

# Jackson's Duel with Avery

By: John Allison, *Dropped Stitches in Tennessee History*, 1897

WAIGHTSTILL AVERY was the **most prominent man and the leading lawyer** in western North Carolina when Andrew Jackson came to the bar. At that time, and indeed from the time of the organization of the first court west of the Blue Ridge Mountains, Avery had the most extensive practice of any lawyer attending the courts east or west of the mountains. He began his professional life west of the Alleghenies with the organization of the first court in Washington County, and was therefore a well known and a highly reputable and highly respected lawyer before Jackson's appearance there.

Avery was born in Norwich, Connecticut, and was educated at Princeton, from which he graduated in 1766. He was a tutor in that college for a year, when he removed to Maryland, and studied law under Littleton Dennis. He emigrated to North Carolina, and was licensed to practice law in 1769. He encouraged education and literature, and was a most devoted friend of liberty. He led the bold spirits of his day in his patriotic county, and was a member of the state convention in 1775, at Mecklenburg, that declared for independence. The minutes of the proceedings show his zeal in the cause of liberty, and the confidence of his countrymen in his talents and integrity is proved by the important duties he was engaged to perform. This called down upon him the vengeance of the enemy; for when British Lord Cornwallis occupied Charlotte, the **law office of Colonel Avery was burnt.**

In 1775, he was a delegate from Mecklenburg in the state Congress at Hillsboro which placed the state in military organization. In 1776, he was a delegate of the same to the same, which met at Halifax and formed the state constitution. He was appointed one of the signers of the proclamation bills. In 1777, he was sent by the council of state with orders to General Williamson, at Keowee, South Carolina. He was appointed by Governor Alexander Martin (1777), with Brigadier General John McDowell and Colonel John Sevier, to treat with the Cherokee Indians. He was elected the first attorney general of North Carolina in 1777, which he resigned on account of his health, and moved to Burke County in 1781, which he represented for many years. Avery died in Burke County in 1821, after enjoying peace and plenty and the love and regard of his neighbors. He was at the time of his death the "patriarch of the North Carolina bar," and "an exemplary Christian, a pure patriot and an honest man." Such is the brief account given by the North Carolina historian, Wheeler, of the man with whom Jackson fought the duel at Jonesborough, which shows that Avery was no ordinary man.

Avery graduated from Princeton in 1766 and Andrew Jackson was born on March 15, 1767. **Hence, Avery must have been at least twenty years older** than Jackson. The records at Jonesborough show that Avery attended the various courts up to about the time Tennessee was admitted into the Union and that he was on one or the other side of nearly all the cases in the courts held there.

Parton, in his life of Jackson, gives an account of this duel, as detailed by Colonel Issac T. Avery, son of Colonel Waightstill Avery, and it would seem that this version of the affair ought to be accepted. It will be noticed, however, that Parton's account omits to state any fact or facts that caused or led up to the challenge – he merely states that the two attorneys were on opposing sides in a case at Jonesborough; that the cause was going rather against Jackson, that he became irritated, and that Avery rather exultingly ridiculed some legal position taken by Jackson, using language that was more sarcastic than was called for (as he afterwards admitted), which stung Jackson, who snatched up a pen, wrote a peremptory challenge on the blank leaf of a law book and delivered it then and there to Avery, by whom it was promptly accepted.

In my search after the facts, made years ago, among the old men of Washington and Sullivan Counties, I ascertained that Jackson fought **two duels at Jonesborough**. When I began my investigation, I had never heard of any except that with Colonel Avery; and therefore; when asking someone about the matter, I would say something to this effect: "What do you remember, or what have you heard, about Jackson's duel fought at Jonesborough?" The answer, four times out of five, would be: "Which one do you mean – the one with Avery, or the one fought in the hollow?" They nearly all remembered the fact that there were two duels, or said that they did; they recollected all about the duel with Avery, and that it was fought on the hill on the south side of the town (not on the north side), and that the other one was fought in the "hollow" (as it was then called) north of the town; but they could not recall the name of the man with whom the latter duel was fought, nor the cause of it. I suggested to some of them that probably there was no duel fought with pistols in the meadow or hollow, but that it must have been a plain old-fashioned fight with fists, as I had heard that the hollow in question was a favorite place for the fisticuff champions of the time to retire to and "fight it out fair." This suggestion was invariably met with ridicule at the mere idea of Andrew Jackson fighting with anything else than a pistol, a dirk or a sword; and I gave up the duel in the hollow with much regret at not being able to learn anything at all about it, beyond the fact that Jackson did fight one there, with someone whose name they could not remember, and the cause of which they had heard but could not recall.

