

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

MICHAEL E. MANN, PH.D.,

*Plaintiff,*

v.

NATIONAL REVIEW, INC., *et al.*,

*Defendants.*

2012-CA-008263-B

Judge Alfred S. Irving, Jr.

**Defendant Mark Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct**

Pursuant to the inherent powers of this Court, Defendant Mark Steyn respectfully moves against Plaintiff Mann and his trial counsel for sanctions for bad-faith trial misconduct on the basis of presentation to the jury of evidence and testimony Plaintiff's counsel and Plaintiff Mann knew was false. Defendant Steyn requests (1) that Dr. Mann be precluded from presenting evidence of his grant-theory of damages and that all such evidence be excluded; (2) that Steyn's pending motion judgment as a matter of law be granted for all the reasons stated therein, as further supported by the exclusion of the false evidence; and (3) that Steyn be awarded his reasonable attorney's fees, costs, and expenses for the entirety of this litigation, or in the alternative for the duration of the trial, or at least the time taken at trial to address the false evidence.

In support of his Motion, Defendant Steyn submits the attached Memorandum, accompanying exhibits, and Proposed Order.

Dated: February 1, 2024

Respectfully submitted,

/s/ H. Christopher Bartolomucci

H. Christopher Bartolomucci

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*Assisting Trial Counsel for*

*Defendant Mark Steyn*

## Introduction

“Stunning.” That is the word this Court used to describe the conduct of Plaintiff Michael E. Mann’s counsel at trial on Monday, January 29, 2024. Trial Tr. (1/31/24 PM) 41. On that day, Plaintiff’s counsel presented to the jury evidence concerning Dr. Mann’s claimed loss of grant funding—evidence counsel knew was not true. Plaintiff’s counsel published to the jury an exhibit and elicited testimony from their client concerning Dr. Mann’s alleged grant loss. But, as Plaintiff’s counsel *knew*, most of the information on the exhibit was wrong, including information about the dollar amounts of the allegedly lost grants.

Plaintiff’s counsel knew that the evidence they offered to the jury was false because it was based on a 2020 discovery response concerning Dr. Mann’s grant-loss claim that counsel had been obliged to revise very dramatically just last year (2023). At trial on the 29th, Plaintiff’s counsel chose to present the wildly misleading and deceptive 2020 data, which counsel for Defendant Rand Simberg had to correct on cross-examination. The difference between the incorrect 2020 data and the corrected 2023 data was striking. This Court noted that “One entry was for nine million, and then it was significantly reduced to something a little over a hundred thousand.” Trial Tr. (1/31/24 PM) 45. On the tenth day of this jury trial, January 31, 2024, this Court asked the parties to address Plaintiff’s falsification of key damages testimony.

## Background

After twelve years of litigation, Dr. Mann’s damages case apparently amounted to lost grant funding: “You know, we’ve been very clear what our damages case is. And it is a loss of grant funding.” Trial Tr. (1/23/24 PM) 82:13–15. This Court has reiterated, time and again, its “concern” since “probably either last January, January of 2022, or prior, that [the Court] had seen very little documentary evidence supporting damages.” *Id.* at 82:23–83:2.

On January 24, 2024, Dr. Mann presented his case for damages. He testified that he had looked at the period four years before and four years after the alleged defamations. Trial Tr. (1/24/24 AM) 65:19–25. Dr. Mann testified that he had seven grants that were funded before the alleged defamations and two grants that were funded after. *Id.* at 66:1–12. The alleged amounts were \$3.3 million total before the alleged defamations, meaning “just under” \$1 million per year before the alleged defamations and “a little more than” \$100,000 per year after the alleged defamations. *Id.* at 66:15–23. The only evidence that Dr. Mann presented to support this testimony was a summary drawn on a paper pad by counsel. *Id.* at 68:19–70:5. The summary was admitted as Plaintiff’s Exhibit 116. *Id.* at 71:14–17.

Counsel for Defendant Simberg, Ms. Weatherford, rightly criticized Dr. Mann for merely throwing out a number and failing even to provide the names of the grants that he allegedly lost. Trial Tr. (1/24/24 PM) 67:17–69:2. She further emphasized on cross that Dr. Mann objected to the names of the grants as irrelevant. Trial Tr. (1/25/24 AM) 12:15–22. The only evidence he submitted on the grant funding issue was the paper pad summary. *Id.* at 16:11–19. Although he “know[s] every single one of the grants that’s depicted on” the paper pad summary, he “didn’t show it to the jury.” *Id.* at 16:20–17:2. He repeatedly expressed his “belie[f] that – that that will be – will come out during the course of this trial.” *Id.* at 17:3–20:14. But he admitted that he had not provided that information to the jury. *Id.* at 20:8–14.

Because Dr. Mann failed to put on a proper damages case on direct, he attempted to shoehorn it into redirect, and in doing so, he and his counsel deliberately put on false and misleading evidence of his grants. Dr. Mann’s counsel asked him whether he “remembere[ed] also last week Ms. Weatherford said that you had not showed the jury one rejected grant application?” Trial Tr. (1/29/24 PM) 20:9–25. He attempted to introduce a list of grants from Dr.

Mann’s 2020 discovery responses. The list of grants was immediately objected to and the Court invited Dr. Mann’s counsel to compare the proposed exhibit against the Court’s orders *in limine*. *Id.* at 21:1–26:19. Defendants opposed the admission of the exhibits. Ms. Weatherford noted that “the discovery responses in [Exhibit] 517 have been superseded,” but Dr. Mann insisted on discussing them and counsel for Dr. Mann, Mr. Fontaine, said that the supplemental March 2023 responses do not differ “substantively” from the chart in the 2020 responses. *Id.* at 27:5–22. In the face of Dr. Mann’s insistence on discussing the superseded discovery responses, Ms. Weatherford said: “You know what? Your Honor, your point is well taken on this. If they want to go ahead and show the old responses, we’ll deal with it.” *Id.* at 27:23–25. The Court questioned why this key testimony did “not come out during the direct,” and Mr. Fontaine responded that “[w]e decided that we were going to handle it on redirect.” *Id.* at 28:1–7.

Dr. Mann then testified *at length*—line by line, and grant by grant—about the false 2020 discovery responses, which he had blown up on a large board to draw the jury’s attention. *Id.* at 28:24–40:7. His counsel then moved the blow-up chart into evidence as Exhibit 117. *Id.* at 40:21. Mr. Fontaine noted that the exhibit was not original: “The graphics on the version that was provided were changed and it’s very, very small.” *Id.* at 40:21–25.

On re-cross, Ms. Weatherford impeached Dr. Mann with his 2023 discovery responses. *Id.* at 56:9–80:15. Dr. Mann agreed that he “made numerous changes to the grants that [he claimed] are at issue in this case.” *Id.* at 60:7–10. And he repeatedly placed the blame for the changes on his attorneys: “My lawyers actually put that information together...,” *id.* at 63:15–16 (stricken as non-responsive); “I didn’t make the change. My lawyers made the change.” *id.* at 65:13–14; “There’s information that had been transcribed incorrectly off of my CV by my lawyers.” *id.* at 67:21–68:3; “My lawyers help put this together based on information off my CV.” *id.* at 72:3–4.

Dr. Mann testified that “we made some mistakes,” *id.* at 68:9–10. He *and his counsel* were well aware of the errors in the evidence he submitted to this Court: “[T]here was that one proposal that was for \$9 million, and I believe I said to you guys, that’s misleading, because there wasn’t a \$9 million contract coming to Penn State. Penn State’s contract was much smaller than that. We should get the numbers right, even it actually would make a less compelling case for losing funding.” *Id.* at 81:3–10. Then, when it came time to present evidence to the jury, Dr. Mann and his counsel presented the more “compelling” \$9 million number instead of the “less compelling” \$100,000 number.

Dr. Mann made “errors” in a seven of the thirteen grants that he was “using as a basis to claim damages in this case.” *Id.* at 73:22–25. And even his 2023 responses contained further errors, falsely stating that he did not receive a grant when he received it a few years later after revising it. *Id.* at 74:9–23. Even after being presented with the blatant contradictions in his responses, Dr. Mann responded to Ms. Weatherford’s question that he had “not put forward anything other than [his] say-so” by doubling-down and testifying under penalty of perjury that “[w]e put forward the actual numbers. And the numbers tell a pretty devastating story.” *Id.* at 80:6–15. Dr. Mann hoped to paint a devastating story with his false evidence, and he did, but not for his damages case. No, the devastating story is of his credibility before the Court.

### **Argument**

Dr. Mann and his counsel engaged in bad-faith misconduct by introducing evidence they knew to be false for Dr. Mann’s damages case. He corrected his 2020 discovery responses (made under penalty of perjury) in 2023 (again under penalty of perjury), and then at trial moved the 2020 responses into evidence. He failed to correct the misleading and false nature of that submission, and testified under oath that he believed the 2020 numbers were misleading. Dr. Mann’s last-ditch

effort to rescue his case from dismissal for lack of damages evidence only underscored the lack of any causation evidence between his grant funding and the allegedly defamations, as well as his failure to show how less grant money for Penn State damaged *Dr. Mann*. His conduct and that of his counsel not only is a serious harm to Defendants who have been forced to wait twelve years for their day in court, and a profound insult to a jury required to take four weeks out of their busy lives to hear this case; it is an affront to this Court; and if left uncorrected, could harm the public's perception of the justice system and public institutions. It must be condemned and sanctioned.

Accordingly, Steyn requests that Dr. Mann be precluded from presenting evidence of his grant-theory of damages, that Steyn's judgment as a matter of law be granted for all the reasons stated therein, as further supported by the exclusion of the false evidence; and that Steyn be awarded his reasonable attorney's fees for the entirety of the twelve years this case has been dragged by Dr. Mann through the courts, but at the very least for the duration of this trial that seems to be destined for an ignominious end, and certainly for the time taken to address the false damages evidence.

#### **I. Dr. Mann's Presentation of False Grant-Loss Evidence Amounts to Misconduct.**

What Dr. Mann and his counsel did amounts to bad-faith misconduct. As this Court stated, "clearly, the plaintiff was aware that the jury was being presented with an exhibit that contained incorrect information." Trial Tr. (1/31/24 PM) 42. "And you wanted the jury to take that back to the jury room and deliberate on those figures." *Id.* Rule 3.3 of the D.C. Rules of Professional Responsibility provides that "(a) A lawyer shall not knowingly ... (4) Offer evidence that the lawyer knows to be false ...." *See Tibbs v. United States*, 628 A.2d 638, 640 (D.C. 2010) ("In the District of Columbia, as in every other jurisdiction of which we are aware, an attorney has a duty not to present false testimony to a court."); *Witherspoon v. United States*, 557 A.2d 587, 596 (D.C.

1989) (Ferren, J., concurring) (“Counsel is duty-bound not to offer evidence he or she knows to be false ....”). Dr. Mann is also responsible for the admission of the false evidence. He knew the 2020 information was false but did not say so on the stand when his counsel questioned him. The truth came out only on cross-examination.

Plaintiff’s counsel’s misconduct warrants a finding that counsel acted in bad faith. Yesterday, when the Court confronted counsel with their presentation of false and misleading evidence to the jury, counsel was unrepentant. Instead of owning what they did, lead counsel John Williams doubled down and asserted that they did not present false evidence to the jury. *See, e.g.*, Trial Tr. (1/31/24 PM) 43–44 (“Mr. Williams: No, Your Honor. Please. The numbers on the board were accurate. There had been earlier mistakes that were corrected, and that’s why we gave them the correct numbers.”). Counsel claimed that he was right and *the Court* was confused. *See id.* at 45 (Mr. Williams: “So I am sorry that there was confusion *on your part*, and we will certainly correct it.”) (emphasis added).

## **II. Dr. Mann’s Grant-Loss Evidence Does Not Prove Actual Injury or Support Any Claim for Damages.**

The misconduct of Dr. Mann and his counsel arose because Dr. Mann had no damages case and was trying desperately to show *some* evidence after Ms. Weatherford pointed out his flip-chart sketch was merely throwing out a few numbers with no basis to conclude which grants were allegedly lost and for how much. Dr. Mann’s desperation arose because *he has no actual injury* (a required element of the tort of defamation) *and no damages case*, as explained in Steyn’s motion for judgment as a matter of law. Dr. Mann has failed to show any causality between Steyn and Simberg’s articles and lost grant funding, and even if he had, the allegedly lost grant funding supports only monetary damages to *Penn State* and has no relation to damages to *Dr. Mann*.



In court on January 31, Mr. Williams, counsel for Dr. Mann, admitted that Plaintiff is not claiming that the two allegedly defamatory blog posts *caused* a decline in grant funding. Instead, Mr. Williams claimed there was a *correlation* between the posts and the decline. *See* Trial Tr. (1/31/24 PM) 28 (“Mr. Williams: It is correlation, Your Honor. And it does not have to be causation. You’re never going to get causation.”). But it is Defamation 101 (to borrow a phrase from Mr. Williams) that the plaintiff must show, as part of his case on liability, that the alleged defamation *caused* actual injury to him. *See* Superseding Pretrial Order at 24 (“To find in favor of the plaintiff, you must find [among other things] ... 3) that the plaintiff suffered actual injury *as a result*” of defendant’s publication of a defamatory false statement) (emphasis added). A plaintiff must also prove that damages were caused by the defamation. *See id.* at 35 (“A defendant is liable to pay damages only for the harm that defendant’s conduct *caused*.”) (emphasis added). Mere correlation, or a simplistic before-and-after comparison such as offered by the Plaintiff here, won’t do. Dr. Mann’s argument suffers from “the logical fallacy *post hoc ergo propter hoc* (after this, therefore because of this)”; “we do not infer that the rooster’s crow triggers the sunrise.” *See Arpaio v. Obama*, 797 F.3d 11, 21 (D.C. Cir. 2015). Since Plaintiff does not even contend that the blog posts caused a drop-off in funding, the evidence is not relevant. And even if the evidence had some marginal relevance, the probative value of the evidence would be outweighed by the unfair prejudice to Defendants from its admission.

The lack of damages evidence in this case is not surprising given the evidence introduced of Dr. Mann’s motives in bringing this case. The evidence shows that this case has never been about righting any actual harm to Dr. Mann, just subjective harm to his ego. Dr. Mann’s case has been about his desire to punish persons and entities with whom he disagrees and suppress ideas that he cannot completely stamp out in public debate.

