**PORTFOLIO**

**National FFA Organization**

**Agricultural Issues Forum**

# **Sample Issue Summary**

**List courses in which instruction occurred:** *AgSc 312: Personal Skill Development in Agriculture:* critical thinking, problem solving and written communications. *AgSc 315: Agricultural Communications*: current issues in agriculture, media relations, issues and case law concerning the First Amendment of the U.S. Constitution; ethical questions in journalism, fairness in issue analysis. *AgSc 332 Animal Science:* current issues in the animal industry, truth and myth concerning feed additives, antibiotics and other food safety issues. About 50 students were involved in the instruction.

**2. Why is this issue so important now?** Media plays a dominant role in today’s society. A study conducted by the Radio and Television News Directors Foundation indicates that 56 percent of the general public relies on television for keeping up on current events, with 24 percent saying they rely on newspapers, which ranked second in the polling to television. A recent internet hoax involving a false press release concerning the Emulex Corporation a California-based maker of fiber-optic equipment, sending its stock plunging as much as 62 percent on August 25 underscores the impact of electronic media on the public psyche.

In a time of dwindling profit margins for agricultural producers, a surge of advances in agricultural technology—particularly biotechnology may provide vehicles to improve efficiency and make production profitable. However, some of these innovations have met resistance from numerous groups who have questioned the safety of some of these advances. These activist organizations were once small in number and relatively inert, operating out of residences and warehouses, but have grown to include nearly 100 organizations that are considered mainstream activists with multimillion dollar budgets and celebrity endorsements. The American Humane Society has an annual budget of $36.6 million and the Environmental Defense Fund an annual budget of $23.9 million. These organizations have legitimate concerns, but many of them also have a vested financial interest in fomenting fear and controversy. In an era of electronic media, they have an enormous capacity to rapidly influence public perceptions, which may be detrimental to agriculture.

Plainview sits on the Texas South Plains, one of the most agriculturally intense regions of the state and nation, containing 34 percent of the state’s total cropland in production and 69 percent of Texas’ irrigated cropland. The region supplies 66 percent of the cotton, 53 percent of the grain sorghum, 72 percent of the wheat and 82 percent of the feedlot cattle in the state. Plainview, Hale County and the Texas South Plains have much to lose in any market downturn.

**3. What is the nature of the issue?** The issue is a classic conflict between economic justice via judicial intervention versus free speech guaranteed under the U.S. Constitution’s First Amendment. Proponents demand accountability and civil redress for statements which damage industry and the people who draw their livelihoods from that industry. Opponents decry the abridgement of free speech and the potential chilling effect the laws may have on scientific exploration and on the free and open discussion of safety concerns.

**4. Who is involved in this issue?** Potentially, producers and related agribusinesses are directly impacted by market fluctuations created by negative publicity. These losses percolate in to all corners of the economy. Media and the scientific community are also directly affected as they may be sued or prosecuted over released findings which may be challenged by producer groups or large, multi-national agricultural corporations. All consumers may be affected by fear mongering which erodes public confidence in the food supply. All consumers may also be affected by food safety issues, discussion of which are snuffed out for fear of litigation.

**5. How can the issue be defined?** The food disparagement issue can be defined in terms of these questions:

* Is all speech, true or false, protected by the First Amendment?
* Do food disparagement laws have a chilling effect on the free and open discussion of legitimate concerns?

**6. What is the historical background of the issue?** Fear and panics concerning food safety are not a new phenomenon. Sodium nitrate, a compound used in curing meat products was reported to be carcinogenic in the late 1970’s touching off a crisis in the meat industry. However, the incident which provided the most compelling impetus for food disparagement laws was the “Great Apple Panic of 1989.” The apple panic was brought about by a report on the CBS news magazine 60 Minutes which highlighted a report from a known activist group, the Natural Resources Defense Council. The NRDC published a report concerning dimethyl hydrazine, a growth regulator marketed by Uniroyal under the trade name Alar and applied to apples. The report implied that the chemical was a potent carcinogen, putting at risk millions of Americans, children in particular. The ensuing panic sent the apple industry into a tailspin causing layoffs and bankruptcies. The apple industry claims that growers, processors, marketers and other related businesses lost about $375 million in the apple scare of 1989. Taxpayers shelled out another $15 million in a government emergency purchase of leftover apples. A number of scientific organizations discredited the report, but the industry was deeply harmed--some producers and related businesses irreparably. The industry pursued litigation to hold CBS and the NRDC liable, but no legal avenue existed for the plaintiffs to recover losses through the courts. Under common disparagement laws, the individual producer must be disparaged in order to bring a cause of action. At the retail level, products of multiple producers are sold together. Because the products were disparaged as a whole, individual producers had no legal standing to file suit.

