



Vic Fezell and supporter Harley Spoon after the \$58 million libel decision against Belo Broadcasting

A jury of jeers

Law: Eager litigants lining up behind victorious Waco libel plaintiff for cases against Channel 8, Belo

By Tommy Witherspoon

WACO—Former McLennan County District Attorney Vic Fezell's record \$58 million libel verdict against the Belo Broadcasting Corporation could have been higher, several jurors say. All he had to do was ask.

At least eight of the jurors who returned the huge verdict Friday, April 19, after hearing six weeks of testimony attended a post-trial victory celebration thrown by Fezell at a Waco hotel. Many jurors told Fezell and others that they would have returned a judgment of \$100 million against WFAA-TV Channel 8 and the station's former investigative reporter Charles Duncan if Fezell had sought that much.

"Several of them...said that they had never seen anything as egregious as what Duncan put on the air," says Fezell, referring to the 1985 10-part series by Duncan that was the focus of the suit. The series included allegations of criminal misconduct against Fezell and the Waco district attorney's office, including the acceptance of bribes in return for case dismissals. "We had a very good, common-sense jury," adds Fezell.

Fezell, 39, the former county prosecutor from Waco, predicts that the entire judgment, with the exception of maybe \$2 million awarded for damage to his law practice, will escape appellate scrutiny. "I don't even think it can be reduced, but if it is, I can't see it getting reduced by more than \$2 million," says Fezell. "And if Belo wants to pay me the \$56 million now, I'll give them the extra \$2 million."

The jury's verdict in the Fezell case included \$17 million in actual damages and \$41 million in punitive damages, including \$1 million assessed to Duncan.

David McHam, a journalism professor at Southern Methodist University, and other media-law specialists say the damages are the

largest ever awarded against a media company in a libel case. The award eclipses the \$34 million a jury ordered the *Philadelphia Inquirer* to pay in May 1990 over a 1973 story that criticized a lawyer's handling of a homicide case when he was assistant district attorney.

Damages in libel cases frequently are reduced by the trial judge or an appeals court.

"I think the damages will be reduced because I don't think the appellate courts generally let anything of this magnitude stand," says McHam. "But we just haven't had that much history in Texas with libel cases. The ones you look at to compare this to go back so far and the judgments were so small.

"It is like this one case becomes the history of libel law in Texas, and I think it will be a textbook case...that people will be studying for years to come. It involves more than just libel. It goes to the very heart of what the news business is about," McHam says.

Mike McCarthy, vice president and general counsel for the A.H. Belo Corp., said after the verdict that the company thinks there isn't a "factual basis to support this jury verdict, which involves a public official." McCarthy says the company will ask for a new trial and, if necessary, an appeal.

In the meantime, Fezell, who resigned as district attorney in 1988, is preparing a judgment for the court and will be seeking interest from the verdict in the interim as well as pretrial interest dating back to 1986, when he filed the suit. If granted, and if Belo drags out an appeal or a settlement, it might take a team of accountants to figure out what Fezell and his attorney, Gary Richardson of Tulsa, Oklahoma, stand to reap from the total package.

"If I were a stockholder at A.H. Belo right now, I'd be very concerned," Fezell said Monday, April 22.

Belo officials said that the verdict, if upheld, wouldn't significantly affect Belo's financial con-

dition, but they would not elaborate.

Duncan, 55, a veteran television newsman who has won a number of awards, is now a private investigator in Dallas. He and his attorneys, John McElhaney and Tom Leatherbury, hastily left the McLennan County Courthouse after the verdict came in. Duncan, reminiscent of Ronald Reagan sloughing off reporters' questions, cupped his hand to his ear and shrugged that he couldn't hear a reporter's questions over traffic noise.

On April 23, Duncan said that it would be premature to comment on the trial until the judge issued his judgment on the case.

At the victory party, jurors told the Feazell camp that they disliked Duncan, were mad at the media in general, and particularly did not care for McElhaney and Leatherbury, whom they dubbed "Huckleberry Hound" and "Deputy Dawg." In post-trial interviews, jurors cautioned reporters to quote them accurately and said they are going to view the media in a different light.

They spouted particular venom in the direction of a Waco television reporter who slept through much of the testimony and refused interviews with him.

The state district court jury of nine women and three men deliberated for about five hours over two days before returning the unanimous verdict. Several told Feazell that they would have returned the verdict sooner had they not looked out the fourth floor and seen the trial participants walking to lunch.

"If you had only waited a little longer, we could have made your lunch a lot more enjoyable," one of the jurors told Feazell.

