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.

Defendant Mark Steyn's Motion for a New Trial

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Rule

Pursuant to this Court's Civil Rules 59 and 60, the Fifth Amendment Due Process Clause, and this Court's inherent power, Defendant Mark Steyn hereby moves for a new trial.

BACKGROUND

Plaintiff Michael Mann asserted a defamation claim against Defendants Mark Steyn and Rand Simberg based on blog posts published in 2012.[1] Trial was held between January 16 and February 8, 2024. The jury returned a verdict in favor of the Plaintiff. As to Steyn, the jury awarded $1 in compensatory damages and $1 million in punitive damages. Tr. 10–11 (2/8/24).[2] As to Simberg, the jury awarded $1 in compensatory damages and $1,000 in punitive damages. *Id*. at 7–8. This Court entered judgment on the verdict.

NEW TRIAL STANDARDS

Rule 59 allows a new trial "for any reason for which a new trial has heretofore been granted in an action at law in federal court or [D.C.] courts." Super. Ct. Civ. R. 59(a)(1)(A). This Court has broad discretion to grant a new trial. *Scott v. Crestar Fin. Corp*., 928 A.2d 680, 687 (D.C. 2007). It has both "the power and the duty to grant a new trial if the verdict is against the clear weight of the evidence, or if for any reason or combination of reasons justice would miscarry if the verdict were allowed to stand." *Id*. "The exercise of this power is not in derogation of the right of trial by jury but is one of the historic safeguards of that right." *Id*. Importantly, "[w]hen acting on a motion for new trial the trial judge need not view the evidence in the light most favorable to the non-moving party." *Id*. Instead, "the judge can, in effect, be the 'thirteenth juror'; he or she may weigh evidence, disbelieve witnesses, and grant a new trial even where there is substantial evidence to sustain the verdict." *Id*. (all *Scott* quotations cleaned up). *See also Faggins*

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[1] Steyn's post (Ex. 60) is attached hereto as Addendum A.

[2] All "Tr." citations herein are to the trial transcript unless otherwise noted. All transcripts cited herein are compiled in Addendum E.

v. Fischer, 853 A.2d 132, 140 (D.C. 2004); *Fisher v. Best*, 661 A.2d 1095, 1098 (D.C. 1995).

ARGUMENT

I. A New Trial Is Required Because Plaintiff and Plaintiff's Counsel Presented to the Jury False Testimony and False Evidence That They Knew Were False.

At trial Dr. Mann gave false testimony about his claimed loss of grant funding—testimony he knew was false.[3] And his counsel elicited that false testimony, also knowing it to be false. They also showed the jury an exhibit with false grant amounts, Ex. 117 (not admitted),[4] which they knew was false. The falsity was huge. As the Court noted, "one entry was for 9 million, and then it was significantly reduced to something a little over a hundred thousand." Tr. 45 (1/31/24 PM). This Court found that Plaintiff and his counsel knew the testimony and exhibit were false but sought to sway the jury with those falsehoods. *Id*. at 42 ("[C]learly, the plaintiff was aware that the jury was being presented with an exhibit that contained incorrect information. And you wanted the jury to take that back to the jury room and deliberate on those figures."). The misconduct, this Court said, was "stunning." *Id*. at 41. This Court told Plaintiff's team: "[Y]ou sort of have to own this problem. Because it was placed before the jury, the numbers, the $9 million. And you queried Dr. Mann on it. And it is your evidence, all of it." Tr. 40 (2/7/24 AM). But they did not own it. Plaintiff's team never recanted the false testimony and false exhibit. Nor did this Court make them own it. This Court never instructed the jury to disregard the false testimony and exhibit, and it denied the defense motion for an adverse inference instruction. Plaintiff's counsel was free to, and did, make grant funding a feature of his closing argument. *See* Tr. 31–33 (2/7/24 PM).

As a remedy for this knowing misconduct, the Court should order a new trial. Due process

[3] Defendant Steyn hereby incorporates by reference the facts, citations, and arguments presented in his pending motion for sanctions, which is attached as Addendum B.

