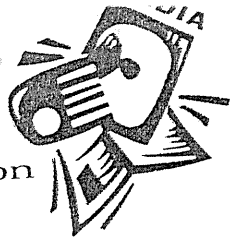


WFAA-TV Channel 8
got hit with a
record \$58 million
libel verdict.



Judgment in Waco

ONE EVENING LAST MARCH, attorney Gary Richardson sat at the cluttered dining room table in the Waco home of his embattled client, Vic Fezell, 39, sipping coffee and polishing the wording of a letter. There, surrounded by dozens of neatly organized file boxes that represented five years of trial preparation, Richardson was offering the Belo Broadcasting Company, parent company of WFAA-TV Channel 8, its last chance for surrender.

In June of 1986 Fezell, at the time district attorney of McLennan County, had filed a blockbuster libel suit against WFAA and investigative reporter Charles Duncan following Duncan's 10-part 1985 series portraying Fezell as a lax, corrupt prosecutor who took bribes from several Waco lawyers in exchange for the dismissal of DWI charges against their clients. Fezell was asking for a staggering \$63.5 million in damages.

Now, while the trial in Waco's 19th state District Court was still in the first week of testimony, Richardson's letter was to be delivered to the Waco offices where Belo lawyers John McElhaney and Tom Leatherbury of the Dallas firm of Locke Purnell Rain Harrell had set up headquarters. Richardson wrote that his client would settle for \$3 million if an agreement was reached immediately. He further stated that the settlement cost would increase by \$1 million at 9 a.m. on each subsequent Monday throughout the trial. Once the case went to the jury, Richardson warned, the offer would become void. "The only response we got," recalls

BY CARLTON STOWERS



ILLUSTRATION BY VICTORIA KANN

Jurors were convinced that reporter Charles Duncan helped in a smear campaign against Vic Fezell.

Fezell, now an attorney in private practice, "was when I saw them off in the corner of the courthouse, reading it and laughing about it."

By the time all testimony had been heard and the jury of nine women and three men had retired to deliberate, six weeks had passed. The Richardson-Fezell offer had mounted to \$8 million.

But the Belo clients and counselors refused to budge. In retrospect, it appears that they turned down a bargain-basement offer.

When Richardson stood to deliver his closing argument, it was clear that all deals were off. Urging the jury to "send a message" to Channel 8 and "irresponsible" journalists throughout the country, he asked that they come back with an award of "not a penny less than \$35 million."

After only five hours of deliberation, the jury filed

back into a courtroom packed with Fezell supporters and a scattering of media representatives (none from the Dallas newspapers or television stations) and returned a judgment that surpassed Richardson's wildest dreams. In response to the charge given them by visiting Judge James Meyers, they had voted to award Vic Fezell \$2 million for damage to his business, \$9 million for damage to his reputation, \$6 million for humiliation and mental suffering, \$40 million in exemplary damages from Belo, and \$1 million in exemplary damages from Duncan. The total was a staggering \$58 million. If that verdict becomes a judgment, it would be the largest in history.

ors had listened while Richardson wove an incredible story, charging that Charles Duncan, 55, had cooperated in an attempt launched by the DA's enemies in the Texas Department of Public Safety, the FBI, and the Waco Police Department to discredit Feazell. Richardson built a damning case, arguing that Duncan had been fed much of the material for his series by those hostile to the DA. Duncan's reports, Richardson insisted, had served as the catalyst investigators had needed to start a public outcry against Feazell.

The smear campaign started, the jury was told, when Feazell exposed the long-running confession scam of Henry Lee Lucas, the one-eyed drifter who had claimed to have murdered as many as 600 people. Feazell was instrumental in proving that most of Lucas's grisly saga was a fabrication. "I stepped on some big toes," Feazell says.

And some big egos. Richardson argued that law enforcement officials and others embarrassed by the Lucas charade had orchestrated a vicious attack on Feazell that resulted in him being indicted and tried for bribe-taking in 1987. Feazell, also represented by Richardson in the Austin trial, was acquitted.

During the Waco trial, the Belo case sustained a number of damaging blows. Two Waco police officers, whom Duncan had identified as primary sources for his reports about Feazell's handling of drug cases, denied telling Duncan things that the reporter had credited to them. Likewise, DPS investigator Ron Boyter, who had been assigned to investigate Feazell, took the stand to refute statements by Duncan.

While Duncan himself was on the witness stand, jurors heard a barrage of evidence that convinced them that the Channel 8 series was rife with error and innuendo designed to attack Feazell's reputation and credibility:

- Jurors were shown a memo from Duncan to a Channel 8 artist asking that he do a drawing "showing Feazell holding a big stack of \$100 bills in one hand with another stack of \$100 bills on his desk." There was no evidence that the DA had ever received any such payments.

