

**MEDIA LAW RESOURCE CENTER (MLRC)**

**REPORT OF AD HOC COMMITTEE ON JURY DEBRIEFING**

**NOVEMBER 2003**

IN THE 57<sup>TH</sup> JUDICIAL DISTRICT COURT  
BEXAR COUNTY, TEXAS

Case No. 95-CI-07456-J

CHRISTOPHER GILL, LAURA GILL,  
RICHARD GILL, AND PETER GILL,

Plaintiffs,

Vs.

AMERICAN BROADCASTING COMPANIES, INC.,

Defendants.

**TRIAL TO MOCK JURY**

**Report generated by Nancy Hamilton of Jackson Walker, LLP**

## **A MOCK JURY'S IMPRESSIONS OF A DEFAMATION CASE**

### **INTRODUCTION**

Actual malice, libel by implication, and substantial truth are all legal concepts that trip up even the most experienced members of the bench and bar. But examining how a jury grapples with these esoteric terms in the context of a defamation case involving the media is not only enlightening but at times horrifying. The value of a mock jury exercise is not merely to determine how the jury voted but, more importantly, why they voted a particular way and what were their motives and perceptions. This is particularly evident where, as here, the jury is forced to wade through murky issues such as libel by implication and actual malice. As the case below illustrates, there are many lessons to be learned from the comments, observations and preconceived notions that the man on the street brings to the judicial process, particularly when he is charged with the duty of being the ultimate fact finder.

### **THE LAWSUIT**

Former officers and directors of a failed savings and loan brought suit against ABC for a broadcast segment of the *Day One* news program that investigated why the Resolution Trust Corporation (“RTC”) had recovered only a small part of the cost of the savings and loan bailout from officers, directors and other insiders at failed savings and loan banks, particularly in Texas and at the Gill Savings Association (“GSA”). Together with claims for tortious interference, trespass, abuse of process and invasion of privacy, the Plaintiffs claimed thirty-eight statements in the *Day One* broadcast defamed them.

ABC’s motion for summary judgment was denied by the trial court. The Defendants took an interlocutory appeal, as permitted by Texas law, and the San Antonio Court of Appeals reversed and rendered the trial court’s denial of summary judgment, holding: (1) the allegations

failed to establish trespass, invasion of privacy, abuse of process or tortious interference; (2) the statements made during the broadcast were not actionable but were either rhetorical hyperbole, opinion, assertions of non-verifiable fact, true or substantially true; (3) the plaintiffs were public figures who were required to prove the alleged defamatory statements were made with actual malice; (4) the broadcaster's statements regarding the former officers and directors involvement in savings and loan association scandal and the RTC's failure to sue them were not made with actual malice; and (5) questions posed and statements made by the television broadcaster during the news gathering process were not actionable. *ABC v. Gill*, 6 S.W.3d 19 (Tex. Civ. App. - San Antonio 1999, writ ref'd.).

During the pendency of the interlocutory appeal,<sup>1</sup> the case was tried to a mock jury in Texas. The following is a report of the mock jury's findings, observations and comments during deliberations that were videotaped and recorded.

### **BACKGROUND FACTS**

In 1994, ABC correspondent Robert Krulwich ("Krulwich"), and two producers for *Day One* became interested in a public controversy surrounding the RTC that ultimately included the Plaintiffs. The investigation included interviews of over 80 sources, and reviews of voluminous documents from public libraries, government agencies and courthouses. The sources included current and former employees of the RTC, former officers and employees of many Texas savings and loans, regulators from both federal and state governments, accountants and lawyers from the public and private sector, and other persons who were in a position to know the inner workings of the RTC, the causes of the savings and loan crisis and details of individual savings and loans, such as GSA. Among the many interviews, ABC interviewed an attorney in the

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<sup>1</sup> ABC, a media defendant, was entitled to an interlocutory appeal based in part on its defenses arising under the First Amendment and the free speech clause of the Texas Constitution and the law of libel under Texas statute. Tex. Civ. Prac. & Rem. Code §51.014 (a)(b).

