergate coverup of a quarter century ago, but it is at least as effective at manipulating public opinion and defining our reality.

If the meat industry has its way, your information about food safety issues will be limited to self-serving propaganda like this ad.

The United States legal system has historically placed a high value on freedom of speech. The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

New "agricultural product disparagement laws," however, are being placed on the books precisely for the purpose of "abridging freedom of speech." The new laws give the food industry unprecedented powers to sue people who criticize their products, using standards of evidence which dramatically shift the "burden of proof" in favor of the industry. "In them, American agribusiness has its mightiest tool yet against food-safety activists and environmentalists, whose campaigns can cost industry millions if they affect consumers' buying habits," observes *Village Voice* reporter Thomas Goetz.

The lawsuit against Howard Lyman, filed in 1996 by cattleman Paul Engler, states that Lyman's warning about mad cow disease "goes beyond all possible bounds of decency and is utterly intolerable in a civilized community." Apparently England is the type of intolerant "civilized community" that Engler would like to emulate.

The lawsuit marks the first test case for a new legal standard which the agriculture industry has spent the past half-decade introducing into dozens of U.S. states. "All agricultural eyes will be watching this one," observed one food industry lobbyist. Engler's attorney described the suit as "a historic case; it serves as a real bellwether. It should make reporters and journalists and entertainers—and whatever Oprah considers herself—more careful."

Thirteen states to date have enacted "food disparagement" laws. Under previous laws, the food industry bore the burden of proof. In order to win a libel case, it had to prove that its critics were deliberately and knowingly circulating false information.

Under the new laws, however, it doesn't matter that Lyman believes in his statements, or even that he can produce scientists who will support him. The industry will be able to convict him of spreading "false information" if it can convince a jury that his statements on the Oprah show deviated from "reasonable and reliable scientific inquiry, facts, or data"—a legal standard which gives a clear advantage to the multi-billion-dollar beef industry, particularly in Texas cattle country —and particularly with respect to mad cow disease, an exotic illness whose characteristics continue to baffle researchers.

STRANGER THAN FICTION

The Oprah show aired on April 16, 1996, less than a month after the British government reversed a decade of denial and admitted that consumption of beef from mad cows was the "most likely" explanation for the appearance of a bizarre, previously unseen dementia in humans known as "new variant Creutzfeldt-Jakob Disease." Like conventional strains of Creutzfeldt-Jakob Disease (CJD), the new variant strain is incurable and invariably fatal, killing its victims by filling their brains with microscopic spongy holes. Conventional CJD, however, almost always kills older people—usually after the age of 50. The new variant came to light when young people started dying, some of them still in their teens.

To date, 19 cases of the new disease have been documented in humans. The number so far is small, and it is possible that it will *stay* small, but it is by no means certain. Lyman's statement on the Oprah Show included his opinion that mad cow disease could be worse than AIDS—an opinion which he bases on the fact that both diseases can take years, even decades, to incubate,

thereby making it impossible to predict the size of an outbreak during its early stages.

This parallel has also been noted by Luc Montagnier, the French scientist who first discovered the infectious agent that causes AIDS. At the time of his discovery in 1983, France had only seen a total of 200 AIDS cases. "I did not realize the epidemic could spread so fast and so widely in the world," he said, warning that the handful of early human victims from mad cow disease could be the harbinger of a much larger epidemic. "It is very difficult to predict, as it was for HIV in 1983," he said.

Mad cow disease belongs to a class of spongy brain diseases known as "transmissible spongiform encephalopathies" TSEs which can take even longer to incubate than AIDS. In Papua New Guinea, an epidemic of a human TSE called kuru included cases in which more than 40 years passed between the time of infection and the onset of illness.

No TSE had ever been documented in *cows* until the mid-1980s, and the total number of bovine cases did not crack 1,000 until the year 1988. Since then, however, more than 160,000 cases have been documented, and scientists concur that most were infected during the period when the British government was confidently claiming that "the number of confirmed cases . . . is very small."

"In those days, it really was hard, in fact, nobody honestly could foresee what was going to happen," British researcher Richard Kimberlin said in 1996. "Now it is all painfully clear, the sheer scale of the epidemic."

Amid the many mysteries surrounding the disease, however, one fact has emerged undisputed. The disease in cows became an epidemic because of modern farming practices, in particular the practice of feeding protein derived from rendered cattle back to other cows. Howard Lyman's appearance on the Oprah Winfrey show focused heavily on precisely this practice of "cow cannibalism." He is being sued because he correctly told a national audience that the U.S. meat industry is continuing to practice animal cannibalism on a massive scale.

Following the first human deaths in England, the USDA and the cattle industry have reluctantly accepted a limited ban on feeding cattle remains back to cows. In order to minimize the blow to industry, however, loopholes have been written into the legislation. It remains legal to feed cattle remains to pigs or chickens, and those remains can in turn be rendered and fed back to cattle. In addition, cannibalistic feeding of pigs to pigs and chickens to chickens remains a common practice which is fully legal under the new regulation.

These are the sort of practices that Lyman warned against, and which drew outraged reactions of shock and surprise from Oprah Winfrey and her studio audience. Government and industry insist that their limited regulations are adequate to prevent future TSE outbreaks in the livestock industry, but not everyone agrees.