Dr. Mann expressed surprise and frustration with the suggestion that he subpoena the grant-awarding entities who allegedly denied him grants on improper grounds, *i.e.*, the only witnesses who could provide non-speculative evidence into whether Steyn and Simberg's articles played any role in denying Dr. Mann any such grants. Had Dr. Mann really been damaged, he would not have hesitated to obtain the evidence he needs to show his damages. But regardless of his motive for failing to obtain the necessary evidence, he has failed to obtain it, and now he must live with the consequences.

### **III. Remedy**

Parties "should always remember that the Superior Court has the inherent authority to punish those who intentionally abuse the litigation process." *Gause v. United States*, 6 A.3d 1247, 1256 (D.C. 2010). "As old as the judiciary itself, the inherent power enables courts to protect their institutional integrity and to guard against abuses of the judicial process ...." *Shepherd v. Am. Broadcasting Cos.*, 62 F.3d 1469, 1472 (D.C. Cir. 1995). "The inherent power encompasses the power to sanction attorney or party misconduct, and includes the power to enter a default judgment." *Id.* at 1475. "Other inherent power sanctions available to courts include fines, awards of attorneys' fees and expenses, contempt citations, disqualifications or suspensions of counsel, and drawing adverse evidentiary inferences or precluding the admission of evidence." *Id.* Appropriate sanctions here are exclusion of all evidence relating to Dr. Mann's grant-loss claim, dismissal of Plaintiff's case, and an award of attorney fees.

Dr. Mann's bad-faith misconduct and that of his lawyers is severe and cannot be countenanced. Such conduct has an enormously detrimental impact on the litigation process, potentially leading directly to incorrect results—in this case, vastly overinflated damages. Their conduct has also required diversion of valuable trial and trial preparation time to respond to their

conduct in court and in this motion. Most egregiously, such conduct erodes public respect for the judicial system and, if not sanctioned, fosters mistrust of the judicial system and an accompanying loss of faith in the courts as reliable sources of justice.

It is for that last reason—the conscious assault on the integrity of justice—that falsification of evidence and false testimony constitutes serious misconduct and may be grounds for a malicious prosecution suit. However, those independent actions would not remedy the misconduct in *this* case. And this Court is not powerless to address the false and misleading evidence that has been presented in these proceedings. This Court’s remedies include dismissal, recovery of attorney’s fees, imposition of a monetary sanction, issue preclusion, or criminal contempt.

Although what Plaintiff’s counsel did here is worse than a discovery violation, the standard for discovery violations sets an appropriate floor for fashioning a remedy here. A court has discretion to strike evidence from the record and award attorney’s fees when a party fails to respond to discovery requests and attempts to testify to their content before the Court. *See Galbis v. Nadal*, 734 A.2d 1094, 1099, 1101 (D.C. 1999). “The Superior Court Rules empower the court to impose sanctions, including the exclusion of evidence, for failure to comply with discovery orders.” *Id.* at 1101; *see also Prisco v. Stroup*, 947 A.2d 455, 462 (D.C. 2008) (excluding evidence that party redacted and then refused to provide an unredacted copy of). When a court considers excluding evidence as a sanction for discovery violations, it evaluates five factors: (1) incurable surprise or prejudice to the opposite party; (2) incurable prejudice to party offering evidence; (3) whether failure to follow rules was inadvertent or willful; (4) orderliness and efficiency of trial; and (5) completeness of information before the jury. *Lowrey v. Glassman*, 908 A.2d 30, 34 (D.C. 2006). Among these factors, “a finding of willfulness ... would go a considerable way toward supporting the judge’s decision to strike ....” *Id.* at 35 (quoting *Abell v. Wang*, 697 A.2d 796, 803 (D.C. 1997)).

Applying these factors, a severe sanction is appropriate and necessary here. *First*, Defendants have repeatedly requested information on Dr. Mann's alleged damages, and he has resisted providing detailed information until *his own redirect at trial*, not even his direct testimony. And he has still failed to connect the grant money that indisputably flows to Penn State to his own damages, other than some unsubstantiated testimony that some portion of a summer salary is dependent on grant money. He has presented no evidence that he received less summer salary. No cure can permit Dr. Mann to offer this evidence he has resisted producing until trial. *Second*, Dr. Mann will not be overly prejudiced by excluding either his grant-theory under an issue preclusion theory or just this evidence of damages. Dr. Mann's entire theory suffers from severe causation deficiencies and he has not shown that less grant money affected him personally. *Third*, the evidence shows that Dr. Mann and his counsel were aware of the falsity of the evidence presented and willfully presented it to the jury anyway. *Fourth*, we are now entering the eleventh day of trial. Dr. Mann has already rested, and this is an ideal time to address his sanctionable conduct, exclude his false evidence, and grant the Defendants' judgment as a matter of law. There is nothing for the jury to do here, and forcing them to sit through another week of testimony will not change the fact that Dr. Mann has no damages case. *Fifth*, excluding Exhibit 517 would not affect the completeness of evidence before the jury. It should not have come in in the first place. Accordingly, Dr. Mann's false evidence should be excluded, and Steyn's motion for judgment as a matter of law should be granted.

If this case continues to closing arguments, Steyn will likely choose to highlight Dr. Mann's deception. As a well-known professor of evidence said, such arguments are entirely proper:

It has always been understood—the inference, indeed, is one of the simplest in human experience—that a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his

consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.

*In re Estate of McKenney*, 953 A.2d 336, 343 (D.C. 2008) (quoting II Wigmore, Evidence § 278, at 133 (Chadbourn ed.1979)). Steyn may make that argument regardless of this Court's decision on sanctions against Dr. Mann and his counsel. This Court should not, however, leave this matter solely to a question of credibility for the jury. The evidence should be excluded, and an appropriate sanction rendered to reflect the seriousness of the false evidence and harm to Defendants, the jury, this Court, and the public.

### **Conclusion**

Dr. Mann's falsification of key evidence on his damages theory is a serious harm to the defendants who have been forced to wait twelve years for this trial; it is an affront to the jury who has been required to take four weeks out of their busy lives to hear this case; it is an affront to this Court; and if left uncorrected, could harm the public's perception of the justice system and public institutions. It must be condemned.

Accordingly, Defendant Steyn requests (1) that Dr. Mann be precluded from presenting evidence of his grant-theory of damages and that all such evidence be excluded; (2) that Steyn's pending motion judgment as a matter of law be granted for all the reasons stated therein, as further supported by the exclusion of the false evidence; and (3) that Steyn be awarded his reasonable attorney's fees, costs, and expenses for the entirety of the twelve years that this case has been dragged by Dr. Mann through the courts, but at the very least for the duration of this trial that seems to be destined for an ignominious end, and certainly for the time taken to address the false damages evidence.

Dated: February 1, 2024

Respectfully submitted,

/s/ H. Christopher Bartolomucci

H. Christopher Bartolomucci

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*Assisting Trial Counsel for*

*Defendant Mark Steyn*

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

MICHAEL E. MANN, PH.D.,

*Plaintiff,*

v.

NATIONAL REVIEW, INC., *et al.*,

*Defendants.*

Case No. 2012-CA-008263-B

Judge Alfred S. Irving, Jr.

**(Proposed) Order**

Upon consideration of Defendant Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct, the memoranda in support thereof, and any opposition thereto, it is hereby:

ORDERED that Defendant Steyn's motion for sanctions is GRANTED; and it is further

ORDERED that all evidence of Plaintiff's grant-loss claim is hereby excluded; and it is further

ORDERED that Defendant Steyn is entitled to attorney's fees and costs in an amount to be determined; and it is further

ORDERED that Defendant Steyn's and Defendant Simberg's motions for judgment as a matter of law are granted.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
The Honorable Alfred S. Irving, Jr.  
Associate Judge

**Declaration of H. Christopher Bartolomucci in Support of  
Defendant Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct**

Pursuant to Rule 43(3) of the Superior Court Rules of Civil Procedure, I, H. Christopher Bartolomucci, declare as follows:

1. I am assisting trial counsel in this matter for Defendant Mark Steyn. I submit this Declaration in support of Defendant Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct. I have personal knowledge of the facts stated herein.

2. Attached is a true and correct copy of excerpts of the trial transcripts from January 23, 2024 (PM Sess.), January 24, 2024 (AM and PM Sess.), January 25, 2024 (AM Sess.), January 29, 2024 (PM Sess.) and January 31, 2024 (PM Sess.).

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

Dated: February 1, 2024

/s/ H. Christopher Bartolomucci  
H. Christopher Bartolomucci



**TRIAL TRANSCRIPT**  
**1/23/24, PM SESSION**  
**[EXCERPTED]**

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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:  
MICHAEL E. MANN, :  
:  
Plaintiff, :  
:  
v. : Civil Action Number  
:  
NATIONAL REVIEW, INC., et al., : 2012-CA-8263(B)  
:  
Defendants. :  
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Washington, D.C.

Tuesday, January 23, 2024

The above-entitled action came on for a jury trial before the Honorable Alfred S. Irving, Jr., Associate Judge, in courtroom number 518, commencing at approximately 1:30 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

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(Appearances continued on the next page.)

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Official Court Reporter

(Continued from the previous page.)

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Also present:

Melissa Howes (Power of Attorney for Steyn)

TABLE OF CONTENTSTRIALWITNESSESOn behalf of the Plaintiff:

MICHAEL E. MANN, Ph.D.,

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1 case are they making, what case are they making about  
2 grants?

3 And the only thing they say about grants that is  
4 still in this case is that the numbers went down. That's  
5 it. And so that is -- that's the issue. Because I'm very  
6 concerned about where this is going and about the jury  
7 continuing to hear about, you know, all of the benefits to  
8 more grant funding and about the journals and his career  
9 and all of the citations and everything, because that's  
10 clearly where they're trying to go with this. And under  
11 Your Honor's prior rulings, that should all be out.

12 MR. FONTAINE: Your Honor, I'm just trying to get  
13 context and, basically, the background in his CV. You  
14 know, we've been very clear what our damages case is. And  
15 it is a loss of grant funding. And there are aspects to  
16 that, nuances to that. And some of this information may be  
17 relevant to it. I think it's certainly appropriate. And  
18 it -- it goes to our damages case, which is loss of grant  
19 funding.

20 I don't think it's inappropriate at all. It's  
21 background and context. It's part of what drives science.

22 THE COURT: And just a preview of future  
23 questions, so then where are you taking this? Because I  
24 think that was yet another concern the Court raised,  
25 probably either last January, January of 2022, or prior,

1     that I had seen very little documentary evidence supporting  
2     damages. And so -- so, yes, I -- I will grant you that  
3     what you've been discussing thus far is --

4             THE COURT REPORTER: Your Honor, there's feedback  
5     that's going to interfere with the recording system.  
6     Sorry. I just want to make sure that's gone.

7             MS. WEATHERFORD: I think that might have been my  
8     cell phone next to the headphones. Apologize.

9             THE COURT: And so I'd like a preview of where  
10    you're going, because it does sound like you're giving much  
11    more than you've disclosed in discovery.

12            MR. FONTAINE: I'm just asking Dr. Mann things  
13    that are on his resumé. He can testify to that. The jury  
14    is entitled to know what the relevance of some of this  
15    stuff is. We heard some of it from Dr. Oreskes. It's part  
16    of science. So, I mean, you know, this isn't -- we're not  
17    putting our damages case on right now. That will be later.  
18    You know, tomorrow.

19            This is necessary context and background so they  
20    can understand his resumé.

21            MR. STEYN: May I be heard?

22            THE COURT: Yes.

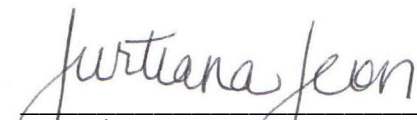
23            MR. STEYN: He said now at least a couple of  
24    times it's part of what drives science. And Judge Anderson  
25    has ruled that the plaintiff is not science and that part

**CERTIFICATION OF REPORTER**

I, Jurtiana Jeon, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the jury trial in the case of MICHAEL E. MANN, Ph.D, v. NATIONAL REVIEW, INC., et al., Civil Action Number 2012-CAB-8263, in said court on the 23rd day of January, 2024.

I further certify that the foregoing 119 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 24th day of January, 2024.

  
\_\_\_\_\_  
Jurtiana Jeon, CSR, RPR  
Official Court Reporter

**TRIAL TRANSCRIPT**  
**1/24/24, AM SESSION**  
**[EXCERPTED]**



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

-----x  
 :  
 MICHAEL E. MANN, Ph.D, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action Number  
 :  
 NATIONAL REVIEW, INC., et al., : 2012-CAB-8263  
 :  
 Defendants. :  
 -----x

Washington, D.C.

Wednesday, January 24, 2024

The above-entitled action came on for a jury trial before the Honorable Alfred S. Irving, Jr., Associate Judge, in courtroom number 518, commencing at approximately 9:32 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

JOHN WILLIAMS, Esquire  
 WILLIAMS LOPATTO PLLC  
 1629 K Street, NW, Suite 300  
 Washington, D.C. 20006

PETER FONTAINE, Esquire  
 AMORIE I. HUMMEL, Esquire  
 COZEN O'CONNOR  
 One Liberty Place  
 1650 Market Street Suite 2800  
 Philadelphia, PA 19103

(Appearances continued on the next page.)

Jurtiana Jeon, CSR, RPR (202) 879-1796  
 Official Court Reporter

(Continued from the previous page.)

PATRICK COYNE, Esquire.  
FINNEGAN, HENDERSON, FARABOW, GARRETT &  
DUNNER LLP  
901 New York Avenue, N.W.  
Washington, D.C. 20003.

On behalf of the Defendant Simberg:

VICTORIA WEATHERFORD, Esquire  
BAKER & HOSTETLER, LLP  
Transamerica Pyramid  
600 Montgomery Street Suite 3100  
San Francisco, CA 94111

MARK W. DeLAQUIL, Esquire  
RENEE KNUDSON, Esquire  
BAKER & HOSTETLER LLP  
1050 Connecticut Avenue, NW Suite 1100  
Washington, D.C. 20036

MARK BAILEN, Esquire  
1250 Connecticut Avenue, NW Suite 700  
Washington, D.C. 20036

On behalf of Defendant Steyn:

H. CHRISTOPHER BARTOLOMUCCI, Esquire  
SCHAERR JAFFE LLP  
1717 K Street, NW Suite 900  
Washington, D.C. 20006

Also present:

Melissa Howes (Power of Attorney for Steyn)

TABLE OF CONTENTSTRIALWITNESSESOn behalf of the Plaintiff:

MICHAEL E. MANN, Ph.D,

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On behalf of the Defendant Simberg: \_\_\_\_\_ Admitted

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1 evidence.