Professional Liability Section of the Dallas office of the RTC who explained the problems that he and others had encountered at the RTC when they attempted to vigorously pursue cases against former insiders of failed savings and loans. Among the complaints raised by the attorney was the failure of the RTC to follow the “money trail.” To illustrate the point about the RTC’s lack of diligence, the attorney focused on fifty Texas banks where, for the most part, despite extraordinary losses, the RTC engaged in almost no effort to recover money from the insiders in these institutions.

ABC learned during its investigation that the criticism of the RTC was wide-ranging in that it focused not on a single institution but on an entire state. ABC’s investigation into the RTC’s performance included how the RTC handled a number of failed thrifts, including GSA among others. GSA pushed to the forefront of ABC’s investigation when ABC learned that the RTC’s examination of the potential liability of GSA’s former officers and directors had progressed much farther than the RTC’s investigations into other institutions. ABC learned that the RTC had obtained authority to sue certain former officers and directors of GSA; that there was a draft complaint, and that normally a lawsuit would follow immediately after such approval, but no suit against the former officers and directors of GSA had been filed. A memorandum authorizing suit against GSA stated that the top officers and directors at GSA, including Plaintiffs, had engaged in “negligent mismanagement,” “fraudulent lending practices,” “self-dealing,” “insider abuse,” received “excessive compensation” and made loans “negligently and imprudently...without full and current appraisals.”

Based on its research ABC concluded that the performance and success (or lack thereof) the RTC had in Texas involved a matter of important public interest and concern. Further, ABC’s investigation showed that GSA and its insiders played a pivotal role in that matter and,

indeed, were part of their own preexisting public controversy. The focus of the broadcast was on the RTC and the magnitude of the national loss (\$500 billion) and the size of the loss in Texas and not on the Plaintiffs. The broadcast, insofar as it related to GSA, discussed the fact that an RTC investigation for the failure of GSA had occurred; that the RTC itself had determined that insiders of GSA were culpable; that the filing of a civil suit had been approved at the highest levels by the RTC; that Plaintiffs Christopher Gill and his wife had been found by the RTC to have substantial assets, and the existence of assets during the relevant time period had been confirmed by ABC; that at least one former RTC official and a U.S. Senator suspected politics played a role in the RTC investigation of GSA and other Texas institutions; and that the U.S. Senator specifically had concerns why no civil lawsuit had been filed after the investigation of GSA. The broadcast also mentioned the fact that a criminal case had been brought against officers and directors of GSA but that the criminal case had been dismissed by the court.

#### **THE COMPLAINED OF STATEMENTS**

Plaintiffs, the Gills, complained of the following statements in the broadcast claiming the statements directly accused them of making bad loans and losing taxpayer money, indirectly accused them of stealing a million dollars and were made with actual malice:

1. *While Washington talks about cutting school lunches, big shots are living high ... after losing tens of billions of your tax money. What's worse, we can't get it back. If this doesn't make you mad, you're not paying attention.*
2. FORREST SAWYER, ABC News: [voice-over] *A story that will make you see red- about big shots living high after losing billions of your tax dollars.*
3. ART LEISER: *You talk about, "Well, the government's going to lose \$500 billion." That's us! That is you and me.*
4. BILL DePUGH: *As a taxpayer, I figure I got screwed. Again.*

5. FORREST SAWYER: *Robert Krulwich uncovers a shocking new twist in the biggest financial scandal in U.S. history.*
6. DIANE SAWYER: *Remember when we were all up in arms in this country about the savings and loan scandal its combination of wild lending greed and in some cases I guess bad luck?*
7. FORREST SAWYER: What a scandal it was. At the end of the day, it could cost us \$500 billion. You know, the *government* told us they were going to set up the Resolution Trust Corporation, the RTC, to collect at least some of that money and *go after the bad guys.*
8. DIANE SAWYER: And it's now been six years. The term of the RTC is about to run out. And a good time, I think, to go back and look and see what it accomplished.

FORREST SAWYER: Exactly what we've done. *We went to Texas, the state where*

*American taxpayers lost at least \$25 billion.*

9. FOREST SAWYER: *Now, so far in Texas, the RTC has recovered only about one tenth of one percent from the people who ran those institutions and were responsible for all those bad loans.*
10. *What went wrong?*
11. Well, we sent Robert Krulwich to San Antonio to find out.