A public debate over these practices would undoubtedly alarm U.S. consumers. The U.S. food industry is anxious to avoid such a debate, which is why it has taken extraordinary steps to silence Howard Lyman. ■

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"Intolerable" Speech? What Howard Lyman Said to Oprah

On April 16, 1996, Howard Lyman told the Oprah Winfrey Show that mad cow disease—known technically as "bovine spongiform encephalopathy" or BSE—could "make AIDS look like the common cold."

"That's an extreme statement, you know," Oprah observed.

"Absolutely," Lyman said, "and what we're looking at right now is that we're following exactly the same path that they followed in England. Ten years of dealing with it as public relations rather than doing something substantial about it. A hundred thousand cows per year in the United States are fine at night, dead in the morning. The majority of those cows are rounded up, ground up, fed back to other cows. If only one of them has mad cow disease, it has the potential to effect thousands."

"But cows are herbivores. They shouldn't be eating other cows," Oprah said.

"That's exactly right, and what we should be doing is exactly what nature says. We should have them eating grass, not other cows. We've not only turned them into carnivores, we've turned them into cannibals."

"How do you know the cows are ground up and fed back to the other cows?" Oprah asked.

"Oh, I've seen it," Lyman said. "These are USDA statistics. They're not something we're making up."

"Now doesn't that concern you all a little bit, right here, hearing that?" Oprah asked her studio audience, which responded with supportive cheers.

"It has just stopped me cold from eating another burger," Oprah said, drawing more applause. "I'm stopped!"

Dr. Gary Weber, a policy director for the National Cattlemen's Beef Association, was the man charged with blunting Lyman's attack. Weber found himself lined up not just against Lyman but also against the grandmother of a British girl who was dying from the human form of mad cow disease and the father of a boy in the United States who had died of E-coli poisoning from the infamous Jack-in-the-Box hamburger outbreak.

"Let me clarify that," Weber began. "There is a reason to be concerned. We've learned from the tragedy in Great Britain and made a decision here. . . . We started taking initiatives ten years ago to make sure this never happened here. Let me go back and correct a couple of things. Number one, we do not have BSE in this country and we have a ten-year history of surveillance to document that based on science. We do not have it. Also, we have not imported any beef in this country since 1985 from Great Britain."

"Are we feeding cattle to the cattle?" Oprah asked.

"There is a limited amount of that done in the United States," Weber admitted, to groans and sighs from the audience. "Hang on just a second now," he said. "The Food and Drug Administration—"

"I have to just tell you, that is alarming to me," Oprah said.

"Now keep in mind that before you view the ruminant animal — the cow — as simply vegetarian, remember that they drink milk," Weber said, floundering desperately. "I'm saying we do not have the disease here, we've got ten years of data, the best scientists in the world who are looking for this, over 250 trained technicians and veterinarians around the country. Everyone's watching for this."

"Before you view the cow as simply vegetarian, remember that they drink milk."
Gary Weber, policy director, National Cattlemen's Beef Association

"The same thing that we've heard here today is exactly what was heard for ten years in England," Lyman replied. " 'Not to worry, we're on top of this.' . . . If we continue to do what we're doing, feeding animals to animals, I believe we are going to be in exactly the same place. . . . Today we could do exactly what the English did and cease feeding cows to cows. Why in the world are we not doing that? Why are we skating around this and continuing to do it when everybody sitting here knows that would be the safest thing to do? . . . Because we have the greedy that are getting the ear of government instead of the needy and that's exactly why we're doing it. . . . What it comes down to is about half of the slaughter of animals is non-sellable to humans. They either have to pay to put it into the dump or they sell it for feed, so they grind it up, turn it into something that looks like brown sugar, add to it all of the animals that died unexpectedly, all of the road kills and the euthanized animals, add it to them, grind it up and feed it back to other animals. It's about as simple as you can be. We are doing something to an animal that was never intended to be done." ■