2 (Plaintiff's Exhibit Number 112  
3 admitted into evidence.)

4 MR. FONTAINE: May I approach?

5 THE COURT: Yes.

6 THE WITNESS: Thank you.

7 BY MR. FONTAINE:

8 Q. Dr. Mann, do you recall Ms. Weatherford saying in  
9 her opening statement that there will be -- not be any  
10 credible evidence that your reputation has been harmed?

11 A. Yes, I do.

12 Q. And do you recall Ms. Weatherford also saying  
13 that you could be the Mother Teresa of climate change and  
14 it still would not have declined because he stopped  
15 applying for grants?

16 A. Yes.

17 Q. Is that accurate?

18 A. No.

19 Q. Have you done an analysis of your history of  
20 obtaining grants?

21 A. I have.

22 Q. Did you look at the period before and after the  
23 defamations in this case?

24 A. Yes. I looked at the period four years before  
25 the defamations and the four years following it.

1           Q.    Please tell the jury what you found in terms of  
2 the amount of grants before and after the defamations.

3           A.    Yeah.  So we had seven grants that were funded in  
4 the four years before and two that were grant- -- that were  
5 funded in the -- in the four years after the defamations.

6           Q.    Please tell the jury what you found in terms of  
7 the percentages of successful grant proposals before and  
8 after the defamations.

9           A.    Yeah.  I believe it was nine out of 15 -- nine  
10 funded out of 15 submitted before, and -- what was it? --  
11 two out of nine, two funded out of nine submitted in the  
12 four years after.

13          Q.    Okay.

14          A.    So that's from a 60 percent to a 22 percent.

15          Q.    In your analysis of successful and unsuccessful  
16 grants, approximately how much money were you bringing in  
17 for the university each year before the defamations?

18          A.    It was about 3.3 million before, and that's over  
19 four years, so just under a million a year.

20          Q.    How much after per year?

21          A.    I think it was -- it was 500,000 total in the  
22 four years after, so that's a little more than 100,000 a  
23 year.

24          Q.    Now, this analysis covered four years before and  
25 four years after; is that correct?

1           A.    Yep.

2           Q.    And so that analysis went through 2016?

3           A.    Yes, it did.

4           Q.    Have you also reviewed the amount of grants you  
5 were bringing in for Penn State since 2016?

6           A.    I have.

7           Q.    Okay.  Would that information be reflected on  
8 your resumé?

9           A.    It would be.

10          Q.    Let's take a look at your resumé.

11               MS. WEATHERFORD:  Objection, Your Honor.

12               (Bench conference.)

13               MS. WEATHERFORD:  To the extent they're going to  
14 attempt to elicit information regarding grant funding that  
15 post-dates 2016, that is outside the scope of their written  
16 responses to discovery in terms of what they had disclosed  
17 as their damages case in this case.

18               MR. FONTAINE:  We were never asked about funding  
19 after 2016.  There was never a question about that.  It all  
20 was related to the period four years before and four years  
21 after, and this is fair inquiry for the witness to testify  
22 about the effects of this.

23               MS. WEATHERFORD:  Again, it's what they  
24 disclosed, which was four years before and four years  
25 after, which was their choice, and they're limited to what

1 they disclosed in discovery.

2 MR. FONTAINE: We disclosed the CV and it lists  
3 all of his grants on his CV, what he received, when he  
4 received them. And he wants to testify that this has  
5 impacted him during the entire period since the  
6 defamations.

7 MS. WEATHERFORD: Again, none of those grants  
8 were --

9 THE COURT: I am going to limit him to what he  
10 disclosed because we've had conversations about what was  
11 disclosed during discovery and that he would be limited to  
12 that. And if you wanted to supplement it, you very well  
13 could.

14 MR. FONTAINE: Okay. I'll move on.

15 (End of bench conference.)

16 THE COURT: All right. The objection is  
17 sustained.

18 BY MR. FONTAINE:

19 Q. I'd like to ask my colleague, Ms. Hummel, to draw  
20 on the paper board your testimony about before and after.

21 A. Yeah.

22 MS. WEATHERFORD: I can't see that. If you can  
23 move it backwards, perhaps. Maybe move it -- because the  
24 judge can't see it.

25 THE COURT: I cannot see it. And I'm not sure

1 the witness can see it.

2 MR. FONTAINE: You know what? Put it right here.  
3 I'll stand over here.

4 MS. WEATHERFORD: I might -- let's try. Let's --

5 MS. HUMMEL: Whatever works.

6 MS. WEATHERFORD: I can -- I can see it. I'll  
7 let you know if I have a problem. Thanks.

8 BY MR. FONTAINE:

9 Q. Okay. And you testified that the four years  
10 before --

11 MR. FONTAINE: Do you want to put the years in  
12 there?

13 MS. HUMMEL: (Complies.)

14 MR. FONTAINE: Yep.

15 BY MR. FONTAINE:

16 Q. Okay. And what was the amount before, Dr. Mann?

17 A. The amount was about 3.3 million, as I recall.

18 Q. And the funding rate?

19 A. So that divided by four, an average -- oh, the  
20 rate of --

21 Q. Yeah, success.

22 A. -- success. Sorry. That was 60 percent.

23 Q. Okay. And after the defamations, in 2012?

24 A. It was about half a million. About 500,000.

25 Q. Okay. And the funding success rate for grants



1 after 2012?

2 A. Just over 20 percent. I think 22 percent.

3 Q. Okay. Does that chart accurately reflect your  
4 analysis?

5 A. It does.

6 Q. Okay. I'd like to turn now to your CV. We  
7 talked yesterday about the grants that you've gotten on  
8 your CV?

9 A. Yep.

10 Q. Can you go to that section, please?

11 A. Yeah. Let's see.

12 Okay. Yeah.

13 Q. Is the information that Ms. Hummel drew reflected  
14 on your CV?

15 A. It is.

16 Q. Okay. Could you please explain how much per  
17 year?

18 A. Yeah. So if we look at the four years before --  
19 so if we look at -- beginning with -- I think that's 2008  
20 to 2011, a framework for probabilistic projections -- I  
21 think that's the first that's included.

22 Q. Okay.

23 A. And -- so that's 2008. Then there's another in  
24 2009 --

25 THE COURT: Would you speak --

1 THE WITNESS: Oh, more into the --

2 THE COURT: Yes.

3 THE WITNESS: Sorry about that.

4 Sorry. Yes. So 2008, a proposal funded in 2008.

5 Another one in 2009. Another one in 2009. Another one in

6 2010. Another one in 2010. Three in 2011. One in 2012.

7 And then nothing funded until all the way to 2016.

8 Q. Okay. Thank you.

9 MR. FONTAINE: We can take this down.

10 I'd like to move this into evidence. This will  
11 be marked as Plaintiff's Exhibit 116.

12 THE COURT: All right. Any objection?

13 MS. WEATHERFORD: No, Your Honor.

14 THE COURT: All right. Court receives  
15 Plaintiff's Exhibit 116.

16 (Plaintiff's Exhibit Number 116  
17 admitted into evidence.)

18 BY MR. FONTAINE:

19 Q. Do you recall Ms. Weatherford stating that Rand  
20 Simberg's blog only received 17,000 page views and that  
21 hardly anyone saw it?

22 A. I do.

23 Q. Is it correct to say that because -- because on  
24 the number of -- sorry.

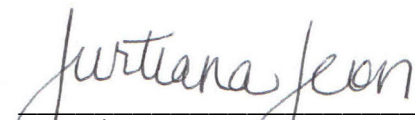
25 Is it correct to say that because, on the number

**CERTIFICATION OF REPORTER**

I, Jurtiana Jeon, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the jury trial in the case of MICHAEL E. MANN, Ph.D, v. NATIONAL REVIEW, INC., et al., Civil Action Number 2012-CA-8263(B), in said court on the 24th day of January, 2024.

I further certify that the foregoing 134 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 25th day of January, 2024.

  
\_\_\_\_\_  
Jurtiana Jeon, CSR, RPR  
Official Court Reporter

**TRIAL TRANSCRIPT**  
**1/24/24, PM SESSION**  
**[EXCERPTED]**

## 1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

## 2 CIVIL DIVISION

3 .....x

4 MICHAEL E. MANN, Ph.D.,

5 PLAINTIFF,

AFTERNOON SESSION

6 VS.

7 NATIONAL REVIEW, ET. AL., 2012 CAB 8263

8 DEFENDANTS. Wednesday, January, 24, 2024

9 .....x

10 The above-mentioned matter resumed for a trial  
11 before the Honorable Alfred S. Irving, Jr., in Courtroom  
12 518, commencing at approximately 2:26 p.m.

13 THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN  
14 OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS  
15 PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND  
16 PROCEEDINGS OF THE CASE AS RECORDED.

## 17 APPEARANCES:

18 On behalf of the Plaintiff:

19 John Williams, Esquire &amp; Peter Fontaine, Esquire

20 Amorie Hummel, Esquire &amp; Patrick Coyne, Esquire

21  
22 On behalf of Defendant Steyn:

23 Mark Steyn, Pro Se

24 Juanita N. Price, RPR, FCRR

25 Official Court Reporter

(202) 879-1063

APPEARANCES CONT'D:

On behalf of Defendant Simberg:

Mark DeLaquil, Esquire

Victoria Weatherford, Esquire

& Renee Knudsen, Esquire

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WITNESSES

FOR THE PLAINTIFF:	DIRECT	CROSS	REDIRECT	RECROSS
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DR. MICHAEL E. MANN		3		
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EXHIBITS

FOR THE DEFENDANT:	ADMITTED
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EXHIBIT NUMBER 897	6
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EXHIBIT NUMBER 898	9
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EXHIBIT NUMBER 899	11
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EXHIBIT NUMBER 1102	20
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EXHIBIT NUMBER 598	29
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EXHIBIT NUMBER 603	31
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1 on Twitter that people with contrary views on Climate  
2 Science are, quote/unquote, hired guns, quote, tin-foil  
3 hat-wearing conspiracy theory mongers, end quote. Quote,  
4 Climate Change deniers, end quote. Quote, horrible human  
5 beings, end quote. Quote, cowardly trolls, end quote.  
6 And a, quote, misogynistic ogre, end quote.

7 MS. WEATHERFORD: I believe you skipped over  
8 Number 12, Your Honor, at the top of page 8, the very top.

9 THE COURT: All right.

10 And now finally, judicial admission, Professor  
11 Mann does not know the identities of the reviewers for the  
12 National Science Foundation View In Africa Grant.

13 All right.

14 MS. WEATHERFORD: Thank you, Your Honor.

15 THE COURT: All right. You may continue.

16 BY MS. WEATHERFORD:

17 Q. Now, Professor Mann, when Mr. Fontaine was asking  
18 you questions regarding your grant funding, he didn't  
19 actually show you, or us, or the jury the actual grants  
20 that you claim you didn't receive after the Blog posts  
21 were published, did he?

22 A. I don't honestly remember what we've provided  
23 you.

24 Q. Okay. Not about what's been provided, but what  
25 was presented during your testimony, you didn't discuss

1 any specific grant that you claim was denied or rejected  
2 after the Simberg post was published; did you?

3 A. I expect that we will have that conversation  
4 later.

5 Q. Okay. Well, the judicial admissions that we  
6 heard for all of those grants, those are every single one  
7 of the grants in your after-period that was denied; isn't  
8 that right?

9 A. I didn't tabulate them to confirm that, but I'll  
10 take your word for it.

11 Q. Okay. And I'm sure if I'm wrong, Mr. Fontaine  
12 will correct me.

13 Now -- now, we heard regarding one of those  
14 grants the Joint Fire Science Program Grant; correct?

15 A. Yes.

16 Q. Okay. Now, I believe you testified with  
17 Mr. Fontaine that you didn't serve any subpoenas on any of  
18 the grant funders that you claim rejected your grants  
19 after the publication of the Blog posts; did you?

20 A. No. That would be a way to alienate the program  
21 and the program managers. It would probably damage your  
22 ability to secure future grants, so, no, I wouldn't do  
23 something like.

24 Q. Okay. And you do understand in this case as a  
25 Plaintiff in litigation you do have the burden of proof in



1 order to show your damages in this case?

2 A. And I think we intend to do that.

3 Q. Okay. Well, do you recall during this case that  
4 the Defendants were able to obtain the testimony regarding  
5 the Joint Fire Science Program Grant.

6 Do you remember that?

7 A. I am aware of that.

8 Q. You are aware of that. So, then, you are aware,  
9 in fact, that the Simberg post, my client's post, was not  
10 considered during any of the reviews of the Joint Fire  
11 Science Program Grant; isn't that right?

12 A. That's a false statement right there. All we know  
13 is that those views are unknown. Generally reviewers  
14 aren't going to share, you know, the imagery or the biases  
15 that might be in their head.

16 MS. WEATHERFORD: Your Honor, move to strike.

17 MR. FONTAINE: She's mischaracterizing --

18 (Whereupon, bench conference is held on the  
19 record at this time, as follows:)

20 MR. FONTAINE: Your Honor, she is not  
21 characterizing accurately what the deposition of that  
22 grant official says.

23 MS. WEATHERFORD: That is an issue for cross  
24 examination in addressing after that testimony is read  
25 into the record, that's deposition by questions (sic).

1 the clerk.

2 MS. WEATHERFORD: That's what I figured.

3 THE COURT: Yes.

4 MS. WEATHERFORD: Okay.

5 THE COURT: We'll try not to lose it.

6 All right. See you tomorrow.

7 (Whereupon, hearing concluded.)

8 CERTIFICATE OF THE REPORTER

9 I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL  
10 REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN  
11 OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF THE  
12 DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED  
13 FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND  
14 TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D.  
15 VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE  
16 NUMBER 2012 CAB 8263, IN SAID COURT ON THE 24TH DAY OF  
17 JANUARY 2024.

