

# 'Let Me Warn You ...'

## OPRAH, THE LAW, AND BAD-MOUTHING FOODS

BY KENNETH SMITH

*Whether the "Dangerous Food" edition of The Oprah Winfrey Show was fair was not a legal issue in the Oprah Winfrey food-disparagement suit. The main issue, in short, was whether the defendants had acted maliciously. In the article below, journalist Kenneth Smith reserves judgment on food-disparagement laws but condemns "the kind of reporting that made some people resort to such laws."*

*Will Ms. Winfrey's exoneration open the floodgates to food fearmongers? I doubt it. For one thing, the cost to the defendants in the Winfrey suit approached one million dollars.*

—J.R.



**L**et me warn you, today's show may cause you to diet for all the wrong reasons. We're talking about the hidden dangers in our food, possibly the food in your own refrigerator. . . . [I]t's the biggest health scare to hit Europe since the Chernobyl nuclear disaster. Mad cow disease has stunned the world." So announced Oprah Winfrey on "Dangerous Food," the April 16, 1996, edition of *The Oprah Winfrey Show*. After drawing attention to two victims of the human equivalent of "mad cow disease" (BSE),\* who allegedly had contracted it by eating contaminated beef, she asked Howard Lyman of the Humane Society: "You



\* "BSE" stands for "bovine spongiform encephalopathy." The human equivalent of BSE is Creutzfeldt-Jacob disease (CJD). The type of CJD linked to BSE is called "new variant CJD," or "nvCJD."

say this disease could make AIDS look like the common cold?" "Absolutely," Lyman answered. Before the program ended, Ms. Winfrey herself had sworn off eating both chicken and beef. "It has just stopped me cold from eating another burger," she said.

Not long afterward, many people followed suit. Cattle prices fell to 10-year lows, devastating farmers—who subsequently sued Ms. Winfrey, her production company, and the Humane Society's Lyman for \$6.7 million in damages. The farmers didn't, however, sue under the usual laws designed to protect people against libel: The Texas Beef Group and other feed and cattle organizations sued under a state statute that makes knowingly spreading misinformation about the safety of a perishable food product illegal. Critics dismiss such statutes as "veggie libel" laws or "banana bills," yet regard them as serious threats to free speech. They could, for example, restrain debate over worthy food-safety issues.

Proponents of food-disparagement statutes wave off such concerns. Steve Kopperud, Senior Vice President of the American Feed Industry Association, notes that he was a reporter for 15 years and that the last thing he wants is to muzzle the press or destroy the First Amendment. "But if activists stand up and say, 'Cauliflower causes breast cancer,' they've got to be able to prove that," he told a reporter for Knight-Ridder newspapers. "I think that to the degree that the mere presence of these laws has caused activists to think twice, then these laws have already accomplished what we set out to do."

Food-disparagement statutes are a fairly new development. Thirteen states have passed such laws in the 1990s, and at least nine other states are reportedly considering similar legislation. Both proponents and nonproponents say the impetus for such legislation was the notorious 1989 *60 Minutes* telecast "A' is for Apple" [see PRIORITIES, Vol. 9, No. 3, 1997, pp. 18-20]. The program's message was that Alar, a chemical used to prevent pre-harvest rotting of apples, was the most potent carcinogen in the food supply. Most

scientists subsequently concluded that demonstrating whether Alar contributed to cancer incidence in the least would be difficult.

In the panic that followed the CBS broadcast, apple sales plummeted overnight, even where farmers didn't use Alar. Apple growers sued CBS for damages but lost. Apple markets eventually recovered; but because apples, like beef, are perishable, the growers never recovered their losses. Some went out of business.

Egg farmers and emu ranchers (emus are flightless birds) have also filed claims under food-disparagement statutes. Ranchers in Texas filed a suit seeking damages in connection with a car commercial telecast in 1997. The comedic commercial featured a job-hunting Honda Civic driver named "Joe." One of his job interviews takes place at an emu ranch called "Fowl Technology," whose owner tells him: "Emus, Joe. It's the

pork of the future."

Says one Texas emu producer: "Basically, Honda made people stop and look at emu meat, emu products, and the emu business as a joke." Unlike pork, he adds, emu meat is low in fat—and red. Honda officials say they meant no harm and describe the ad as tongue-in-cheek.

The other food-disparagement case involves Buckeye Egg Farm. Buckeye says an activist organization—the Ohio Public Interest Research Group (OPIRG)—libeled its products by accusing the company of illegally repackaging old eggs and selling them as new. Buckeye Egg Farm is seeking unspecified damages. The company's president, Andy Hansen, reportedly told the Associated Press that Buckeye had followed federal guidelines and that these permit repackaging in certain circumstances. Hansen also noted that OPIRG had made its allegations public shortly before the Easter-egg season. "If there was no intent to disparage this product, why was it done at that time?" Hansen asked.

A long-term chill on the press from food-disparagement laws seems unlikely. Judge and jury in the

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Oprah case dismissed all charges. But to win a food-disparagement suit, a food producer must meet extremely high standards—even if the disparager has been recklessly apocalyptic.

