

## **AVERY versus WEAPONIZED MEDIA & the Flawed TCPA**

On appeal to be submitted and ruled upon on July 29th, 2016 in the Fourth Court of Appeals in San Antonio Texas.

If Avery loses his appeal and a possible Texas Supreme Court appeal he will be forced to pay Hearst in-house New York Attorney fees, their costs and expenses for attending hearings in Texas.

The Texas Citizen Participation Act (TCPA) was passed in 2011 to discourage SLAPP suits or Strategic Lawsuits Against Public Participation.

But Avery claims he was the citizen in *participation* and *association* with others while Hearst was the *non-participant observer reporter of facts* about others that maliciously perverted the facts to **CREATE FALSE ENEMIES OF THE STATE** resulting in libel.

[www.PostWTC.com/avc.html](http://www.PostWTC.com/avc.html)

### **Synopsis of Avery vs. Hearst et al.**

Ronald F. Avery vs. Dylan Baddour, Hearst Communications, Inc., owner of the Houston Chronicle, HoustonChronicle.com and Chron.com.

Avery sued Defendants for falsely targeting him and a group of people meeting at his building in their mass media on the weekend of the 9/11 Memorial as part of the Growing Right-Wing Terrorist Threat now worse than Muslim terrorist.

The Defendants published an online article and a front page news article about a meeting Avery hosted at his bar five months earlier, i.e., it was no longer news. They saved the story five months to use on the 9/11 Memorial to show their readers that there is a real threat of domestic homegrown terrorism in Texas. Dylan Baddour was the reporter that attended the entire all day meeting and wrote the news article.

The lead photo in both the front page and online news articles showed a picture of a man wearing a jacket with a gold star and the words "Republic of Texas" at top and "Texian National" at the bottom. The caption below the picture said:

"All Texians have informally renounced their U.S. citizenship, as evident from **Ronald Avery's jacket**. Many members have formally renounced citizenship by filing Republic documents to Texas courts, which has no real effect. Most carry official Texian identification. Some have landed briefly in jail for explaining to law enforcement officers that they don't have a Texas driver's license because they are citizens of the Republic." (bolding added)

Problem: The man was not Ronald Avery nor did the jacket belong to Ronald Avery nor does Ronald Avery have such a jacket nor is Ronald Avery a member of the Republic of Texas.

The online article was titled "**Ever hopeful and determined, Texas secessionist face long, long odds.**" The front page story printed on Monday 9/14/2015 was titled "**Secessionist hopeful despite odds.**"

Problem: It is a known fact that the group calling themselves "The government of the Republic of Texas" and Ronald Avery, personally, are not secessionists and both have been publicly opposing secession for many years on their websites and in national publications and radio talk shows.

The third picture in the Chronicle online article showed a picture of Avery addressing the "Republic of Texas" with a caption below that said:

"In April, the Texian congress assembled beneath the blue-and-yellow flag of the old Republic, on the dance floor of the shuttered Silver Eagle Taphouse near the banks of the Guadalupe River in McQueeney. They follow a speaker list, and **members take turns at the microphone**. In this photo, **Ronald Avery** lists grievances with the U.S. including the 2008 bank bailout, NSA surveillance, the "police state" and "immoral wars." (bolding added)

This time the Chronicle got the right name on the right person in the photo but again claimed he was a member of the group not simply the host who addressed the group after the group's business was concluded.

The online article included hyperlinks to other articles and publications. The articles were all linked together based upon the falsehood that the "Republic of Texas" and Ronald Avery, shown as a member and host, were secessionists. The first linked article was titled "**Putin's Plot to Get Texas To Secede**." This article talked about a member of the "Texas Nationalist Movement," a rival group in Texas, going to Russia to meet with "**far right fascists**" and "**neo-Nazis**" to "rail against Western decadence." The sole mission of the "Texas Nationalist Movement" is to advocate and get the "State of Texas" to secede.

The next link was to a New York Times article titled "**The Growing Right-Wing Terrorist Threat**" which reviewed statistics they said supported the idea that homegrown anti-government types were now **more dangerous than the Muslim terrorist** in America. The next link was to a **Department of Homeland Security** publication that contained an "Intelligence Assessment" reporting on what they called the "**sovereign citizen extremist**." It reported that these extremist would "**drive violence at home, during travel and at government facilities**."