18 I FURTHER CERTIFY THAT THE FOREGOING 91 PAGES  
19 CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS  
20 TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED  
21 WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

22 IN WITNESS WHEREOF, I HAVE HERETO SUBSCRIBED MY  
23 NAME, THIS 24TH DAY OF JANUARY, 2024.

24 OFFICIAL COURT REPORTER

RPR, FCRR

**TRIAL TRANSCRIPT**  
**1/25/24, AM SESSION**  
**[EXCERPTED]**

## 1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

## 2 CIVIL DIVISION

3 .....x

4 MICHAEL E. MANN, Ph.D.,

5 PLAINTIFF,

MORNING SESSION

6 VS.

7 NATIONAL REVIEW, ET. AL.,

2012 CAB 8263

8 DEFENDANTS.

Thursday, January, 25, 2024

9 .....x

10 The above-mentioned matter resumed for a trial  
11 before the Honorable Alfred S. Irving, Jr., in Courtroom  
12 518, commencing at approximately 9:37 a.m.

13 THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN  
14 OFFICIAL COURT REPORTER, ENGAGED BY THE COURT, WHO HAS  
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23 Mark Steyn, Pro Se

24 Juanita N. Price, RPR, FCRR

25 Official Court Reporter

(202) 879-1063

1 APPEARANCES CONT'D:

2 On behalf of Defendant Simberg:

3 Mark DeLaquil, Esquire

4 Victoria Weatherford, Esquire

5 & Renee Knudsen, Esquire

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7 WITNESSES

8 FOR THE PLAINTIFF: DIRECT CROSS REDIRECT RECROSS

9 DR. MICHAEL E. MANN 9

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13 EXHIBIT NUMBER 1101 35

14 EXHIBIT NUMBER 641 42

15 EXHIBIT NUMBERS 538, 537, 701, 639, 640, 1044, 639, 526, 528, 641

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10	EXHIBIT NUMBER 528,801	132
11	EXHIBIT NUMBER 802	134
12	EXHIBIT C	143

13                   P R O C E E D I N G S

14                   (Whereupon, proceedings takes place on the  
15 record, as follows:)

16                   THE COURT: We're missing just one more.

17                   Any preliminaries?

18                   MS. WEATHERFORD: Yes, Your Honor.

19                   THE COURT: We'll call the case.

20                   MS. WEATHERFORD: Okay.

21                   THE DEPUTY CLERK: Yes, Your Honor. Calling case  
22 number 2012 CAB 8263, Michael E. Mann, Ph.D. versus Rand  
23 Simberg and Mark Steyn.

24                   Parties state your names for the record, starting  
25 with the Plaintiff.

1 next Interrogatory Number 23.

2           You were asked to, quote, identify all grants  
3 that you have applied for, but not received from 2005 to  
4 present, unquote.

5           Did I read that right?

6           A. Yes, as you can see it's almost a blanket  
7 response to what my lawyers felt was an overly broad  
8 demand on the part of you folks, yeah.

9           Q. Okay. Well, let's look at your response. Again,  
10 I've highlighted that Dr. Mann further objects to this  
11 Interrogatory, because it seeks information that is not  
12 relevant to any claim or defense in this case.

13           Did I read that right?

14           A. Yes.

15           Q. And in response to these questions, you didn't  
16 identify a single loss grant, did you?

17           A. We said that we had objected to the  
18 Interrogatory, so, no.

19           Q. And you said because it sought information that  
20 was not relevant to any claim or defense that you had in  
21 this case, isn't that true?

22           A. That's what we clearly said.

23           Q. Okay. Turn to page six. Let's look at  
24 Interrogatory Number 25 where you were asked to, quote,  
25 identify all works whether in scientific, academic,

1 MR. WILLIAMS: What is this?

2 MR. DeLAQUIL: It's 116, John. It's your Exhibit.

3 MR. WILLIAMS: Well, I can't see it.

4 THE COURT: Why don't you step around?

5 MS. WEATHERFORD: Step around the table.

6 (Pause in Proceedings.)

7 MR. FONTAINE: Okay.

8 MS. WEATHERFORD: Yeah, it's your demonstrative.

9 BY MS. WEATHERFORD:

10 Q. Now, I need to make sure I can see the witness.

11 Professor Mann, the Blog post at issue in this  
12 case were written 12 years ago and here we are now in a  
13 three-week jury trial, all of us, and this exhibit is the  
14 only shred of documentary evidence for your claim that you  
15 suffered a drop in grant funding due to Mr. Simberg's Blog  
16 post.

17 Isn't that right?

18 A. Well, this is a summary of what actually happened  
19 with the grant funding, so, yes.

20 Q. Okay. And you, in fact, know every single one of  
21 the grants that's depicted on this exhibit, don't you?

22 A. Yes, that's correct.

23 Q. You do. And you didn't show it to the jury,  
24 isn't that right?

25 A. I don't think the jury has seen that yet. I'm



1 not sure that it won't be shown to the jury at some point  
2 during this trial.

3 Q. Yes or no, Dr. Mann. You did not show the jury a  
4 single one of the grants that's depicted in this  
5 demonstrative?

6 A. And it was my lawyer who was showing the various  
7 exhibits, but, no, he has not shown that yet.

8 Q. Okay. And, Dr. Mann, you know the project name  
9 of every single one of these grants that's depicted on  
10 this demonstrative, don't you?

11 A. Well, I haven't committed them to memory. Some  
12 of them, as you've heard, are very lengthy and technical  
13 titles. I am aware of them and can recall them, if  
14 presented to me.

15 Q. Okay. And you didn't show any of those grants to  
16 the jury, isn't that right?

17 A. Show the -- you mean -- do you mean the grant or  
18 a proposal?

19 Q. The names of the proposals that are at issue --

20 A. We showed the grants. We showed the information  
21 about what was -- we described the grants that were not  
22 funded.

23 The proposal, no, we didn't show the -- the  
24 lengthy --

25 Q. The names.

1 A. The grant proposal, no.

2 Q. Okay. And you know the name of the agency that  
3 awarded every single one of the grants that's depicted on  
4 this exhibit, isn't that right?

5 A. Of course.

6 Q. And you didn't provide that information to the  
7 jury, either, did you?

8 A. Again, I don't think we're done presenting our  
9 case yet, and so...

10 Q. It's a yes-or-no question, Dr. Mann.

11 A. The question (sic) is, no, because we haven't  
12 gotten to that point yet.

13 Q. And you know how much money every single one of  
14 these grants or proposals was for, granted or denied,  
15 don't you?

16 A. Again, not committed to memory, but given the  
17 information in front of me, I can recognize it.

18 Q. So, that's a yes?

19 A. Well, I haven't committed that information to  
20 memory, but I am familiar.

21 Q. Okay. And you didn't provide that information  
22 for any of these grants or proposals to the jury, isn't  
23 that right?

24 A. Provide which information?

25 Q. The information on how much money every single

1 one of these proposals was for?

2 A. We showed the totals, and that's, you know, I  
3 think we were trying to keep our presentation relatively  
4 brief, so we didn't go into that level of detail.

5 Q. Yes or no, Dr. Mann. You did not provide the  
6 information about the total costs for any one of the  
7 grants that are depicted on this demonstrative, isn't that  
8 right?

9 A. No. I mean you say didn't provide, we provided  
10 all of that information to you.

11 Q. And you didn't show it to the jury, did you?

12 A. That has not been shown to the jury yet.

13 Q. Okay. And for many, if not all, of these grants,  
14 you weren't even the sole Principal Investigator for them,  
15 were you?

16 Several of the grants depicted on here, in fact,  
17 have co-Principal Investigators, isn't that right?

18 A. Yes, most grants have co-Investigators.

19 Q. Okay. And you didn't provide that information  
20 about which grants that you were the sole Principal  
21 Investigator versus the grants where you were a  
22 co-Principal Investigator to the jury; did you?

23 A. Again, we haven't shown those details to the jury  
24 yet. I believe that -- that that will be -- will come out  
25 during the course of this trial.

1 Q. So, that's a no?

2 A. Not yet, no.

3 Q. And for many of these grants, if not all of them,  
4 you know who the program manager is who made the ultimate  
5 decision about whether to grant or deny your proposal,  
6 isn't that right?

7 A. Yeah, that's public information.

8 Q. And you didn't provide that information, the  
9 information about the program managers to the jury, did  
10 you?

11 A. We haven't shown those details to the jury,  
12 because we had a fairly brief presentation about, you  
13 know, we provided the summary information as the jury can  
14 see right in front of them.

15 Q. You also haven't identified, as a witness in this  
16 case, any one of the program managers for any of the  
17 grants that's depicted on your demonstrative, isn't that  
18 right?

19 A. Yeah, I think as I explained yesterday, the idea  
20 of subpoenaing program managers would be very alienating  
21 to those grant agencies and would probably have, you know,  
22 a negative impact on my ability to receive any additional  
23 support.

24 Q. Subpoena or not, you've not identified any one of  
25 those grant's program managers as a witness in this case,

1  
2 CERTIFICATE OF THE REPORTER  
3

4 I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL  
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7 DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED  
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9 TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D.  
10 VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE  
11 NUMBER 2012 CAB 8263, IN SAID COURT ON THE 25TH DAY OF  
12 JANUARY 2024.

13 I FURTHER CERTIFY THAT THE FOREGOING 144 PAGES  
14 CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS  
15 TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED  
16 WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

17 IN WITNESS WHEREOF, I HAVE HERETO SUBSCRIBED MY  
18 NAME, THIS 25TH DAY OF JANUARY, 2024.

RPR, FCRR

19  
20 OFFICIAL COURT REPORTER  
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**TRIAL TRANSCRIPT**  
**1/29/24, PM SESSION**  
**[EXCERPTED]**

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

-----x  
:  
MICHAEL E. MANN, :  
:  
Plaintiff, :  
:  
v. : Civil Action Number  
:  
NATIONAL REVIEW, INC., et al., : 2012-CA-8263(B)  
:  
Defendants. :  
-----x

Washington, D.C.  
Monday, January 29, 2024

The above-entitled action came on for a jury trial before the Honorable Alfred S. Irving, Jr., Associate Judge, in courtroom number 132, commencing at approximately 2:15 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

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1 THE COURT: All right. All right. We do not  
2 have a substitute.

3 MR. FONTAINE: Your Honor, I will move on for  
4 now.

5 THE COURT: All right.

6 (End of bench conference.)

7 THE COURT: All right. Sir.

8 BY MR. FONTAINE:

9 Q. Do you remember also last week Ms. Weatherford  
10 said that you had not showed the jury one rejected grant  
11 application?

12 A. Right, I do.

13 Q. I'm showing you Exhibit 517, which  
14 Ms. Weatherford placed into evidence last week.

15 MR. FONTAINE: Can you scroll through that a  
16 little bit?

17 BY MR. FONTAINE:

18 Q. Do you recognize that document?

19 A. Yes, I do.

20 Q. Does this contain a list of the rejected grant  
21 applications?

22 A. I believe it does.

23 Q. And does it also include a list of the grant  
24 proposals that were funded?

25 A. I believe it does.

1 MS. WEATHERFORD: Objection.

2 (Bench conference.)

3 MS. WEATHERFORD: Your Honor, these charts have  
4 been ruled inadmissible in Your Honor's motion in limine  
5 regarding Exhibits -- I believe -- is it -- 102 and 103 in  
6 regard to the -- it's the motion in limine regarding  
7 grants and Dave Verardo. Those exhibits which are --

8 THE COURT: I can't hear you.

9 MS. WEATHERFORD: Can you hear me?

10 THE COURT: Yeah.

11 MS. WEATHERFORD: Okay. Great. These charts  
12 were separately put on their exhibit list as Exhibits 102  
13 and 103 which Your Honor has ruled inadmissible in the  
14 motion in limine I believe from October 10th of last year.  
15 And so, if they're inadmissible there, they're inadmissible  
16 here. That information has been ruled...

17 THE COURT: Specifically, what information are we  
18 talking about?

19 MR. FONTAINE: The list of the grants that he  
20 received and did not receive, which are the same grants  
21 that you read into the record on the judicial admissions.  
22 And this is his answers to interrogatories. It's a  
23 different chart than what she is referring to.

24 And the witness needs to be able to explain the  
25 grants that -- you know, that he did not receive. And Your

1 Honor gave him an opportunity to provide a more fulsome  
2 explanation to the judicial admissions. And so I'm trying  
3 to guide him through that and get that testimony on the  
4 record.

5 THE COURT: So I think what I need to do is see  
6 the -- the information you're trying to get into evidence  
7 and compare it against, or with, the order from October.

8 MR. FONTAINE: Okay.

9 THE COURT: So do you have that?

10 MR. FONTAINE: The order from October?

11 THE COURT: Well, I can get the order.

12 MR. FONTAINE: Yeah, we can get the order.

13 THE COURT: All right.

14 (Pause in the proceedings.)

15 MR. FONTAINE: Your Honor, I would -- these were  
16 moved into evidence by the defendants last week. She then  
17 cross-examined him and said, you haven't put on any  
18 evidence of the grants. And he said -- you'll recall -- in  
19 response, it is coming. And now they are saying that we  
20 can't use evidence that's been moved in to the record. And  
21 that is patently unfair.

22 MS. WEATHERFORD: Your Honor, I have the motion  
23 in limine here which says you will not permit at trial any  
24 testimony from plaintiff as to Mr. Verardo's funding of his  
25 research or Plaintiff's Exhibits 102 and 103.

1 MR. FONTAINE: And this is not 102 and 103. And,  
2 Your Honor, we are not going to be getting into  
3 Mr. Verardo's testimony. We are aware that that's been  
4 proscribed. But to not allow the witness to testify to  
5 evidence that's in the record already is incorrect.

6 MS. WEATHERFORD: I have on our computer  
7 Exhibits 102 and 103. I don't know if there's copies in  
8 the courtroom. I don't have copies in the courtroom of  
9 those exhibits, but I do have electronic copies.

10 THE COURT: 102 and 103.

11 MR. FONTAINE: And the Verardo information --

12 THE COURT: I'm going to excuse the jury just so  
13 that we can wend our way through this. All right?

14 MR. FONTAINE: Okay.

15 THE COURT: All right.

16 (End of bench conference.)

17 THE COURT: So I'm going to give you a short  
18 break. We have a question that we need to resolve. And  
19 we'll call you when we're ready for you. All right? Thank  
20 you.

21 (Jury out at 2:51 p.m.)

22 THE COURT: All right. So 102 and 103, what are  
23 they? Are they in the plaintiff's notebook or the  
24 defendant's?

25 MR. WILLIAMS: Your Honor, may I address this?

1           THE COURT:   Yes.

2           MR. WILLIAMS:  102 and 103 were different -- it  
3           contains information.  What it contains, like -- I don't  
4           know if it's 102 or 103, but what it contains is a list of  
5           funded and unfunded grant proposals.  There's never been  
6           any question about that, that they're admissible.

