

Case 5

In January of 1997 a federal jury in Greensboro, North Carolina awarded a supermarket chain, Food Lion Incorporated, more than \$5.5 million in punitive damages, to be paid by the American Broadcasting Company (ABC). The damage award was in connection with a lawsuit brought by Food Lion concerning a segment of ABC's Prime Time Live program, which accused Food Lion of selling rat gnawed cheese, spoiled meat, and fish that had been washed in bleach to kill the odor. Food Lion denied these accusations, but did not sue ABC for slander. Instead it brought action against ABC for fraud and trespass, complaining that ABC reporters gained access to the Food Lion meat department by submitting false resumes to get jobs, and then used hidden cameras to film there.

The jury's verdict in favor of Food Lion, a subsidiary of a multi-national conglomerate, headquartered in Belgium, that operates 1,100 stores in 14 states, was only the second time a jury has awarded punitive damages in a case involving hidden cameras. The purpose of punitive damages is not to compensate a plaintiff in a lawsuit for losses actually suffered as a result of the defendant's conduct, but instead to punish the defendant for conduct the jury considers unacceptable, and to deter future similar conduct. In order to keep the jurors focused upon the issues of fraud and trespass, rather than slander, the judge instructed them that in reaching their decision they were to assume the accuracy of the Prime Time Live segment. (No evidence was presented at the trial, one way or the other, in regard to the segment's accuracy.) Keeping the judge's instruction in mind the jury awarded the corporation only \$1,400 in actual damages, despite claims at the trial that ABC's Prime Time Live report had resulted in corporate losses of more than \$1 billion from drops in sales and stock value. The \$5.5 million jury award, in the words of one juror, was intended to send a message to ABC that it has to "go about gathering news in a different way."

In a statement commenting upon the jury's award, Roone Arledge, President of ABC, said: "If large corporations are allowed to stop hard hitting investigative reporting the American people will be the losers." "Food Lion would never contest the truth of the broadcast; these people were doing awful things in these stores," claimed Mr. Arledge. Tom Smith, President and Chief Executive Officer of Food Lion, expressed pleasure with the jury's verdict. "This case is not about money," Mr. Smith said. "We believe," he continued, "that this jury has said that ABC must be held accountable when it breaks laws that everyone else is expected to obey."

Subterfuge by newspaper reporters has a long tradition, going back to at least 1887 when Nellie Bly, a reporter for the New York World, gained admittance to the New York City Lunatic Asylum by feigning insanity. Bly's report on her ten days in the asylum exposed dreadful conditions badly in need of reform. In a similar vein, recently organizations investigating racial discrimination in white collar employment

compared the job hunting experiences of pairs of applicants, one white and one african-american, sent out to apply for jobs with fake credentials and resumes. Commenting upon the jury's award in the Food Lion case, Bob Steele, Director of the Ethics in Journalism program at the Poynter Institute in St. Petersburg, Florida said: "This verdict has the potential to chill important investigative reporting and to prompt news organizations to back off." On the other side of the question, Paul Starobin, a contributing editor of the Columbia Journalism Review, expressed the opinion in a New York Times Op Ed column, that ABC was driven by commercial rather than journalistic motives. In this regard, Starobin wrote: "Diane Sawyer, the Prime Time Live anchor said that 70 current and former employees of [Food Lion] had attested to unhealthful food handling practices in on the record interviews with the show's researchers. But that wasn't sexy enough so ABC went undercover to dramatize the tale."