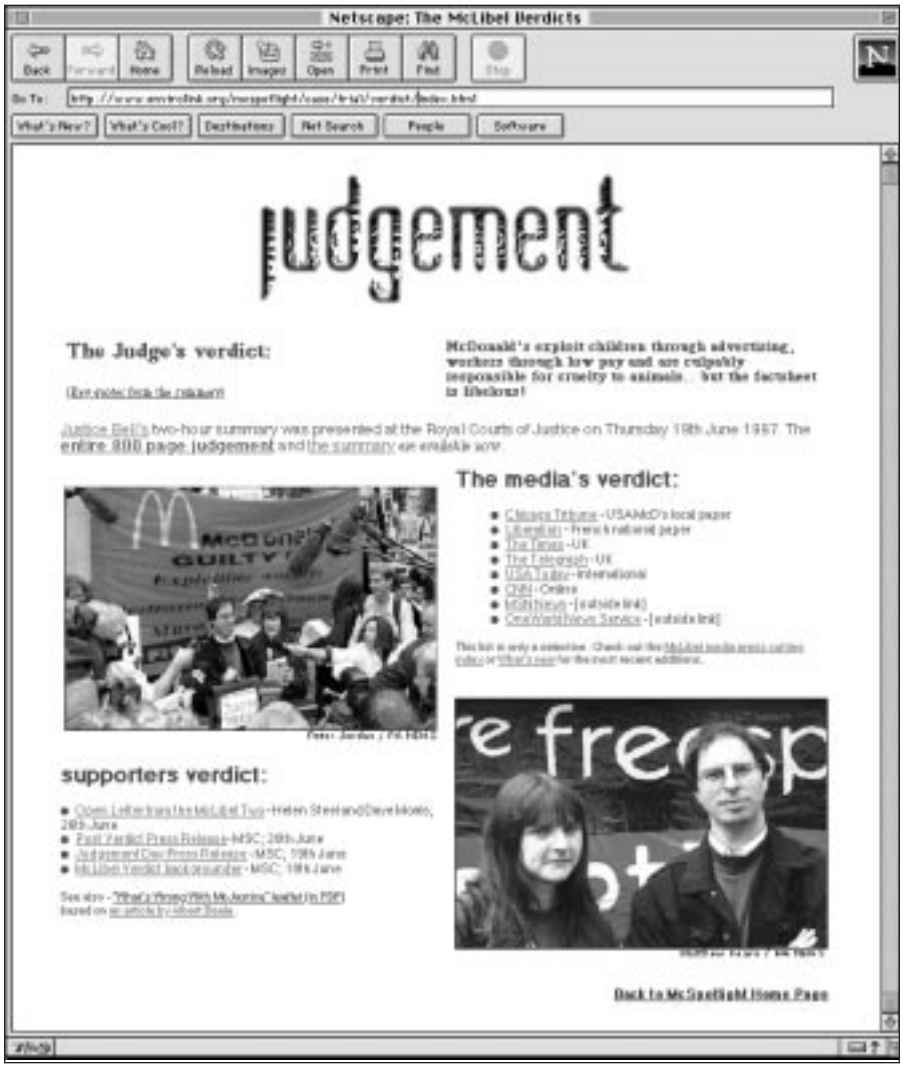
They Said, He Said: Why the Judge Ruled for McDonald's

The outcome of the McLibel case provides a dramatic example of what happens when the "burden of proof" is shifted in libel cases. British laws place the burden of proof on defendants rather than plaintiffs. In the McLibel trial, this meant that McDonalds did not have to prove that the defendants had deliberately circulated *false* information. Instead, the defendants carried the burden of proving that what they said was *true*.

In an 800-page ruling, Justice Rodger Bell undertook a piece-by-piece dissection of a four-page fact sheet titled "What's Wrong With McDonald's," published in 1986 by a group whose members included defendants Helen Steel and Dave Morris. Bell found that there was evidence to support all of the arguments made in the leaflet, but ruled against the defendants anyway because, in his opinion, they had "exaggerated" their claims against the food chain.

Under U.S. law, of course, the outcome of a libel trial would not revolve around the question of whether the judge shares the opinions of the people who are being sued. The fundamental issue in this country is whether people have the right to hold *different* opinions, and to express and debate those differences freely before the court of public opinion.

In England, that right does not exist, as can be seen by reading the following excerpts from the fact sheet and Bell's ruling:



To read the full text of the leaflet that McDonald's sued to suppress, along with detailed transcripts of the trial and the complete verdict by judge Rodger Bell, visit the "McSpotlight" website at <http://www.mcspotlight.org/>.

ON RAINFOREST DESTRUCTION

The fact sheet stated: "Every year an area of rainforest the size of Britain is cut down or defoliated, and burnt. . . . McDonald's and Burger King are two of the many U.S. corporations using lethal poisons to destroy vast areas of Central American rainforest to create grazing pastures for cattle to be sent back to the States as burgers and pet food, and to provide fat-food packaging materials. (Don't be fooled by McDonald's saying they use recycled paper: only a tiny per cent of it is. The truth is it takes 800 square miles of forest just to keep them supplied with paper for one year. Tons of this end up littering the cities of 'developed' countries.)"

The judge ruled: "In my judgment 'rainforest' in the concept of this leaflet . . . must mean more than tropical forest of any kind. . . . In my view it would mean luxuriant, broad-leaved, evergreen, very wet, canopy forest—very wet because of the very heavy rainfall." The proportion of recycled paper in McDonald's packaging was "small but nevertheless significant," so the fact sheet had broken the law by stating that "only a tiny proportion" was recycled. As for the litter problem, Bell said that McDonald's was not to blame for actions of "the inconsiderate customer."

ON NUTRITIONAL VALUE

The fact sheet stated: "A diet high in fat, sugar, animal products and salt (sodium), and low in fibre, vitamins and minerals—which describes an average McDonald's

meal—is linked with cancers of the breast and bowel, and heart disease. This is accepted medical fact, not a cranky theory. Every year in Britain, heart disease alone causes about 180,000 deaths."

The judge ruled that some of McDonald's advertisements and literature have inaccurately claimed positive nutritional benefits for their food, and people who eat there frequently, "encouraged by McDonald's advertising," increased their risk of serious diseases. He ruled, however, that this section of the factsheet was defamatory because many of the people it was addressed to didn't eat there often enough to suffer the ill effects. "It is not true in substance and in fact because it is only true . . . in relation to a small proportion of people who eat McDonald's food several times a week."

