

VIC FEAZELL,)	IN THE DISTRICT COURT OF
)	
Plaintiff,)	
)	
vs.)	McLENNAN COUNTY, TEXAS
)	
BELO BROADCASTING)	
CORPORATION, and)	
CHARLES DUNCAN, JR.,)	
Individually,)	
)	
Defendants.)	19TH JUDICIAL DISTRICT

CHARGE OF THE COURT

MEMBERS OF THE JURY:

This case is submitted to you in a charge consisting of specific questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all instructions which have previously been given. You are now given additional instructions which you should carefully and strictly follow during your deliberations.

Do not let bias, prejudice, or sympathy play any part in your deliberations.

In arriving at your answers, consider only the evidence introduced under oath and such exhibits as have been introduced for your consideration under the rulings of the Court, that is, the

evidence seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

Do not speculate on matters not shown by the evidence admitted before you and about which you are not asked any questions.

Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss or concern yourselves with the effect of your answers. That is a matter for the Court exclusively.

You will not decide an issue by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the

answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

You will not discuss this case except inside your jury room when all of the members of the jury are present, and only when the door to the jury room is closed.

These instructions are given because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury, and all of our time will have been wasted.

The presiding juror or any other juror who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

The Court now gives you certain definitions of terms used in this charge, by which you will be governed in arriving at your answers to the questions submitted to you.

DEFINITIONS AND INSTRUCTIONS

The term "preponderance of the evidence" means the greater weight of the credible evidence.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proven by witnesses who saw the act done or heard the words spoken or by documentary evidence. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

The term "clear and convincing evidence" means that degree of proof which will produce in your minds a firm belief or conviction as to the existence of the matter at issue. Proof by clear and convincing evidence is greater than proof by a preponderance of the evidence, however, the evidence need not be unequivocal or undisputed.

The term "defamatory" means a communication expressed in a publication which tends to injure a person's reputation and thereby expose him to public hatred, contempt or ridicule, or business injury, or to impeach the honesty, integrity, virtue, or reputation of that person, and thereby expose him to public hatred, contempt or ridicule or business injury. In order for a statement to be defamatory of Plaintiff, Plaintiff must prove that the statement refers to him personally.

The term "proximate cause" means a cause which, in a natural and continuous sequence of events, is unbroken by any new and

Independent cause, produces damages, and without which such damages would not have occurred. To be a proximate cause of the damages in question, it should have been reasonably foreseen by a person of ordinary prudence, in the exercise of ordinary care, that the damages or some similar damages would occur as a natural and probable consequence.

As used in this charge, "Vic Feazell" means Plaintiff Vic Feazell; "Charles Duncan" means Defendant Charles Duncan; and "Belo" means Defendant Belo Broadcasting Corporation, d/b/a WFAA-TV (Channel 8).

In deciding whether a broadcast is defamatory, you are instructed to consider only what effect the broadcast would have on the mind of an ordinary television viewer, taking the words in their plain, ordinary, and natural meaning in light of all of the facts and circumstances surrounding that broadcast.

You are instructed that the fairness or the balance or the objectivity of the broadcasts are not in issue. A journalist who honestly believes in the truth of the statements in the broadcast is under no obligation under the law to treat the subject of the broadcast fairly or evenhandedly.

Under Texas and federal law, it is not illegal for a person to disseminate information if he lawfully obtained it from a public record that may have been expunged.

In order to recover for alleged mental anguish, Vic Feazell must prove more than mere worry, anxiety, vexation, or anger; the

proof must show intense pain of body or mind, or a high degree of mental suffering.

A broadcast is false only if the Plaintiff proves that the gist or central meaning of the broadcast is false. Literal truth of each statement of each broadcast is not required. Inaccuracies which do not change the central meaning or gist of the broadcast are not false under the law.

In answering questions relating to the Defendants' conduct or states of mind, you should consider the evidence separately as to each Defendant.

