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## THE COST OF TAKING A STAND

by Jane Akre

After three judges, 27 months of pre-trial wrangling and five weeks of courtroom testimony, the jury finally had its say. On August 18, 2000, it awarded me \$425,000 in damages for being fired by TV station WTVT in Tampa, Florida. WTVT is a Fox station, owned by one of the richest people in the media, Rupert Murdoch. The verdict made me the first journalist ever to win a "whistleblower" judgment in court against a news organization accused of illegally distorting the news.

Notwithstanding this vindication, I have yet to collect a dime of that jury award. There is no telling how long Fox will drag out the appeals process as it seeks to have the judgment overturned by a higher court. Meanwhile, I am still out of work, as is my husband and fellow journalist Steve Wilson, who was also fired by Fox and who filed suit along with me. December 2 marked the third anniversary of our firing for refusing to falsify a news story in order to appease the powerful Monsanto Company.

You would think that our jury verdict, with its landmark significance for journalists everywhere, would spark some interest from the news media itself. Instead, the silence has been deafening. One of the biggest names in investigative reporting at one of the best network news-magazines took a look at our case—and then decided not to do a story. Why not? It was deemed to be "too inside baseball." Translation: there

## FLACK ATTACK

In our Second Quarter 1998 issue, *PR Watch* wrote about TV investigative reporters Jane Akre and Steve Wilson, who were fired after refusing to go along with misleading alterations to their story about Monsanto's genetically-engineered bovine growth hormone.

Akre and Wilson recently won a landmark whistleblower lawsuit against the station that fired them, yet their former network continues its legal efforts to reverse the ruling and crush them financially. In this issue, we are honored to publish Jane Akre's firsthand account of her experiences standing up to corporate and media powers that have tried to silence them.

Journalists everywhere should take a close look at this case and its implications. If the Fox network and Monsanto get away with destroying the careers of these two seasoned reporters, the same thing can happen to

anyone who tries to stand up for a story that they believe in. With few resources other than the courage of their convictions, Akre and Wilson have struggled to place issues before the public that otherwise would remain hidden from view. In addition to their battle in the courts, they have used the skills they honed in the newsroom to fight back in the court of public opinion. They have created a website ([www.foxBGHsuit.com](http://www.foxBGHsuit.com)) that includes a downloadable video of their suppressed news story, plus court documents and other facts about their case. We encourage you to visit their website and, in light of their continuing financial struggles, to consider making a donation to their cause.

We hope that after reading their story, you will also share it with others and help get the word out. The public needs to inform itself and take action when the news media fails to do its job properly, and this is an egregious example.

## WE WIN; FOX SPINS *by Jane Akre*

It's perfect. A television news organization, just found guilty of distorting the news, slants the news regarding the ruling.

The jury rendered its verdict just after five o'clock on the Friday evening of August 18. Fox WTVT ran the first story near the top of its 6 p.m. broadcast. The initial story on WTVT was a fairly straightforward report announcing to Tampa viewers that the jury had awarded me damages because the "station violated the state's whistleblower law." The news anchor announced the reason for the verdict in my favor, "because she refused to lie in that report and threatened to tell the FCC about it."

By 10 p.m., however, the Fox corporate spinmeisters had rewritten the story entirely, crafting a devastatingly embarrassing loss into "good news" for their side. "Today is a wonderful day for Fox 13, because I think we are completely vindicated on the finding of this jury that we do not distort news, we do not lie about the news, we do not slant the news, we are professionals," said Fox news director Phil Metlin, looking rather uncomfortable on camera.

Metlin's statement is at odds with the jury's own unanimous verdict as clearly stated on the official verdict form, which asks, "Do you find that Plaintiff Jane Akre has proven, by the greater weight of the evidence, that the Defendant, through its employees or agents, terminated her employment or took other retaliatory personnel action against her, because she threatened to disclose to the Federal Communications Commission under oath, in writing, the broadcast of a false, distorted, or slanted news report which she reasonably believed would violate the prohibition against intentional falsification or distortion of the news on television, if it were aired?"

"Yes," the jury answered.

If indeed Fox regards the jury verdict as "complete vindication," the network should abandon its appeals, accept the verdict, and pay up. The check would be greatly appreciated. But that will never happen, because Fox would rather show its other employees in media outlets around the world what can happen if you mess with Murdoch. They will easily spend four times our award just to make that point.

is an unwritten rule that news organizations seldom turn their critical eyes on themselves or even competitors.

This rule is not absolute, of course. Some previous legal challenges involving the media have received heavy news coverage, including the battle between *60 Minutes* and Vietnam-era general William Westmoreland; the "food disparagement" lawsuit that Texas cattlemen brought against talk-show host Oprah Winfrey; and the multi-million-dollar lawsuit brought against ABC-TV by the Food Lion grocery store chain.

All of those other lawsuits, however, involved conflicts between a news organization and some outside group or individual. *Our* lawsuit involved a conflict *within* the media, pitting labor (working journalists Steve and myself) against broadcast managers, editors and their attorneys who hijacked the editorial process in an effort to do what should never be done in investigative reporting—remove all risk of being sued or sending an advertiser packing. By saying this is just "inside baseball," the veteran newsman who declined to cover our story was effectively siding with the owners against the players.

Prior to my firing at WTVT, I had worked for 19 years in broadcast journalism, and Steve's career in front of the camera was even longer. He is the recipient of four Emmy awards and a National Press Citation. His reporting achievements include an exposé of unsafe cars that led to the biggest-ever auto recall in America.

Today, however, we have spent three years off the air, tied up in a seemingly interminable legal battle. Few people recognize our faces anymore. Our story has circulated throughout the world via email and our website ([www.foxBGHsuit.com](http://www.foxBGHsuit.com)), yet we remain curiously anonymous—so far from famous, in fact, that even Monsanto's own public relations representatives sometimes have a hard time recognizing us.

