

V. Facts

9. This case presents the novel issue of whether a criminal defendant indicted for felony evidence tampering may call a press conference for the specific purpose of disparaging the character of the grand jurors who indicted him—and then invoke the protections of grand jury secrecy to prevent the jurors he attacks from defending themselves. Plaintiffs ask the Court to declare that the civil privilege to respond to defamatory attacks supersedes grand jury secrecy under the unique facts of this case.

10. After being summoned by the sheriff to appear before the 263rd District Court on August 6, 2007, and after appearing and being duly qualified and selected, Plaintiffs were sworn in as members of a Harris County Grand Jury to hear cases and vote on felony indictments arising in Harris County, Texas, until November 2, 2007. Plaintiffs were administered the following oath:

You solemnly swear that you will diligently inquire into, and true presentment make, of all such matters and things that shall be given you in charge; the State's counsel, your fellows' [counsel] and your own, you shall keep secret, unless required to disclose the same in the course of a judicial proceeding in which the truth or falsity of evidence given in the grand jury room, in a criminal case, shall be under investigation. You shall ... leave [no] person unrepresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God.

TEX. CODE CRIM. PROC. art. 19.34.

11. At the expiration of Plaintiffs' regular term on November 2, 2007, Plaintiffs were engaged in an unfinished investigation regarding the June 28, 2007, arson of Texas Supreme Court Justice David Michael Medina's home at 3507

High Falls Drive in Harris County. The Harris County District Attorney prepared and presented to the 263rd District Court—and the 263rd District Court signed—an order purporting to extend the term of the Grand Jury until February 1, 2008.

12. After hearing evidence in the Medina case, Plaintiffs asked the District Attorney to procure and present certain additional witnesses and evidence. Over two months later, on about January 3, 2008, the District Attorney informed the Plaintiffs that he had “done nothing” to procure the additional witnesses and evidence requested. Then, in violation of article 20.19, the District Attorney urged Plaintiffs not to even meet to deliberate or vote on the Medina case.

13. Nevertheless, Plaintiffs followed what they believed to be their oaths and the law, and on January 17, 2008, at about 1:30 PM voted indictments against (i) David Michael Medina for evidence tampering; and (ii) Francisca Medina for arson of the home. When instructed to draw the indictments, the District Attorney refused, in violation of TEX. CODE CRIM. PROC. art. 20.20, which provides that the District Attorney “shall prepare all indictments which have been found, with as little delay as possible, and deliver them to the foreman.” The arson investigator of the Harris County Fire Marshall’s office eventually prepared the indictments, forcing grand jurors to remain assembled without lunch until 3:30 PM, when the indictments were finally ready for signature by the Foreman.

14. By 4:30 PM on the same day the indictments were handed down, local television stations were already reporting that District Attorney Chuck Rosenthal had stated publicly that the Medinas would not be prosecuted and that the indictments would immediately be dismissed without further investigation. At 9:00 AM on January 18, 2008, the indictments were dismissed by Hon. Brian Rains upon the motion of Assistant District Attorney Vic Wisner.

15. Later that same day, Medina attorney Terry Yates held a televised press conference. With Supreme Court Justice David Medina sitting at his side

approvingly, Yates attacked Plaintiffs as being “nutty,” “drunk with power,” “liberal activists with a grudge against conservative Republican judges,” and pawns of the Harris County Republican Party prosecuting a Republican vendetta against Rosenthal—embattled because of, among other things, a pending criminal contempt charge in U.S. District Court for evidence tampering. So inflammatory were the attacks on Plaintiffs that the headline in the Houston Chronicle on January 19, 2008, read, “TABLE TURNS ON MEDINA GRAND JURY,” with a subheading of “Lawyer wants 2 sanctioned after indictments in fire are dropped.” See Exhibit A. Above the fold on Page 1 of the Houston Chronicle, the friends, co-workers, professional colleagues, children, and grandchildren of the members of the 263rd District Court Grand Jury read this about Plaintiffs:

“They’ve made a mockery of the entire process,” [Medina criminal defense lawyer Terry] Yates said. “This is crazy. This is mindboggling, what this grand jury has done. This is more than a runaway grand jury. This is a grand jury speeding away in a Lamborghini.”

Those who watched television heard even more distasteful attacks—all clearly sponsored and endorsed by the criminal defendant himself.

16. Plaintiffs Robert C. Ryan and Jeffrey L. Dorrell criticized the haste with which the indictments were dismissed because Rosenthal could not even have known what the evidence was that he claimed was “insufficient.” On January 18, 2008, shortly before his press conference, Medina attorney Yates moved the 263rd District Court to hold Ryan and Dorrell in contempt and jail them for 30 days for violating their oath of secrecy by having criticized Rosenthal’s hasty dismissal of the Medina indictments. Medina attorneys argued that grand jurors violated TEX. CODE CRIM. PROC. art. 20.02, which provides in relevant part that a Grand Juror who discloses “anything transpiring before the grand jury...”

...in the course of the official duties of the grand jury shall be liable to

a fine as for contempt of the court, not exceeding five hundred dollars, imprisonment not exceeding 30 days, or both such fine and imprisonment. TEX. CODE CRIM. PROC. art. 20.02.

17. After the Medina indictments were dismissed, the grand jurors scheduled another session for January 23, 2008, and directed the Bailiff to issue several subpoenas for additional witnesses and evidence to be brought before the grand jury at that time. Anticipating that Plaintiffs would re-indict the Medinas, the District Attorney needed to find a way to stop Plaintiffs in their tracks. On January 22, 2008, it was “discovered” and brought to the attention of Medina’s criminal defense attorneys that there was a defect in the order of the 263rd District Court extending the grand jury’s term beyond November 2, 2007. The 263rd District Court then ruled that the defect caused the grand jury to have been unlawfully constituted after November 2, 2007, nullifying over 30 felony indictments Plaintiffs had handed down thereafter—including those of the Medinas. Thus, the District Attorney’s office successfully invoked its own Incompetence as both a sword and a shield to: (i) preempt the grand jury’s scheduled meeting on January 23, 2008, (ii) invalidate grand jury subpoenas issued to new Medina witnesses to appear that same day, and (iii) terminate the grand jury’s criminal investigation into the arson that destroyed the Medina home.

18. Eight members of the Grand Jury held a televised press conference on January 22, 2008, in defense of the attacks on their integrity. Even then, all grand jurors assiduously observed their oaths of secrecy in their deliberations and refused to reveal any of the evidence they considered, as they have ever since. Plaintiffs have been—and continue to be—deprived of a fair opportunity to defend themselves against the assault on their integrity by uncertainty involving the application and construction of TEX. CODE CRIM. PROC. art. 20.02 to the facts of the instant case.

19. Repeatedly accused of base and corrupt motives and hidden political agendas, Plaintiffs have been obliged to sit close-mouthed while an indicted felon and his attorney trumpet to media that the evidence was “insufficient” to support even any further investigation of the charges. On threat of fine and imprisonment under TEX. CODE CRIM. PROC. art. 20.02, Plaintiffs have been—and continue to be—restrained from responding to the attacks on their character by revealing how extensive the evidence of wrongdoing by Texas Supreme Court Justice David Medina actually was.