[4] All trial exhibits cited herein, unless very lengthy, are compiled in Addendum C.

is denied by "a deliberate deception of court and jury by the presentation of testimony known to be perjured." *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). To vindicate Steyn's right to a fair trial and the integrity of the judicial process, a new trial is required. *See Breezevale Ltd. v. Dickinson*, 879 A.2d 957 (D.C. 2005) (affirming much harsher sanction of dismissal of lawsuit where plaintiff knew documents were forgeries); *Hawthorne v. United States*, 504 A.2d 580, 589–90 (D.C. 1986) (criminal defendant is "entitled to a new trial if there is any reasonable likelihood that false testimony could have affected the judgment of the jury") (cleaned up). Here, the false testimony and exhibit on grant funding almost certainly affected the verdict. Plaintiff's team was always "very clear what our damages case is … loss of grant funding." Tr. 82 (1/23/24 PM). His counsel stressed grant funding in his closing argument: "[H]is grant funding went down after the defamations. … It was the defamations that led to this decline." Tr. 32–33 (2/7/24 PM). The false testimony and exhibit very likely contributed to the verdict on actual injury and the enormous punitive damage award against Steyn. *See* Tr. 40 (2/7/24 AM) (The Court: "especially seeing $9 million on a board that's been published to the jury … the 9 million is going to strike them as quite impressive, and it was not corrected until the recross examination").

II. A New Trial Is Required Because of the Improper and Prejudicial Closing Arguments by Plaintiff's Counsel.

A. Counsel urged the jury to award punitive damages because "these attacks on climate scientists have to stop."

Plaintiff's counsel made highly improper and prejudicial jury arguments in his rebuttal. Counsel raised the issue of punitive damages and then told the jury "[t]hese attacks on Climate Scientists have to stop, and you now have the opportunity --." Tr. 108 (2/7/24 PM). At that point, both Defendants objected, and the Court immediately sustained the objection. *Id*. At a bench conference, the Court then had this colloquy with Plaintiff's counsel:

> THE COURT: You received an admonition really from the Court of Appeals, Climate Science discussions, discourse are not part of this case.
>
> MR. WILLIAMS: I understand.
>
> THE COURT: And so you're raising this, and the jury will think that Climate Science is the subject of this case. This is a defamation case.
>
> MR. WILLIAMS: All right.
>
> THE COURT: And I'm going to let you know once again, all right?
>
> MR. STEYN: Before we -- Judge Anderson specifically told the Plaintiff that he does not represent Science.

Id. Back on the record, the Court stated:

> The objection is sustained. Members of the Jury, this case is a defamation case. And, yes, as we've told you that there are aspects of the case concerning Science that sort of -- it's an underlay or an overlay, but this case is not about the Climate Science, Climate Change debate. All right. So, it will be helpful if you keep that clear when you're reviewing the facts. This is not a Science, whether there's global Warming or not. That's not the subject of this case. All right. And then with respect to defamation, I will give you the instruction once again.

Id. at 109. Although it sustained Defendants' objections, the Court did not instruct the jury to disregard counsel's improper argument that "these attacks on Climate Scientists have to stop."

After counsel concluded his rebuttal, the Court proceeded to re-read the instruction on the elements of defamation, *id*. at 110–112, but these instructions did not address—and did nothing to cure—counsel's improper argument on punitive damages.

B. Counsel's highly improper argument that "these attacks on climate scientists have to stop" requires a new trial to avoid a miscarriage of justice.

The "case law in this jurisdiction has put counsel on notice that certain types of arguments are impermissible and that counsel who practice here … are expected to abide by those decisions." *Dyson v. United States*, 450 A.2d 432, 443 (D.C. 1982). Here, counsel's argument in connection with Plaintiff's punitive damage claim that "these attacks on climate scientists have to stop" was such an impermissible argument. Indeed, the speed with which the Court sustained Defendants' objections confirms the obvious impropriety of the argument.

The Court of Appeals "has stated repeatedly that an attorney must not ask a jury to 'send a message' to anyone." *Bowman v. United States*, 652 A.2d 64, 71 (D.C. 1994). This is the law for good reason: "Juries are not in the message-sending business. Their sole duty is to return a verdict based on the facts before them." *Id*. *See also Coreas v. United States*, 565 A.2d 594, 604 (D.C. 1989) ("Argument which encourages the jury to 'send a message' has been found improper by this court."); *Powell v. United States*, 455 A.2d 405, 410 (D.C. 1982) ("The function of the jury is to determine the facts based on evidence presented. The jurors are not empaneled to send messages on behalf of their community."). And the parties here agreed and represented to the Court that "Plaintiff will not present any argument or evidence related to any claim that the jury should 'send a message' through its verdict." Jt. Pretrial Statement at 8 (§ E-13).