### HAPPY SHINING PEOPLE

I had the opportunity to meet a couple of those industry PR people in October 2000 at the annual conference of the Society of Environmental Journalists (SEJ). The conference brought together hundreds of environmentally conscious, mostly young journalists to Lansing, Michigan, to delve into topics such as hybrid auto technology, nuclear misdeeds, and Great Lakes pollution. Together with *PR Watch* editor Sheldon Rampton, I participated in a panel discussion titled "Fibbers, Spinners, and Pseudo-journalists."

The SEJ conference also featured an exhibit hall, and in an adjoining room, the biotech industry had mounted a glossy display, staffed by two representatives who stood out like a couple of well-suited salesmen at a college campus. Standing before their expensive photo kiosk depicting gold-drenched fields of harvest, they offered literature from the Council for Biotechnology Information, an industry-funded organization whose stated mission is

“to create a public dialogue.” It’s all part of industry’s \$50-million PR campaign touting the safety and benefits of genetically engineered foods. Its slick handouts at the SEJ conference reeked of the moneyed corporations they represent—Aventis, CropScience, Dow Chemical, DuPont, Monsanto and Novartis among others.

Stuck inside one of their glossy presentations was a list of ten “tenets for consumer acceptance of food biotechnology.” Among the tips: “Biotechnology must be placed in context with the evolution of agricultural practices,” and “Emphasize the exhaustive research over many years that led to the introduction of each new product of food biotechnology.”

Also included was a list of biotech food products you’ve probably already consumed or used. Corn, cotton, potatoes, soybeans, and sweet potatoes were on the list, as was rBGH milk produced using Monsanto’s recombinant bovine growth hormone that is reportedly now injected into more than 30% of America’s dairy herd. Our reporting on rBGH (trade named Posilac, and also known as recombinant bovine somatotropin or rBST) was what got Steve and me fired at Fox Television’s WTVT.

Mark Buckingham, one of the men in suits at the SEJ conference, told us that this was his first U.S. assignment for Monsanto. In this country just three weeks from the U.K., Mark worked hard at being the perfect salesman. His wide, toothy smile never dimmed when a reporter challenged him about the supposed wonders of biotech. The smile stayed in place when I introduced myself and cordially explained that I was one of the journalists whose



**Fired Fox TV reporters Jane Akre and Steve Wilson: “Today, few people recognize our faces.”**

career has been ruined by the company that writes his paychecks. At first he acted as though he knew nothing about the case, and then—still smiling—acknowledged that maybe he had heard a little bit about it. Buckingham kept smiling even when Sheldon Rampton challenged the industry mantra that numerous studies had been done to assure the safety of genetically modified foods.

“Can you name some actual peer-reviewed studies?” Rampton asked. After some hemming and hawing, Buckingham took Rampton’s card and promised to send the studies along later by mail, since he just didn’t happen to have them on hand. (*Editor’s note: Two months later, they have yet to arrive.*) ■

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# DON'T ASK, DON'T TELL: THE STORY WE WEREN'T ALLOWED TO AIR

by Jane Akre

The truth is, only Monsanto really knows how many U.S. farmers are presently using their recombinant bovine growth hormone (rBGH). The company persistently refuses to release sales figures but claims it has now become the largest-selling dairy animal drug in America. The chemical giant's secretive operations were part of what made the story of rBGH such a compelling one for me to explore as an investigative reporter.

In late 1996, my husband Steve Wilson and I were hired as investigative journalists for the Fox-owned television station in Tampa, Florida. Looking for projects to pursue, I soon learned that millions of Americans and their children who consume milk from rBGH-treated cows have unwittingly become participants in what amounts to a giant public health experiment. Despite promises from grocers that they would not buy rBGH milk "until it gains widespread acceptance," I discovered and carefully documented how those promises were quietly broken immediately after they were made three years earlier. I also learned that health concerns raised by scientists around the world have never been settled, and indeed, the product has been outlawed or shunned in every other major industrialized country on the planet.

Clearly, there is not "widespread acceptance" of rBGH, not in 1996 when I began my research, and not today. By any standard, it was a solid story, but little did I know that it would become the last story of my 19-year broadcast journalism career and the heart of a dispute that could nearly destroy me and my family.

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***Even if you ask directly, "How much of your milk comes from cows injected with an artificial growth hormone?" we discovered that you are still likely to be misled or lied to today.***

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Steve helped me gather and produce a TV report based on the information we discovered. The investigation began with random visits to seven farms to determine whether and how widely rBGH was being used in Florida. I confirmed its use at every one of the seven farms I visited, and then I discovered what amounted to an ingenious public relations campaign that seemed to have succeeded in keeping consumers in the dark. Remember those Florida grocers who promised consumers that milk from hormone-treated cows would not end up in the dairy case until it achieved widespread acceptance from consumers and others? I learned that behind the scenes, those grocers and the major co-ops of Florida's dairymen had pulled the wool over the eyes

of consumers with what amounted to a clever "don't ask, don't tell" policy combined with some careful wording to answer any inquiries about the milk.

In an on-camera interview, the president of one of the two giant dairy co-ops in the state said that he had written a letter to dairymen on behalf of grocers requesting that farmers not inject their cows with the artificial growth hormone. But in response to my questions, the co-op president made a startling confession. He admitted he did nothing but write the letter!

"Did the dairymen get back to you?" I asked.

"No."

"What was their response?"

"They accepted it, I guess. They didn't respond."

To this day, any consumer who calls to inquire gets essentially the same well-coordinated response from a big Florida grocer or their dairy supplier: "We've asked our suppliers not to use it (rBGH)," they say. It is a truthful but incredibly misleading statement that nearly always produces the desired result, leading consumers to the false conclusion that their local milk supply is unaffected by rBGH use.

