

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TALK RADIO NETWORK, INC.)	
)	
Plaintiff,)	
)	
v.)	No. 03C 3167
)	
THOMAS V. LEAVITT <i>et al.</i> ,)	
)	
Defendants.)	

AFFIDAVIT OF THOMAS V. LEAVITT

1. My name is Thomas V. Leavitt. I make this affidavit in support of my motion to dismiss or change venue.

2. I am a resident of Santa Cruz, California. I grew up in California and went to college in California. I have never lived in or visited Illinois; as far as I can recall, I have not even changed planes at an airport in Illinois.

3. I am a professional computer systems administrator, and although I have worked for a variety of companies, none of them are based in Illinois. None of them compete with either Michael Savage or with Talk Radio Network. I do not own any property in Illinois, and so far as I am aware I do not have any investments in Illinois companies.

4. This lawsuit has been filed over a web site that I created to express my opinions about the bigoted and offensive commentary of Michael Weiner, who has become known as Michael Savage. Weiner lives in Northern California.

5. My web site is maintained on the World Wide Web at www.savagestupidity.com. I work on this site on my own time at my home in California. The site resides on a server in Santa Cruz, California. The site has nothing to do with Illinois. I created the web site in

approximately May of 2002. At the time the complaint was served, the last time I had updated the site to any extent was sometime in October 2002.

6. The site includes links to the web site of CafePress.com, which offers certain goods which are offered for sale. However, none of the goods have ever been sold to an Illinois resident coming from my site, and, in fact, the links for the sales of the goods have not been working for several months. The site also recommends several books that are carried by Amazon.com; although, in theory, I could get commissions when Internet users buy those books from Amazon.com on my recommendation, the minimum commission that is needed for me to start receiving payments is \$10, and apparently sales have not yet reached a high enough level for me to receive even that amount.

7. My site includes a few requests for donations to support the expenses of maintaining the site; I have received a few hundred dollars in such donations, much less than the cost of maintaining the site. However, I have no mechanism by which such donations can be made on my web site; donors must send me checks by snail mail, or they can use paypal.com or amazon.com to donate; most choose to donate anonymously. So far as I am aware, none of the donors was from Illinois. After I was sued, I added a request for donations to assist my legal defense; I have suggested to those people who have responded favorably to this request that they contact my lawyer's organization to make a contribution.

8. The complaint asserts that "defendants" have "copied radio broadcasts," "are unlawfully broadcasting 'The Michael Savage Show' through internet radio," and have placed previously broadcast "programs" of the Michael Savage Show, or "previously aired Michael Savage shows" on their web sites. I do not, in fact, have any such programs on my site. I have included some short excerpts from some of Savage's programs on my web site; at the time this

action was filed, most of them ran 30 seconds or less. The excerpts illustrate my contention that Savage is a homophobic, sexist, racist bigot whose slurs against Jewish liberals are as bad as those of the worst anti-Semite's. I kept the excerpts short because I understood that it was necessary to do so to meet the test for fair use under the copyright laws and I only wanted to make available the portions that would illustrate my criticisms.

9. The complaint alleges that the “defendants” have urged members of the public to boycott certain companies whose advertising supports Weiner’s show, and specifically alleges that “defendants” have expressly directed their boycott efforts at Culligan. Although my web site does urge a boycott of certain advertisers, my web site does not mention Culligan as an advertiser to be boycotted, and so far as I have been able to find, at the time the complaint was served, my site had never made reference to Culligan, and, in fact, did not include a single reference to Illinois anywhere on it. Nor was I aware of any contracts between Culligan and Talk Radio Network. I was not even aware that Culligan was advertising on Savage’s shows; I had not listened to the show for several months when the complaint was served.

10. Nor does my site urge anybody to boycott TRN’s advertisers. The focus of my site has always been on Savage himself and Savage’s show. Although I was aware that TRN syndicated Savage nationally, and that they sold advertising on his radio show, I never chose to highlight TRN's role in the process and I never urged a general boycott of TRN's advertisers or specifically named any advertisers as clients of TRN. In fact, I had no way of determining whether the advertisers I heard on my local radio station had purchased advertising through TRN or the radio station itself, and the third party who compiled the list of advertisers that I used did not make this distinction either. In my view, the relevant relationship was between the advertiser and the show – the syndicator was a generic entity that merely served to facilitate that

relationship and could easily be replaced. I did not intend to interfere with its relationships with any such advertisers.

11. I also do not have a list of the radio stations that carry Savage's show. Until I was served with the complaint, I was not aware that he was broadcasting on WBIG AM 1280 or WAIT AM 850 in Illinois.

12. The complaint alleges that my web site makes "false and malicious statements" about Weiner. To the extent that my web sites makes statements of fact about Weiner and the Michael Savage Show, I believe that the statements are all true, and most of them are documented by the excerpts of Savage himself speaking or of newspaper articles and other sources that are quoted on the site. Most of what I have to say on the site, however, simply reflects my opinion about Savage and about what other citizens should do about him.

13. Although my wife, Gunilla Leavitt, is associated with the web site, she has no responsibility for the content of the site. She does not choose any material to post. Her sole responsibility is artistic: she designed the site, and receives very occasional emails directed to the webmistress address listed for her on the site, but otherwise plays no ongoing role with it.

14. In addition to filing this lawsuit against me, TRN has filed an administrative proceeding under the Uniform Dispute Resolution Procedure, alleging that the domain name for our web site, www.savagestupidity.com, might confuse some of Savage's adherents into believing that my web site is sponsored by Savage. Under the UDRP's rules, he cannot pursue an administrative proceeding if he is maintaining a trademark lawsuit at the same time, and so he has assured the tribunal hearing his complaint that this action does not involve trademark at all. A copy of that filing is attached as Exhibit A.

15. I have examined the online records of the Oregon Secretary of State, Corporations

Division. Those records indicate that there is a company named The Original Talk Radio Network, Inc, whose headquarters are in Central Point, Oregon. The records indicate that corporation was previously named Talk Radio Network, Inc. There is another company named Talk Radio Network LLC that is headquartered in Grants Pass, Oregon. There is no listing for Talk Radio Network, Inc. headquartered in Grants Pass, Oregon. It is therefore not clear what company has sued me, and I question whether the company that owns the contracts that are at issue here is the plaintiff in this case. A copy of the corporate filing records is attached as Exhibit B.

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the foregoing is true and correct. Executed on June 6, 2003.

Thomas V. Leavitt