ON MARKETING TO CHILDREN

The fact sheet stated: "Nearly all McDonald's advertising is aimed at children. . . . Thousands of young children now think of burgers and chips every time they see a clown with orange hair. No parent needs to be told how difficult it is to distract a child from insisting on a certain type of food or treat. . . . McDonald's know exactly what kind of pressure this puts on people looking after children. It's hard not to give in to this 'convenient' way of keeping children 'happy', even if you haven't got much money and you try to avoid junk-food."

The judge ruled that "McDonald's advertising and marketing is in large part directed at children, with a view to them pressuring or pestering their parents to take them to McDonald's. . . This is made easier by children's greater susceptibility to advertising, which is largely why McDonald's advertises to them quite so much."

Even so, Bell ruled that this section of the fact sheet was defamatory because the gimmicks used to attract children were not misleading about the quality of the food—"the food is just what a child would see and expect it to be: beef burgers in buns or chicken in a coating, for instance, soft drinks, milk shakes and—'best bits' of all, I suspect—chips or fries."

ON CRUELTY TO ANIMALS

The fact sheet stated: The menu at McDonald's is based on meat. They sell millions of burgers every day in 35 countries throughout the world. This means the constant slaughter, day by day, of animals born and bred solely to be turned into McDonald's products. Some of them—especially chickens and pigs—spend their lives in the entirely artificial conditions of huge factory farms, with no access to air or sunshine and no freedom of movement. Their deaths are bloody and barbaric."

The judge ruled that "Broiler chickens which are used to produce meat for [McDonald's] food spend their whole lives in broiler houses without access to open air or sunshine. I do not find this in itself cruel. However, they spend the last few days of their lives with very little room to move. The severe restriction of movement over those last few days is cruel and [McDonald's is] culpably responsible for that cruel practice. . . . It was not shown that cattle or pigs which are used to produce the Plaintiffs' food are frequently still fully conscious when they have their throats cut. A proportion of the chickens which are used to produce [McDonald's] food are still fully conscious when they have their throats cut. This is a cruel practice for which the Plaintiffs are culpably responsible." This portion of the fact sheet, therefore, "is justified, true in substance and in fact."

ON LABOR AND UNION ISSUES

The leaflet stated: "Workers in catering do badly in terms of pay and conditions. They are at work in the evenings and at weekends, doing long shifts in hot, smelly, noisy environments. Wages are low and chances of promotion minimal. . . . The 'kitchen trade' has a high proportion of workers from ethnic minority groups who, with little chance of getting work elsewhere, are wary of being sacked—as many have been—for attempting union organisation. McDonald's has a policy of preventing unionisation by getting rid of pro-union workers. So far this has succeeded everywhere in the world except Sweden, and in Dublin after a long struggle."

The judge ruled that McDonald's "does pay its workers low wages, thereby helping to depress wages for workers in the catering trade." Even so, he found the leaflet defamatory because, even though McDonald's was "strongly antipathetic to any idea of unionisation", it did "not have a policy of preventing unionisation."

Regarding working conditions, Bell acknowledged the "hard and sometimes noisy and hectic nature of the work, occasional long, extended shifts including late closes, inadequate and unreliable breaks during busy shifts, instances of autocratic management, lack of third party representation in cases of grievance and occasional request to go home early without pay for the balance of the shift if business is slack."

Even so, he concluded, "I do not judge the Plaintiffs' conditions of work, other than pay, to be generally "bad" for the restaurant workers. . . . I find it difficult to see how [McDonald's] could have grown so fast in countries where there is a high expectation of living and working conditions if McDonald's working conditions had been truly and generally bad." ■

SLAPP Happy: Corporations That Sue to Shut You Up

The corporate technique of suing people into silence and submission has become so popular that it even carries its own cute nickname in legal circles. Such lawsuits are known in lawyer lingo as "SLAPP suits," an acronym for "strategic lawsuits against public participation."

"Thousands of SLAPPs have been filed in the last two decades, tens of thousands of Americans have been SLAPPed, and still more have been muted or silenced by the threat," write law professors George Pring and Penelope Canan in their 1996 book, *SLAPPs: Getting Sued for Speaking Out*.

In their investigation of the trend, Pring and Canan found that "filers of SLAPPs rarely win in court yet often 'win' in the real world, achieving their political agendas. We found that SLAPP targets who fight back seldom lose in court yet are frequently devastated and depoliticized and discourage others from speaking out—'chilled' in the parlance of First Amendment commentary."

SLAPP suits achieve their objectives by forcing defendants to spend huge amounts of time and money defending themselves in court.

"The longer the litigation can be stretched out . . . the closer the SLAPP filer moves to success," observes New York Supreme Court Judge J. Nicholas Colabella. "Those who lack the financial resources and emotional stamina to play out the 'game' face the difficult choice of defaulting despite meritorious defenses or being brought to their knees to settle. . . . Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined."

"Initially we saw such suits as attacks on traditional 'free speech' and regarded them as just 'intimidation lawsuits,' " Pring and Canan state. "As we studied them further, an even more significant linkage emerged: the defendants had been speaking out in government hearings, to government officials, or about government actions. . . . This was not just free speech under attack. It was that other and older and even more central part of our Constitution: the right to petition government for a redress of grievances, the 'Petition Clause' of the First Amendment."