Even if you ask directly, "How much of your milk comes from cows injected with an artificial growth hormone?" we discovered that you are still likely to be misled or lied to today.

Steve recently made an inquiry to the dairy co-op that supplies the milk served to our daughter and her classmates in their school cafeteria. First he was told there was "0%" artificial BGH use. Then a woman in the dairy's Quality Assurance department offered the assurance that rBGH is not used at all "as far as we know." Pressed further, she said the co-op "does not recommend it because cows do just fine without," but ultimately admitted that the co-ops "have no authority to check whether it is or is not being used."

Steve pressed further: "Couldn't you just *ask* the dairy farmers who supply your milk whether or not they're injecting their cows?"

A long silence followed. Finally, the reply: "I suppose we could, but they could just lie to us."

## LAWYERED UP

After nearly three months of investigation that took me to interviews in five states, we produced a four-part series that Fox scheduled to begin on Monday, February 24, 1997. Station managers were so proud of the work that they saturated virtually every radio station in the Tampa Bay area with thousands of dollars worth of ads urging viewers to watch. But then, on the Friday evening prior to the broadcast, the station's pride turned to panic when a fax arrived from a Monsanto attorney.

The letter minced no words in charging that Steve and I had “no scientific competence” to report our story. Monsanto’s attorney described our news reports, which he had ostensibly never seen, as a series of “recklessly made accusations that Monsanto has engaged in fraud, has published lies about food safety, has attempted to bribe government officials in a neighboring country and has been ‘buying’ favorable opinions about the product or its characteristics from reputable scientists in their respective fields.”

And to make sure nobody missed the point, the attorney also reminded Fox News CEO Roger Ailes that our behavior as investigative journalists was particularly dangerous “in the aftermath of the Food Lion verdict.” He was referring, of course, to the then-recent case against ABC News that sent a frightening chill through every newsroom in America.

The Food Lion verdict showed that even with irrefutable evidence from a hidden camera, documenting the doctoring of potentially unsafe food sold to unsuspecting shoppers, a news organization that dares to expose a giant corporation could still lose big in court.

Confronted with these threats, WTVT decided to “delay” the broadcast, ostensibly to double-check its accuracy. A week later after the station manager screened the report, found no major problems with its accuracy and fairness, and set a new air date, Fox received a second letter from Monsanto’s attorney, claiming that “some of the points” we were asking about “clearly contain the elements of defamatory statements which, if repeated in a broadcast, could lead to serious damage to Monsanto and dire consequences for Fox News.”

Never mind that I carried a milk crate full of documentation to support every word of our proposed broadcast. Our story was pulled again, and if not dead, it was clearly on life support as Fox’s own attorneys and top-level managers, fearful of a legal challenge or losing advertiser support, looked for some way to discreetly pull the plug.

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February 21, 1997

**BY FAX AND BY HAND**

Mr. Roger Ailes  
Chairman and Chief Executive Officer  
Fox News  
1211 Avenue of the Americas  
New York, New York

Dear Mr. Ailes:

This firm represents Monsanto Company and I write to bring to your attention a situation of great concern to Monsanto involving your recently acquired, owned and operated television station in Tampa, Florida, WTVT-TV. This situation requires immediate investigation by you and your senior news executives. WTVT television news correspondent Jane Akre and her producer Steve Wilson in Tampa have been working on a story involving Monsanto's product POSILAC<sup>®</sup>, a protein which improves the production of milk by dairy cows. POSILAC<sup>®</sup> is known to scientists as recombinant bovine somatotropin (rBST). POSILAC<sup>®</sup> is biologically identical to naturally occurring bovine somatotropin (BST), a protein which is essential to milk production by dairy cows. When used to supplement naturally occurring levels of BST in dairy cows, POSILAC<sup>®</sup> improves the efficiency of milk production without changing the composition of the milk. In November 1993, after years of intensive research, testing and what has been called by the Federal Government one of the most thorough examinations of any drug in history, the U.S. Food and Drug Administration approved Monsanto's rBST product for use in dairy herds in the United States.

What has Monsanto alarmed and deeply concerned is the assault on their integrity, and the integrity of their product POSILAC<sup>®</sup>, blatantly carried on by Ms. Akre and Mr. Wilson in a series of interviews and telephone conversations with Monsanto scientists and executives. The Akre-Wilson approach suggests strongly that, with no scientific competence

\* Registered trademark of Monsanto Company.

*This letter from Monsanto attorney John J. Walsh to Fox News Chairman Roger Ailes set the wheels in motion that led to the killing of a news story and the firing of two veteran journalists.*

The station where we worked had recently been purchased by Fox, and we soon discovered that the new management had a radically different definition of media responsibility than anything we had previously encountered in our journalistic careers. As Fox took control, it fired the station manager who had originally hired us and replaced him with Dave Boylan, a career salesman devoid of any roots in journalism and seemingly lacking in the devotion to serving the public interest which motivates all good investigative reporting.

## **KILL THE STORY, KILL THE MESSENGER**

Not long after Boylan became the new station manager, Steve and I went up to see him in his office. He promised to look into the trouble we were having getting our rBGH story on the air, but when we returned a few days later, his strategy seemed clear.

*Dave Boylan, station manager at Fox WTVT, asked, “What would you do if I killed your rBGH story?”*



“What would you do if I killed your rBGH story?” he asked. What he really wanted to know was whether we would tell anyone the real reason why he was killing the story. In other words, would we leak details of the pressure from Monsanto that led to a coverup of what the station had already ballyhooed as important health information every customer should know?

It was suddenly and unmistakably clear that Boylan’s biggest concern was the concern of every salesman, no matter what product he peddles: image. He understood that it could not be good for the station’s image if word leaked out that powerful advertisers backed by threatening attorneys could actually determine what gets on the six o’clock news—and what gets swept under the rug.