Telling the jury "these attacks on climate scientists have to stop" was a forbidden send-a-message argument. *See Scott*, 928 A.2d at 685 n.7, 689 (affirming grant of new trial based on plaintiff's counsel's improper closing arguments; in rebuttal counsel asked the jury for '"a verdict that lets Crestar know that they can't have this kind of stuff, that this stuff has got to stop,'" and the Court of Appeals agreed that counsel made an "improper 'send a message' argument"). Although in *Scott* plaintiff's counsel "never used the specific phrase 'send a message' in closing argument" the trial court concluded that "the clear import and intent of what counsel argued was to ask the jury to 'send a message' to defendants." *Id*. at 686. The Court of Appeals agreed. *Id*. at 689. So too here. And Plaintiff's team dispelled any doubt that they had asked the jury to "send a message" about stopping attacks on climate scientists by issuing a press release after the verdict that quoted Mann as saying "I hope this verdict sends a message that falsely attacking climate scientists is not protected speech." Michael E. Mann (@MichaelEMann), Twitter (Feb. 8, 2024, 5:11 PM), https://tinyurl.com/y9ca3jym, attached as Addendum D.

Counsel's argument that "these attacks on climate scientists have to stop" was particularly egregious because both this Court and the Court of Appeals have repeatedly made clear that this case is not about climate science, let alone "attacks on climate scientists." *See* Pretrial Conf. Tr. 9 (10/16/23) (this Court's observation that the Court of Appeals "went through great efforts to ensure that the case … do[es] not get into the realm whether there is or is not global warming, or climate change"); Tr. 29 (1/16/24 AM) (THE COURT: "It's not a climate change case."); Tr. 58 (1/23/24 AM) ("THE COURT: As you well know and as we discussed extensively this is not a case of Climate Change."). Indeed, this Court admonished Plaintiff's counsel during his opening statement not to turn the trial into a case about climate change. *See* Tr. 26 (1/18/24 AM) (counsel objected to Mr. Williams' argument that Defendants "were hostile to [Plaintiff's] findings and his warnings about Climate Change, which showed that Climate Change was real"); *id*. at 27 ("I am going to admonish you, Mr. Williams, to ensure that this opening remains within the confines of what the case is about as established by both the Court of Appeals and this Court.").

Counsel's improper jury argument was prejudicial, no doubt about it. His insistence that "these attacks on climate scientists have to stop" inflamed the jury, which imposed $1 million in punitive damages on Mr. Steyn (and $1,000 in punitives on Simberg, despite his *negative* $200,000 net worth)—even though Mann had suffered only a $2 loss. And "[t]he prejudicial effect of the [attorney] misconduct was compounded by the timing of the comments." *Powell*, 455 A.2d at 411. Plaintiff counsel's "improper remarks were made during rebuttal argument. Defense counsel was thereby denied the opportunity to contest or explain the statements in summation before the jury." *Id*.

Although the Court sustained the objections raised to the improper argument, it did not instruct the jury to disregard the argument. And although the Court re-read its instruction on the

elements of defamation, that instruction was not effective in curing the improper argument. Counsel made the improper argument as part of a request for punitive damages, *see* Tr. 107–08 (2/7/24 PM), and the instructions this Court re-read (*see id*. at 110–12) did not relate to punitive damages. This Court did not re-read its instructions on punitive damages. Nor did the Court tell the jury that a desire to stop attacks on climate scientists is not a permissible basis for a punitive award. Thus, what the Court did was "insufficient to compensate for the prejudice inflicted." *Powell,* 455 A.2d at 411. It did not cure counsel's highly improper and prejudicial argument.

C. Counsel's Politically Charged and Inflammatory Comparison of Defendants to Donald Trump and "Election Deniers" Requires a New Trial.

Counsel have a duty not to incite the "passion or prejudice" of the jury. *Scott*, 928 A.2d at 689; *see Brown v. United States*, 766 A.2d 530, 540 (D.C. 2001) (closing argument "must not be used to inflame the minds and passions of the jurors so that their verdict reflects an emotional response") (quotation marks omitted). Violating that duty, Plaintiff's counsel in rebuttal equated Defendants with "Donald Trump" and "election deniers"—"[t]he people who continued to deny that Trump los[t] the election" despite "overwhelming evidence to the contrary." Tr. 107 (2/7/24 PM). Counsel said "the same issue is true here." *Id*. And he offered this politically charged argument in support of his request for punitive damages. *Id*. When counsel segued into his stop-the-attacks on climate scientists argument, both Defendants objected. *Id*. at 108.