The term "actual malice" means with actual knowledge that the broadcast was false or with reckless disregard of whether it was false or not. Actual malice may not be presumed. The Plaintiff bears the burden of establishing actual malice by clear and convincing evidence.

The term "reckless disregard" requires that a false and defamatory statement was made with a high degree of awareness of its probable falsity. There must be clear and convincing evidence to permit the conclusion that a defendant in fact entertained serious doubts as to the truth of the statement at the time it was broadcast or published.

Reckless disregard depends on the state of mind of the defendant and cannot be inferred solely from the language of a broadcast itself or the fact that the broadcast was false. Failure to investigate the truth of statements made does not, alone,

constitute reckless disregard for the truth. Failure to investigate information or the credibility of a source does not, alone, constitute reckless disregard for the truth. Reliance on a biased source does not, alone, establish reckless disregard for the truth. The fact that a defendant made a mistake or failed to act as a reasonably prudent person in broadcasting a statement is insufficient, alone, to prove reckless disregard for the truth.

During the course of the trial, you have heard the testimony of several witnesses which has been taken in the form that we call a "deposition."

Ordinarily, under the rules of procedure governing the preparation of a case for trial, the parties are permitted to take and record the testimony of witnesses, under oath, in the same manner as you have seen witnesses sworn and questioned here before you; and, under certain conditions, that testimony, which is called a "deposition," may then be offered as evidence before the jury at the trial.

You should consider the deposition testimony that the Court has admitted, and evaluate the weight or credibility to which it is entitled, in the same way you consider and evaluate all the other testimony in the case. In other words, you should consider the deposition just as though the witness was here in person and testified before you.

You are instructed to answer the following questions:

QUESTION NO. 1

Do you find by a preponderance of the evidence that the "First Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes

No

If you have answered Question No. 1 "Yes", then answer Question No. 2; otherwise, go to Question No. 3

QUESTION NO. 2

Do you find by clear and convincing evidence that the "First Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Belo	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Go on to Question No. 3

QUESTION NO. 3

Do you find by a preponderance of the evidence that the "Second Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes

No

If you have answered Question No. 3 "Yes", then answer Question No. 4; otherwise, go to Question No. 5

QUESTION NO. 4

Do you find by clear and convincing evidence that the "Second Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Belo	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Go on to Question No. 5

QUESTION NO. 5

Do you find by a preponderance of the evidence that the "Third Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes

No

If you have answered Question No. 5 "Yes", then answer Question No. 6; otherwise, go to Question No. 7

QUESTION NO. 6

Do you find by clear and convincing evidence that the "Third Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<u>✓</u>	_____
Belo	<u>✓</u>	_____

Go on to Question No. 7

QUESTION NO. 7

Do you find by a preponderance of the evidence that the "Fifth Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes No

If you have answered Question No. 7 "Yes", then answer Question No. 8; otherwise, go to Question No. 9

QUESTION NO. 8

Do you find by clear and convincing evidence that the "Fifth Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<u>✓</u>	_____
Belo	<u>✓</u>	_____

Go on to Question No. 9

QUESTION NO. 9

Do you find by a preponderance of the evidence that the "Sixth Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes _____ No _____

If you have answered Question No. 9 "Yes", then answer Question No. 10; otherwise, go to Question No. 11

QUESTION NO. 10

Do you find by clear and convincing evidence that the "Sixth Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Belo	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Go on to Question No. 11

QUESTION NO. 11

Do you find by a preponderance of the evidence that the "Seventh Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes _____

No _____

If you have answered Question No. 11 "Yes", then answer Question No. 12; otherwise, go to Question No. 13

QUESTION NO. 12

Do you find by clear and convincing evidence that the "Seventh Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Belo	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Go on to Question No. 13

QUESTION NO. 13

Do you find by a preponderance of the evidence that the "Eighth Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes

No

If you have answered Question No. 13 "Yes", then answer Question No. 14; otherwise, go to Question No. 15

QUESTION NO. 14

Do you find by clear and convincing evidence that the "Eighth Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<u>✓</u>	_____
Belo	<u>✓</u>	_____

Go on to Question No. 15

QUESTION NO. 15

Do you find by a preponderance of the evidence that the "Winth Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes

No

If you have answered Question No. 15 "Yes", then answer Question No. 16; otherwise, go to Question No. 17

QUESTION NO. 16

Do you find by clear and convincing evidence that the "Winth Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Belo	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Go on to Question No. 17

QUESTION NO. 17

Do you find by a preponderance of the evidence that the "Tenth Broadcast," taken as a whole, was both false and defamatory of Vic Feazell?