7           The issue on 102 and 103 was we had also done a  
8           separate analysis in terms of what David Verardo was  
9           involved in.  And you said, because we had fully disclosed  
10          this presentation that they had made to the Verardo group,  
11          anything about Verardo was out.  So we said, fine.

12          And what they actually did is to put in the same  
13          type of exhibit, 102, 103, and just took the Verardo  
14          columns out.  And we're fine with that.  That was okay.  
15          They put that in.

16          We're not even going into that analysis right  
17          now.  All we are looking at right now is the list of  
18          exhibit -- excuse me, of proposals.  And it's already in  
19          evidence.  And he saw that and he said, yeah, I see it.  
20          She then decides to cross-examine on it:  Why haven't you  
21          told the jury about it?  He says, it's right here; it's  
22          coming.

23          So I think it is bad faith, frankly, to say you  
24          have excluded that information.

25          And I also want to make one other point.  They

1 are putting in these exhibits. We're not objecting to it.  
2 It's fine. It comes in. We'd like the jury to see  
3 everything. And then they realize that they put in things  
4 that maybe might hurt them. And so then they say, well,  
5 that should have been redacted. It wasn't our  
6 responsibility to redact it.

7 So we've got to stop this.

8 THE COURT: All right. And so this exhibit --  
9 this exhibit here was admitted into evidence without  
10 redactions?

11 MR. FONTAINE: Correct. The only thing that  
12 was --

13 MS. WEATHERFORD: We do have --

14 MR. FONTAINE: -- redacted was the Verardo --

15 MR. WILLIAMS: Only Verardo.

16 MS. WEATHERFORD: The Verardo column for -- the  
17 Verardo information was redacted. And the exhibit that was  
18 put into evidence was 517. However, the information --

19 THE COURT: And this is 517A?

20 MS. WEATHERFORD: Correct, which reflects as the  
21 redacted version of it. So we did redact the  
22 Verardo-related information. However, Your Honor did also  
23 say in that same order that you are prohibiting at trial  
24 testimony regarding Exhibits 102 and 103. And I think  
25 that's the issue here, Your Honor.

1 THE COURT: All right.

2 MR. WILLIAMS: You were --

3 THE COURT: And I do not have --

4 MR. WILLIAMS: Excuse me, Your Honor. That's  
5 right. You said you're permitting -- excluding 102 and 103  
6 because it included Verardo. So if they took out  
7 Verardo -- they put it in -- 102 and 103, the information  
8 is the information. You've already read it to the jury,  
9 the list of grants. This is just sort of silliness to --

10 MR. FONTAINE: And Your Honor also ruled that  
11 Dr. Mann could expand upon the admissions. He could  
12 provide context. And so --

13 THE COURT: All right. I'm going to overrule the  
14 objection because -- well -- and largely for the reason  
15 that 517A is now in evidence. And so if these columns were  
16 not redacted, then fair game.

17 MR. WILLIAMS: Thank you, Your Honor.

18 THE COURT: All right?

19 MR. FONTAINE: All right. Thank you.

20 MS. WEATHERFORD: So, Your Honor --

21 MR. WILLIAMS: And by the way, in the future,  
22 Your Honor, as we're going forward, if they put something  
23 into evidence, I don't think -- once it's into evidence,  
24 they can't say, oh, that should have been redacted.

25 THE COURT: And I think that the redactions need



1 to be stated on the record, or at least there is some  
2 agreement that both sides have agreed that certain aspects  
3 of an exhibit contains some redactions before they go back  
4 to the jury.

5 MS. WEATHERFORD: Certainly, Your Honor. The  
6 only other issue we have is that the discovery responses in  
7 517 have been superseded, so they are not, in fact, the  
8 plaintiff's discovery responses in this case -- current  
9 responses.

10 MR. FONTAINE: They're in evidence. The grant  
11 applications are in evidence, and he should be able to talk  
12 about them.

13 THE COURT: And how do the responses supersede  
14 what we have here now in evidence?

15 MS. WEATHERFORD: The plaintiff provided  
16 supplemental responses in March 2023.

17 THE COURT: That differ from the chart here?

18 MS. WEATHERFORD: They do. Yes.

19 MR. FONTAINE: Not --

20 MR. WILLIAMS: No.

21 MR. FONTAINE: Not substantively, and they kept  
22 it out.

23 MS. WEATHERFORD: You know what? Your Honor,  
24 your point is well taken on this. If they want to go ahead  
25 and show the old responses, we'll deal with it.

1           THE COURT: All right. And why did this not come  
2 out during the direct?

3           MR. FONTAINE: Why did it not come out?

4           THE COURT: Right.

5           MR. FONTAINE: We decided that we were going to  
6 handle it on redirect.

7           THE COURT: All right. All right.

8           MR. FONTAINE: That's why.

9           THE COURT: All right.

10          Yes. And we'll bring back the jury.

11          MR. BARTOLOMUCCI: Your Honor, we had raised a  
12 matter right after the lunch break about Mr. Steyn.

13          THE COURT: Oh, yes. Yes. I'm sorry. We'll let  
14 them know.

15          (Jury present at 2:58 p.m.)

16          THE COURT: You may be seated.

17          And, members of the jury, you likely noticed that  
18 Mr. Steyn is not with us this afternoon. Because of  
19 illness, he will be -- he will return to us tomorrow  
20 morning.

21          MR. FONTAINE: Okay. Could I put up Exhibit 517  
22 again, please.

23          BY MR. FONTAINE:

24          Q. Dr. Mann, when we last broke, we were talking  
25 about Exhibit 517, which were your answers to

1 interrogatories?

2 A. Yes.

3 Q. And we were showing two charts that were included  
4 in the interrogatories. They're very difficult to see, so  
5 we have prepared a blow-up of it that we'd like to show  
6 you.

7 MR. FONTAINE: Any objection to that?

8 MS. WEATHERFORD: Is it this?

9 MR. FONTAINE: Yes.

10 MS. WEATHERFORD: No objection.

11 MR. FONTAINE: The demonstrative exhibit,  
12 blow-up -- basically, a copy of that.

13 BY MR. FONTAINE:

14 Q. All right. It's a little awkward, but can you  
15 see that, Dr. Mann?

16 A. Yes.

17 Q. Okay.

18 MR. FONTAINE: Can you -- counsel see that?

19 MS. WEATHERFORD: I can see -- I can see it. I'm  
20 having a little bit of a hard time reading the details, but  
21 I take your word, Counselor.

22 BY MR. FONTAINE:

23 Q. Okay. Now, what we have here -- and I'm going to  
24 use a laser pointer to direct you. We have funded and  
25 nonfunded. Could you describe for the jury what that

1 refers to?

2 A. Yes. The funded are projects, grant proposals  
3 that were funded for support by the government agency in  
4 question. Not funded are grant proposals that were not  
5 funded.

6 Q. Okay. And tell us what time frame this spans.

7 A. So we are looking at the time frame from four  
8 years before the defendant's statements were made to four  
9 years after the defendant's statements were made.

10 Q. Okay. So this covers the period 2008 to 2016?

11 A. Yes.

12 Q. Okay. And did the defendants take your  
13 deposition a couple of months after you provided this  
14 response with the list of grants, funded or not funded?

15 A. Yes, I believe that's the case.

16 Q. Do you recall they asked you a lot of questions  
17 about it?

18 A. I do recall that.

19 Q. Okay. So let's dig into the exhibit. You  
20 mentioned that the top chart is -- is funded. And this is  
21 your history of grants over the eight-year period, correct?

22 A. Yes.

23 Q. Okay. Please summarize for the jury each of the  
24 grants you were denied in the nonfunded chart at the bottom  
25 after the Simberg and Steyn writings.

1           A.    Yes.  So we're looking at the full period from  
2   2008 to 2016?

3           Q.    Yes.

4           A.    Okay.  So the first grant is an NSF grant to look  
5   at abrupt climate change.

6           Q.    And let me just stop you there.  Ms. Rutherford  
7   [sic] also asked you to identify the program managers in  
8   her query last week.  So I'd like you to share the program  
9   managers that were connected to the grants.

10          A.    Okay.

11          Q.    Yeah -- with the exception of what's been  
12   proscribed, if you know.

13          A.    So do we have the grant -- the program indicated  
14   on this --

15                MS. WEATHERFORD:  I'm going to object.

16                BY MR. FONTAINE:

17          Q.    No.  And if you can't remember --

18          A.    Yeah.  I don't --

19                MS. WEATHERFORD:  Objection.

20                THE COURT:  All right.  There's an objection.

21                (Bench conference.)

22          MS. WEATHERFORD:  The identity of any of the  
23   program managers was never disclosed in discovery other  
24   than the Verardo issue.  So our position is is that this  
25   runs afoul of the motion in limine prohibiting the

1 defendant [sic] from testifying as to any damages-related  
2 issues that were not disclosed.

3 MR. FONTAINE: Counsel invited Dr. Mann to  
4 identify the program managers in her cross-examination last  
5 week. It would be prejudicial and unfair for him not to be  
6 able to respond as he promised the jury he would.

7 MS. WEATHERFORD: I did not ask him to identify  
8 them. I merely confirmed that he did not identify any  
9 witnesses or produce witnesses in this case. Who the  
10 particular individuals are doesn't matter because they've  
11 never been identified and are not witnesses.

12 MR. FONTAINE: Ms. Weatherford, that is  
13 incorrect. You specifically said that he had not  
14 identified any of the program managers in the grants.

15 MS. WEATHERFORD: And he did not because they are  
16 not in the responses.

17 THE COURT: I'm going to allow the question. He  
18 testified last week he couldn't remember anyone, and so --

19 MR. FONTAINE: Well --

20 THE COURT: Hold on. And if he remembers them  
21 today, then that will be impressive.

22 MR. FONTAINE: Well --

23 THE COURT: And you're not calling any of them as  
24 witnesses in this case.

25 MR. FONTAINE: That's correct.

1           THE COURT: All right. So even the relevance is  
2           questionable. But I'll allow the question.

3           MR. FONTAINE: Okay. Great. Thank you.

4           (End of bench conference.)

5           THE COURT: Yes.

6           BY MR. FONTAINE:

7           Q. Dr. Mann, would you please go through the list of  
8           nonfunded grants on the below chart and describe for the  
9           jury what those grant applications were, and to the extent  
10          that you can recall the program manager --

11          A. Sure.

12          Q. -- please do so.

13          A. So the first one, as I mentioned, Improved  
14          projections of potential abrupt changes: Combining paleo  
15          and instrumental observations with an Earth system model, I  
16          believe that's supposed to be.

17                 And this was work, I think, submitted to the  
18          paleoclimate program of the National Science Foundation.  
19          There's a good chance that the program manager -- the  
20          presiding program manager was Dave Verardo because he was  
21          the --

22          MS. WEATHERFORD: Objection.

23          THE COURT: Sustained.

24          BY MR. FONTAINE:

25          Q. Okay. Move on from that.

1           A.    Okay.

2           Q.    Next one.  And let me ask you, were you the  
3 program -- the principal investigator for that?

4           A.    I believe I was the PI or co-PI.

5           Q.    There's a column here on the far right with role.  
6 Can you see that, Dr. Mann?

7           A.    It's Hartford -- is it also on the screen here?  
8 Yes.  So I can see that now at the end of -- yes, so I was  
9 the principal investigator on that one.

10          Q.    Okay.  And the next one?

11          A.    So -- so this was a project -- a center proposal,  
12 the center for study of decadal-length climate change  
13 predictability.  And this was combining information from  
14 climate models and paleo data, as well as instrumental  
15 data, to see if we can improve the predictability of  
16 near-term climate variation.  This was submitted, I  
17 believe, to -- this is a subcontract to University of  
18 Southern California where -- which was the main  
19 institution.  It was a multi-institution grant.  The main  
20 institution was University of Southern California, and it  
21 was an NSF center proposal.

22          Q.    Okay.  And the next one?

23          A.    Collaborative research:  A quantitative  
24 paleoprecipitation network from lake sediment for improved  
25 Earth system modeling of Pacific Ocean influences on North



1 America. That is a National Science Foundation proposal.  
2 I believe I was PI on that one, principal investigator.  
3 That is trying to use information -- we saw a little bit  
4 about lake sediment work early on in the trial, and so this  
5 is trying to develop new lake sediment records that can  
6 help constrain the patterns of past climate variability  
7 and, once again, potentially help us with Earth system  
8 model predictions.

9 Q. Okay. And the next one?

10 A. Climate change impacts and adaptation in west  
11 Africa. I'm a co-principal investigator -- I would have  
12 been a co-principal investigator of that grant. It's a  
13 National Science Foundation grant.

14 Q. Okay. And the next one?

15 A. So a quantitative paleoprecipitation  
16 reconstruction using lacustrine -- that's a fancy word for  
17 lake-based -- and lake level records, so records from lake  
18 sediments or from the levels -- the measures of the  
19 fluctuation in lake levels, once again, for improving Earth  
20 system models predictions, in this case, with a focus on  
21 North American drought.

22 Q. Okay. And these were all the grants that were  
23 denied up through June 1st of 2012; is that correct?

24 A. I believe that's correct.

25 Q. Okay. And the next one is CCEP-II. What was

1     that one?

2           A.     So that is a Climate Literacy Zoo Education  
3     Network. It was part of the climate change education  
4     program. That's what CCEP stands for. It was a  
5     multi-agency program: NSF, NOAA, and I believe DOE grants.  
6     It was a program that supported climate change education.  
7     In this case, this involved a network of zoos, zoos and  
8     aquaria that are trying to use the experience that people  
9     have at zoos and aquaria to help communicate the science of  
10    climate change.

11           The main -- again, the sort of -- "lead" is the  
12    word -- the lead institution was the Chicago Zoological  
13    Society. They actually run the zoos of Chicago. And that  
14    was an NSF -- this was submitted to NSF. But it was a  
15    multi-agency program.

16           Q.     Okay. And that's through 2012. The next one in  
17    2013, coupling between El Nino -- what was that one?

18           A.     So this was an interesting proposal. It was  
19    looking at -- talked about the El Nino/southern oscillation  
20    phenomenon. And it's a natural phenomenon that has a huge  
21    impact on global climate. There are still efforts to  
22    better model El Nino, better predict El Nino and understand  
23    how it might interact with various drivers of climate. And  
24    in this case, it turns out the biomass burning in the  
25    Indonesian archipelago, it turns out, can actually

1 potentially impact the behavior of the El Nino/southern  
2 oscillation.