Comparing Defendants to Donald Trump and election deniers was an inflammatory—indeed, incendiary—appeal to politics and the January 6 violence. "Mr. Trump received only five percent of the vote in the District of Columbia in the 2020 presidential election" and "a mob of Mr. Trump's supporters stormed the U.S. Capitol building—which is located in the District of Columbia—on January 6, 2021." *Democracy Partners, LLC v. Project Veritas Action Fund*, No. 17-1047-PLF, 2021 WL 4785853, at *4 (D.D.C. Oct. 14, 2021). Likening Defendants to Trump

and election deniers in front of a jury comprised of District of Columbia residents was highly improper and surely prejudicial. It was also a nod to huge verdicts recently returned against Trump and a not subtle suggestion that this jury should do the same. The grossly excessive punitive award against Steyn indicates the improper tactic worked. *See Scott*, 928 A.2d at 688 ("Excessiveness refers not only to the amount of the verdict but to whether ... the award of damages appears to have been the product of passion, prejudice, … or consideration of improper factors").[5]

Courts have thrown out verdicts obtained after closing arguments comparing the defendant to notorious figures or invoking horrific events, and this Court should do the same. *See United States v. Steinkoetter*, 633 F.2d 719, 720 (6th Cir. 1980) (defendant compared to Pontius Pilate and Judas Iscariot); *Brown v. United States*, 370 F.2d 242, 246 (D.C. Cir. 1966) ("[I]n the context of current events, raising the spectre of martial law was an especially flagrant and reprehensible appeal to passion and prejudice."). "Such a comparison creates an overwhelming prejudice in the eyes of the jury." *Martin v. Parker*, 11 F.3d 613, 616 (6th Cir. 1993). And under D.C. law, improper jury arguments "are looked upon with special disfavor when they appear in the rebuttal because at that point defense counsel has no opportunity to contest or clarify" them. *Turner v. United States*, 26 A.3d 738, 744 (D.C. 2011) (cleaned up). *Accord Coreas*, 565 A.2d at 605.

Counsel deliberately played the "Trump" card and put Defendants on par with "election deniers." He appealed to D.C. residents' deep antipathy to Trump and recalled the horrific events of January 6. That improper rebuttal argument, combined with his other ones, necessitates a new

[5] Counsel's comparison was especially egregious and prejudicial because the January 6 violence occurred in the District of Columbia and because, as counsel knew, one of the jurors, Juror 931, works for the U.S. Senate Sergeant-at-Arms to watch for security risks, "including demonstrations that are affecting my agency." Tr. 92 (1/17/24 AM). Juror 931's office was at the center of the January 6 riot. *See* Michael Balsamo & Sophia Tulp, *US Senate sergeant-at-arms during Capitol riot dies at 71*, Associated Press (June 28, 2022), https://tinyurl.com/4bu7kw7u. Juror 931 served as the foreman of the jury.

trial. Although Steyn did not immediately object when counsel first uttered Trump's name, the Court should have intervened at that moment. When lawyers "overstep the boundaries of proper argument, the trial judge should take responsibility for maintaining control." *Bates v. United States*, 766 A.2d 500, 509 (D.C. 2000). "'Swift and stern corrective action' by the trial judge is appropriate" to avoid prejudice to the defendant. *Id*. This Court may grant a new trial as a remedy for an improper jury argument even if there is no objection. *See Scott*, 928 A.2d at 689 (affirming trial court's decision to grant new trial because of improper send-a-message argument even though counsel "did not object to the offending argument"). In any event, Steyn did object when counsel connected his election-deniers analogy to his stop-the-attacks argument. Tr. 108 (2/7/24 PM).

D. Counsel's improper argument that Steyn and his co-defendant "don't really have any proof they didn't act recklessly" requires a new trial.

Plaintiff's counsel also made an improper jury argument on the issue of Defendants' alleged actual malice. Mr. Williams said: "You see, they don't really have any proof that they didn't act recklessly." Tr. 101 (2/7/24 PM). Both Defendants immediately objected and asked the Court for an instruction to the jury. *Id*. They explained that "Mr. Williams continues to conflate reckless with recklessly. It's incorrect. It's misleading to the jury. … Highly prejudicial and legally incorrect." *Id*. After defense counsel insisted "Your Honor, I do want an instruction"—clearly meaning an instruction to the jury to disregard the improper argument—the Court said it would "reread the instructions" previously given to the jury. *Id*. at 102. The Court did not sustain (or overrule) Defendants' objections or instruct the jury to disregard counsel's improper argument. The Court allowed Plaintiff's counsel to resume his rebuttal and, after it ended, the Court re-read its general instruction on the four elements of defamation. *See id*. at 110–12.