- Richardson also introduced unused scripts authored by Duncan that, the attorney claimed, clearly demonstrated the mind-set of the reporter. One painted Feazell as a draft dodger, suggesting that he took a clerk's job with the Austin Police Department immediately after high-school graduation "at a time when most men his age were going off to serve in Vietnam." In fact, Feazell was 17 years old at the time, not of legal draft age.

- Jurors had serious questions about the fact that a Channel 8 camera crew from Dallas was poised and ready to film Feazell's early morning arrest by FBI and DPS agents. No other media had been alerted. Who, they wanted to know, had alerted Channel 8 that the arrest was to be made when the indictment was sealed and supposedly secret?

In the aftermath of the trial, there was no

doubt how jurors felt about the Belo attorneys. Said one: "In his opening statement Mr. McElhane stood there and talked down to us, saying that they were going to be using some big words during the trial but would carefully explain them to us. I'm a school teacher with a college degree. I know the big words."

For the Dallas lawyers, things went downhill from there.

At one point the Belo attorneys objected to a document that Richardson introduced into evidence, arguing that they had never seen it. Embarrassed, they withdrew the objection when Feazell's lawyer told them that he had received it from them during pretrial discovery.

Jurors were also irritated with the response

On the stand, some of Duncan's own sources denied saying things he had credited to them.

by WFAA-TV general manager Dave Lane and executive news director Marty Haag to a question posed by Richardson. Noting that Channel 8 had covered Feazell's federal trial in Austin on a daily basis, he asked why the station had given no coverage to the Waco trial. Haag's terse reply was that "We don't cover civil trials." Lane said, "We talked about it but didn't deem it appropriate."

More importantly, Richardson went through each of the Channel 8 reports, arguing that Duncan repeatedly reported rumor as fact, distorted the truth, and even aired information that he knew to be false.

For instance: While Duncan's reports painted Feazell's prosecution record in a negative light, evidence was introduced that he had available to him a published *Pardons and Parole Study* which showed that Feazell's office ranked first in Texas in felony convictions among counties with a population of more than 100,000 and was in the top third in the state in DWI convictions.

Historically, large libel awards against the media have been reduced and often overturned by appellate courts. Such awards can result from jurors' bias in favor of a hometown plaintiff vs. an out-of-town defendant, and libel lawyers say that juries are sometimes reluctant to uphold the First Amendment rights of highly paid, high-profile media people. But Feazell believes his victory against WFAA-TV will stand. He mentions the fact that as an elected official at the time, he was considered a "public figure" in the proceedings, and public figures are held to a higher standard and must prove malice. "We tried a conservative case," he says. "I don't think they have any factual grounds on which they can appeal."

Texas A & M University's Don Tomlinson, a libel expert who had followed the case closely, agrees. "From what I can tell you, this appears to be one of the cleanest libel and malice cases I've ever seen."

Neither Belo attorneys nor Charles Duncan would comment for this story, though Mike McCarthy, general counsel for Belo, issued a formal statement: "The company believes there is absolutely no factual basis to support this jury verdict, which involves a public official. We will obviously pursue all available post-trial motions and, if necessary, appeal."

The enormity of the judgment has set the Dallas legal community abuzz with speculation about Belo's next move. Some appellate specialists question whether the media giant can, in fact, afford the astronomical cost of the appeal unless the judge dramatically reduces the amount of the award.

In the event Belo attorneys are unsuccessful in their attempts to have the case dismissed (via what is called a motion for judgment notwithstanding the verdict), the next step would be to request a new trial. If that is refused, and if a judgment is entered for the plaintiff, Belo's next legal move would be an appeal.

And that's when that ticking money meter starts to sound like a runaway train.

To avoid seizure of its assets during appeal, Belo will be required to post cash, bond, or property worth the value of the judgment, plus an additional 10 percent of the judgment to cover interest during the time that lapses between the filing of an appeal and a final ruling, which could take years. If the judgment against Belo is in the full amount of the verdict—\$57 million, minus Duncan's \$1 million—that could exceed \$62 million dollars.

According to one Dallas liability specialist, Feazell may also be entitled to pre-judgment interest on the actual damages (\$17 million) awarded by the jury. But the cost of appealing the judgment, several local lawyers agree, could involve pledging assets of as much as \$70 million. According to documents produced in pretrial hearings, the total shareholders equity in Belo Broadcasting is slightly more than \$91 million.

And Belo's worries don't end there. Four other lawsuits, each stemming from the Duncan series, have been filed by various Waco figures seeking more millions in damages. Richardson is representing all of them.

The Feazell victory has earned the attention of media throughout the United States, including *The New York Times* and *The Wall Street Journal*. Even if a judge should slice the award in half, the financial burden of paying would still be extremely painful. But Channel 8, long considered one of the country's leading television news organizations, must now concern itself with an even greater problem—its image. ■

Carlton Stowers is author of *Careless Whispers: The True Story of the Lake Waco Murders*.