Boylan was in a jam. If he ran an honest story and Monsanto’s threatened “dire consequences” did materialize, his career could be crippled. On the other hand, if he killed the story and the sordid details leaked out, he risked losing the only product any newsroom has to sell: its own credibility.

To resolve this dilemma, Boylan devised the sort of “solution” that you might expect from a salesman. He offered us a deal. He would pay us for the remaining seven months of our contracts, in exchange for an agreement that we would broadcast the rBGH story in a way that would not upset Monsanto. Fox lawyers would essentially have the final say on the exact wording of our report, and once it aired, we were free to do whatever we pleased—as long as we forever kept our mouths shut about the entire ugly episode.

As journalists, Steve and I wanted to get the story on the air more than anything. A buyout, no matter how attractive, was out of the question. Neither of us could fathom taking money to shut up about a public health issue that absolutely and by any standard deserved to see the light of day.

The remainder of 1997 was a tense standoff, with the station unwilling to either kill the story or to run it. Fox attorney Carolyn Forrest was sent in to review our work, with a mandate from Fox Television Stations President Mitch Stern to “take no risk” with the story. “Taking no risk” meant cutting out substance, context and information. Boylan told us to “just do what Carolyn wants” with the story, but what Carolyn really wanted to do was

destroy it. We rewrote the story, rewrote it, and rewrote it again, trying to come up with a version that would both remain true to the facts and satisfy the station’s concerns about airing it.

## **MEANWHILE, BEHIND THE SCENES**

Monsanto hadn’t stopped with the threatening letters. In January, I had interviewed Roger Natzke, a dairy science professor at the University of Florida. Everything had gone well. We got a tour of the “Monsanto dairy barn” at the Gainesville dairy compound where Posilac had been tested in the mid-1980s. Natzke gave the product a glowing report and admitted he promoted its use to farmers through Florida’s taxpayer-supported agriculture extension offices. After spending a few hours with us, Natzke gave us directions to a good lunch joint.

Natzke must have forgotten about this relatively pleasant exchange when, one month later, he called the station to complain about my reporting techniques. “She’s not a reporter” was part of the phone message submitted to my boss alongside the words “St. Simon’s Island.” What does that mean? I asked. The assistant news director, apparently not seeing any connection or conflict, told me that Natzke had just returned from a weekend at the island resort with Monsanto officials.

The same week that Natzke called and the Monsanto threat letters arrived, Florida farmer Joe Wright wrote a complaint letter to the station. This time we were not shown the correspondence. Only in the light of our lawsuit did the station have to produce it in “discovery” one year later. The pieces of the puzzle behind the Monsanto pressure began falling into place.

Wright, who had spent five minutes on the phone with me a month earlier, informed the station that “Ms. Acre’s (sic) work is gaining notoriety in our dairy industry. . . . The word is clearly out on the street that Ms. Acre is on a negative campaign based on everyone’s assessment of the numerous interviews she has already conducted.” Wright had reached these conclusions after attending the 22nd Annual Southern Dairy Conference in Atlanta, a “Who’s Who” of the dairy industry where our report was the topic of intense discussion. Following the conference, he went to Dairy Farmers Inc., a dairy promotion group, which helped draft his letter of complaint to my employers and discussed filing a food disparagement suit against the station should the story air.

Behind the scenes, a much more stealthy attack on us and our story was launched by the Dairy Coalition, a pro-rBGH group formed around the time of Posilac’s FDA approval. Its director, Dick Weiss, took a call from Steve in 1998 and—not realizing exactly who Steve Wilson was—bragged that the Dairy Coalition had

## Who Is the Dairy Coalition? *by Sheldon Rampton and John Stauber*

Created by the PR and lobby firm of Capitoline/MS&L with funding from the National Milk Producers Federation, the Dairy Coalition is composed of business, government and non-profit groups, including university researchers funded by Monsanto as well as other carefully selected “third party” experts. Dick Weiss, director of the Dairy Coalition, now works with former Monsanto rBGH lobbyist Carol Tucker Foreman at the Consumer Federation of America. Dairy Coalition participants include:

- The International Food Information Council, which calls itself “a non-profit organization that disseminates sound, scientific information on food safety and nutrition to journalists, health professionals, government officials and consumers.” In reality, IFIC is a public relations arm of the food and beverage industries, which provide the bulk of its funding. Its staff members hail from industry groups such as the Sugar Association and the National Soft Drink Association, and it has repeatedly led the defense for controversial food additives including monosodium glutamate, aspartame (Nutrasweet), food dyes, and olestra. (See page 10.)
- The American Farm Bureau Federation, the powerful conservative lobby behind the movement to pass food disparagement laws like the one under which Oprah Winfrey was sued in Texas.
- The American Dietetic Association, a national association of registered dietitians that works closely

with IFIC and hauls in large sums of money advocating for the food industry. Its stated mission is to “improve the health of the public,” but with 15 percent of its budget—more than \$3 million—coming from food companies and trade groups, it has learned not to bite the hand that feeds it. “They never criticize the food industry,” says Joan Gussow, a former head of the nutrition education program at Teachers College at Columbia University. The ADA’s website even contains a series of “fact sheets” about various food products, sponsored by the same corporations that make them (Monsanto for biotechnology; Procter & Gamble for olestra; Ajinomoto for MSG; the National Association of Margarine Manufacturers for fats and oils).

- The National Association of State Departments of Agriculture, representing the top executive of every department of agriculture in all 50 states.
- The Grocery Manufacturers of America, whose member companies account for more than \$460 billion in sales annually. GMA itself is a lobbying powerhouse in Washington, spending \$1.4 million for that purpose in 1998 and currently-funding a multi-million-dollar PR campaign for genetically engineered foods.
- The Food Marketing Institute, a trade association of food retailers and wholesalers, whose grocery store members represent three fourths of grocery sales in the United States.