Plaintiff's counsel's statement—that Defendants "don't really have any proof that they didn't act recklessly"—was improper argument for several reasons. *First*, Defamation law does

not ask whether a defendant acted "recklessly." To establish actual malice, the law required Plaintiff to prove, by clear and convincing evidence, that Defendants acted with reckless disregard for whether their statements were true or false—meaning they entertained serious doubts about the truth of their statements or had a high degree of awareness of their statements' probable falsity. *See Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1252 (D.C. 2016) ("*CEI*"). Thus, Plaintiff's counsel blatantly misstated the law. *Second*, to make matters worse, he inverted the burden of proof. He led the jury to believe that *Defendants* had to prove they were not reckless when, in fact, *Plaintiff* had the burden to prove Defendants' reckless disregard for the truth or falsity of their statements by clear and convincing evidence. Third, as a factual matter, Plaintiff's counsel misstated the evidence. It was false to say that Defendants "don't really have any proof that they didn't act recklessly." Defendants *did* have and present proof that they *did not* act with reckless disregard for the truth or falsity of their statements. *See infra* Part III at 13–15.

For these reasons, Plaintiff counsel's argument was improper, incorrect, misleading, and prejudicial. Once again, the "prejudicial effect" of counsel's "misconduct was compounded" by the fact his "improper remarks were made during rebuttal argument" and so defense counsel was "denied the opportunity to contest or explain the statements." *Powell*, 455 A.2d at 411.

Counsel's improper and prejudicial argument was not cured by the Court. The Court failed to sustain Defendants' objections and thus left the jury free to conclude that Plaintiff's counsel had said nothing wrong. Nor did the Court instruct the jury that it should disregard counsel's improper argument. Instead, the Court re-read its instruction on the four elements of defamation. But the point the jury needed to hear—that counsel's statement that "they don't really have any proof that they didn't act recklessly" was a misstatement of the law and the facts—was not conveyed by simply re-reading the instruction on the elements of defamation. To the extent the two sentences

in the instruction on "reckless disregard" were somewhat helpful, they got lost amid the general instruction on the four elements of defamation, a lengthy instruction that took three pages to transcribe. *See* Tr. 110–112 (2/7/24 PM). The Court did nothing to connect specifically in the jurors' minds the "reckless disregard" instructions to counsel's improper argument. The Court further undercut any curative effect from re-reading the general instruction on the elements of defamation by then giving other basic, and lengthy, instructions. *See id*. at 112–118.

In short, re-reading the general instruction on the four elements of defamation was clearly "insufficient to compensate for the prejudice inflicted." *Powell,* 455 A.2d at 411. The reality is "'one cannot unring a bell,' and we cannot be sure that a curative instruction would have undone the damage." *Scott*, 928 A.2d at 689 (quoting *Thompson v. United States*, 546 A.2d 414, 425 (D.C. 1988)). The Court should have sustained Defendants' objections and should have instructed the jury to disregard the improper argument; its failure to do so was error requiring a new trial.

This improper jury argument, by itself and when combined with the improper "send a message" argument, warrants a new trial.

III. The Clear Weight of the Evidence Confirms Steyn Lacked Actual Malice.

The jury's verdict as to actual malice is against the clear weight of the evidence and justice would miscarry if the verdict stood. *Scott*, 928 A.2d at 687. On a new trial motion, this Court need not view the evidence in the light most favorable to Plaintiff but may instead act as a "thirteenth" (or seventh) juror. *Id*. Furthermore, because of the vital First Amendment interests at stake, courts "reviewing a determination of actual malice" must "exercise independent judgment and determine whether the record establishes actual malice with convincing clarity." *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 514 (1984). This rule applies to a trial court's post-judgment review of a jury verdict. *Id*. at 501; *Tavoulareas v. Piro*, 817 F.2d 762, 805 n.2 (D.C. Cir. 1987) (Wald, C.J., concurring in the judgment).

To prove actual malice, a plaintiff must show by clear and convincing evidence that "the defendant either (1) had subjective knowledge of the statement's falsity, or (2) acted with reckless disregard for whether or not the statement was false." *CEI*, 150 A.3d at 1252 (cleaned up). The first test—subjective knowledge—"requires the plaintiff to prove that the defendant actually knew that the statement was false." *Id.* And the second—reckless disregard— "requires more than a departure from reasonably prudent conduct." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989). "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *Id*. (quoting *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968)). "The standard is a subjective one—there must be sufficient evidence to permit the conclusion that the defendant actually had a 'high degree of awareness of ... probable falsity.'" *Id*. (quoting *Garrison v. State of Louisiana,* 379 U.S. 64, 74 (1964)). "As a result, failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard." *Id*. (citing *St. Amant,* 390 U.S. at 731, 733). The Court has also "emphasiz[ed] that the actual malice standard is not satisfied merely through a showing of ill will or 'malice' in the ordinary sense of the term." *Id*. at 666. "The phrase 'actual malice' … has nothing to do with bad motive or ill will." *Id*. at 666 n.7.

