

DECLARATION OF JONATHAN AUTRY

I, Jonathan Autry, hereby swear and depose as follows:

1. I make this declaration pursuant to 28 U.S.C. § 1746 upon my personal knowledge of the facts. I am over the age of 18 and am competent to testify to the facts stated herein. I am a citizen of the United States and a resident of the Commonwealth of Virginia.

2. Dr. Ergun Caner has sued me for copyright infringement regarding 2 videos I posted on YouTube in Counts 1 and 2, and has sued Jason Smathers for 2 videos he posted on Viddler.com in Counts 3 and 4. The videos in Counts 1 and 3 are the same video.

3. At all relevant times to this cause of action, I resided in the Western District of Virginia. Since the filing of the Amended Complaint, I have moved to the Eastern District of Virginia.

4. Under username, Moses Model, I posted 42 videos of Dr. Ergun Caner on YouTube. I believed all videos were fair use criticisms of Dr. Caner and not copyright infringement.

The Counts 1, 3, and 4 Videos

5. Jason Smathers obtained the Count 1/Count 3 video, "Ergun Caner gives his testimony to US Marines in New River, NC" via the Freedom of Information Act (FOIA) from Marine Corp Air Station New River.

6. Jason Smathers also obtained the Count 4 titled "Ergun Caner trains Marines (base theater)" video through FIOA from the U.S. Marines.

7. Jason Smathers posted both the Count 1/Count 3 video and the Count 4 video to Viddler in 2010.

8. I posted the Count 1 / Count 3 video to YouTube in February 2012.

9. In the Count 1 and 3 video, Dr. Caner is seen speaking to Marines preparing for deployment on April 15, 2005. The video includes an introduction of Dr. Caner, a lecture by Dr. Caner, and then a question and answer session. In the video, Dr. Caner makes several false claims about his past.

10. The video is about one hour, sixteen minutes, and thirteen seconds.

The Count 2 Video

11. The video in Count 2, "Ergun Caner educated in Cairo, Egypt," had two sources.

12. The first source was audio from an appearance that Dr. Caner made in a vlog series on YouTube entitled "Go Chad Live" by then Liberty University student Chad Jarrett, a supporter of Dr. Caner's.

13. During the Spring of 2011, Mr. Jarrett produced a video of approximately ten minutes with a scene from Dr. Caner. It appeared that Chad Jarrett recorded a conversation with Dr. Caner after a class. Dr. Caner is sitting at a table and talks to Chad Jarrett while looking directly at the video camera. In the video, Dr. Caner states, "I am Ergun Caner, and you are watching *Go Chad Live*." This vlog was Dr. Caner's first appearance on YouTube after the controversy surfaced. In the wake of the controversy, Dr. Caner joked about running for President of Egypt.

14. To make the Count 2 video, I took about 28 seconds of audio from the video (Dr. Caner's joke about running for President of Egypt), followed by four repeats of a four second audio statement of Dr. Caner to Marines from the Count 1/Count 3 video that, "I didn't know anything about America until I was fourteen years old," and concluding with the video of that statement, and another nine second clip from that lecture to Marines.

15. During the audio portions, I posted text as commentary and criticism:

"Ergun Caner is running for President of Egypt"

"This may work well since he has claimed to have studied in Cairo."

"Then again he also made according to Liberty University..."

"Dr. Caner has made factual statements that are self-contradictory."

"...found discrepancies related to matters such as dates, names and places of residence."

"Dr. Caner has cooperated with the board committee and has apologized for the discrepancies and misstatements that led to this review."

"Has he?"

16. The total video is about one minute and fifteen seconds.

17. I attributed the first 28 seconds of audio to Chad Jarrett, who gave me permission to use the audio.

18. I posted this video in the Spring of 2011.

My purpose

19. I posted both videos to criticize Dr. Caner.

20. I posted the videos as religiously-based criticism against a public figure on a matter of public concern. I posted the videos based upon my sincerely held religious beliefs. I am a born-again Evangelical Christian. I believe that it is morally wrong to lie, and especially wrong to lie in a church and to U.S. Marines who serve our country honorably.