SLAPP suits threaten the very foundation of citizen involvement and public participation in democracy. "Americans by the thousands are being sued, simply for exercising one of our most cherished rights: the right to communicate our views to our government officials, to 'speak out' on public issue," state Pring and Canan. "Today, you and your friends, neighbors, co-workers, community leaders, and clients can be sued for millions of dollars just for telling the government what you think, want, or believe in. Both individuals and groups are now being routinely sued in multimillion-dollar damage

Some Typical Examples of Corporate Censorship Lawsuits

- In Las Vegas, a local doctor was sued over his allegations that a city hospital violated the state's hospital cost containment law.
- In Baltimore, members of a local community group faced a $52 million lawsuit after circulating a letter questioning the property-buying practices of a local housing developer.
- In West Virginia, an environmental activist faced a $200,000 lawsuit for criticizing a coal mining company's activities that were poisoning a local river.
- In Pennsylvania, a farmer was sued after testifying to his township supervisors that a low-flying helicopter owned by a local landfill operator caused a stampede that killed several of his cows.
- In Washington state, a homeowner found that she couldn't get a mortgage because her real estate company had failed to pay taxes owed on her house. She uncovered hundreds of similar cases, and the company was forced to pay hundreds of thousands of dollars in back taxes. In retaliation, it dragged her through six years of legal harassment before a jury finally found her innocent of slander.
- In Rhode Island, a resident of North Kingstown wrote a letter complaining about contamination of the local drinking water from a nearby landfill and spent the next five years defending herself against the landfill owner's attorneys, who charged her with "defamation" and "interference with prospective business contracts."
- In South Carolina, an animal rights activist was sued for $4 million after writing a letter to an obscure research journal protesting an Austrian company's plans to use chimpanzees in hepatitis research.
- In Missouri, a high school English teacher was hit with a $1 million libel suit after complaining to a weekly newspaper that an incerator burning hospital waste was a health hazard.

actions for such 'all-American' political activities as circulating a petition, writing a letter to the editor, testifying at a public hearing, reporting violations of law, lobbying for legislation, peaceful demonstrating, or otherwise attempting to influence government action."

SLAPPED INTO SUBMISSION

Corporate libel lawsuits bring the formidable powers of government and industry together for the purpose of suppressing the views of people with complaints against the system. Ironically, the PR industry is eagerly hyping these lawsuits as populist *solutions* to the problem of too much government.

Tom Holt, a Washington policy wonk whose life reflects in microcosm the pattern of collusion that unites government and industry interests, epitomizes the contradictions and hypocrisy inherent in this position.

Holt began his career after receiving training at the Morton Blackwell Leadership Institute, a corporate-funded school which teaches conservative college students how to start their own campus newspapers to compete against perceived liberal bias in schools' official newspapers. Following a brief stint with the Richmond, Virginia *Times-Dispatch,* he became "research director" for the Commonwealth Foundation, helping churn out a study which argued that lawsuits against the tobacco industry did more harm than good, creating a "litigation superhighway where lawyers are the ones who will make the most money."

After serving as a speechwriter for two US secretaries of transportation, Holt went to work as a public-relations staffer for the right-wing Heritage Foundation before signing on at another right-wing Washington think-tank called the Capital Research Center. As a CRC "visiting fellow," he authored a book titled *The Rise of the Nanny State: How Consumer Advocates Try to Run Our Lives,* which accused the consumer movement of "capitalizing on the public's ignorance of science and the media's eagerness for calamity."

According to Holt, reforms are necessary to make it harder to sue corporations because "the consumer movement has imposed significant costs on industry—costs ultimately passed on to consumers—and has violated individual freedoms in a futile effort to protect us from our own actions and judgment."

In order to restore those freedoms, Holt is now calling for new laws so that corporations can use the nanny state more effectively to sue, chastise and punish their enemies. "Could lawsuits be the cure for junk science?" he asked in a 1995 issue of *Priorities,* the monthly publication of Elizabeth Whelan's corporate-funded right-wing advocacy group, the American Council on Science and Health.

POWER TO THE PLAINTIFFS

Holt complained that current libel law "has been a major stumbling block to the progress of a lawsuit brought by the Washington Apple Growers against the National Resources Defense Council, perpetrators of the Alar scare. The growers initially filed suit in Yakima County (WA) Superior Court; but . . . the growers lost their case." (See our related story about the Alar case on page 10.) Fortunately, he added, "agribusiness is now fighting back, shepherding what are known as 'agricultural product disparagement laws' through state legislatures. . . . On the national level, the National Association of State Departments of Agriculture wants similar provisions to be included in the 1995 farm bill."

The drive has been spearheaded by the nonprofit, tax-exempt Animal Industry Foundation (AIF), which calls itself "animal agriculture's collective voice on food animal production, its effect on diet and environment, and its contributions to our quality of life."

