

The Media Can Legally Lie

Contributed by Jane Akre
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Back in December of 1996, Jane Akre and her husband, Steve Wilson, were hired by FOX as a part of the Fox "Investigators" team at WTVT in Tampa Bay, Florida. In 1997 the team began work on a story about bovine growth hormone (BGH), a controversial substance manufactured by Monsanto Corporation. The couple produced a four-part series revealing that there were many health risks related to BGH and that Florida supermarket chains did little to avoid selling milk from cows treated with the hormone, despite assuring customers otherwise.

According to Akre and Wilson, the station was initially very excited about the series. But within a week, Fox executives and their attorneys wanted the reporters to use statements from Monsanto representatives that the reporters knew were false and to make other revisions to the story that were in direct conflict with the facts. Fox editors then tried to force Akre and Wilson to continue to produce the distorted story. When they refused and threatened to report Fox's actions to the FCC, they were both fired. (Project Censored #12 1997)

Akre and Wilson sued the Fox station and on August 18, 2000, a Florida jury unanimously decided that Akre was wrongfully fired by Fox Television when she refused to broadcast (in the jury's words) "a false, distorted or slanted story" about the widespread use of BGH in dairy cows. They further maintained that she deserved protection under Florida's whistle blower law. Akre was awarded a \$425,000 settlement. Inexplicably, however, the court decided that Steve Wilson, her partner in the case, was ruled not wronged by the same actions taken by FOX.

FOX appealed the case, and on February 14, 2003 the Florida Second District Court of Appeals unanimously overturned the settlement awarded to Akre. The Court held that Akre's threat to report the station's actions to the FCC did not deserve protection under Florida's whistle blower statute, because Florida's whistle blower law states that an employer must violate an adopted "law, rule, or regulation." In a stunningly narrow interpretation of FCC rules, the Florida Appeals court claimed that the FCC policy against falsification of the news does not rise to the level of a "law, rule, or regulation," it was simply a "policy." Therefore, it is up to the station whether or not it wants to report honestly.

During their appeal, FOX asserted that there are no written rules against distorting news in the media. They argued that, under the First Amendment, broadcasters have the right to lie or deliberately distort news reports on public airwaves. Fox attorneys did not dispute Akre's claim that they pressured her to broadcast a false story, they simply maintained that it was their right to do so. After the appeal verdict WTVT general manager Bob Linger commented, "It's vindication for WTVT, and we're very pleased; It's the case we've been making for two years. She never had a legal claim."

UPDATE BY LIANE CASTEN: If we needed any more proof that we now live in an upside down world, the saga of Jane Akre, along with her husband, Steve Wilson, could not be more compelling.

Akre and Wilson won the first legal round. Akre was awarded \$425,000 in a jury trial with well-crafted arguments for their wrongful termination as whistleblowers. And in the process, they also won the prestigious "Goldman Environmental" prize for their outstanding efforts. However, FOX turned around and appealed the verdict. This time, FOX won; the original verdict was overturned in the Appellate Court of Florida's Second District. The court implied there was no restriction against distorting the truth. Technically, there was no violation of the news distortion because the FCC's policy of news distortion does not have the weight of the law. Thus, said the court, Akre-Wilson never qualified as whistleblowers.

What is more appalling are the five major media outlets that filed briefs of Amici Curiae- or friend of FOX - to support FOX's position: Belo Corporation, Cox Television, Inc., Gannett Co., Inc., Media General Operations, Inc., and Post-Newsweek Stations, Inc. These are major media players! Their statement, "The station argued that it simply wanted to ensure that a news story about a scientific controversy regarding a commercial product was present with fairness and balance, and to ensure that it had a sound defense to any potential defamation claim."

"Fairness and balance?" Monsanto hardly demonstrated "fairness and balance" when it threatened a lawsuit and demanded the elimination of important, verifiable information!

The Amici position was "If upheld by this court, the decision would convert personnel actions arising from disagreements over editorial policy into litigation battles in which state courts would interpret and apply federal policies that raise significant and delicate constitutional and statutory issues." After all, Amici argued, 40 states now have Whistleblower laws, imagine what would happen if employees in those 40 states followed the same course of action?

The position implies that First Amendment rights belong to the employers — in this case the five power media groups. And when convenient, the First Amendment becomes a broad shield to hide behind. Let's not forget, however; the airwaves belong to the people. Is there no public interest left—while these media giants make their private fortunes using the public airwaves? Can corporations have the power to influence the media reporting, even at the expense of the truth? Apparently so.

In addition, the five "friends" referred to FCC policies. The five admit they are "vitaly interested in the outcome of this appeal, which will determine the extent to which state whistleblower laws may incorporate federal policies that touch on sensitive questions of editorial judgment."

Anyone concerned with media must hear the alarm bells. The Bush FCC, under Michael Powell's leadership, has shown repeatedly that greater media consolidation is encouraged, that liars like Rush Limbaugh and Ann Coulter are perfectly acceptable, that to refer to the FCC interpretation of "editorial judgment" is to potentially throw out any pretense at editorial accuracy if the "accuracy" harms a large corporation and its bottom line. This is our "Brave New Media", the corporate media that protects its friends and now lies, unchallenged if need be.

The next assault: the Fox station then filed a series of motions in a Tampa Circuit Court seeking more than \$1.7 million in trial fees and costs from both Akre and Wilson. The motions were filed on March 30 and April 16 by Fox attorney, William McDaniels—who bills his client at \$525 to \$550 an hour. The costs are to cover legal fees and trial costs incurred by FOX in defending itself at the first trial. The issue may be heard by the original trial judge, Ralph Steinberg—a logical step in the whole process. However, Judge Steinberg must come out of retirement if he is to hear this, so the hearing, set for June 1, may go to a new judge, Judge Maye.

Akre and her husband feel the stress. "There is no justification for the five stations not to support us," she said. "Attaching legal fees to whistleblowers is unprecedented, absurd. The "business" of broadcasting trumps it all. These news organizations must ensure they are worthy of the public trust while they use OUR airwaves, free of charge. Public trust is alarmingly absent here."

Indeed. This is what our corporate media, led by such as Rupert Murdoch, have come to. How low we have fallen.

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