ROBERT KRULWICH, ABC News: This used to be San Antonio Savings. They lost more than a billion dollars here. And this used to be Bexar Savings. They lost \$686 million here. And this place is Gill Savings. It went bust and lost \$1.4 billion. That's one thousand, four hundred billion dollars.

[voice-over] And since Gill had the biggest losses here we wondered how the RTC handled the Gill case. *Gill Savings was founded 20 years ago in Hondo, Texas, when the Gill family bought out a small town S & L called Medina Savings.*

JACKIE WINKLER: *The Gills were those were the rich city folks.*

12. You know we're—were talking about Hondo, Texas, population 5,000, and they were just a different breed from from the folks here in Hondo.
13. ROBERT KRULWICH: [voice-over] *Jackie Winkler of Hondo remembers that once the Gills took over the S & L, suddenly its loan portfolio began to grow.*
14. Under the direction of *Christopher Gill, who declined to be interviewed for this broadcast*, Gill Savings went from a mere \$9 million in assets to a spectacular \$1 billion.
15. JACKIE WINKLER: You know, *when you take it from \$9 million to a billion in just a very few years, [it] things can't grow healthy and grow that fast, right?*
16. ROBERT KRULWICH: Well, apparently, that is right, at least according to this in-house document, a memo prepared by the RTC's own lawyers and investigators and obtained by Day One.

[voice-over] *The memo focuses on three loans and claims top officers who ran Gill Savings engaged in "negligent mismanagement," "fraudulent lending practices," "self-dealing," "insider abuse," "excessive compensation." Investigators concluded that those loans were 'negligently and imprudently made without full and current appraisals.*

17. [interviewing] *So if the Gills were making loans without appraisals -*  
ART LEISER: *They were violating the law.*

18. ROBERT KRULWICH: [voice-over] Art Leiser was chief bank examiner for the state of Texas for 16 years.

[interviewing] Why *didn't* somebody say, "Hey, you can't do this"?

ART LEISER: *We did.*

19. ROBERT KRULWICH: *What'd they do?*

ART LEISER: Well, *they subsequently went broke.*

20. ROBERT KRULWICH: [voice-over] And then, as happened all over Texas, teams of RTC investigators moved in.

1st RTC OFFICER: You may have guessed why we're here.

ROBERT KRULWICH: [voice-over] The RTC took over 137 S & Ls in Texas.

2nd RTC OFFICER: I'm Larry Long. I'm the managing agent of the Resolution Trust Corporation.

ROBERT KRULWICH: [voice-over] They seized all records of loans and transactions.

3rd RTC OFFICER: Well, yeah. We'll probably need to lock up things at night.

ROBERT KRULWICH: [voice-over] They secured the buildings and then they were supposed to find and sue those responsible for the losses and get money back for the taxpayers. The Gills say they did nothing wrong, but the RTC's team listed seven pages of allegations against the officers of Gill Savings and asked for authority to sue. Top RTC officials reviewed



the claims and the filing of a civil lawsuit was approved by all of them. *The Gills were never sued.*

21. [interviewing] *Why didn't the RTC sue the Gill family to-*

TOM HINDES: I'm not going to-

ROBERT KRULWICH: *-recover money for the taxpayers?*

22. TOM HINDES: I'm not going to talk about specific cases.

ROBERT KRULWICH: [voice-over] In Washington, Tom Hinde is the RTC's lawyer in charge of recovering money from S & L wrongdoers. Often, he says, these lawsuits aren't worth pursuing.

TOM HINDES: Directors and officers are not the people with the most resources.

ROBERT KRULWICH: But they're the guys who did it. They're the ones who did it.

TOM HINDES: Well, they're not the only ones who did it.

ROBERT KRULWICH: But they're the they ran the banks. They made these loans. They lost our money. We should get it back.

23. TOM HINDES: If you stole a million dollars from me and then you spent it and you don't have any money I mean, I can sit here and say, "Well, I should get that million dollars back."

ROBERT KRULWICH: But you're not saying that all those people are impoverished now.

TOM HINDES: I'm not saying all of them are impoverished and where the resources are there to pursue a cost-effective and a valid claim, we pursue those claims.

*Gill*, 6 S.W.3d at 29-34.