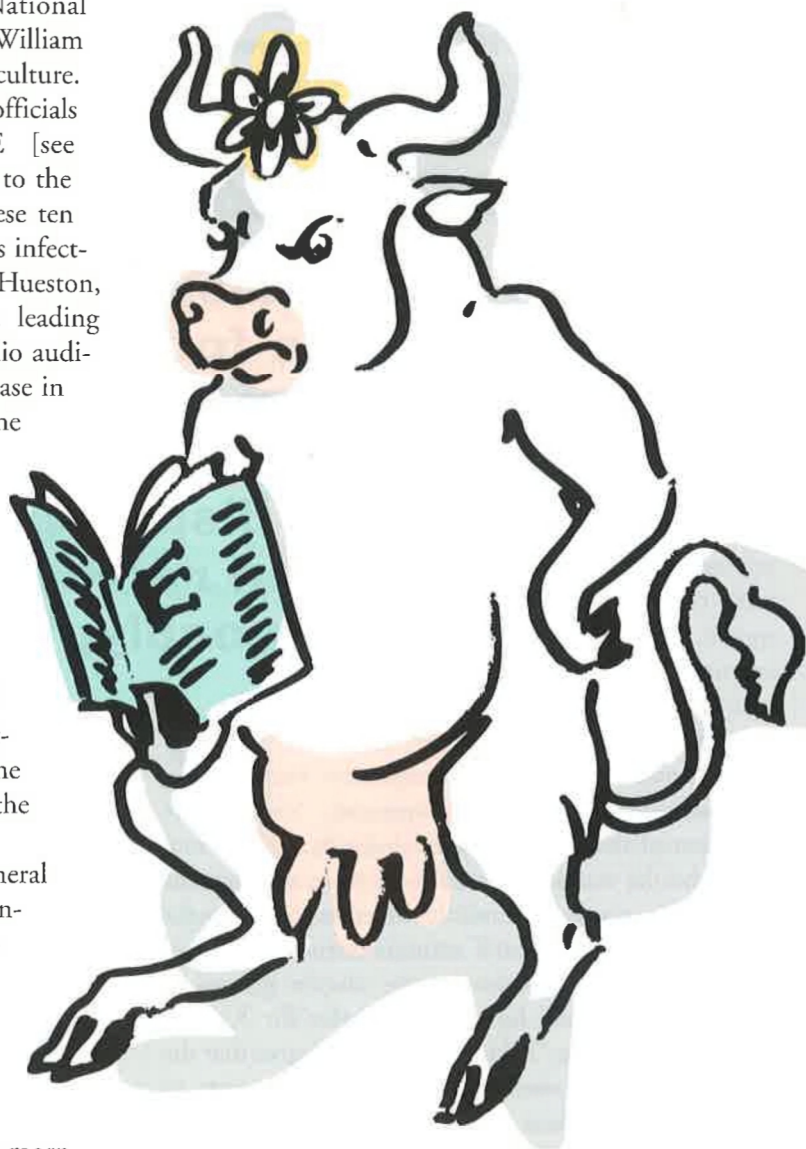
Besides the Humane Society's Howard Lyman, guests on the "Dangerous Food" edition of Ms. Winfrey's talk show included Dr. Gary Weber—described as a spokesman for the National Cattlemen's Beef Association—and Dr. William Hueston of the U.S. Department of Agriculture. The program aired shortly after British officials had announced the linking of BSE [see *PRIORITIES*, Vol. 8, No. 3, 1996, pp. 7–8] to the deaths of ten people in their country. These ten people reportedly had eaten beef from cows infected with a certain feed contaminant. Dr. Hueston, whom Winfrey correctly described as a leading expert on "mad cow disease," told the studio audience that there was no evidence of the disease in the United States. But, because of editing, the broadcast did not include that pivotal statement. Neither did it include several other statements Hueston had made to the studio audience: that the risk of contracting the human equivalent of BSE was so small he would consume not only American beef but beef from Great Britain as well; that the U.S. Food and Drug Administration (FDA) had strictly regulated the feed in question; and that the cattle industry had voluntarily banned the feed and had requested an FDA ban.

Also omitted was former Surgeon General C. Everett Koop's public statement that consumers of American beef "should feel completely safe." Instead, the television audience heard former cattle rancher Lyman's claim that U.S. officials are "following exactly the same path that they followed in England." Some 100,000 cows that are fine at night, he said, are dead by morning—and most of them are ground up and fed to other cows. That unsubstantiated claim went largely unchallenged in the broadcast.

Winfrey made much of Lyman's transformation from cattleman to vegetarian Humane Society official, implying that he was a man of principle who had fled the cattle industry out of revulsion for its practices. Unknown to most of Winfrey's viewers, Lyman had sold his ranch to pay his debts; furthermore, he had weighed over 300 pounds when his physician advised

him to change his eating habits and Lyman gave up eating meat.

Because of the degree of her show's influence—a book promoted thereon can consequently become a bestseller overnight—Ms. Winfrey owes it to her viewers and sponsors to deal accurately and comprehen-



sively with any controversy her show covers. "Dangerous Food," to say the least, does not exemplify such an approach; and it is doubtful that existing food-disparagement laws will have much of an effect on talk shows.

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