3           So this grant proposal was to support modeling  
4 work and observational work, trying to understand that  
5 linkage.

6           Q.    Okay.  And the next grant in 2013 that you lost,  
7 what was that?

8           A.    A quantitative paleo-drought network from  
9 lacustrine stable isotope and lake level records for  
10 improved Earth system modeling of North American climate.  
11 And you may see -- some of these sound somewhat similar  
12 because we're continuing to try to fund what we feel is  
13 really important work in this area.

14          Q.    Okay.  It looks like there's one more in 2013?

15          A.    Yes.  Oh.  That one -- you know what?  I think I  
16 might have misstated.  The first proposal, climate literacy  
17 proposal, was to NSF.  This one is to NOAA.  So this is a  
18 similar proposal, informal, climate education, once again,  
19 a network of zoos and aquaria trying to develop climate  
20 change outreach materials for zoos and aquaria across the  
21 United States.  And this was submitted to NOAA, again, part  
22 of that multi-agency program.

23          Q.    Okay.  And the next one is in 2014, collaborative  
24 research.  What's that?

25          A.    This is another proposal trying to support work

1 to develop these lake records and -- lake sediment records  
2 and using modeling, along with these paleo-lake records, to  
3 better understand the relationship between climate  
4 variability and changes in North American drought.

5 Q. Okay. One more in 2014. Water variabilities?

6 A. Yes. So this was a pretty broad proposal. I  
7 believe it was multi-institutional, submitted to the  
8 National Science Foundation. And it's sort of to develop a  
9 network of scientists that are looking -- as we see --  
10 various stressors and sensitivities to climate change,  
11 looking at how people around the world are dealing with  
12 stresses [sic] and -- and sensitivity to the impacts of  
13 climate change. So it's actually a combination of  
14 scientists and social science experts. It was a really  
15 interesting multi-disciplinary proposal which I wish had  
16 been funded. It would have been exciting to do that work,  
17 but it wasn't funded.

18 Q. Okay. And the next one, forecasting fire risk?

19 A. Yes. So this was submitted to the Department of  
20 the Interior, which is very interested in wildfire. It's  
21 one of the great, you know, climate change impacts that we  
22 are dealing with today. And this -- this is actually back  
23 at -- 2015. So interestingly, this is before -- we've sort  
24 of seen this remarkable increase in the prevalence of  
25 wildfire in the western U.S. in the years since then.

1           This is back in 2015 where we're looking to try  
2   to improve the forecasting of wildfire risk based on  
3   understanding modes of climate variability, atmospheric  
4   variability, and how they impact drought and wildfire in  
5   the western U.S.

6           Q.    Okay.  And is that the last on the list?

7           A.    One more.

8           Q.    One more.  2016, yes.

9           A.    Improved characterization and understanding of  
10   internal decadal to multidecadal climate variability.  
11   The -- folks here may remember, I talked early on about the  
12   Atlantic multidecadal oscillation, which was this  
13   phenomenon that we argued for some years ago, early on in  
14   my research.  And I actually used an acronym in describing  
15   the tools that we used in that analysis, which is proposed  
16   to be used again here, called MTM-SVD.  And a good friend  
17   of mine who's in the audience reminded me that we should  
18   always define our acronyms, as technical as they might be.  
19   So it actually stands for multi-taper method-singular value  
20   decomposition.  It's a fancy statistical method for seeing  
21   if there are oscillations in a set of data.

22           And what we wanted to do is to sort of revisit  
23   this hypothesis that we had explored, you know, at the  
24   beginning of my career, back in 1995, this question, are  
25   there these natural long-term oscillations in the climate

1 record? We wanted to use all of the data that we now have  
2 and sort of the tremendous archive of model simulations  
3 that are now available to revisit the question, can we  
4 detect these sort of long-term natural oscillations in the  
5 climate record?

6 It's work that I was real excited to do, but it  
7 didn't get funded.

8 Q. Okay. One other point on this. Do you recall  
9 Ms. Weatherford showed you an earlier answer to these same  
10 interrogatories and read into the record your objections,  
11 which is Exhibit 938?

12 A. Okay.

13 MR. FONTAINE: Can we show 938?

14 BY MR. FONTAINE:

15 Q. She didn't mention the date of those initial  
16 answers. Can you go to the date?

17 A. Oh, it was there. February 1st, 2020.

18 Q. Okay. Was the requested information subsequently  
19 supplied?

20 A. I believe so.

21 MR. FONTAINE: I'd like to move this exhibit into  
22 evidence. And it's just a blow-up of the version that was  
23 provided. The graphics on the version that was provided  
24 were changed and it's very, very small, Your Honor. You  
25 can't see it at all. So if I can move this into evidence.

1 underlying pattern. They are linked time and again in some  
2 way to the same individuals and groups that lie at the  
3 center of an ever-well-oiled climate change denial machine.

4 MR. FONTAINE: Nothing further.

5 MS. WEATHERFORD: I have recross, Your Honor.

6 THE COURT: All right.

7 RECROSS EXAMINATION

8 BY MS. WEATHERFORD:

9 Q. Dr. Mann, this chart that's Exhibit 57 -- a  
10 demonstrative drawn from 517A, those were responses that  
11 you provided in June 2020 in response to the defendant's  
12 written interrogatories asking you to provide information  
13 regarding your grant funding; isn't that right?

14 A. It sounds reasonable, sure.

15 Q. Okay. And then you provided another revised set  
16 of answers to this question regarding your grant funding  
17 about three years later, in March of 2023. Does that sound  
18 right?

19 A. Yes, I think so.

20 Q. Okay. Let's -- let me show you Exhibit 1047 and  
21 1048, what's been marked. And I believe we have redacted  
22 copies.

23 MR. FONTAINE: Excuse me. I just want a  
24 clarification on this. Can we go on the --

25 (Bench conference.)

1 MR. FONTAINE: Are these interrogatory responses  
2 that you objected to that are not in evidence?

3 MS. WEATHERFORD: These are the written  
4 interrogatory responses, which is the next set of the  
5 responses that are here, which I'm using to impeach your  
6 client on.

7 MR. FONTAINE: And you objected to those,  
8 however, right?

9 MS. WEATHERFORD: I objected to you using them.  
10 And now that this chart is in, I'm impeaching your client  
11 with the subsequent responses.

12 MR. FONTAINE: Okay.

13 (End of bench conference.)

14 THE COURT: Yes. Thank you.

15 MS. WEATHERFORD: This is a little awkward for  
16 me, honestly, with the rear view.

17 MR. FONTAINE: Sorry.

18 MS. WEATHERFORD: I'm sure it's awkward for you  
19 too. I just --

20 MR. FONTAINE: I'll move over here.

21 MS. WEATHERFORD: No. That's all right. Thank  
22 you.

23 BY MS. WEATHERFORD:

24 Q. Okay. Dr. Mann, looking at Exhibit 1047, do you  
25 recognize those as your supplemental answers to the



1 National Review's first set of interrogatories?

2 A. 1047A?

3 Q. Yes. It's a redacted version.

4 A. Okay. Yes.

5 Q. You recognize that?

6 A. I recognize this document as what you described,  
7 yeah.

8 Q. Okay. And then Exhibit 1048 -- that might also  
9 be an "A" -- do you recognize that as the attachment to  
10 your written discovery responses providing updated grant  
11 funded and not funded charts?

12 A. Yes.

13 Q. You do. Okay.

14 MS. WEATHERFORD: I move 1047A and 1048A into  
15 evidence.

16 THE COURT: All right. Now, are these --

17 MR. FONTAINE: No objection.

18 THE COURT: No objection? Are these redacted or  
19 not redacted?

20 MS. WEATHERFORD: These are redacted versions --

21 THE COURT: All right.

22 MS. WEATHERFORD: -- Your Honor, which have been  
23 redacted to remove information that's been addressed  
24 previously.

25 THE COURT: All right. The Court receives 1047A

1 and 1048A into evidence.

2 (Defendant Simberg's Exhibit  
3 Numbers 1047A and 1048A  
4 admitted into evidence.)

5 MS. WEATHERFORD: Thank you.

6 BY MS. WEATHERFORD:

7 Q. And let's look at 1047. I hope that's the  
8 redacted version. Let's go to the last page and just  
9 confirm, Professor Mann, you signed these --

10 MS. WEATHERFORD: Keep on going. Oh, that's the  
11 last page. Oh, I think the verification is on the other  
12 one. Anyways, let's pull up 10478 [sic].

13 BY MS. WEATHERFORD:

14 Q. And I think, Professor Mann, like all your other  
15 responses, you signed these under penalty of perjury; is  
16 that right?

17 A. Yes, of course.

18 Q. Okay. And then we've got -- let's go to -- here  
19 we go. Do you recognize -- I believe that's -- page 4 of  
20 Exhibit 1048 as a chart of your funded grants, kind of like  
21 what you provided here on the demonstrative for your 2020  
22 responses? Do you recognize this chart?

23 A. Yes.

24 Q. Okay. And then the next page should be the not  
25 funded; is that right?

1 MS. WEATHERFORD: Here we go. Great. Excellent.

2 BY MS. WEATHERFORD:

3 Q. Okay. And do you recognize that? That's the  
4 responses you provided in March 2023 regarding your not  
5 funded grants; is that right?

6 A. That looks correct.

7 Q. Okay. And between your June 2020 and March 2023  
8 grants, you made numerous changes to the grants that you  
9 are claiming are at issue in this case; isn't that right?

10 A. Yes. Would you like to know why?

11 Q. I am going to be going through the responses with  
12 you right now, Dr. Mann.

13 Okay. I've got a couple of demonstratives myself  
14 of the grant charts. What we did for our demonstrative is  
15 we've got the start date; we've got the project. We took  
16 out sponsor. And we've got the budget, just to try and  
17 make it a little bit easier to read since I think, even  
18 like that, it's pretty difficult to read what is -- what's  
19 on there. So I think -- you've got paper copies. If you  
20 can keep your 2020 and 2023 responses open, we've taken the  
21 2020 responses, which are --

22 A. Sorry, which pages do you want me to have open  
23 here?

24 Q. So for your June 2020 responses, which are the  
25 responses 517A that your counsel --

1           A.     Sorry. Which document? Which exhibit are we --

2           Q.     So Exhibit 517A.

3           A.     I don't have that in front of me.

4           Q.     Okay. We can get that for you.

5           MS. KNUDSEN: 1048, page 1.

6           MS. WEATHERFORD: Also has it? I'm looking for  
7 June 2020. Thank you. If you can open it up to the page.

8           BY MS. WEATHERFORD:

9           Q.     So the demonstrative that we created here is --  
10 contains the same information regarding start date year,  
11 project and budget for the demonstrative for the -- this is  
12 not funded -- for the not funded grants that your counsel,  
13 Mr. Fontaine, put up. We just thought it would be a little  
14 bit easier to see if it was in a little bit bigger font.  
15 And we figured we'd just go by the names of the grants. Do  
16 you see that?

17          A.     Yes, I'm looking at it.

18          Q.     Okay. Great. And this is your not funded grants  
19 from your responses that -- like I said, was what  
20 Mr. Fontaine put up. And we put the red line there between  
21 numbers 6 and 7, a September 1, 2012 grant and then a  
22 July 1st, 2013, grant which I believe at your deposition,  
23 you testified that you had received the word on your  
24 September 1, 2012, grant before the blog posts were  
25 published. Do you remember that?

1           A.    Yes.

2           Q.    Okay.  So that's why we put the line there, to  
3 show before the blog posts and after the blog posts.  Does  
4 that make sense?

5           A.    Okay.

6           Q.    Okay.  So these are your June 2020 responses.  
7 And now I'm going to use -- I'm going to show on the screen  
8 the non-funded.

9                   MS. WEATHERFORD:  Is this the June 2023 [sic]  
10 that's on the screen here?  It should be Exhibit 1048A.

11                   BY MS. WEATHERFORD:

12           Q.    And then if you can have open in front of you  
13 1048A; it should be the fourth page.  Is that right?  Not  
14 funded, June 2020?

15           A.    Fourth page is funded.

16           Q.    Okay.  Third page, then, perhaps -- fifth page.  
17 Renee told us the fifth page.

18                   MS. WEATHERFORD:  And then, Renee, I'm going to  
19 need you with the marker.

20                   THE WITNESS:  Okay.

21                   BY MS. WEATHERFORD:

22           Q.    Great.  Okay.  So you are looking at, in front of  
23 you, your -- you have your March 2023 responses, which is  
24 what folks are seeing up here as well.  And then up here,  
25 these are the responses that Mr. Fontaine just showed you

1 and the jury.

2 Now, you made many changes. I would like to  
3 start with grant number 11, which is September 15, 2014,  
4 water variabilities stressors and sensitivities (WAVESS)  
5 sustainability research network. Do you see that one?

6 A. Yes.

7 Q. In your June 2020 responses, you claim that the  
8 amount at issue for that grant was \$9,713,924; is that  
9 correct?

10 A. Correct.

11 Q. Okay. And then in your March 2023 responses you  
12 change that amount down to \$112,000; is that correct?

13 A. Yeah. Actually --

14 Q. Yes or no answer, Dr. Mann.

15 A. My lawyers actually put that information  
16 together, and I informed them that they had shown too large  
17 an amount because my subcontract was much smaller than the  
18 9713. I told them --

19 Q. Sorry.

20 MS. WEATHERFORD: Move to strike, Your Honor.

21 THE COURT: The testimony is stricken. And  
22 please, members of the jury, disregard.

23 And please just answer the question and there  
24 likely will be a follow-up, Dr. Mann.

25 BY MS. WEATHERFORD:

1           Q.    Your counsel can ask you a follow-up about it.  
2    So from your June 2020 answers under penalty of perjury to  
3    your March 2023 answers under penalty of perjury, the  
4    amount of that not funded grant after the blog post changed  
5    from about \$9.7 million to \$112,000; isn't that right?

6           A.    Yes, it did.

7           Q.    Okay. Great.

8           MS. WEATHERFORD: Renee, you can mark just right  
9    on that, I think.

10          BY MS. WEATHERFORD:

11          Q.    Okay. So we've got the -- what we've taken as  
12    well from March 2023 up here, we've done the same thing,  
13    start date year, project -- we took out the sponsor because  
14    we were trying to save space to make the text a little  
15    bigger. And we've got the budget on here.