24. *Well, were the Gills too poor to sue?*
25. *We checked and discovered that after Gill Savings went broke, Christopher Gill and his wife still owned or were partners in the Butterfield apartments, the Spanish Main apartments, Walnut Grove apartments, Briarbend apartments, all of the Austin-San Antonio area. They also had a vacation home in Beaver Creek, Colorado, a posh ski resort outside of Vail, not to mention another vacation home on the Texas Gulf coast, a 2000-acre ranch and a residence in the most exclusive part of San Antonio.*
26. *And the memo shows the RTC itself determined that Christopher Gill had at least \$37 million.*
27. *So they had money.*
28. ROBERT KRULWICH: [voice-over] . . . *So why didn't the RTC sue?*

SHARON HOWARD: *Well, I can't believe it just fell through the cracks so I have to believe that there was some other kind of pressure brought to bear.*

ROBERT KRULWICH Attorney Sharon Howard was part of the RTC's money recovery team in Dallas and *she smelled politics.*

29. SHARON HOWARD: *What makes me think that there may have been some political motivation is the fact that the major complex cases were*

*being retained in Washington and those cases somehow, from the ones that I've seen, particularly from San Antonio, the cases were not pursued.*

ROBERT KRULWICH: *So somebody wanted those cases back in Washington.*

SHARON HOWARD: *Uh-huh.*

ROBERT KRULWICH: *And somebody who got them back in Washington didn't prosecute them.*

SHARON HOWARD: *Right.*

30. BILL DePUGH: *Things are delayed. Things are set aside. Certain tasks are not done that might lead to certain people.*

31. ROBERT KRULWICH: [voice-over] *Bill DePugh had been a government investigator for more than 30 years. Once chief of criminal investigations for the IRS in Manhattan, he had now become the RTC's head of investigations in Texas and he, too, was suspicious of his own bosses.*

BILL DePUGH: *They wouldn't give us subpoenas. They wouldn't answer phone calls.*

*They lied to us. I mean, you've figured, "What's going on here?"*

ROBERT KRULWICH: [voice-over] *Well, one thing wasn't going on. The RTC never issued a single subpoena in its investigation of the Gills.*

32. *The memo shows they did not demand to see the Gills savings accounts or certificates of deposit or stocks or bonds.*

33. *And DePugh says this happened in case after case.*

BILL DePUGH: *Now, if we have subpoena power and do not use it to follow that money trail and find out where the assets are hidden or where they went or how they got there, we're not doing our job.*

34. TOM BURNSIDE: I mean, one of the big things that you had to do in Texas was you had to figure out "Where'd the money go?"

ROBERT KRULWICH: [voice over] Tom Burnside left a good corporate law job in St. Louis and worked side by side with Bill DePugh in Dallas. He, too, says subpoenas are essential to getting money back.

TOM BURNSIDE: *The people that were running these institutions are smart people. They're not going to leave notes in their files saying "Ha, ha! I took the money and this is where you're going to find it."*

35. ROBERT KRULWICH: [voice-over] But in Washington, Tom Hinde says subpoenas aren't always necessary.

TOM HINDES: We have ability to determine whether people have assets or not without using subpoenas.

ROBERT KRULWICH: [voice-over] He says that, at first it was not clear the RTC had been given full subpoena power by Congress, so they decided to use them very sparingly.

[interviewing] *You were going to go out and look around for documents and everybody would just hand them to you. "Here, take my financial statements. Here, look through my bank account. Here, find out all my stocks and bonds. Here, check all the things that I have hidden in my house." No one's going to do that.*

36. TOM HINDES: Well it may surprise you to know that there are a lot of people who do that.

Sen. JOHN KERRY, (D), Massachusetts: The results of this lack of subpoena were catastrophic.

ROBERT KRULWICH: [voice-over] Last year when Senator John Kerry asked about the lack of subpoenas in Texas, the RTC reported back it hadn't issued a single subpoena in about two thirds of its failed S & Ls.

Sen. JOHN KERRY: There's a pattern of avoidance here that raises very serious questions about whether or not there was political influence.

37. ROBERT KRULWICH. [voice over] Senator Kerry has taken a particular interest in the Gill case.

Sen. JOHN KERRY: Well I took an interest in that case because it is one of those cases where you have a very significant loss, but also because there was a criminal investigation.

ROBERT KRULWICH: What happened in the criminal proceeding?

