News You Can't Trust

Breaching the public interest in broadcasting

By Karen Charman

How much protection do broadcast journalists have against employers who pressure them to distort or falsify their reports? According to the 2nd District Court of Appeals in Lakeland, Florida, none.

On Valentine's Day this year, that court overturned Jane Akre's jury verdict awarding her $425,000 for wrongful dismissal from Tampa **Fox** affiliate WTVT after she, along with her husband and journalistic partner, Steve Wilson, refused to report false information about growth hormones in milk (**Extra! Update,** 6/98; **Extra!,** 1-2/01). The court's reasoning: The Federal Communications Commission's news-distortion policy isn't a real regulation; therefore Akre, who claimed protection under it in her lawsuit against Fox, wasn't actually a whistleblower and had no grounds for protection against pressure from her employer to distort a news story.

"It's vindication for WTVT, and we're very pleased," the station's general manager Bob Linger told the St. **Petersburg Times** (2/15/03). "It's the case we've been making for two years. She never had a legal claim."

Akre strongly disagrees. "Nothing in the decision that reversed the verdict at trial absolved Fox of what the jury found to be misconduct in pressuring a reporter to go on the air with a false story to appease the subject of our investigation," Akre said. "They may call it vindication, but overturning a jury's decision on a technicality that it's not illegal to lie on the public airwaves is not vindication in the mind of any honest and ethical journalist."

The Florida appeals court also slapped Akre with **Fox's** legal fees, which she expects exceed $1 million. Absent

from the court's decision was any recognition that **Fox** broadcasts on the public's airwaves, and in return for that incredibly lucrative privilege, the Communications Act of 1934 requires it to broadcast in "the public interest, convenience and necessity."

Knowing that the airwaves are both a scarce resource and a uniquely powerful tool for communicating to the public at large, Congress initially made that requirement in 1927 in deference to the First Amendment, which recognizes that democracy cannot function without a press that provides a check on government power and keeps the citizenry informed about issues that affect it.

But despite the requirement to serve the public interest, commercial television-the dominant form of our mass media system-is now devoid of even a pretense of serving the public, says media critic Mark Crispin Miller.

Television can be particularly deceptive, Miller says, because people tend to believe what they see: "If the networks show it and CNN discusses it, then it's true." Conversely, if something is merely covered in the foreign press, on the Internet, or even buried in the line print of a newspaper article here, it is not considered legitimate. "Media manipulation in the U.S. today is more efficient than it was in Nazi Germany, because here we have the pretense that we are getting all the information we want," he says. "That misconception prevents people from even looking for the truth."

Irreconcilable conflict

Part of the problem is that commercial, profit-driven media are required by law to maximize shareholder profits, which Miller characterizes as an irreconcilable conflict with broadcasters' public-interest obligations. Investigative reporting gets short shrift because it is both time-consuming and costly compared to the fare that dominates today's television news: stories about street crime, celebrities or government pronouncements. Hard-hitting investigative reporting can also antagonize advertisers and bring threats of massive lawsuits-like the one Monsanto threatened when Jane Akre researched the company's bovine growth hormone.

The TV and radio industry currently rakes in nearly $60 billion a year from advertising on the public airwaves. Broadcasters pay nothing to the government for their licenses, though they are allowed to sell them for millions of dollars.

Broadcasters even routinely abdicate their most obvious responsibility for keeping the public informed and engaged in the political process: covering electoral races. According to Paul Taylor, former executive director of the Alliance for Better Campaigns, a nonprofit group that advocates free airtime for candidates, pre-election news coverage of the candidates has in many cases all but disappeared.

At the same time, the cost of political ads on television, the third highest source of ad revenues for the industry, has more than quadrupled since 1982. In the 2002 election cycle, candidates spent more than $1 billion on political ads. Despite legislation intended to limit candidates' advertising costs, broadcast stations take advantage of the compressed time period candidates have to get their message out. Taylor says the Alliance's most recent study found that ad prices at 39 stations around the country rose by more than 50 percent in the two months before the 2002 elections.

This arrangement, he says, suits both broadcasters and incumbents just fine. In an article in the **Washington Monthly** (9/00), Taylor explained it this way: "Politicians give commercial broadcasters the public airwaves for free. During the campaign season, broadcasters turn around and sell air time back to the politicians, while imposing a virtual news blackout on candidate discussion of issues. . . . By creating a pay-to-play model for political "speech on the nation's premier medium for political communication, the television industry protects incumbents, starves challengers and enriches itself."

The public interest standard in broadcasting dates back to the Radio Act of 1927, as an attempt to reconcile broadcasters' commercial goals and their public interest obligations. Both Congress and the FCC have over the years developed specific regulations intended to encourage news programs, foster diverse cultural and public affairs programming, ensure candidate access to the airwaves, serve local communities, develop high-quality children's programming and maintain a separate system of noncommercial programming.

Public interest obligations were treated seriously until they came under attack in the Reagan years, when the FCC under Mark Fowler-who described television as nothing more than "a toaster with pictures"-began to advocate a market approach to broadcast regulation.

Under Reagan, long-standing rules designed to enforce public interest standards were eliminated. These included requirements that stations air minimum amounts of public affairs programming, limit advertising nine, maintain program logs and formally consult their local community to determine its broadcast needs. The license renewal process-when a station's public-interest performance used to be formally assessed-was transformed into a postcard notification that made renewals virtually automatic and extended license terms from three to five years. (Broadcast license terms were extended again to eight years in the Telecommunications Act of 1996.)

In 1987, Reagan's FCC eliminated the Fairness Doctrine, which required broadcasters to air and provide contrasting viewpoints on controversial issues of public importance. Some credit abolition of the Fairness Doctrine with enabling the right-wing dominance of the airwaves today. "Now there's no recourse against a station that wants to be completely one-sided or that refuses to air a certain point of view," says Angela Campbell, a law

professor and co-director of the Institute for Public Representation at Georgetown University. Recently, for example, several broadcast stations refused to air paid anti-war commercials before the U.S. invaded Iraq.

Campbell points out that when the FCC made its first deregulatory sweep of public-interest broadcasting rules, the agency said that caps on station ownership ensuring a diversity of owners coupled with anti-discrimination employment rules would guarantee a diversity of views. But the courts have since struck down the equal opportunity rules, and the limits on ownership have been dramatically loosened over the past 20 years.

Contempt for the public interest

In early June, the FCC voted along partisan lines to allow broadcasters to own still more stations, and to buy up newspapers and cable outlets in the markets they dominate. *FCC* chair Michael Powell, who has dismissed the very concept of the public interest, scheduled just one public hearing on the issue of ownership limits.

FCC commissioner Michael Copps, one of two Democrats on the five-member commission, tried to warn the public about what is at stake with the latest relaxation of rules. At an unofficial hearing on media consolidation in Los Angeles on April 28, he said the *FCC's* decision will impact "everything we hear and see and read through the media."

Copps stressed the fact that the airwaves belong to the public. "No one has a God-given right to use these airwaves for strictly commercial purposes," he said. While they can be used to run a business, the licenses are granted on a temporary basis "using public property for primarily public purposes in behalf of the public interest."

Of course, if **Fox** were using its licenses to serve the public interest, then Jane Akre and Steve Wilson would not have lost their jobs for refusing to deceive the public on an important public health issue.

"At the very least, if there is no law, rule or regulation against using the public airwaves to knowingly present news that is false and distorted, it's time the *FCC* or the Congress write one," Wilson said. "Clearly, our case shows you cannot count on all broadcasters to act ethically and honestly in reporting the news and putting the public interest ahead of their own."