IRONICALLY, THE jury deliberated in the same grand jury room where Feazell questioned Henry Lee Lucas in April 1985 and began to discredit some of his 300 murder confessions.

The grand jury cleared Lucas in three McLennan County homicides to which he had confessed, and Feazell was about to start looking into the actions of the Texas Rangers task force that had custody of Lucas when he says the rug was pulled out from under him. Feazell testified during the trial that it was Duncan who pulled on one corner of that rug and more or less became an arm of vengeful law enforcement officers eager to discredit Feazell for his role in exposing the Lucas hoax.

Two weeks after the Lucas grand jury was convened, former Waco radio station owner Tom Pauken, now a congressional candidate from Dallas, set up a meeting between Duncan, Department of Public Safety investigator Ron Boyter, and former Waco police legal adviser Bill Johnston in a Waco hotel room. The pair reportedly provided news tips and rumors about Feazell, many of which apparently found their way, seemingly uncorroborated, into Duncan's episodes.

Feazell has blamed Duncan for serving as the willing catalyst that state and federal investigators were looking for to whip up enough public outcry against Feazell to justify their own investigation of him and a handful of Waco attorneys. Federal prosecutors indicted Feazell on bribery and racketeering charges six weeks before he was elected to his second term in November 1986. A federal jury in Austin acquitted Feazell of all charges in 1987 after a six-week trial. At least five of the Austin jurors said they thought Feazell had been "framed."

Feazell thanked God last week and "24 wonderful people," the 12 in Austin who acquitted him and the 12 in Waco "who found me innocent."

Many in Waco, however, are unconvinced of Feazell's innocence, even after the libel verdict,

but Feazell remains unscathed by those "naysayers."

"Some people still think the world is flat," he says.

On the day of his acquittal in Austin, Feazell vowed to come after Channel 8 with a vengeance. Armed with Duncan's notes, taped phone conversations Duncan made, and FBI reports placing the official beginning of the federal investigation of Feazell after the Lucas grand jury, he did just that.

Belo's attorneys tried to prove that the Lucas grand jury had nothing to do with Duncan's series or the federal investigation of Feazell. They said that Duncan was merely reporting on an ongoing investigation and that his series was fair comment on a public official.

The jury didn't buy it.

During the trial, several law enforcement officers that Duncan had used as sources testified that they didn't tell Duncan things that he attributed to them. For instance, Boyter told the jury that he couldn't have told Duncan at their hotel meeting that a federal investigation of Feazell had begun in the fall of 1984—a key point in the case—because it didn't begin until June 1985.

According to other testimony presented at the libel trial, Duncan apparently did not interview many primary sources, reportedly relying on hearsay from other parties. Plaintiff's attorney Gary Richardson, a former U.S. attorney, tracked Duncan's episodes line by line and source by source, demonstrating in every episode how Duncan had distorted facts, reported erroneous information, and, in some instances, he showed that Duncan knew that what he was running was incorrect.

Richardson even aired critical outtakes from Duncan's interviews and introduced into evidence proposed scripts that Duncan had prepared but had not aired, using them to show that the reporter was on a "mission" to destroy Feazell and had a preconceived storyline.

THE HUGE VERDICT PROVED good news to Waco attorney George Shaffer, who has a \$3 million libel suit against Duncan pending and is set for trial in the fall.

The same might be said for former Feazell staffers John Ben Sutter and Pat Murphy and Waco printshop owner Mike Stanley. Each also has a libel suit stemming from the series pending against Duncan and Belo.

Duncan singled Shaffer out in the first episode in June 1985 and quoted Shaffer as telling a client that they would have to put any deal with the district attorney's office on hold because "the heat is on."

Shaffer denies making the statement and says his business suffered as a result of Duncan's allegations that he engaged in payoffs to prosecutors.

"By name, I was only mentioned in episode one," says Shaffer. "But in others, they kept referring to that handful of defense attorneys who were obtaining dismissals from the district attorney's office. I think it is a fair statement that the average viewer, since they saw me in episode one, would infer that I was in that category."

It is harder for a public figure, like Feazell, to prove that he has been libeled than for a non-public figure, like Shaffer. That and other factors could make Shaffer reconsider his damage claims, he says.

"If I can watch a verdict for \$58 million be returned, I need to rethink my original position," he says.

Meanwhile, Feazell is sitting back and waiting for Belo officials to make the next move. Belo has 30 days to file a motion for a new trial. □

Jurors said they disliked Duncan and were generally mad at the media