Answer "Yes" or "No".

Yes

No

If you have answered Question No. 17 "Yes", then answer Question No. 18; otherwise, go to Question No. 19

QUESTION NO. 19

Do you find by clear and convincing evidence that the "Tenth Broadcast" was published by the Defendants, or any one of them, with actual malice?

Consider each Defendant separately and answer "Yes" or "No" as to each Defendant.

Answer:	<u>Yes</u>	<u>No</u>
Duncan	<u>✓</u>	_____
Eelo	<u>✓</u>	_____

If you have answered any subsection of Questions No. 2, 4, 6, 8, 10, 12, 14, 16, or 18 "Yes" as to any Defendant, then go to Question No. 19, otherwise stop.

QUESTION NO. 19

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Vic Feazell for the damages, if any, proximately caused by the broadcasts?

In deciding whether or not to assess damages, if any, you should consider only those damages, if any, resulting from the statements in the broadcasts that you have found were false and defamatory of Vic Feazell, and were made with actual malice. Consider the elements of damages listed below and none other.

Answer separately in dollars and cents, if any, with respect to each of the following elements. You are to consider each element of damage separately so as not to include damages for one element in any other element.

Damage to business:

Answer: \$ 2,000,000

Impairment to reputation and standing in the community:

Answer: \$ 9,000,000

Personal humiliation and mental suffering:

Answer: \$ 6,000,000

QUESTION NO. 20

What sum of money, if any, do you find from a preponderance of the evidence that Vic Feazell should be awarded against the Defendant or Defendants as exemplary damages?

In connection with this Question, you are instructed that "exemplary damages" means an amount that you may in your discretion award as an example to others and as a penalty for by way of punishment, in addition to any amount that you may have found as actual damages. You may award exemplary damages only as to those broadcasts, if any, which you have found were both false and defamatory of Plaintiff and which were made with actual malice and for which you have awarded actual damages.

You are instructed that in considering an award of exemplary damages, you shall consider the evidence separately as to each Defendant.

Answer in dollars and cents, if any, as to each party.

Defendants:

Duncan	\$ <u>1,000,000</u>
Belo	\$ <u>40,000,000</u>

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked:

It is the duty of the presiding juror:

- (1) to presiding during your deliberations;
- (2) to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge;
- (3) to write out and to hand to the bailiff any communication concerning the case which you desire to have delivered to the judge;
- (4) to vote on the issues;
- (5) to write your answers to the issues in the spaces provided; and
- (6) to certify to your verdict in the space provided for the presiding juror's signature, if unanimous.

After you have retired to consider your verdict, no one has any authority to communicate with you except the bailiff of this Court. You should not discuss the case with anyone, not even with the members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the Judge of this fact.

When you have answered all of the questions which you are required to answer under the instructions of the Judge, and your presiding juror has placed your answers in the spaces provided, and

signed the verdict as presiding juror or obtained the signatures, you will advise the bailiff at the door of the jury room that you have reached a verdict, and then you will return to the Court with your verdict.

JAMES MEYERS, Presiding Judge
19th District Court

CERTIFICATE

We, the jury, have answered the above and foregoing Questions as herein indicated, and herewith return same to the Court as our verdict.

(To be signed by the presiding juror if unanimous.)

Unanimous
Presiding Juror

* * * * *

(To be signed by those rendering the verdict if not unanimous)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____