“swamped the station” with all sorts of pressure to have the story killed. As he recounted the story, Weiss laughed like a college kid who had just pulled the best prank in the frat.

### GETTING THE BOOT

Nearly a full year passed as we wrangled over this important public health story. After turning down the station’s buyout offer, we ended up doing 83 rewrites of the story, not one of which was acceptable according to Fox lawyers, who were fully in charge of the editing process. “It was like being circus dogs jumping through hoops,” Steve said.

At the first window in our contracts, December 2, 1997, we were both fired, allegedly for “no cause.” However, an angry Carolyn Forrest made a major legal mistake when she wrote a letter spelling out the “definite reasons” for the firing, and characterizing our response to her proposed editorial changes as “unprofessional and inappropriate conduct.” But as Steve commented when

he read the letter, just what is the “professional and appropriate” response that reporters should make when their own station asks them to lie on television?

On April 2, 1998, we filed a whistleblower lawsuit against Fox Television. Under Florida state law, a whistleblower is an employee, regardless of his or her profession, who suffers retaliation for refusing to participate in illegal activity or threatening to report that illegal activity to authorities. We contended that we were entitled to protection as whistleblowers, because the distortions our employers wanted us to broadcast were not in the public interest and violated the law and policy of the Federal Communications Commission.

Three months after we were fired and six weeks after we filed our lawsuit, the station finally got around to airing an rBGH story, filled with many of the same lies and distortions that Steve and I refused to broadcast. The reports, aired by a young and inexperienced reporter, looked to us like nothing more than damage control instigated by Fox attorneys. ■

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# AN Uphill BATTLE: OUR LAWSUIT AGAINST FOX

by Jane Akre

Going to court against a powerful conglomerate like the Fox network is a daunting experience, and Fox knows how to intimidate people. Prior to our dismissal, Dave Boylan had flaunted the company's wealth in an attempt to make us back down. "We paid three billion for these stations," he told us on one occasion. "We'll tell you what the news is. The news is what we say it is!"

After Fox local counsel Patricia Anderson lost two major efforts to have the suit derailed, the network apparently decided it needed bigger, smarter, meaner lawyers. They turned to William McDaniels and the Washington firm of Williams and Connolly, the same firm that Bill Clinton used to help him through Whitewater, Monica Lewinski, and his famous redefinition of the word "is." Six weeks before the start of the trial, Williams and Connolly camped out on the top two floors of the Hyatt Hotel in downtown Tampa. Using more than a dozen lawyers and some of the top firms around the country to help with various pre-trial chores, Fox staff lawyers flew back and forth between Los Angeles and Tampa regularly.

Had it not been for our two competent attorneys, we would have never been successful. Tom Johnson and John Chamblee are a couple of labor lawyers who work out of an historic house in downtown Tampa. Ultimately, they fought off one motion to dismiss then a summary judgement motion. The second motion to dismiss, slickly crafted by Williams and Connolly, was nine pounds of color coded and tabulated legal language which was very slick and no doubt very expensive. Chamblee fired back and we survived their third effort to get the case kicked.

## CRAZY LIKE A FOX

The Fox legal strategy was woven tightly from day one and helped by a well-coordinated team effort. They claimed that we had turned our backs on the story and were using the whistleblower claim as a "tactic." We missed deadlines, they said, and had told managers and lawyers we were "going to get Monsanto." They also claimed that we became convinced that rBGH milk causes cancer, that we became advocates instead of objective reporters of the controversy.

None of that was true. Our story did bring forth information that had been suppressed for far too long: that a spin-off hormone in the altered milk has been linked to tumor proliferation; that consumers did not have the benefit of labeling at the grocery store shelf because Monsanto had sued two small dairies to block it; and that the FDA's Center for Veterinary Medicine, which reviewed the drug, did not do long-term human toxicity tests. The cancer questions to this day remain unanswered. The human effects are, in essence, being tested on consumers in the marketplace.

The Fox effort, though united, was not flawless. Fox news vice president Phil Metlin told the six-person jury that if he ever learned a news organization was trying to eliminate risk by using a threatening letter as a "road map" to craft a story, such news would "make me want to throw up." But just days later, on the stand, a local attorney for Fox admitted he did just that, using Monsanto directives to help craft the rBGH story. Metlin actually turned white. He also didn't score any points with his bosses when he admitted that he found no errors in our reporting of the rBGH story, and he saw no reason why our final version of the story could not be aired.

Dave Boylan had to be flown into town for his testimony. On the eve of the trial, Fox rewarded him with a promotion to general manager of the Fox-owned station in Los Angeles. The man who had told us "we paid three billion for these stations, we'll tell you what the news is," lost his bravado on the stand, shooting quick, nervous smiles at the jurors while checking in with the defense team after every answer.

During our cross-examination of Boylan, it helped that Steve knew exactly what had transpired during 1997. Earlier in the trial, it had been estimated that lost revenue in advertising from Monsanto ads for Roundup or Nutrasweet could have cost the station about \$50,000. Fox bragged that \$50,000 was nothing for an organization of its size, but Steve's relentless interrogation of Boylan showed that the actual cost of going up against Monsanto could have been much higher.

"You testified Fox owns 23 stations?" Steve asked.

"Yes," Boylan answered.

"Could Monsanto pull advertising off all 23?"

"Yes."

"And the Fox News Channel?"

"Yes."

"And the Sky Channel in Europe?"

"Yes."

"It could extend beyond \$50,000?"

"It could," Boylan admitted.

## THUMP, THUMP

Fox attorney Bill McDaniels earned the nickname "Thumper" from our team because he made an audible noise with his foot whenever he got nervous. There was a lot of thumping during the presentation of our case, particularly when Ralph Nader took time from his presidential campaign to serve as an expert witness. Fox had tried unsuccessfully, through objections, to have Nader eliminated as a witness.