16          Okay. So that one is wrong.

17          Now, on line 12 here, forecasting fire risk in  
18    the southeastern U.S. from atmospheric circulation  
19    patterns, that number changed as well, didn't it? You said  
20    it was \$354,539, and then, in your responses here, you  
21    changed it, \$382,175; is that right?

22          A.    Yes.

23          Q.    Okay. So you couldn't get that one right either.  
24    Let's keep on going.

25          A.    No, we did get. We corrected them --

1 Q. Excuse me.

2 A. -- so that they're right.

3 Q. No pending question.

4 A. You just made a statement misrepresenting my  
5 testimony.

6 Q. Let me put it this way. Your June 2020 answer  
7 was wrong; isn't that true?

8 A. And we corrected it.

9 Q. I'm sure counsel will talk to you all about it.

10 Now let's take a look at your -- the changes. So  
11 this is in your not funded. We can see that there were --  
12 did you make the change as well to item number 12?

13 A. I didn't make the change. My lawyers made the  
14 change.

15 MS. WEATHERFORD: No question pending, Your  
16 Honor. Move to strike.

17 THE COURT: No, no, no. That was just to the  
18 scrivener, with respect.

19 BY MS. WEATHERFORD:

20 Q. Okay. Now, let's put up the boards for the  
21 changes that happened between June 2020 and March 2023 to  
22 your funded grants.

23 MS. WEATHERFORD: Do you have the one that's  
24 plain; I can actually do the crossing out, or we can leave  
25 it like that if you want. Let's have -- all right. Renee



1 doesn't get to cross it out. Do we have the original?

2 MS. KNUDSEN: Yeah. We have it.

3 MS. WEATHERFORD: Thank you.

4 MS. KNUDSEN: Sorry, which one are you looking  
5 for?

6 MS. WEATHERFORD: I was going to do the original  
7 funded June 2020, and then also the -- if we've got one for  
8 the March 2023, but that one is up on the screen.

9 If we don't have it, we can just use theirs, if  
10 they've got funded. There are a lot of boards with grants  
11 on it, so apologies.

12 MS. KNUDSEN: Is that visible?

13 MS. WEATHERFORD: That's good.

14 THE COURT: Can you see it, members of the jury?

15 THE JUROR: Not the bottom one.

16 MS. WEATHERFORD: They can't see the bottom one.  
17 Well, let's go with this -- so why don't we use the one  
18 from Mr. Fontaine, actually. Let's just use theirs. Just  
19 pull it up. You can just put it on the bottom. Yeah,  
20 that's fine. Here we go. Funded is on top for them. Put  
21 that one on the floor, actually, because I want to use --  
22 that's fine.

23 BY MS. WEATHERFORD:

24 Q. Just so everybody can see -- I'm being totally  
25 transparent here -- so down here, this is what Mr. Fontaine

1 showed, which is your 2020 responses. And you can see the  
2 second grant listed, reconstruction of Pacific climate and  
3 sea surface temperatures. You deleted that grant entirely  
4 in your March 2023 responses, didn't you?

5 A. I didn't --

6 Q. Yes or no?

7 A. -- delete anything. We amended it because I  
8 believe that that had been left off of -- that was on the  
9 CV in --

10 Q. There's no question pending right now, Dr. Mann.  
11 In your 2023 responses --

12 THE COURT: But I thought there was a question.

13 MS. WEATHERFORD: It was a yes or no question.

14 THE COURT: Right. But he was giving an  
15 explanation for either the removal of it -- there was  
16 something that we were waiting for in terms of an  
17 explanation for a correction or -- so I'd like to hear the  
18 testimony.

19 BY MS. WEATHERFORD:

20 Q. Okay.

21 A. Thank you. So we made a number of corrections to  
22 make sure we got everything right. There's information  
23 that had been transcribed incorrectly off of my CV by my  
24 lawyers. I went back to the original documents to make  
25 sure we had the dates right, we had the amounts right, we

1 had all the information right. And what was ultimately  
2 provided was the correct data. We made sure that we got it  
3 right.

4 Q. Okay. So your testimony is that you and the  
5 three law firms representing you, in your June 2020  
6 responses were unable to get correct the grants that you  
7 claim were funded and not funded in this case. Is that  
8 what your testimony is today? Yes or no?

9 A. Unable to? We made some -- we made some  
10 mistakes.

11 Q. Okay. Yes, you did. Let's keep on looking at  
12 those mistakes.

13 So like I said, in your 2020 responses you have  
14 on your list for funded grants before, the reconstruction  
15 of Pacific climate and sea surface temperatures, and that  
16 grant is gone in your pre-blog post funded chart in your  
17 March 2023 responses, isn't it?

18 A. Yes, again, it was probably incorrect on the CV,  
19 and that's what my lawyers were using, and we went back and  
20 made sure everything was correct as indicated in the  
21 original grant documents, not the CV. There's some errors  
22 on the CV, or at least there were.

23 Q. Okay. And looking at item number 5 in your  
24 June 2020 responses, this one I've put in red the amount of  
25 the grant. They are for the development of a northern

1 hemisphere gridded -- yada-yada -- grant in 2010. Again,  
2 this one is in advance. And the amount of that grant  
3 changed between June 2020 and March 2023 from \$234,800 to  
4 \$262,954; isn't that right?

5 A. I can't quite read --

6 Q. Yes or no?

7 A. I can't quite read it from here. I take you at  
8 your word.

9 Q. Okay. I gave you copies in front of you of both  
10 of these as well.

11 A. All right. Which documents? Sorry.

12 Q. So one is your June 2020 responses from  
13 Exhibit 517A. And the other --

14 A. 517 -- hold on. I've got a lot of documents  
15 here. Okay.

16 Q. And then we're also looking here on the screen,  
17 your 2023 responses.

18 A. I'm not seeing it on this page. This is the  
19 funded. So it's --

20 Q. Looking at funded.

21 A. Funded. This is -- we had it open to not  
22 funded -- here, funded. Okay. On the northern  
23 hemisphere -- so, yes, that was a subcontract, a NOAA  
24 subcontract.

25 Q. And the number changed; isn't that right?

1           A.    Yeah.  We made sure we got the numbers right.

2           Q.    Okay.  So --

3           A.    So the differences --

4           Q.    -- your lawyer can ask you --

5           THE COURT:  Hold on.

6           BY MS. WEATHERFORD:

7           Q.    Your lawyer can ask you a follow-up question.

8    Okay.

9                   I'm moving on to what was previously identified  
10   as grant number 6, the scientific input on climate change  
11   outreach grant which you originally indicated was \$16,499.  
12   And in your 2023 responses, it's now grant 5, because you  
13   took out the reconstruction grant.  And now that grant is  
14   \$32,733.  Did I read that correctly?

15          A.    I take your word at it.

16          Q.    Like I said, you have got the two charts right in  
17   front of you.

18          A.    Yeah.  They're tiny.

19          Q.    I know.  That's why we created our own.  Okay.

20                   And then looking at what originally was your  
21   grant 8, your regional and global sea surface -- funded  
22   grant, this originally you said was \$64,919.  And then in  
23   your changed answers it's now \$44,000 -- \$44,322; isn't  
24   that right?

25          A.    Yes, that is correct.

1           Q.    Okay. Looking to what previously was your grant  
2 number 10, the WSC category 2 collaborative grant, you  
3 originally said it was \$300,514. That one changed to  
4 \$300,171. Did I read that correctly?

5           A.    Yeah. I don't question that.

6           Q.    Okay. And then what previously was grant 11,  
7 January 1, 2014, megadrought, local vs. remote causal  
8 factors for medieval North America, that's another grant  
9 that you removed entirely in your March 2023 responses;  
10 isn't that right?

11          A.    Again, I take your word for it.

12          Q.    Okay. And then the last one that was previously  
13 on the June 2020 list that Mr. Fontaine showed you and the  
14 jury is your September 1, 2016 grant for \$391,000, the  
15 EarthCube building blocks. And then in your 2023  
16 responses, you changed that one, too, for \$450,042; isn't  
17 that right?

18          A.    Looks correct.

19          Q.    Okay. So let me get this straight. For your  
20 funded grants between June 2020 and March 2023, you had to  
21 make corrections to seven, by my calculation, out of the 13  
22 grants on here; isn't that right?

23          A.    Yes.

24          Q.    You did. Okay. That's less than a 50 percent  
25 score, Dr. Mann. So are you saying that it's okay to give

1 a failing grade in your sworn responses under penalty of  
2 perjury about your grants?

3 A. My lawyers help put this together based on  
4 information off my CV. That information is incomplete  
5 because often a grant is funded at a different amount from  
6 what was submitted. So in some cases, they were using the  
7 submitted numbers but the grant was funded for a larger  
8 amount or it was funded for a smaller amount.

9 In addition, the grant timing changes. It's  
10 submitted for one start date and it may be funded for a  
11 different start date.

12 And so there are a number of these sorts of  
13 things that weren't taken into account in the original  
14 tabulation. I went back to make sure that we got  
15 everything right. And in the end, the correct data  
16 actually make a much stronger case. It goes 60 percent  
17 funding to 22 percent funding. That is the correct data.

18 Q. Okay. And let me just get this straight. You  
19 are asking the jury to believe that your complicated  
20 statistics in this case are unimpeachable and that they  
21 should trust you on the data for your grants when you can't  
22 even get a dozen grants right. Is that what I'm supposed  
23 to believe and what the jury is supposed to believe?

24 A. No. What they're supposed to believe is that, if  
25 I make a mistake, I own up to it.

1           Q.    Okay.  Let's go back, actually, and look at the  
2   grant for the --

3           THE COURT:  Now the reporter needs a break.

4           MS. WEATHERFORD:  Let's do it.

5           THE COURT:  All right.  So where are we?  It's  
6   4:00.  We'll come back at 4:15.  All right?

7           MS. WEATHERFORD:  Okay.  Thank you.

8           THE DEPUTY CLERK:  This Court stands at a recess  
9   until 4:15.

10          (Jury out at 4:00 p.m.)

11          THE COURT:  All right.  We'll see you in a few  
12   moments.

13          (Recess.)

14          THE COURT:  You may be seated.

15          Call in the jury.

16          THE DEPUTY CLERK:  Yes.

17          THE COURT:  All right.  Please rise.

18          (Jury present at 4:19 p.m.)

19          THE COURT:  All right.  You may be seated.

20          Yes.

21          BY MS. WEATHERFORD:

22          Q.    Now, Dr. Mann, I've put away the funded chart,  
23   which was the one that showed that you had errors in seven  
24   out of your 13 grants that you claim were grants that you  
25   were using as a basis to claim damages in this case.  I



1 want to go back to your non-funded chart and the changes  
2 that you made there.

3 Now, I believe you testified earlier that you  
4 worked with your lawyers on the first set and then you  
5 looked at it again, realized there were mistakes, and then  
6 you worked with your lawyers again on the second set; is  
7 that right?

8 A. Well, that -- yes.

9 Q. Okay. But it's, in fact, not true your most  
10 recent answers are correct; isn't that right?

11 A. My most recent answers are correct.

12 Q. Okay. Let's take a look at the -- the very last  
13 grant on here, in your four years before/four years after,  
14 collaborative research: Improved characterization and  
15 understanding of internal decadal-multidecadal climate  
16 variability graph.

17 Now, this is a grant that you claim you applied  
18 for and that you didn't get; isn't that right?

19 A. I believe that's the case.

20 Q. But that's not true, is it? You did get this  
21 grant, didn't you?

22 A. This grant, no, I believe there was a revised  
23 version of it that was funded.

24 Q. Let's take a look at that. Let's go to your  
25 self-reviews. Exhibit 896, which is already in evidence.

1 Let's turn to page 4. And here we go. The very beginning.  
2 This is your self-review: I have been encouraged by the  
3 director of the NSF paleoclimate program to resubmit in  
4 2017 a proposal, joint with Byron Steinman, my former  
5 post-doc, now faculty member at the University of  
6 Minnesota - Duluth, that was not funded by another NSF  
7 program.

8 And you describe it and you say, I am hopeful it  
9 will be funded and look forward to pursuing the research  
10 agenda outlined in the proposal.

11 Did I read that right?

12 A. Yes.

13 Q. Okay. Now, I want to just pause here for a  
14 second. Now, you have not identified a single one of your  
15 co-PIs for any of your grants that you claim were funded or  
16 not funded; isn't that right?

17 A. I have -- I haven't -- I'm not sure what you mean  
18 by I have not identified any of my co-PIs. It's a matter  
19 of public record on the NSF site as to who the  
20 investigators are.

21 Q. In your sworn responses to discovery in this  
22 case, for example, identifying witnesses to your claimed  
23 damages, you've never identified a single one of your  
24 co-PIs; isn't that true?

25 A. I don't think we indicated co-PIs on this

1 information.

2 Q. Okay. Now let's see what happened ion 2017.  
3 Let's go to your 2017 review, Exhibit 897, which is also in  
4 evidence.

5 MS. WEATHERFORD: Let's go to page 4, the middle  
6 of that page. Let's see -- not there. Let's see. Go  
7 back. There we go.

8 BY MS. WEATHERFORD:

9 Q. We are currently awaiting a decision on a  
10 proposal submitted last year to the NSF paleoclimate  
11 program, joint with Byron Steinman, my former post-doc, now  
12 faculty member at the University of Minnesota - Duluth.  
13 The decision is on hold pending the availability of next  
14 year NSF funds.

15 Did I read that right?

16 A. Yes.

17 Q. Okay. Now let's take a look at what happened in  
18 2018. Let's go to your 2018 self-review, Exhibit 898.  
19 Exhibit 898, page 12 at the bottom. There we go.

20 Improved characterization -- it's the first  
21 awarded grant. There we go. Right at the top. There it  
22 is. Improved characterization and understanding of  
23 internal decadal-multidecadal climate variability using  
24 paleoclimate archives, blah, blah, blah. Did I read that  
25 right?

1           A.    Yes.

2           Q.    And that's the same one we've been talking about,  
3 to NSF with Mr. Steinman; isn't that right?

4           A.    No, that's not correct. The original proposal  
5 was submitted to the climate dynamics program. This  
6 proposal was reworked and submitted to the paleoclimate  
7 program. And two years later it was eventually funded.

8           Q.    That's right. The proposal was eventually  
9 funded. It was the same co-PI. It was the same  
10 proposal --

11          A.    No.

12          Q.    -- and you are claiming here that you didn't get  
13 it when, in fact, you responded you made tweaks and you got  
14 it; isn't that right?

15          A.    That's false. It's a different proposal, it's a  
16 different grant number, it's a different program, a  
17 different program manager.