The *St. Amant* case teaches the right way to analyze actual malice. In a televised speech, St. Amant republished statements by Albin, a union member, to the effect that Thompson, a deputy sheriff, had accepted bribe money from the union's president. The Louisiana Supreme Court held that St. Amant defamed Thompson, finding that "St. Amant had broadcast false information about Thompson recklessly" and pointing out that St. Amant "failed to verify the information with those in the union office." 390 U.S. at 730. The U.S. Supreme Court, however, rejected this analysis as not a "proper test of reckless disregard." *Id*. at 732. It explained that the record did not show "an

awareness by St. Amant of the probable falsity of Albin's statement about Thompson" and that St. Amant's "[f]ailure to investigate" was not "evidence [of] a doubtful mind." *Id*. at 732–33, 733.

Here, the jury verdict on actual malice is against the clear weight of the evidence and cannot withstand the independent review required by *Bose*. The jury first found that Steyn had knowledge his statements were false. Tr. 9 (2/8/24). But there is, in fact, no evidence that Steyn *subjectively knew* his statements were untrue. Indeed, Plaintiff's closing argument to the jury did not even suggest that Steyn had such subjective knowledge. Nor did Plaintiff's brief opposing Steyn's Rule 50 motion so suggest. And Steyn's own testimony was directly contrary. *See* Tr. 85 (1/23/24 AM) ("Q. In 2012 it was your view that the Hockey Stick is fraudulent? A. Correct."); *id*. at 38 ("Q. Now, … you had maintained that the Hockey Stick was fraudulent since the time it first came out. … A. Correct."); *id*. at 43–44 ("Q. Now, since you took this position back in 2001, … you've been resolute in that position ever since, right? … A. Yes."). The jury did not have to credit Steyn's testimony, but not crediting it does not equal actual malice. It simply leaves the record with no credited evidence as to Steyn's subjective knowledge. And the mere absence of such evidence does not satisfy Plaintiff's burden to prove actual malice by clear and convincing evidence. *See Bose*, 466 U.S. at 512 ("When the testimony of a witness is not believed, the trier of fact may simply disregard it. Normally the discredited testimony is not considered a sufficient basis for drawing a contrary conclusion.").

The jury also found that Steyn acted with reckless disregard for whether his statements were false. Tr. 9–10 (2/8/24). That, too, is against the clear weight of the evidence. The evidence of Steyn's actual malice was thin to the point of emaciation. Plaintiff's counsel summed up his theory on reckless disregard this way: "You see, they don't really have any proof that they didn't act recklessly." Tr. 101 (2/7/24 PM). But counsel misstated the evidence. Steyn did offer proof

that he did not act with reckless disregard of the truth or falsity of his 2012 post.

Before posting, Steyn read the Penn State report, the Louis Freeh report, the Lord Oxburgh report, and the Muir Russell report. Tr. 14 (1/23/24 AM). He "looked at all four of those things to make sure that the Simberg article was correct." *Id*. Steyn was familiar with Simberg; he had previously read posts on Simberg's website. *Id*. at 27. And he "had been writing, on and off, about Penn State and Sandusky for most of the previous year." *Id*. at 35. Although Steyn did not recall whether he saw the NSF report "before or after writing my piece," *id*. at 16, that testimony in no way proves actual malice. Steyn regarded the two U.K. reports as "the more relevant reports" since "the UK East Anglia was the scene of the crime," *i.e*., the place where the Climategate e-mail scandal occurred. *Id*. at 17–18. Steyn read the finding in the Muir Russell report that the hockey stick was "misleading." *Id*. at 31. In his trial testimony, Steyn quoted that finding from page 13 of the report. *Id*. at 52. Steyn also read the Climategate emails, including the notorious email in which Phil Jones referenced "Mike's Nature trick" and "hide the decline." Ex. 533. From that email alone, Steyn and countless other observers could, and did, fairly come to the conclusion, free from any actual malice, that the hockey stick was deceptive or misleading—*i.e*., fraudulent.