Nader told jurors what the FCC has repeatedly said, that it is "a most heinous act" to use the public's airwaves to slant, distort and falsify the news. "A reporter has a

legal duty to act in accordance with the Communications Act of 1934 and in addition to their professional responsibility to be accurate, not to be used as an instrument of deception to the audience,” Nader said.

McDaniels also objected vehemently to Walter Cronkite’s inclusion as an expert on our side. The Fox counsel said, “Mr. Cronkite is not an expert in the pre-broadcast review of a story.” I couldn’t believe my ears. For thirty years Cronkite was the managing editor of the CBS Evening News. During Cronkite’s deposition, McDaniels had asked the 83-year-old anchorman whether he was a lawyer and suggested to Cronkite that he couldn’t be an expert in the pre-broadcast review of a story unless he was an attorney.

In his deposition, Cronkite said that an ethical journalist should resist directives that would result in a false or slanted story being broadcast. “He should not go a microinch towards that sort of thing. That is a violation of every principle of good journalism,” Cronkite said.

## THE RULING

The jury awarded me with \$425,000 but gave nothing to Steve, who had been forced to act as his own attorney. Steve repeatedly showed dogged determination in questioning many of the witnesses and getting them to admit some of the most damaging things that ultimately undermined the Fox defense. In the end, we suspect Steve received no award because of what seems to be an erroneous instruction from the judge to the jury. The jurors were told, incorrectly we believe, that in order to find for each of us, they must determine there was no other reason each of us was fired other than the fact we resisted orders to lie on the air and threatened to blow the whistle to the FCC. In any event, we view the verdict as a win for both of us. Our trial was never about money. It was about a reporter’s duty to resist and blow the whistle loud and strong when pressured to lie and distort the news over the public airwaves.

Fox immediately announced that it would appeal. On October 12 and again on November 3, the network argued to the judge that he should vacate the jury’s verdict. During the trial itself, McDaniels had claimed that Fox merely wanted “to get our good name back” and repair the damage to its credibility which we had inflicted by telling our story on our website and speaking to groups around the world. During the Motion to Vacate, however, McDaniels seemed to toss the network’s credibility in the garbage by making an argument that any legitimate news organization would be embarrassed to voice. “There is no law, rule or regulation against slanting the news,” he told the judge.

## WHO IS THAT MASKED CLIENT?

We didn’t think much about it at first. A young man sat in the back of the courtroom during our five-week trial, taking careful, thorough notes. Finally Steve approached him and asked who he was, fully expecting the young man to say he was from a local law school or college. Instead he fessed up, identifying himself as Ian Davis, an intern representing the Public Strategies PR firm, based in Austin, Texas. The most famous member of Public Strategies is President Clinton’s former press secretary, Mike McCurry, who heads its lobbying arm in Washington, D.C. (Other Public Strategies clients include Anheuser-Busch, ARCO, Bristol-Myers Squibb, the Edison Electric Institute, Lockheed Martin, Reuters and Southwest Airlines.)

Davis said he didn’t know which client he was taking notes for. He didn’t know what aspect of the trial he was supposed to focus on. He didn’t know how long he would be there. In fact the intern said he was just working a summer job with the group. That’s why you can imagine how surprised I was when, the other day, I called the Austin office of Public Strategies to find out if Monsanto was a client, and Ian Davis answered the phone. He is still just an intern, he said, and he still didn’t know who his client was.

The judge denied Fox’s Motion to Vacate, but years of appeals lie ahead. Every indication we have received suggests that the network plans to continue its efforts to wear us down with time-consuming, tedious and expensive legal maneuvers. They have the financial wherewithal to do this, whereas we have been out of work for three years with no immediate job offers on the horizon. Somehow we will have to find a way to house and feed ourselves and our daughter while simultaneously continuing to wage a full-time battle against a media giant.

Fox will appeal first to the 2nd District Court of Appeals, then the Florida Supreme Court and eventually the U.S. Supreme Court, if it is willing to hear the case. All the while, we won’t see a cent of our winnings.

And despite our victory, it is possible that Fox’s army of lawyers will eventually succeed in their effort to overturn the verdict on some legal technicality. Frankly, our struggle is still a hardship shouldered almost entirely by our single family. Put that up against the \$600-an-hour Williams and Connolly lawyers who fly first class, stay in luxury hotels, and have legions of legal minions to research and churn out unending briefs for us to answer. Alas, friends, this is the way the system works. ■

# Liquid Truth: Advice from the Spinmeisters

by Sheldon Rampton and John Stauber

In 1992, the food industry's International Food Information Council (IFIC) retained Dr. G. Clotaire Rapaille, "an international market research expert," to research "how Americans relate to food biotechnology and genetic engineering." IFIC, an ardent enthusiast for the use of biotechnology in agriculture, wanted to know how it could overcome consumer apprehensions about the new technology.

A "core team" was assembled to aid in the research, consisting of representatives from the Monsanto Agricultural Company, NutraSweet, Kraft General Foods, Ajinomoto, Du Pont and Calgene. Other research sponsors included Frito-Lay, Coca-Cola, Nestlé, Procter & Gamble, and the M&M/Mars candy company. The goal of the research team was to "develop actionable strategies, messages, and language that will express information positively about the process and products—without stirring fears or negative connotations."

Dr. Rapaille is a Jungian psychologist who uses a technique that he calls "Archetype Studies" which claims to delve into the "primordial cause for . . . opinions, attitudes or motivations." As his report to IFIC explained, "For each element in the world, there is a first meaningful experience called the Imprinting Moment. The Archetype is the pattern which underlies this Imprinting Moment. The Archetype is completely pre-ordained by the culture, and it is common to everyone in a given culture. . . . The Archetype is the Logic of Emotion that forms the Collective Unconscious." Discover these Archetypes, Rapaille's theory promised, and "You can 'read' the consumers like a book, and you can understand their unconscious 'logic.'"

