

Case 6-2 Texas Cattlemen Versus Oprah Winfrey

On April 16, 1996, Oprah Winfrey, host of America's top syndicated talk show, featured a former cattle farmer named Howard Lyman, who was invited as part of the Humane Society's Eating with Conscience Campaign. On the show, Winfrey and Lyman discussed the Bovine Spongiform Encephalopathy (BSE) disease—a deadly disease that had been found in British cattle. Just a month before the show, the British government had announced that 10 of its young citizens had died or were dying of a brain disease that may have been a result of their eating beef from a cow sick with mad cow disease, a similar dementia. An article in *The Nation* magazine quoted a scientist who headed the British government's Spongiform Encephalopathy Advisory Committee saying that millions of people *could* be carrying the disease, and that it is fatal and undetectable for years. When it does appear, it emerges as an “Alzheimer's-like killer.”

In the Winfrey interview, Lyman compared BSE with AIDS and raised the possibility that a form of mad cow disease *might* exist in the United States. He also explained that the common practice of grinding up dead cows to use as protein additives in cattle feed *may have* contributed to the outbreak of BSE.

Winfrey seemed clearly shocked by what Lyman said. At one point she asked, “. . . you say that this disease could make AIDS look like the common cold?” Lyman replied “Absolutely.” Winfrey replied, “It has just stopped me cold from eating another burger.”

The audience applauded in approval. But Wall Street did just the opposite: The price of cattle futures dropped and remained at lower levels for two months.

The cattle industry was enraged at Winfrey and Lyman for what they viewed as defamatory and libelous remarks. Texas rancher Paul Engler of Amarillo, Texas, along with a group of other beef ranchers, immediately filed a \$12 million lawsuit against Winfrey her production companies, and Lyman, claiming they violated the Texas disparagement law, otherwise known as the “veggie libel law.” Passed in 1995, the law attempts to protect farmers and ranchers against false claims about their products that could unnecessarily alarm the public and hurt industry sales. According to the law, the plaintiff must prove two things: that the statement(s) made were false, and that the person who made them knew they were false.

There has long been an adage advising against making war against “those who buy ink by the barrel” and it should be extended to those who have hours of television time at their disposal every week. While the case against Winfrey and Lyman proceeded through the courts of law, it really heated up in the court of public opinion.

Battle lines were drawn early and included comments from industry groups such as the National Cattlemen's Beef Association and the American Feed Industry Association supporting the cattleman and consumer groups venting via publications ranging from *USA Today* and *The Nation*. Issues such as “free speech” and the First Amendment to the Constitution were bantered about against those who would prevent “economic havoc caused by sensational and untruthful reporting by the media.”

The ranchers, and the city of Amarillo, were not fully prepared for a battle with Oprah Winfrey on either front. When the

trial dates were set, Winfrey put her national popularity and fame to work, moving her show to Amarillo to “avoid interruption” of her daily taping. Once there, she continued her daily shows while her crack legal team fought the battle in court.

With each airing, the American public was reminded once again that the show was in Amarillo because its host was being sued by Texas cattlemen who didn’t like her opinion that she would not eat hamburger again. Cast in that light, the legal effort was disparaged without even so much as a mention. Public opinion was clearly in the corner of the popular talk show host.

Legally, things were not going much better for the plaintiffs. Lyman’s opinions were just that—opinion—even if misguided opinion. Winfrey’s declaration was just that—her vow that she would not again eat hamburger meat. Proving those statements to be false would be difficult because they were personal opinions. The legal grounds for the suit, even under a law established to protect agriculture from disparaging comments, seemed weak.

Consumer groups said the laws prevented critics from making any statements that might anger the food and cattle industry. An article in *USA Today* the week before the trial reported “Critics say the laws, enacted as consumers concern over food safety is at an all-time high are an effort to squelch debate on public health issues.” According to the magazine *The Nation*, “Winfrey had the right to broadcast it and hamburger lovers have the right to know it . . . even if Winfrey’s program gave a one-sided perspective on things, cattlemen have obvious remedies: They could have published and disseminated point-by-point critiques of Lyman’s statements, they could have challenged him to open public debates and they could have hired the best experts money could buy. After all, the

meat industry already spends hundreds of thousands of dollars a year hawking its products; its opinions and promotions and celebrity spokespeople dominate the commercial airways.”

The jury found the defendants not guilty. Right after the verdict, the president of the National Cattleman’s Beef Association said in a statement “The good news for the American consumer from this trial is that all the scientific experts testified that America has the safest beef in the world.”

The Winfrey/Cattleman episode clearly shows the peril of confusing legal and public relations issues. Under libel and slander laws (to which the veggie law is similar) legal redress is limited and difficult to achieve. Proving statements false is one thing; proving state of mind of the speaker is another. Courts tread lightly on such slippery slopes, and appellate courts are even more careful. Initial verdicts rarely make it through the appeals process, meaning remedy in the courts of law is illusive, indeed.

The court of public opinion, however, is another thing. When individuals or industries have a grievance with public utterances, the better avenue of remediation is usually via public opinion. Here the public relations practitioner is the “attorney” and the affected publics are the “jury.”

As the apple industry did when attacked by media driven by the Natural Resources Defense Council in the Alar “scare,”¹ the cattle feeders might have used the “facts” to their advantage in a public relations response to the Winfrey/Lyman assertions. The facts are BSE is not the equivalent of AIDS, nor does it “make AIDS look like the common cold.” (Editors note: The common cold is still much more common and less fatal than AIDS.)

¹See Case 7-2.

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The cattle-feeding industry might have called in favors from its end-users—McDonald’s, Burger King, Wendy’s, etc. The popularity of Winfrey’s show is unquestioned, but millions of American consumers are satisfied customers of hamburgers every day. This personal experience will prevail over the opinion of even the most famous celebrity.

In the end, the cattlemen did get across a message that American beef is safe—if anyone was listening. In the end, Winfrey’s

show and its popularity remain intact. The American consumer still buys hamburger meat in copious quantities. The City of Amarillo still stands, even if its mayor at the time had to confess, “I didn’t realize the depth and breadth of Winfrey’s popularity.”

The American public has a relatively short memory. This issue, like most others, can and did pass without lasting damage—the lesson to be learned in handling similar cases in the future. ■

QUESTIONS FOR DISCUSSION

1. Assess the wisdom of legally challenging a national icon such as Oprah Winfrey. What are the pros and cons?
2. Comment on Winfrey’s strategy of moving her entire broadcasting operation to Texas for the period of the trial. What was she hoping to accomplish? Did she succeed?
3. What limits are there to First Amendment rights?
4. What other ways could the Texas cattlemen have considered to handle this issue?
5. Do American consumers adopt or change behaviors based on what they see on a television show?