Having read the U.K. reports, Steyn did not believe he had to, as Plaintiff put it, "educate [him]self about the findings of the American Government." Tr. 20 (1/23/24 AM). And even if he should have read the NSF report in addition to the four reports he did read, "failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard." *Harte-Hanks*, 491 U.S. at 688. Nor is it sufficient to note that Steyn did not "consult[ ]" with scientists "to find out their views whether the Hockey Stick was fraudulent." Tr. 69 (1/23/24 AM). The First Amendment protects Steyn's right to form his own views. Plaintiff did not get an apology or retraction, but he never asked Steyn for one. *Id*. at 74.

National Review, not Steyn, placed the college newspaper ad poking fun at Mann. Tr. 71 (1/22/24 PM) ("It wasn't me."). In any event, this Court ruled "It's irrelevant." *Id*. at 72.

Far from having serious doubts about the truth of his statements, Steyn had "[n]o reason to doubt [his] position on the Hockey Stick." Tr. 44 (1/23/24 AM). Steyn testified: "I stand by every word in that post, because that post is the truth." *Id*. at 75. Steyn had been writing about—and criticizing—the hockey stick graph in widely-read newspapers for more than a decade before his 2012 post. In 2001, he wrote in the *Telegraph* that the graph uses "incompatible sets of data" in that "it measures the 11th to the 19th centuries with one system (tree ring samples) and the 20th with another (thermometers)." Ex. 5. *See* Tr. 77–78 (1/23/24 AM). In 2006, he wrote in the *Australian* that "[t]his graph was almost laughably fraudulent, not least because it used a formula that would generate a hockey stick shape, no matter what data you input, even completely random, trendless, arbitrary computer-generated data." Ex. 8. *See* Tr. 79–80 (1/23/24 AM). And Steyn had even more reasons to deem the graph fraudulent. *First*, "the Tree Rings do not correlate with the temperature record in our lifetime. … But we're supposed to believe that they can accurately tell you the temperature for the year 1512 or 1482." *Id*. at 78–79. *Second*, "for the years 1400 to 1404, there was no data, so [Mann] just cut and pasted some data from later in the 15th Century." *Id*. at 76. *Third*, for some years in the mid-15th Century, Mann relied on just "one reliable tree" from the Gaspé Peninsula in Quebec. *Id*. at 75–76, 80. *Fourth*, by using certain data starting in the year 1550, "Mann conveniently eliminate[d]" the 1530s, which "has always been known to be the warmest decade in Europe." *Id*. at 76. Others may, and surely did, disagree with Steyn's critique of the hockey stick as fraudulent. But the First Amendment protects Steyn's right to express that truth and opinion as much as it protects their freedom to disagree.

At trial, Plaintiff repeatedly invoked *Nader v. de Toledano*, 408 A.2d 31 (D.C. 1979), but

that case is inapposite. *Nader* was a summary judgment case, and the Court of Appeals held that "at summary judgment the plaintiff is not required to prove to the court 'actual malice with convincing clarity' as he must do at trial." *Id*. at 49. Here, of course, Plaintiff Mann was required to prove actual malice at trial by clear and convincing evidence. Defendant de Toledano wrote that a Senate report had "demonstrate[d] conclusively that Nader falsified and distorted evidence to make his case against the automobile." *Id*. at 38. The Court of Appeals held that, under its summary judgment test (which, again, did not require the plaintiff to show clear and convincing evidence of actual malice), summary judgment could not be granted to the journalist on the issue of actual malice because the report itself stated that Nader's charges "were made in good faith based on the information available to him." *Id*. at 37. Thus, de Toledano had made a claim about the findings of the Senate report that the report itself contradicted, and that was sufficient for Nader to survive summary judgment. The instant case is very different, not only because of the different procedural posture, but also because Steyn did not make any claim about the findings of a report at variance with the report itself. Steyn's post said that Penn State's report "declined to find one its star names guilty of any wrongdoing"—no evidence of actual malice there—and the post did not mention any other report concerning Mann. Ex. 60.

IV. The Clear Weight of the Evidence Confirms That Mann Lacks Actual Injury.

Plaintiff failed to prove actual injury. An "actual" injury is one that is "[r]eal; substantial" as "[o]pposed to potential, possible, virtual, theoretical, hypothetical, or nominal." *Actual, Black's Law Dictionary* 33 (5th ed. 1979). In a defamation case, actual injury "must be supported by competent evidence concerning the injury." *Gertz v. Robert Welch, Inc*., 418 U.S. 323, 350 (1974). The plaintiff must have "concrete proof" that his reputation was harmed. *Rocci v. MacDonald-Cartier*, 731 A.2d 1205, 1208 (N.J. Super. Ct. App. Div. 1999) (citing *Sisler v. Gannett Co*., 516 A.2d 1083, 1096 (N.J. 1986)), *aff'd as modified*, 755 A.2d 583 (N.J. 2000); *Weidner v. Anderson*,

174 S.W.3d 672, 684 (Mo. Ct. App. 2005). Here, there is no competent, concrete evidence of reputational harm or, indeed, any actual injury.