Rapaille's process for uncovering Archetypes was similar in most respects to what another advertising or PR person might term a "focus group," but Rapaille liked to refer to them as "Imprinting Groups." Each group consisted of 20-30 everyday Americans, which Rapaille's team of "Archetypologists" led through a series of "relaxation exercises and visualization" aimed at eliciting their innermost feelings about biotechnology.

The result of these exercises, the team concluded, was that the biotech industry stood at a crossroads. "In one

case, we have tremendous public support—we can be viewed as farmers bringing new varieties and improved foods to consumers. But if we do not position ourselves and our products correctly, we can just as easily be viewed in the same class as Hitler and Frankenstein."

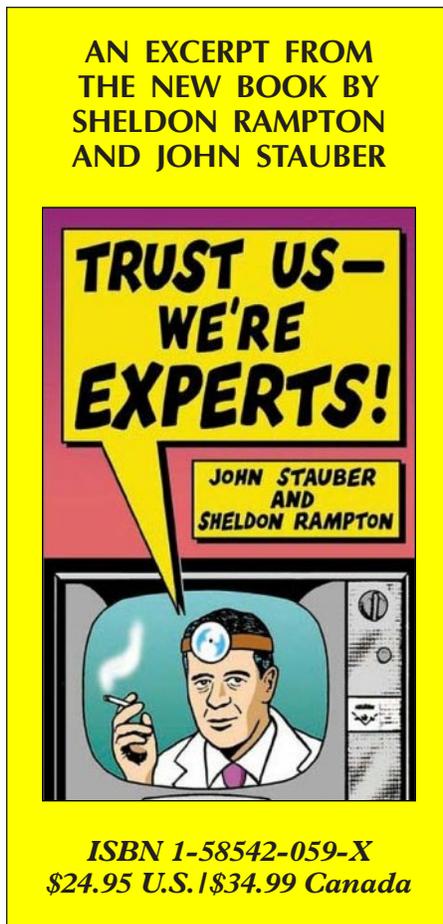
The difference depended on which "imprint" provided the Archetype for public perception of the new foods. And the public would choose its Archetype based largely on the food industry's choice of words.

"In communicating about food biotechnology and genetic engineering, we now know a variety of 'trigger' words that will help consumers view these products in the same vein as farming, hybrids, and the natural order, rather than as Frankenfoods," the study concluded. In the category of "words to use," Rapaille suggested terms such as beauty, bounty, children, choices, cross-breeding, diversity, earth, farmer, flowers, fruits, future generations, hard work, heritage, improved, organic, purity, quality, soil, tradition and wholesome.

"Words to lose" included: biotechnology, chemical, DNA, economic, experiments, industry, laboratory, machines, manipulate, money, pesticides, profit, radiation, safety and scientists.

In a memo accompanying the completed study, IFIC's Libby Mikesell and Tom Stenzel summarized the lessons learned. "The technology in biotechnology has 'scary' overtones in connection with life in any form. . . . Biotechnology may not be the optimal term to use in our discussions," they wrote. "Clotaire recommends that we 'sandwich' the word genetic between other words that create an association with tradition and nature. Some possible terms he suggested were 'biogenetic gardening,' 'natural genetics' or 'natural genetic gardening.' He composed this sentence as an example of how to use the terms: *New genetic discoveries allow us to be successful gardeners of the 21st century and to accomplish cross-breeding at a highly sophisticated level, fulfilling a vision of the gardeners of the 19th century.*"

It is worth noting that many of the terms in Rapaille's list of "words to lose" are straightforward characterizations of the actual scientific process used in developing



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genetically engineered foods, while many of the “words to use” are vague, pleasant-sounding euphemisms designed to obscure the details about everything that is new and unique about the process.

It is also worth noting the irony in IFIC’s choice of someone like Rapaille to help design its strategy for defending biotech foods. Whatever dangers biotechnology may or may not present to the public, it is undeniably an example of modern science in action. When talking among themselves, biotech’s promoters frequently invoke the name of science, characterizing their opponents as irrational, fear-driven technophobes.

“We all are frustrated by the public’s emotional response to scientific, factual issues,” stated the IFIC report. Yet Rapaille’s advice to IFIC was not only calculated to *evoke* an emotional response and to avoid any mention of science, his very methodology for arriving at his analysis is at best a parody of the scientific method.

## HARD SCIENCE AND FLUID TRUTH

The power that science wields in modern society is a reflection of its ability to create knowledge that is as close to infallible as any product of human endeavor. Reasonable people may disagree in their opinions about Shakespeare or religion, but they do not disagree with the laws of thermodynamics. This is because the theories of science, especially the hard sciences, have been developed through methodologies that require verification by multiple, independent researchers using clearly defined, replicable experiments. If the experiments do not bear out a hypothesis, the hypothesis must be rejected or modified.

The very prestige that science enjoys, however, has also given rise to a variety of scientific pretenders—disciplines such as phrenology or eugenics that merely claim to be scientific. The great philosopher of science Karl Popper gave a great deal of consideration to this problem and coined the term “pseudoscience” to help separate the wheat from the chaff. The difference between science and pseudoscience, he concluded, is that genuinely scientific theories are “falsifiable,”—i.e., they are formulated in such a way that if they are wrong, they can be proven false through experiments. By contrast, pseudosciences are formulated so vaguely that they can never be proven or disproven.

“The difference between a science and a pseudoscience is that scientific statements can be proved wrong and pseudoscientific statements cannot,” says Robert Youngson in his book, *Scientific Blunders: A Brief History of How Wrong Scientists Can Sometimes Be*. “By this criterion you will find that a surprising number of seemingly scientific assertions—perhaps even many in which

you devoutly believe—are complete nonsense. Rather surprisingly this is not to assert that all pseudoscientific claims are untrue. Some of them may be true, but you can never know this, so they are not entitled to claim the cast-iron assurance and reliance that you can have, and place, in scientific facts.”