At the bottom of the online article the Houston Chronicle provides a blog where people left comments about the story. Two of the comments wanted the "Republic of Texas" members to be sent to GITMO to be given the "enhanced interrogation" because they are just like Muslim terrorist." This is a public written expression of hatred. Many others wrote expressions of public ridicule and contempt relating to what they thought was evidence in the article showing that the group was ignorant, incompetent, foolish, stupid, rash, gun crazy and the like.

Problem: The links were based on the group being secessionists which linked them to far right groups and fascist and neo-Nazis which further linked them to sovereign citizen extremist etc.

Defamation is communication that exposes a person to public ridicule, contempt and hatred. Libel is the use of words, material and graphics to defame a person. The material must be statements of fact, not opinion. And even if it is opinion it must be a reasonable conclusion based upon the facts. The material, parts or gist and sting must be false. The falsehood must be worse than the truth. The material must be understood to be about the claimant, or Plaintiff. The Plaintiff must have suffered some general or special damage as a result. The material must have been produced with malice or at least negligence.

Damage is presumed, or "per se," as a matter of law, when a person can show the material to be that which must produce public ridicule, contempt and hatred. The same is presumed as a matter of law when one can show actual written expression of public

hatred as the result of an article about them. Malice can be shown by the publisher's knowledge that the defamatory publication was false.

Avery claims Baddour should have known the "Republic of Texas" was not a secessionist group. Also, Avery informed the Chronicle that he was not a member of the "Republic of Texas" and showed evidence and reason why he and the "Republic of Texas" were not secessionists, the Chronicle reprinted the lie in their revision to their online story that said:

"This article has been edited to reflect the following information: In a photo caption accompanying this article about the Republic of Texas, **a secessionist organization**, the Chronicle incorrectly identified a man wearing a Republic of Texas jacket as Ronald Avery. Avery is not a member of the organization and was not in the photograph." (bolding added)

Avery's case was dismissed prior to trial on a Motion to Dismiss brought under the Texas Citizen Participation Act that was passed by the Texas Legislature in 2011. Under this act the defendant in any lawsuit, regarding a communication made about a public issue, can file a motion to dismiss and win if they can show that the Plaintiff does not have every element of a cause of action for defamation, and even if the defendant cannot, that the defendant has every element of a valid defense.

Avery has shown prima facie evidence for every element of a libel cause of action. Avery also cannot find any element of a valid defense for Hearst.

A very strange aspect to the case is that the **Trial Court Judge granted the motion but refused to grant attorney's fees which are mandatory when a Motion to dismiss under the TCPA is granted**. This is strong evidence that the judge did not take time to study the case or the act and simply treated it like any other type of case where attorney fees are generally disallowed.

**Avery believes the Defendants weaponized their media to make him a potential terrorist on the 9/11 Memorial weekend in 2015. He believes he has shown Prima Facie evidence of all elements of a libel case with per se defamation and general damage.**

The Chronicle believes they got the *gist and sting* of the article correct and that the truth is worse than any inaccuracy or falsehood they told. But if they are correct and Avery is a real terrorist threat worse than what they wrote **why did they wait five months to tell anyone?**

Avery believes the *gist and sting* of their article is false and defamatory causing damage per se.

Avery also believes that the **Texas Citizen Participation Act is flawed** protecting all "mass media" because all news men are educated and trained to not become involved in the stories they cover, i.e., they are not participants in the story but simply reporters of facts about people or citizens who are participating and associating in the public. The act makes a mere observer and reporter of facts into a participant in the action with full rights to distort facts and publish falsehoods. The act creates a short circuit in the ordinary judicial process that favors the media. It creates an unfair advantage for those who use the media in a negligent or malicious way. It goes against good journalism it is anti-journalism.

***Avery thinks the TCPA allows the full development and use of a WEAPONIZED MEDIA to punish the citizen for participating in community affairs, a function the act was created to protect.***

Ronald Avery  
7/10/16