AIF's corporate funders include the powerhouse Burson-Marsteller and Hill & Knowlton PR firms. Its trustees include a who's-who list of meat industry lobby and trade associations: the American Farm Bureau Federation, American Feed Industry Association, American Sheep Industry, American Society of Animal Science, American Veal Association., National Broiler Council, National Cattlemen's Beef Association, National Milk Producers Federation, National Pork Producers Council, National Turkey Federation, Southeastern Poultry & Egg Association and United Egg Producers.

"The model for these statutes was developed by the American Feed Industry Association," boasts an AIF newsletter. "If you'd like a copy of the model state legislation, please contact in writing Steve Kopperud at AFIA." AIF in fact shares the same address, phone and staff as AFIA—the American Feed Industry Association, a "national trade association representing the manufacturers of more than 70 percent of the primary formula livestock and poultry feed sold annually."

In a letter to *Consumer Reports,* Kopperud has defended the industry's rationale behind food dispar-

agement laws, claiming that they "do not repress free speech, but rather compel a speaker to think twice about opportunistic or false statements and the damage such rhetoric can do. . . . Food disparagement laws, as tools to make more honest our national discussion of food safety, are the ultimate consumer protection."

The AIF speaks more bluntly in literature aimed at farmers: "Animal rights activists . . . threaten the survival of today's farmers and ranchers. . . . It's time to fight back! . . . through advertising, elementary school programs, publications and videos, news media outreach and public opinion research."

Rather than push for legislation at the national level, the food industry has worked quietly state-by-state while avoiding a controversial national debate. So far, thirteen state legislatures have approved product disparagement laws—Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma, South Dakota, and Texas. Other states are considering similar measures.

PROFITS BEFORE PEOPLE

Nicknamed in the news media as "banana laws" or "broccoli bills," agricultural product disparagement laws are designed to give even more power to SLAPP suits by rewriting the rules of evidence so that the food industry will have a better chance of winning in court.

The new legislation is designed specifically and expressly for the purpose of protecting industry profits by preventing people from expressing opinions that might discourage consumers from buying particular foods.

"An anti-disparagement law is needed because of incidents such as the Alar scare several years ago," argued the Ohio Farm Bureau in lobbying for the new law. "Apple producers suffered substantial financial losses when people stopped eating apples because of reports that Alar, a pesticide which can lawfully be used on apples, would cause serious heath problems. These reports were later proven to be false, but the damage had been done."

The penalties for food disparagement vary from state to state. In Idaho, defendants can be required to pay a penalty equal to the plaintiff's claimed financial damages. In Texas, the penalty is *three* times the damages. In Colorado, the legislation included provisions for actual jail time of up to a year.

According to Holt, the new laws place "the onus on the disparaging activist, rather than under liability law, which would place the onus on the grower or manufacturer of the disparaged product."

Shifting the onus means that instead of corporations being forced to prove their critics are wrong, food critics can be judged guilty unless they can prove that what they have said is *correct*.

"That type of speech, I don't feel needs to be protected," argues Kansas cattle rancher Jim Sartwelle. "It's important to have some sort of backstop in place to penalize people for making unsubstantiated comments."

TRUTH IN THE EYE OF THE BEHOLDER

The problem, of course, is that no one except God can consistently and correctly distinguish between "correct" and "incorrect" views. "Who knows what the hell that is?" asks Tom Newton of the California Newspaper Publishers Association. "Scientists say there is no such thing as reliable scientific fact, that science is based on hypothesis and conclusions, and is ever-changing."

"If I say that hogs kept in confinement are being cruelly treated, am I making a mistake of fact?" asks farmer and Illinois law professor Eric Freyfogle, explaining his opposition to the legislation. "Indeed, I am not. What I'm talking about is a matter of ethics. I may view as unethical behavior that which someone else finds entirely reasonable. But that's the great benefit of a democracy based on free speech—we can air our differences in public, without worrying about the speech-police coming to arrest us."

"Agricultural disparagement statutes represent a legislative attempt to insulate an economic sector from criticism, and, in this respect, they may be strikingly successful in chilling the speech of anyone concerned about the food we eat," observes David Bederman, Associate Professor of Law at Emory University Law School. "The freedom of speech, always precious, becomes ever more so as the agricultural industries use previously untried methods as varied as exotic pesticides, growth hormones, radiation, and genetic engineering on our food supply. Scientists and consumer advocates must be able to express their legitimate concerns. The agricultural disparagement statutes quell just that type of speech. At bottom, any restriction on speech about the quality and safety of our food is dangerous, undemocratic, and unconstitutional."

Even though disparagement laws present a chilling threat to journalists, actual press coverage of new laws has been scant, tending to trivialize the issues with lighthearted commentary about "veggie hate crimes" or humorous wordplay. "Mind how you disparage asparagus or berate broccoli," advised the headline in the *Los Angeles Times.* "Don't bad-mouth that Brussel sprout. It could cost you," quipped *USA Today.* ■

One Bad Apple? Facts and Myths Behind the "Alar Scare"

Symbolically, at least, the "great Alar apple scare" marks a watershed in industry thinking about the "problem" of free speech. The industry and its PR conduits have endlessly repeated the story of the Alar scare, portraying it as an unscrupulous and unfair attack by environmentalists against apple growers which destroyed farmers' livelihoods by stirring up unfounded consumer fears about a chemical which later turned out to be harmless.