Sen. JOHN KERRY: *In the criminal proceeding, there was some presentation of evidence to a judge.*

38. *He found there was insufficient evidence for a criminal finding and so that was dismissed.*

39. ROBERT KRULWICH: [voice-over] But Senator Kerry wondered why didn't the RTC simply file a civil suit for money, a much easier standard?

Sen. JOHN KERRY Oh, a much easier standard. A much easier standard and a clear standard to be able to try to recoup some money.

ROBERT KRULWICH [voice over] *But by the time the judge dismissed the Gills' criminal case the time to sue had run out.*

40. [on camera] So no court ever got the chance to decide if the Gills owe the taxpayers money and, as of this moment, except for one settlement with a Gill lawyer, the taxpayers got nothing back in the Gill case.

*Gill*, 6 S.W.3d at 39-42.

### **THE MOCK JURORS' IMPRESSIONS**

Thirty-four mock jurors were selected based on a qualitative and quantitative analysis of the Bexar County, Texas jury pool to assure that the demographics and common psychological factors including moral, social, and political tenets were congruent with the anticipated Bexar County jury panel. The jurors were shown the *Day One* broadcast at issue and afterwards the attorneys presented abbreviated case-specific presentations. Following the attorneys' presentations which included live testimony, videotape depositions and documentary evidence, the jurors were divided into three groups and asked to deliberate over five specific questions in a

modified jury charge. Below are the questions, the votes, and excerpts of the jurors' comments during deliberation of each of the five questions.

**Question # 1:**

**Do you find that the broadcast by Defendant was defamatory and false toward the Gills?**

Answer: Yes     2                          No     34    

**Comments**

"I'm not quite sure from the evidence."

"It just didn't sound quite right."

"Did they go out and nail this guy to the wall and have him lose his house and home? Or did they give you a story and let you make up your own minds what was going on in the story?"

"I think the way the story was portrayed was about how they stressed, for example, they said, 'One year. How can this company make so much money? They stressed that, and another part was that the producer was saying —maybe I have too many reasons, but I think they could have been more neutral and portrayed this story better."

"In judging the Gills and the broadcast, you have to guide what the broadcast was about. My opinion was that it was about the RTC and how it was retaining the money of the taxpayer. Well, here's a case, it happens to be the Gills, because they've been brought up time after time after time over a two year period before the show came on. They never said the Gills were guilty of fraudulent behavior. It said they seemed to be guilty. If you look at the evidence, I think they do seem to be. I'm not going to claim that the Gills are guilty or innocent. They never said they did those things. They gave representation of people who said they did that. That's the first amendment right. I have the right to say whatever I want but it has to be malicious, and I don't think that was their aim."

"I think its the way you tell the story, you can manipulate them."

"I think the limit was crossed when they were trying to make their witnesses testify in a certain way. Those aren't their words. They're actually putting wording in their mouths so they can manipulate the way the information comes out, and then push an opinion to be made by the viewer without giving them the whole information. It's one thing that they do fraudulent things, but there should be a limit on how much you, as a broadcaster, are going to push to get an idea across."

“I thought it was about the government and how they dropped the ball. I think Gill was in the wrong place at the wrong time.”

“People can say what they want its free speech.

“We can’t judge context because once you start putting a limitation on context, well, that gets into freedom of speech because how can you amend someone’s context and tone? You can’t do that. If there’s no maliciousness, it doesn’t matter.”

“I know for a fact that. . .I would sue if someone came on television and inferred to the point where it was not even arguable that I was a big shot, that I was a money spender.”

“I think it was true, the information that was given, the problem that the plaintiff has was the tone that was used to get across the truth. So there’s a difference in the tone you use to say different things. That’s mainly what the plaintiffs have a problem with. I am not pleased with the tone that was used to influence my opinion without getting more on the facts.”

“I agree with that, but that’s the context of television. The lawyer for the defense got up there and said, ‘It’s not about ratings.’ Please. Everybody out here is here to make a dollar.”

“I have a problem with the tone of the broadcast, and he says that is their prerogative. I think the story could have been told better.”

“This is a very complex trial. You can go on discussing things. Let’s focus on this question yes or no. Let’s define defamatory. Okay. This guy has a good reputation, but he’s actually being false about it because he’s not being honest in his business practice, and I think the evidence provided that it was true, not the tone of the interview, but just the facts.”