18          Q.    It is a different grant number. I agree with  
19 you.

20          A.    A different program manager. A different  
21 program.

22          Q.    But you --

23          A.    It's a different grant.

24          Q.    -- said in your -- you -- Dr. Mann, you said in  
25 your self-reports you were told to resubmit, and you

1 resubmitted and you got it, true or false?

2 A. I've already explained.

3 Q. Yes, you have. All right. And now you are  
4 trying to pin the fact that you say you didn't get this  
5 grant, but you did. You reworked it. You responded and  
6 then you did get that. And you are trying to claim --  
7 right? -- that this was due to my client, to -- Rand  
8 Simberg is the reason why you didn't get this grant, when  
9 you know exactly why you didn't get it in the beginning and  
10 then you did, in fact, get that grant; isn't that true?

11 A. Everything you've just said is false, and let me  
12 explain why.

13 Q. Your counsel can have you explain why. I asked  
14 you a yes or no question, Dr. Mann.

15 A. False, and I'm happy to explain why.

16 Q. All right. And you are trying to ask the jury  
17 here, when you can't get 14 grants right, the amounts,  
18 which ones are at stake -- you can't get them -- when you  
19 are working with your lawyers over a period of years, over  
20 and over again -- you're trying to get this jury to believe  
21 the words that you are saying, that these grants are  
22 somehow reflective of harm from my client, but you can't  
23 even get them straight. Is that what you're trying to tell  
24 the jury?

25 A. No. What I'm trying to tell them is that we did

1 everything we could to make sure that, in the end, the  
2 numbers were correct. And the correct numbers are  
3 devastating. I went from 60 percent funding to 22 percent  
4 funding. Why would I want to hide that? Those are the  
5 actual numbers, and they're devastating.

6 Q. And, in fact, just as the judge read with the  
7 judicial admissions, you have no idea why you did not  
8 receive any specific grant; isn't that true?

9 A. No. That isn't true.

10 Q. Should we have Judge Irving read the judicial  
11 admissions again? We can do it.

12 MS. WEATHERFORD: Judge Irving -- I've got a  
13 series of judicial admissions that we can read again into  
14 the record.

15 THE WITNESS: What -- I said I have no idea why  
16 we didn't get funding? I would like to see, you know,  
17 evidence that I said it that way.

18 BY MS. WEATHERFORD:

19 Q. Well, the judicial admissions are that you have  
20 no idea whether any of the persons responsible for awarding  
21 any of those grants considered my client's blog post; isn't  
22 that true?

23 A. Well, we said -- we don't know the anonymous  
24 reviewers. They're anonymous. We don't know who they are.

25 Q. And you made no attempt to find out; isn't that

1 true, Dr. Mann?

2 A. What do you mean find out? Do you mean  
3 subpoenaing reviewers, my colleagues, my professional  
4 colleagues? Do you mean alienating myself from my entire  
5 community? Is that what you're talking about?

6 Q. I'm talking about you proving your case,  
7 Dr. Mann, with witnesses and evidence besides your say-so,  
8 which, as we've seen, even your own CV in this case, which  
9 you are relying on for the jury, shows that it's not  
10 reliable evidence. And you've not put forward anything  
11 other than your say-so to the contrary --

12 A. No.

13 Q. -- isn't that right?

14 A. No. We put forward the actual numbers. And the  
15 numbers tell a pretty devastating story.

16 MS. WEATHERFORD: All right. No further  
17 questions, Your Honor. Thank you.

18 THE COURT: Any redirect?

19 MR. FONTAINE: Just --

20 THE COURT: Any re-redirect?

21 MR. FONTAINE: Yes. And hopefully this is it.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. FONTAINE:

24 Q. Dr. Mann, you testified that you went through and  
25 made some corrections to the information that had

1 previously been submitted. What was the net effect on the  
2 numbers?

3 A. I think, in the end, it substantially decreased,  
4 the apparent loss of funding. We -- because of that --  
5 there was that one proposal that was for \$9 million, and I  
6 believe I said to you guys, that's misleading, because  
7 there wasn't a \$9 million contract coming to Penn State.  
8 Penn State's contact was much smaller than that. We should  
9 get the numbers right, even if it actually would make a  
10 less compelling case for losing funding.

11 MR. FONTAINE: No further questions.

12 MS. WEATHERFORD: All right. And Your Honor,  
13 before the witness is off the stand, I would like to admit  
14 these demonstratives as exhibits.

15 THE COURT: All right. And the exhibit numbers  
16 are.

17 MS. WEATHERFORD: 1114 and 1115.

18 THE COURT: All right.

19 MR. FONTAINE: No objection.

20 THE COURT: All right. The Court receives 1114  
21 and 1115.

22 (Defendant Simberg's Exhibit  
23 Numbers 1114 and 1115  
24 admitted into evidence.)

25 THE COURT: Thank you, sir. You may step down.



1 (Whereupon, the proceedings concluded at  
2 4:49 p.m.)

3 **CERTIFICATION OF REPORTER**

4  
5 I, Jurtiana Jeon, an Official Court Reporter for  
6 the Superior Court of the District of Columbia, do hereby  
7 certify that I reported, by machine shorthand, in my  
8 official capacity, the proceedings had and testimony  
9 adduced upon the jury trial in the case of MICHAEL E.  
10 MANN, Ph.D, v. NATIONAL REVIEW, INC., et al., Civil Action  
11 Number 2012-CA-8263(B), in said court on the 29th day of  
12 January, 2024.

13 I further certify that the foregoing 95 pages  
14 constitute the official transcript of said proceedings, as  
15 taken from my machine shorthand notes, together with the  
16 backup tape of said proceedings to the best of my ability.

17 In witness whereof, I have hereto subscribed my  
18 name, this the 30th day of January, 2024.

19  
20  
21  
22 

23  
24 \_\_\_\_\_  
25 Jurtiana Jeon, CSR, RPR  
Official Court Reporter

**TRIAL TRANSCRIPT**  
**1/31/24, PM SESSION**  
**[EXCERPTED]**

## 1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

## 2 CIVIL DIVISION

3 -----x  
4 MICHAEL E. MANN, :  
5 Plaintiff, :  
6 v. : Civil Action Number  
7 NATIONAL REVIEW, INC., et al., : 2012-CA-8263(B)  
8 Defendants. :  
9 -----x

10 Washington, D.C.

11 Wednesday, January 31, 2024

12 The above-entitled action came on for a jury  
13 trial before the Honorable Alfred S. Irving, Jr., Associate  
14 Judge, in courtroom number 132, commencing at approximately  
15 2:08 p.m.

16 THIS TRANSCRIPT REPRESENTS THE PRODUCT  
17 OF AN OFFICIAL REPORTER, ENGAGED BY THE  
18 COURT, WHO HAS PERSONALLY CERTIFIED THAT  
19 IT REPRESENTS TESTIMONY AND PROCEEDINGS OF  
20 THE CASE AS RECORDED.

## 21 APPEARANCES:

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(Appearances continued on the next page.)

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(Continued from the previous page.)

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Also present:

Melissa Howes (Power of Attorney for Steyn)

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1 him. The loss of grant funding goes simply to show that  
2 his reputation was injured.

3 THE COURT: Right. But you've not spoken to the  
4 defendants' evidence about there not being any evidence  
5 tied to these two articles resulting in a loss of funding.

6 MR. WILLIAMS: Yes, I have.

7 THE COURT: All right. So --

8 MR. WILLIAMS: Yes. I thought I explained it,  
9 and I will do it again.

10 THE COURT: No, it was not clear.

11 MR. WILLIAMS: It was a before and after.

12 THE COURT: Right.

13 MR. WILLIAMS: Prior to these defamations, his  
14 funding was constant and solid.

15 THE COURT: But there was no evidence of  
16 causation. What caused the loss of funding, that was  
17 never -- that's the --

18 MR. WILLIAMS: It is correlation, Your Honor.  
19 And it does not have to be causation. You're never going  
20 to get causation. You're never going to say because of  
21 this, this happened in a defamation case.

22 THE COURT: So then how can you put that before  
23 the jury?

24 MR. WILLIAMS: Because it is an issue of  
25 correlation. We can demonstrate what it was beforehand,

1     that I did not state on the record "admitted," but it was  
2     clear that he was moving those exhibits into the record.  
3     And so the Court is ordering them -- or deeming them  
4     admitted.

5             I'm going to ask for a research or homework  
6     assignment from the parties. I want to know what we should  
7     do about the claim of lost grant funding. Because the  
8     Court, quite frankly, was more than impressed, stunned that  
9     plaintiff had put before the jury an exhibit -- a chart  
10    that indicated names of funding proposals and dollar  
11    amounts. And then Ms. Weatherford had to come back with an  
12    exhibit to show that 50 percent of the exhibit was  
13    erroneous. That is significant. It was stunning. And so  
14    I want to know what the Court really should do about a  
15    claim for such when the supporting facts were sparse at  
16    best, and whether that claim should go before the jury.

17            I understand when -- Dr. Mann's testimony that if  
18    I subpoena documents to go behind to see what the  
19    decision-making process was, and perhaps I would have  
20    gotten the information I need to put before the jury  
21    properly -- because, again, you've lived with this case for  
22    many, many moons. The jury is hearing what it needs, or  
23    what it hopes it will receive, in order to make a decision.  
24    And when you're saying that and not providing half of the  
25    information you need because I do not want to offend my --

1 my funders, well, that's -- that's not good enough. They  
2 need to have more.

3 And so, tonight, I want briefing on that, what  
4 should be done. Should I exclude arguments on that? And,  
5 really, what's to be done with the production of a document  
6 that has many, many errors, and it's not as a result of  
7 oversight or -- oversight, because there were corrections  
8 made to that presentation during discovery. And so,  
9 clearly, the plaintiff was aware that the jury was being  
10 presented with an exhibit that contained incorrect  
11 information. And you wanted the jury to take that back to  
12 the jury room and deliberate on those figures.

13 Ms. Weatherford had to come in and present a  
14 corrected document. So --

15 MR. WILLIAMS: No, Your Honor. Let me just --  
16 we'll address it tonight.

17 THE COURT: Yes, please.

18 MR. WILLIAMS: Because -- I want to be clear one  
19 more time. Okay? The numbers that went to the jury were  
20 the correct numbers. Okay?

21 THE COURT: That's not the Court's recollection.  
22 I was --

23 MR. WILLIAMS: No -- well, then we'll be very  
24 clear --

25 THE COURT: All right.



1           MR. WILLIAMS: -- to point that out. The  
2 numbers --

3           THE COURT: And then I want to see the  
4 transcript.

5           MR. WILLIAMS: Yes. Absolutely.

6           THE COURT: All right.

7           MR. WILLIAMS: The numbers on the board were the  
8 correct numbers. What she had done is gone back and looked  
9 at earlier --

10          MR. STEYN: Oh.

11          MR. WILLIAMS: Would you like to speak?

12          THE COURT: No, no, no. Mr. Steyn --  
13 Mr. Steyn...

14          MR. WILLIAMS: She had gone back to earlier  
15 drafts prior to the corrections. We'll address that all  
16 tonight.

17          THE COURT: All right. But it was quite clear --  
18 and I could see that everyone was quite moved by the fact  
19 that the jury had been presented with something -- and  
20 before you -- or you had concluded your direct and they  
21 were still left with a document you clearly knew was  
22 inaccurate.

23          MR. WILLIAMS: No, Your Honor. Please. The  
24 numbers on the board were accurate. There had been earlier  
25 mistakes that were corrected, and that's why we gave them

1 the correct numbers.

2 MR. FONTAINE: The drawing. The drawing.

3 MR. WILLIAMS: The drawing up there was the  
4 correct numbers, and he testified to that two or three  
5 times.

6 THE COURT: All right. Well --

7 MR. WILLIAMS: We will go back and look at it.

8 THE COURT: All right. Because --

9 MS. WEATHERFORD: I think, Your Honor -- can I  
10 clarify?

11 THE COURT: Yes.

12 MS. WEATHERFORD: I think what Mr. Williams is  
13 referring to is the one-page scribbled piece of paper that  
14 was originally presented before the plaintiff deigned to  
15 provide, you know, any information at all about any  
16 specific grant. However, when they did finally provide  
17 some information about what these grants were, what that  
18 information was, that was their June 2020 responses, which  
19 they then significantly revised in March 2023, which is  
20 what I had to show the jury.

21 So it is, in fact, true, that when the plaintiff,  
22 Michael Mann, and his lawyers, showed grants and numbers to  
23 the jury, they knew that what they were showing to the jury  
24 was false --

25 MR. WILLIAMS: Oh, goodness grief.

1 MS. WEATHERFORD: -- and misleading and a  
2 falsehood.

3 THE COURT: Well, and Mr. Williams, what's  
4 more --

5 MR. WILLIAMS: I will --

6 THE COURT: Hold on. What's more, one entry was  
7 for 9 million, and then it was significantly reduced to  
8 something a little over a hundred thousand.

9 MR. WILLIAMS: The error was in the \$9 million.  
10 What was put on the board was not -- did not incorporate  
11 the \$9 million because we caught the mistake, took it off  
12 and put it -- put the correct number -- the correct number  
13 was encompassed on there. So I am sorry that there was  
14 confusion on your part, and we will certainly correct it.

15 THE COURT: All right.

16 MR. WILLIAMS: But there -- we will point you to  
17 where we specifically took it through. Okay? But the  
18 suggestion that I put up false numbers is simply --

19 THE COURT: Well, that was the Court's takeaway.  
20 And if the Court is in error, the Court apologizes.

21 MR. WILLIAMS: Okay. All right. We will make it  
22 very clear that those were correct numbers.

23 THE COURT: All right.

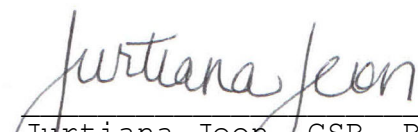
24 MS. WEATHERFORD: I'm saying again, Mr. Williams  
25 is referring to that one-page flip chart.

**CERTIFICATION OF REPORTER**

I, Jurtiana Jeon, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the jury trial in the case of MICHAEL E. MANN, Ph.D, v. NATIONAL REVIEW, INC., et al., Civil Action Number 2012-CA-8263(B), in said court on the 31st day of January, 2024.

I further certify that the foregoing 86 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 1st day of February, 2024.

  
\_\_\_\_\_  
Jurtiana Jeon, CSR, RPR  
Official Court Reporter