Since then, thirteen states have enacted various versions of food disparagement laws which provide civil remedies for affected parties when food products are knowingly and/or with malice and intent disparaged. In 1991, Louisiana became the first state to enact such legislation. The perishable food disparagement bill was introduced in the Texas legislature on January 23, 1995. It was signed into law by Governor George W. Bush and enacted on May 9, 1995. Other states that have enacted food disparagement laws are Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Mississippi, North Dakota, Ohio, Oklahoma and South Dakota.

The first case tried under the Texas law, the perishable food disparagement statute, was brought against Oprah Winfrey and HARPO Productions in 1997 and tried in 1998. On April 16, 1996 Oprah Winfrey had on her daytime television program Howard Lyman of the American Humane Society, a well-known vegetarian. Lyman claimed that American consumers were at risk for contracting Creutzfeldt-Jakob Disease, a rare, degenerative brain disease also know as Human Spongiform Encephalopathy (HSE). Some had linked the disease to Bovine Spongiform Encephalopathy, known by its nickname, “mad cow disease.” Lyman claimed that BSE might exist in the U.S. and that consumers were at risk because feedlot operators were feeding renderings from cattle which may have died from BSE. Dr. Gary Weber of the National Cattlemen’s Beef Association and Dr. Will Hueston from the USDA refuted much of what was said, but most of their comments were edited out of the version of the program that aired on national television. Cattle markets plunged the following day, allegedly as a result of the program. Cactus Feeders of Amarillo reported losses of $6.7 million. Cactus chairman Paul Engler filed the suit against Oprah and HARPO Productions.

In the Cactus Growers, Inc. vs. Oprah Winfrey and HARPO Productions, the presiding judge, U.S. District Judge Mary Lou Robinson, declared that live cattle were not a perishable food product, so the case could not be tried under the Texas food disparagement law. Thus the question for jury was whether or not Paul Engler or Cactus Feeders had been specifically named on the program in question. They had not, so the jury was obligated to decide for the defendant. An appeal to the Fifth Circuit Court of Appeals in New Orleans failed to provide a legal test for the law since the court simply upheld the earlier decision that live cattle were not a perishable food product.

**7. What caused the issue?** For Plainview, Hale County and Texas Panhandle residents, the law became an issue due to the case against Oprah Winfrey. More than 100,000 head of cattle are fed in the Plainview area each year. Excel, the local beef packing facility, employs 1800 Plainview citizens and has an annual economic impact of more than $40 million. Corn, corn silage, grain sorghum, cottonseed meal, cottonseed hulls and soybeans are all commodities purchased locally and regionally by area feeding operations. The economic health of the cattle industry has a profound effect on the economy.

**8. What are the risks?** Stifling free and open discussion for fear of litigation, and thus compromising public health is the greatest risk. The potential for lawsuit abuse is real and has already been manifested. Emu raisers sued the automobile maker Honda for making fun of emus as an investment in a television commercial. A suit was filed against a Texas A&M University scientist for saying that a particular type of sod grew better in certain areas than in others. Although the suit was dismissed, the state attorney general had to expend time and financial resources to defend the scientist.

**9. What are the benefits?** Food disparagement laws provide a measure of protection for agricultural producers and related agribusinesses against groups who have a vested financial interest in creating high profile controversies. Many of these organizations have used questionable data and procedures to produce reports that support their overarching agenda. These laws provide legal recourse not previously possible under common disparagement and slander laws.

**10. Is there strong agreement on how the issue should be solved?** The battle lines in this debate are drawn very clearly. Agricultural and rural interests are solidly behind the laws. Consumer activists and civil libertarians are staunchly opposed. A recent vote to repeal the law in Texas generally pitted urban legislators against rural lawmakers.