“Well, his reputation was already mined. They didn’t do it on purpose. It was already mined.”

“The defense lawyer took a statement in the broadcast regarding the Gills, and he went through all sixteen of these statements and said, “Is this statement true, yes or no? There is no truth or false in an opinion. If I feel sad right now, you can’t dispute that. If I have an opinion that somebody is a jerk, you can’t dispute that. He went through all of the statements, and none of them were false or defamatory, none would bring public hatred or whatever. That’s what libel is. These people who made a whole lot of money a while ago are trying to get more money because they feel these people who are representing the facts to you are wrong. He lost his right to defend himself when he would not let his statements be aired.”

“The fact bothers me that ABC walks away free—and I don’t believe that they were a hundred percent clean—you can say something bad by doing it or by not



doing something, and I think they didn't present everything that they could have presented to make a more balanced picture. I think in the end, the Gills probably still would have ended up stinking, but it would have shown another story where me, as a viewer, would have said 'That's pretty bad.' They walked away with all this money, but no court really found them guilty. So it kind of like doesn't give you the full picture."

**Question # 2:**

**Do you find that the broadcast in question, including reasonable implications therefrom or omissions of known facts, if any, falsely stated or implied that the Gills were guilty of wrongdoing with respect to the operation of Gills Savings and Loan?**

**Answer:      Yes          2                          No          34**

"They're stating that, did they leave out something or make the implication or did they intentionally, falsely imply something that is not true? Are they leaving out something that would pertain to accusing the Gills they were ripping off? Or did they put something in to imply that the Gills were guilty of?"

"We saw the broadcast and we heard the evidence, both sides of the story. Did we hear anything that showed us that they were guilty of wrongdoing with respect to the operation of Gill Savings & Loan? Did ABC falsely state or imply that the Gills were guilty?"

"I think it's also saying, 'Did we get any known facts when we watched everything that the lawyers presented? This is how we can judge this. We all saw the same thing when we watched to broadcast. Did any of us find anything in what they told us that showed us that the broadcast deliberately didn't tell us any facts they had in their possession?"

"I believe they truthfully stated the information they have and that the Gills were just the ones in the way. They concentrated on one. They probably weren't the only ones."

"I think that what ABC did was to say they're going to expose the problem, and the thing around was that with what Congress and the Gills would be discussing; and Anderson came out with a strong article. So it's something that has already been exposed to the public. Then they start digging and digging and they come out with a bunch of facts; and from what I heard from the lawyers, they did the job, the homework and all of that, and they came back with those people paying millions of dollars. They were paying with our money."

"To me, in the show we saw, it seemed like a vicious attack like someone was trying to rip them apart, and they were just trying to follow up with something that is already going on; and they thought there was something sketchy over there, and then they brought it to the public. The public opinion will get the last word,

and to me, let's face it I don't care how many friends they have up there. They were wrong, and they had to pay the price."

"For me, it's kind of a mixed bag. I don't think ABC was totally fair in presenting both sides. They tweaked the picture they wanted to present. I think--in the end after you turn everything away, they told the truth. It could have been a more balanced view of what occurred. Again, it's after you peel everything away, you're left with, 'Yeah, it was true.'"

"I think they made up some of the stories."

"I think they may have made something up. I think the context of the story was fabricated."

"The only thing I can judge is that the television program did a pretty good job in a short time and showing what was going on in the whole banking industry. It was a revelation to me. I'm not blaming them, but I know that that's going on out there with other people, too."

**Question #3:**

**Do you find by clear and convincing evidence that the Broadcast was broadcast by Defendant with actual malice?**

**Answer:      Yes          0                          No          36**

"I don't think that they were acting maliciously when they were broadcasting because they have all the facts. . . . nowadays when you broadcast a story and it's not true, you're opening yourself up to a multi-million dollar lawsuit; and ABC having all of these lawyers and such they have to be very, very careful when they open their mouths and start mouthing off comments."

"I don't think ABC . . . just set out to get the Gills. They didn't run their program saying: 'We're going to get this man, and we're going to slam them.' They were giving informative information. They were giving facts. I don't think the heads of ABC said, 'We're going to do this to come out and give them a bad name.'"