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***“You always try—you always serve the truth. But again—but the truth is often, you know, is often not necessarily a solid. It can be a liquid.”***  
—public relations counselor John Scanlon

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Judged by this standard, many of the “social sciences”—including the psychoanalytic theories of Freud, Jung and others—are actually pseudosciences rather than the real thing. This does not mean that Freud and Jung were charlatans or fools. Both were creative thinkers with fascinating insights into the human psyche, but a research methodology that derives its data from the dreams of mentally ill patients is a far cry from the orderly system of measurements that we associate with hard sciences like physics and chemistry.

Regardless of their scientific limitations, theories of human psychology figure prominently in the thinking of the public relations industry. What is more important than their actual effectiveness is the seemingly authoritative justification that they provide for the PR worldview—a belief that people are fundamentally irrational and that therefore a class of behind-the-scenes manipulators is necessary to shape opinion for the public’s own good. But this belief is at odds not only with the ideals of democracy but also with the fundamental and necessary ideological underpinnings of the scientific method itself. Before scientists can reach any conclusions whatsoever about the elements in the periodic table or the space-time continuum, they have to first believe that “the truth is out there” and that their investigations will take them closer to it.

The public relations worldview, however, envisions truth as an infinitely malleable, spinnable thing. For consultants like Clotaire Rapaille, the truth is not a thing to be discovered but a thing to be *created*, through artful word choices and careful arrangement of appearances.

“Given a choice, do you serve your client or the truth?” a reporter asked John Scanlon, one of today’s leading spinmeisters, during a 1991 interview.

“You always try—you always serve the truth,” Scanlon replied. “But again—but the truth is often, you know, is often not necessarily a solid. It can be a liquid. . . . What

seems to be true is not necessarily the case when we look at it and we dissect it and take it apart, and we turn it around and we look at it from a different perspective. . . . Whose truth are we talking about, your truth or my truth?”

John Scanlon specializes in representing high-profile clients, especially clients embroiled in controversy. In 1997, the trade publication *Inside PR* ranked him as the number two expert in the world at “crisis management”—the PR field that specializes in helping clients fend off scandals and repair bad reputations. In 1999, for example, he represented famed fellatrix and self-proclaimed liar Monica Lewinsky as she embarked on a media tour to promote her book, *Monica’s Story*. Lewinsky too, it seems, had a version of the truth to tell, as did the president whose sexual relationship with her depended on what your definition of “is” is.

Scanlon’s other assignments have included PR for CBS when it was sued for libel by Vietnam-era general William Westmoreland. Later, he squared off against *60 Minutes* when he went to work for the Brown & Williamson tobacco company in its effort to discredit tobacco-industry whistleblower Jeffrey Wigand, whose story was dramatized in the recent movie, *The Insider*.

Scanlon also represented Ivana Trump during her divorce from The Donald. “What we did was quite scientific,” he said. By “scientific,” however, he meant something quite different from what a particle physicist would mean. “I mean we sat down with Mrs. Trump, with Ivana early on with her attorneys and talked about what was the specific critical message that she wanted to communicate. I mean, we had a very, very clear position.” But having a “very, very clear position” is an entirely different thing than seeking the truth, which is what an actual scientist would be doing.

It would be nice to imagine that Scanlon’s fluid attitude toward the truth is some kind of aberration, but it is not. Richard Edelman, his one-time boss at Edelman Worldwide, goes even further. Not only are there different versions of the truth, “In this era of exploding media technologies,” Edelman says, “there is no truth except the truth you create for yourself.”

One of the rules of PR is that spin cannot be a *demonstrable* lie, a point driven home in every PR textbook. “Never lie to a reporter” has become an industry mantra. Fortunately, there is a loophole. Spin is the art of appearances, not substance. When there is no truth except what you create for yourself, lies become unnecessary, even irrelevant. To lie is to respect reality enough to falsify it. The practitioners of public relations do

not falsify the truth, because they do not believe that it even exists.

## BAMBI KILLERS

The PR industry’s preoccupation with imagery over substance was evident again in its reaction to the May 1999 release of a Cornell University study showing that pollen from Monsanto’s genetically-engineered Bt corn could drift onto milkweed plants and poison Monarch butterflies.

The Monarch is “sort of the Bambi of the insect world,” according to Marlin Rice, a professor of entomology at Iowa State University in Ames. “It’s big and gawdy and gets a lot of good press. And you’ve got school kids all across the country raising them in jars.” The Bt-Monarch controversy came on the heels of other recent studies showing that Bt crops kill non-target beneficial insects such as lacewings and ladybugs, kill beneficial soil microorganisms, damage soil fertility, and may harm insect-eating birds. However, it was the image problems associated with killing Bambi that sent industry spokespersons scurrying to counter the damage. Discoveries like this could end consumer complacency “in an instant,” worried one source quoted in *PR Week*, which described the Cornell study as “a wake-up call” for industry.

Perhaps the most interesting aspect of *PR Week*’s response to the Monarch butterfly study is the narrow range of options that it considered possible for the public relations industry. “Are we only limited to a defensive role in talking about GE foods?” it asked, answering that PR pros can also make a positive case by arguing that biotechnology is “needed to adequately feed a growing world population.” The choice, in other words, was between playing defense or offense for the biotech team.

“The law of unintended consequences means studies like the butterfly study are likely to surface, focusing on something company researchers may never have considered,” *PR Week* admitted, but rather than take such “unintended consequences” seriously, it advised public relations professionals to treat them as “brush fires” to be “quickly dealt with.” ■

## PLEASE CONSIDER US IN YOUR Will

Bequests can be designated to the non-profit  
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