The account of the duel between Jackson and Avery, as given me and as I heard it given by others, twenty, twenty-five and as far back as thirty years ago, by very old native-born citizens, agrees in the following particulars with that given by others: Jackson and Avery were opposing counsel in a suit being tried in the afternoon; the case was going apparently against Jackson's view and client; Jackson was exerting himself in an effort to escape from authorities relied on by Avery; and the latter did ridicule severely some legal position taken by his opponent. If, however, the account given me be a true one, as I have every reason to believe that it is, there is much that must be added to the foregoing, although it can be done briefly.

**Avery's favorite authority was "Bacon's Abridgement."** This he carried with him from court to court and from the tavern to the courthouse and back. It was always in his "green bag" and the latter, when not in his saddle bags, was in his hand or swinging from his arm. The book was carefully wrapped up in a piece of

buckskin, to preserve it from wear. Avery quoted from and referred to “Bacon’s Abridgement” in every case and on all occasions, and of course had done so on the trial of the case out of which grew the duel; and **Jackson had ridiculed** Avery’s pet authority, but had not said anything derogatory to his opponent as a lawyer or a gentleman. Avery, in his retort, grew sarcastic; he not only criticized legal positions taken by Jackson, but intimated pretty strongly that he did not know anything about the law of that case or of any other; and that he had much to learn before he would be justified in criticizing a law book written by anyone. This was enough to inflame Jackson, and it did. **Jumping to his feet, he exclaimed: I may not know as much law as there is in Bacon’s Abridgement, but I know enough not to take illegal fees!**” Avery at once turned to Jackson, and demanded fiercely to know whether he meant to charge him with taking illegal fees. Jackson answered, “I do sir,” and started to say more; but Avery, pointing and shaking a finger at his adversary, hissed through his teeth, “It’s false as hell!” whereupon Jackson immediately sat down, picked up a law book, tore a blank leaf from it, wrote a challenge, delivered it to Avery, bowed to him ceremoniously, and walked out of the courthouse. Avery seated himself, wrote an acceptance of the challenge, walked out of the courthouse and meeting John Adair, requested him to act as his second, and to deliver his note to Jackson. The latter, in the mean time, had met a friend, whom he asked to act as his second, and to whom he said that he did not wish to kill Avery; that Avery had interrupted him without hearing all that he had intended to say, which was that Avery had taken illegal fees because of his ignorance of the latest law fixing a schedule of fees, and not that he had done so corruptly. Avery’s manner and language were such as to prevent this intended explanation, which Jackson could not afford to make afterward without the probability of being suspected of fearing Avery, and that he (Jackson) would rather be killed by his antagonist than suspected of cowardice. Note: Attorneys fees at that time were fixed by statute, in both civil and criminal cases.

Jackson’s second (whose name I was never able to ascertain) unquestionably communicated to Adair, during the subsequent negotiations between them as to weapons, etc., the substance of what Jackson had said; and the two seconds determined that there should be no duel in earnest, or “shooting to kill” as one of my informants expressed it. This agreement must have been communicated to both principals, before they left the town for the “field of honor” as subsequent events clearly indicate.

Difficulties that led to a challenge and its acceptance, in the olden times, were rarely ever adjusted before the combatants arrived at the field. The distinguished duelists followed the custom on this occasion; and with their seconds and others who knew of the affair, went to the ground selected – the hill on the south side of Jonesborough, and not “the hollow” north of town. The distance was measured off, the principals stationed and the word given – and **Jackson and Avery both fired in the air**, to the great gratification of their friends.

The two principals approached each other with extended hands. While holding his recent antagonist by the hand, Jackson said: “Colonel Avery, I knew that, if I hit you and did not kill you immediately, the greatest comfort you could have in your last moments would be to have “Bacon’s Abridgement” near you; and so I had my friend

bring it to the ground.” Thereupon, Jackson’s second unrolled the package in his hand, which was about the size of a law book, **and out fell a piece of old, well-cured bacon!**

Parton, in a note appended to his account of the duel, says that there was a comic incident connected with it, which Jackson would not tell and Adair did not. The version here given was told by three different old men, in Washington County, years ago. They were Abram Gregg, Micajah Hodges, and John Fullmer, each of whom had been a soldier in the War of 1812, Gregg having been, I believe, a captain. The last time that I talked with Fullmer and Hodges on this subject was in 1879, and they were both clear in their recollections, without any consultation with each other, residing in different parts of the county, Fullmer on the Watauga River and Hodges on the Holston, eight miles distant.