Today, even many journalists believe this myth, even though the facts tell a somewhat different story.

Alar was a chemical, first marketed in 1968, that growers sprayed on trees to make their apples ripen longer before falling off. In use, however, Alar breaks down to a byproduct called "unsymmetrical dimethyl hydrazine" or UDMH.

The first study showing that UDMH can cause cancer was published in 1973. Further studies published in 1977 and 1978 confirmed that Alar and UDMH caused tumors in laboratory animals.

"Risk estimates based on the best available information at this time raise serious concern about the safety of continued, long-term exposure."

EPA letter to apple growers before the story broke

The U.S. Environmental Protection Agency (EPA) opened an investigation of Alar's hazards in 1980, but shelved the investigation after a closed meeting with Alar's manufacturer. In 1984, EPA re-opened its investigation, concluding in 1985 that both Alar and UDMH were "probable human carcinogens," capable of causing as many as 100 cancers per million people exposed to it in their diet for a lifetime—in other words, 100 times the human health hazard considered "acceptable" by EPA standards.

NO ACTION TAKEN

Under pressure from the manufacturer, however, EPA allowed Alar to stay on the market. Its use continued, even after tests by the National Food Processors Association and Gerber Baby Foods repeatedly detected Alar in samples of apple sauce and apple juice, including formulations for infants.

The states of Massachusetts and New York had banned the chemical, and the American Academy of Pediatrics was urging a similar ban at the federal level.

"Risk estimates based on the best available information at this time raise serious concern about the safety of continued, long-term exposure," stated an EPA letter to apple growers which estimated that 50 out of every million adults would get cancer from long-term exposure to Alar and that the danger to children was even greater. Aside from these urgings, however, federal agencies continued to avoid regulatory action.

On February 26, 1989, the public at large first heard about Alar's dangers when CBS-TV's *60 Minutes* aired an exposé titled "A is for Apple," which became the opening salvo in a carefully-planned publicity campaign developed for the Natural Resources Defense Council (NRDC) by the Fenton Communications PR firm.

Fenton helped NRDC distribute public service announcements featuring actress Meryl Streep, who warned that Alar had been detected in apple juice bottled for children. Streep's movie-star status guaranteed a large audience for the message, and public outcry ensued, as mothers poured apple juice down sink drains and school lunchrooms removed apples from the menu.

The industry, its back to the wall, hastily abandoned its use of Alar, and the market for apples quickly rebounded. Within five years, in fact, apple industry profits were 50 percent higher than they had been at the time of the *60 Minutes* broadcast.

THE EMPIRE STRIKES BACK

At first blush, NRDC's PR campaign produced what looked like a victory for environmentalists. Over time, however, the episode began to look like a winning battle in a losing war, as the food industry fought back with its own infinitely better-financed PR campaign.

"Actual risks may be lower or even zero."

EPA statement after the story broke

The EPA, USDA and FDA began the counter-attack with a face-saving joint statement claiming that NRDC's warning lacked scientific validity. "Available data show overwhelmingly that apples carry very small amounts of Alar," the agencies argued. "It should also be noted that risk estimates for Alar and other pesticides based on animal testing are rough and are not precise predictions of human disease. Because of conservative assumptions used by EPA, actual risks may be lower or even zero."

Apple growers claimed that the scare had cost them $100 million and sent dozens of family-owned orchards into bankruptcy. On November 28, 1990, apple growers in the Washington state filed a libel lawsuit against CBS, NRDC and Fenton Communications.

The food industry's publicity machine began cranking out propaganda. Porter/Novelli, a leading food-industry PR firm, helped an industry group called the "Center for Produce Quality" distribute more than 20,000 "resource kits" to food retailers which scoffed at the scientific data presented on *60 Minutes*. Industry-funded organizations such as the Advancement of Sound Science Coalition and the American Council on Science and Health hammered home the argument that the "Alar scare" was an irrational episode of public hysteria produced by unscrupulous manipulators of media sensationalism.

In court, the apple growers lost their lawsuit. The apple growers were able to show that the scientific evidence of Alar's dangers was *inconclusive*, but they were not able to prove that it was *wrong*. In dismissing the lawsuit, the presiding judge pointed to failures in the federal government's own food safety policies, noting that "governmental methodology fails to take into consideration the distinct hazards faced by preschoolers. The government is in grievous error when allowable exposures are calculated . . . without regard for the age at which exposure occurs."

Notwithstanding years of industry efforts to disprove the merits of NRDC's warning, the National Academy of Sciences in 1993 confirmed the central message of the Alar case, which is that infants and young children need greater protection from pesticides in foods. NAS called for an overhaul of regulatory procedures specifically to protect kids, finding that federal calculations for allowable levels of chemicals do not account for increased childhood consumption of fruit, lower body weight, or for their heightened sensitivity. ■

Sludge Backs Up: Merco's SLAPP Suit Fails in Texas

An appeals court has overthrown a 1996 libel verdict won by a New York company that hauls sewage sludge against filmmaker Michael Moore's *TV Nation* television program and EPA whistleblower Hugh Kaufman.