"If you said 'yes,' you would be saying that they only ran that program to get the Gills and they didn't do that."

"They couldn't expose the whole thing. That's why I feel they used the Gills as an example, not that I'm saying that it was right, but I feel that's the reason why they did it was so they could show the whole corruption all the way down to the government."

"Malice is based on false information. They have substantiated facts."

"There were facts behind this."



should pay at least somebody something to try to put a stop to the way they manipulate and give that information to the public.”

“A \$100 million to ABC. They have to pay the Gills.”

“They shouldn’t get fined for it. They did their investigation.”

“This is asking about a punishment to ABC, I think for some of the questions raised before like taking things out of context and making things sound like they come from different questions, that’s not right.”

“I don’t know how much to assess them.”

“On this, you’ve got to consider how much money ABC brings in.”

“So now you’re wanting to fine ABC for being rich?”

“Well, who gets the money?”

“Well, somebody has to pay the court costs for some of this too.”

“My first impression was the Gills were not defamed. They may have had a bad reputation. I thought they dressed it up a little, but what was more important to me was that this government funded and government organization that was supposed to get my money back, they didn’t try. They didn’t do anything. I didn’t make an assumption but the facts were there.”

“When you punish ABC, you’re rewarding the Gills. They may have done this before, but you can’t punish them.”

“This does not say they’re going to pay the Gills. It just says against the defendant.”

“But you can’t do that. We said they didn’t falsely state anything. We said they didn’t do it with malice, and they didn’t deserve any damages. It should be zero.”

## CONCLUSION

In Texas, the S & L failures and debacle wreaked havoc throughout the state’s economy, affecting nearly every sector. Thus, the S & L owners and directors did not come in with the typical plaintiff halo and sympathy. Nonetheless, there was a decided anti-media prejudice among the jurors. The jurors’ votes of no liability and no damages to the Plaintiffs are of little comfort given the fact that several participants felt the facts had been manipulated; the broadcast,

although true, was biased, negative and implied the Gills were guilty; and, that a message should be sent to the media and ABC should pay “somebody.” Several common themes can be gleaned from the jurors responses, among them include:

- The broadcast was biased.
- The media has a responsibility to produce an unbiased product.
- The broadcast was true and accurate.
- ABC did not damage the Gills.
- ABC’s conduct in preparing, interviewing witnesses, producing and reporting the broadcast was not done with reckless disregard for the truth.
- The broadcast caused the viewers to conclude that the Plaintiffs defrauded the American tax payers.
- ABC manipulated interviews.
- The tone of the broadcast was negatively biased against the Gills.
- The Gills reputation was already ruined.
- Interviews were manipulated.
- ABC should be sent a message.
- Who would benefit from an exemplary damage award?
- ABC did nothing wrong.
- ABC has deep pockets.

As one can see from the themes and actual comments, some of the jurors, while they seem at sea and baffled by the fundamental concepts and process, fall back on their own core values of what is right and what is not and whether they were being manipulated by the media. For example, with respect to libel by implication, some of the jurors resorted to their sense of whether the broadcast was fair and balanced, i.e. did ABC unfairly target the Gills and use them as an example, even though the facts as stated were true.

Regarding actual malice, some jurors clearly rejected the legal definition and instead held onto their preconceived notions that malice means malicious intent, ill will and to set out to “get somebody.” As for monetary awards, exemplary damages, such as the \$100 million suggested by one juror, are often completely off the wall and seemingly without basis. Not only is it apparent that some jurors did not understand the purpose of such damages but they did not seem to understand that the Plaintiffs, whom they had adjudged did not deserve damages, would be the recipients of such an award, if one were made.

In conclusion, it is of fundamental importance to remember that jurors do not necessarily understand, agree with or accept the legal concepts that they are being asked to decide. They bring into the deliberations their own prejudices and preconceived notions about how the media should present its stories. The fact that a broadcast may have wide audience appeal and ratings does not mean that the jurors will give it a pass when they are confronted with determining whether or not there is liability. Indeed, in the eyes of the jurors, success and profitability often work against the media defendant, particularly where damages are concerned. Perceptions of fairness, balance and lack of manipulation of the facts, not necessarily the truth of the underlying facts, are the principles that jurors repeatedly fall back to when confronted with this type of case.