The foregoing version of this duel is supported by the old court records at Jonesborough. Years ago I read and copied from the following entry: “Waightstill Avery having for want of Acts of Assembly Crept into an Error in Taking Two pounds instead of One pound Six Shillings and Eight pence Was by the Court freely pardoned at his own request.” It is also borne out by the fact that, when Jackson was President, this duel was mentioned to him by Samuel P. Carron, then a member of Congress from the district in North Carolina in which Colonel Avery died, whereupon the President, according to Parton, asked Carron, “Who told you about it?” General Adair,” was the answer. “Did he tell you what happened on the ground?” “No.” “Well then, I shall not,” said Jackson, laughing. This would indicate that the duel had had a comic ending, and not a comical beginning.

The other version of the duel, which I never heard in upper East Tennessee, agrees with the one before given, except in the following particulars. It was said that, in the course of the trial, Jackson was rather getting the best of Avery, and it was near adjourning time, and Colonel Avery, strange to say, had forgotten his green bag with “Bacon’s Abridgement” in it, when returning from dinner, he said to the court that he would produce next morning the authority in support of his position; that Bacon’s Abridgement would show how little the opposing counsel knew about the law in the case, etc. Next morning, Jackson went into Avery’s room during the latter’s absence, took the “Abridgement” out of the green bag, and substituted a piece of bacon about the size of the book, wrapped first in paper and then in buckskin which Avery used as a wrapper for his precious volume. When Avery came into court with his green bag; and proceeded to produce the authority, out tumbled the piece of bacon, in the presence of the court and the lawyers, as well as the spectators who had been invited to witness the fun. This practical joke so incensed Avery, that he challenged Jackson on the spot; the challenge was accepted, and the combatants immediately proceeded to the dueling ground, fired at each other, both missing, whereupon each expressed himself satisfied, and the affair ended. This latter version does not accord with what Jackson said to Carron about the comic incident, when he asked if Adair had told him what happened *on the ground* – not at the court house or before the duel.

I gathered from the old men alluded to above that public sentiment, as they understood, was rather with Avery at the time of the duel, as the people had more

confidence in his law knowledge that of “young Jackson” but they all believed both of them to be brave and honest, although Jackson was a “little too fractious.”

Did Jackson fight another duel at Jonesborough? I do not know; but it is certain that the three old gentlemen whom I have named, as well as others, **asserted most positively that he did.** When asked whom the duel was fought with, when it occurred, what caused it, etc., they could not remember; but they all agreed the affair took place in the “long meadow” as it was called (formerly the hollow) on the north side of town, and they all asserted that the duel with Avery was fought on the hill on the south side. Captain Abram Gregg was of the opinion that the duel occurred in the year after Jackson came to Jonesborough, which would fix it in 1789. He said that Jackson hit his man, but he was not seriously wounded, and soon recovered and left the community; that Jackson was not touched. It can be seen from this statement how the facts of the duel might have been forgotten, if it took place, as the other party to it left the country soon afterward, whereas Colonel Avery continued to attend the courts of Washington County for years after his duel with Jackson. This would naturally keep the matter fresh in the minds of the people, although Jackson left the county permanently about October or November 1790.

**Postscript: Avery County, North Carolina is named for Waightstill Avery**

Avery County is the 100th and last county formed in North Carolina in 1911, from portions of Mitchell, Watauga and Caldwell Counties. It is named for Waightstill Avery (1741-1819) who was a Colonel in the Continental Army during the Revolutionary War, a member of North Carolina state legislature, 1776, 1782-83, 1793, North Carolina State Attorney General, 1777-79; and a member of North Carolina state senate, 1796. It is characterized by rugged mountains including Grandfather Mountain, home to the Grandfather Mountain Highland Games & Gathering of Scottish Clans. It has the highest average elevation of any county in the United States east of the Rocky Mountains, reaching that of 5,964 ft. above sea level. Approximately half of the county lies within the Pisgah National Forest. There are many wild trout streams and ski resorts located within its boundaries. The population in 2002 was 17,526. The county seat is Newland.