On August 2, 1994, *TV Nation* aired a segment titled "Sludge Train," which followed a load of sludge from a sewage plant in New York as it was hauled by train to Sierra Blanca, Texas, where it was applied as fertilizer on ranchland owned by Merco Joint Venture, the company hired to dispose of the sludge.

The purpose of the program, according to a memo written by a *TV Nation* staffer, was to document "the socioeconomics of waste, about who gets—literally—shat upon." It featured footage of Sierra Blanca residents who complained about odors from the sludge operation, and interviewed EPA whistleblower Hugh Kaufman, who described the ranch as "an illegal haul and dump operation" and said "the people of Texas are being poisoned."

Merco retaliated with a libel lawsuit against Kaufman, *TV Nation* and its parent company, TriStar Television. After a year of litigation, a Texas jury awarded actual damages in the paltry amount of $2, plus $5 million in punitive damages.

Upon appeal, however, the circuit judges found that Merco had failed to prove its case. "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication," they stated. "That evidence is lacking here. . . . Merco presented no proof that TriStar and Kaufman knew, or should have known, that any part of the 'Sludge Train' broadcast was false. Indeed, Merco failed to show any part of the broadcast actually *was* false."

In defense of its position, Merco cited experts who argued that land application of sewage sludge is a safe practice, and argued that the program should not even have interviewed Kaufman, on grounds that he was a "renegade" notorious for his "whistleblower" activities at the EPA. The judges, however, ruled that "expert opinions are merely that—opinions. Moreover, because an 'expert' endorses a certain practice does not mean all reasonable debate on the merits or safety of that practice is foreclosed."

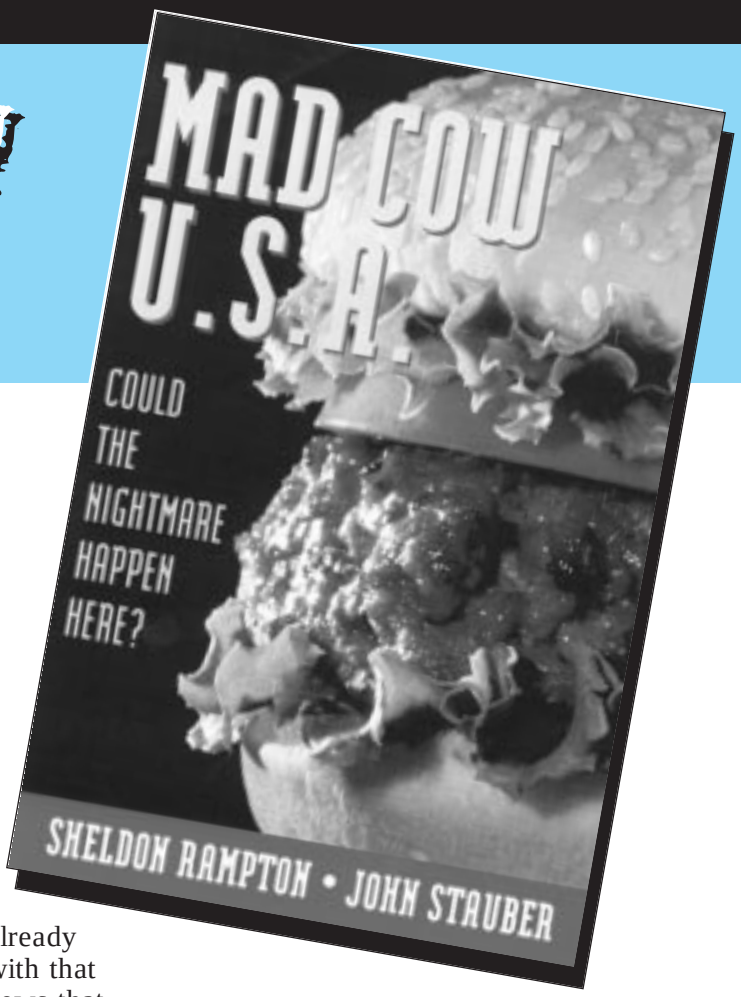
"TriStar and Kaufman are not liable for defamation because they refused to corroborate the Merco party line," the judges concluded. "Defamation law should not be used as a threat to force individuals to muzzle their truthful, reasonable opinions and beliefs. To endorse Merco's version of defamation law would be to disregard . . . constitutional protections."

ANNOUNCING A NEW BOOK

Mad Cow U.S.A.

Could the Nightmare Happen Here?

by Sheldon Rampton and John Stauber



On May 12, 1997, *ABC World News Tonight* reported that "people may not be contracting Alzheimer's as often as we think. The bad news is that they may be getting something worse instead. . . . This is about Creutzfeldt-Jakob Disease. It is fatal. It destroys your brain, and what is worse, it is infectious."

In England, Creutzfeldt-Jakob Disease (CJD) has already become a household word because of its association with that country's epidemic of mad cow disease. In 1996, the news that young people were dying from eating infected beef shook England and all of Europe.

Rampton and Stauber, authors of the critically-acclaimed *Toxic Sludge Is Good for You: Lies Damn Lies and the Public Relations Industry,* reveal how mad cow disease has emerged as a result of modern, intensive farming practices whose true risks are kept hidden by government and industry denials.

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WHAT REVIEWERS ARE SAYING:

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