21. I further believe that Dr. Caner is an unrepentant sinner who has lied to churches and the military about his background. Dr. Caner has been claiming that Liberty University exonerated him and stands behind him. I am particularly troubled by this because of Dr. Caner's leadership position in the Evangelical community, previously Dean of Liberty University's

seminary and now Vice President of Arlington Bible College. In addition, Dr. Caner still gives public speeches at churches and other religious events. I feel a close connection because he attended college and seminary at Liberty University, and in particular, attended the seminary while Dr. Caner was Dean.

22. When Dr. Caner's misrepresentations became public, I desired to expose Dr. Caner, a public figure, for his dishonesty. When Dr. Caner denied any dishonesty, I desired to expose the truth. Because of this, I posted the videos for a completely different purpose than Dr. Caner: to expose Dr. Caner for the dishonesty.

23. In particular, I blogged about the misstatements in the Marine videos and linked to the videos. I focused on the fact that Dr. Caner told the Marines that he lived in Turkey until he was fourteen years old—when in reality Dr. Caner's family moved to Ohio when Dr. Caner was only three or four years old. On the same note, Dr. Caner falsely claimed to the Marines that he learned American culture as a child through television because he was living in Turkey as a child.

24. I posted the entire Count 1 / Count 3 video so that blog readers could decide for themselves. In other words, without the unedited source, readers would not know if I took Dr. Caner's words out of context.

25. I did not post the videos to make money and believed that the production constituted fair use.

26. I have never to the best of my knowledge ever had any financial benefit from the videos that I produced for YouTube.

The Challenge to the Videos

27. On May 31, 2013, Dr. Caner filed takedown notices on 34 videos, and YouTube removed those videos. Even though Dr. Caner only challenged 34 of the 42 videos, I removed seven of the other eight videos from public view.

28. Copies of a video he contested, "Probably my only Ergun Caner gibberish video", continue to exist on other user's Youtube.com accounts uncontested by Dr. Caner.

29. On June 4, 2013, I filed a counter-notification on only three videos. I won the challenge to one video, but lost the other two.

My Attempt to Resolve this Case

30. On June 18, 2013, Dr. Caner filed his lawsuit alleging that I infringed his copyright as to those videos in Counts 1 and 2 and that Jason Smathers infringed his copyright as to two videos in Counts 3 and 4. As explained, the Count 1 and Count 3 videos are the same video.

31. I am currently an unemployed husband and father of three minor children, and lack the financial resources to pay an attorney for my defense, much less Dr. Caner's attorney. Joshua Autry, my younger brother, is representing me *pro bono* in the hope of recovering legal fees as a prevailing party.

32. Within two days of the original Complaint, I informed Dr. Caner's attorney through my attorney that I had removed the uncontested videos of Dr. Caner and would agree to not post any videos of him again in the future if he would drop this case.

33. Dr. Caner further requested that I sign a non-disparagement agreement, and I agreed to do so.

34. Dr. Caner asked me to voluntarily answer informal interrogatories, which I did.

35. Dr. Caner then requested that I make my wife and children—ages four, five, and seven—sign non-disparagement agreements. My wife and children have nothing to do with this case and never posted any videos about Dr. Caner. Dr. Caner apparently seeks to harass my wife for no reason other than her marriage to me and children for no reason other than their relationship with me.

36. Dr. Caner additionally requested that I turn over private correspondence, but I refused. My attorney informed Dr. Caner’s counsel that, so long as Dr. Caner has an active case against Jason Smathers, he could issue a subpoena to compel the production of such documents. Accordingly, there was no need to keep me in this case for discovery purposes only.

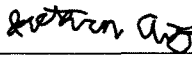
37. Dr. Caner informed me that he may follow this copyright suit with defamation lawsuits and with the likely outcome of bankrupting those involved.

38. Because all contested videos have been removed from Youtube, and I additionally agreed to remove uncontested videos as well as non-disparagement, I have offered to Dr. Caner more than he is requesting in this suit.

39. Despite this, Dr. Caner has continued with the lawsuit for apparently no reason other than to seek attorney fees that I cannot afford to pay.

40. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/26/2013
Date


Jonathan Autry