First, no competent evidence showed that Steyn's blog post *caused* a loss of grant funding. Plaintiff makes the simplistic claim that he had more grants before the post and fewer grants after the post. That is not proof of causation. It is instead a logical fallacy. *See Arpaio v. Obama*, 797 F.3d 11, 21 (D.C. Cir. 2015) (discussing "the logical fallacy *post hoc ergo propter hoc* (after this, therefore because of this)" and explaining that "we do not infer that the rooster's crow triggers the sunrise"). Counsel admitted to the Court that he could show only correlation, not causation. *See* Tr. 28 (1/31/24 PM) ("MR. WILLIAMS: It is correlation, Your Honor. … You're never going to get causation."). *But see* Jury Instructions at 9 (§ 12.02) (causation requirement); *id*. at 11 (plaintiff must show actual injury "as a result" of defamatory statement). Mann does not know whether reviewers of his grant applications even considered the Defendants' posts. *See* Tr. 62–67 (1/24/24 PM) (judicial admissions read to the jury).

Second, the dirty look from a stranger in the supermarket is almost laughable as an attempt to show actual injury. There is no evidence the stranger even read Steyn's post, no evidence the dirty look had anything to do with the post, and no evidence the stranger even recognized Mann in the grocery. Did Mann read his mind? Mann's apparent paranoia is not a cognizable injury.

Third, Dr. John Abraham's testimony does not show actual injury. On the contrary, he testified that Dr. Mann's reputation was "excellent." Tr. 99 (1/30/24 PM). "His work is highly regarded in the Scientific Community." Tr. 40 (1/31/24 AM). He did not ask Mann to work on a paper because he was "concerned" that some co-authors would be "skittish" about it. *Id*. at 68, 83. This concern was wholly speculative. He did not know if any of his co-authors had even read the Steyn and Simberg blog posts. *Id*. at 68. And he did not know of any researcher who refused to

collaborate with Mann because of the posts. *Id*. at 76. In a revealing moment, Abraham testified it was "this whole ClimateGate thing," *i.e*., the 2009 email scandal, that caused his concern about Mann (*id*. at 63)—not the 2012 blog posts. The Court should credit *that* candid testimony, not his assertion that the posts caused concern. Abraham was an extremely biased witness. He helped to found the Climate Science Legal Defense Fund to help Mann and others. *Id*. at 93, 102. He has called Mann a "hero" and co-authored seven peer-reviewed articles with him. *Id*. at 65.

Fourth, any "injury" was in large part self-inflicted. Mann himself emailed Steyn's post to his "climatebloggers" group and tweeted out the *Chronicle of Higher Education* article to his hundreds of thousands of followers. Ex. 535. Mann objects to being compared to Jerry Sandusky but for years he voluntarily and repeatedly associated himself with Graham Spanier, even after Spanier's indictment and conviction. A self-inflicted injury is not cognizable as an injury. *See Nat'l Family Planning & Repro. Health Ass'n v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006). Mann breached his duty to mitigate his damages. *See* Jury Instructions at 10 (§ 12.07).

Finally, since 2012, Mann's career trajectory has shot up like the blade of his hockey stick. His professional accomplishments, total annual income, "h index" and standing with the people he cares about—scientists, politicians, and celebrities—have gone up and up. Ex. 112 (Mann CV). He received a promotion to an Ivy League university. The blog posts prevented none of this.

In sum, at trial Mann failed to prove by competent evidence so much as a molecule of actual injury. Relief from the verdict and judgment is required for that reason alone.

V. Steyn's Statements Were True, Non-Defamatory, and Constitutionally Protected.

Every word of Steyn's post is true. The hockey stick graph *is* fraudulent. "It does not prove what it purports to prove." Mark Steyn, *"A Disgrace to the Profession"* at iii (2015). Synonyms for fraudulent include false, misleading, specious, and spurious. *See Fraudulent, Merriam-Webster Thesaurus Online*, https://www.merriam-webster.com/thesaurus/fraudulent

(last visited Mar. 8, 2024). That is "the plain and natural meaning of the words of the statement." Jury Instructions at 11.

The clear weight of the evidence at trial showed the hockey stick graph was misleading. *See*, *e.g.*, Ex. 620 (video of Berkeley professor Richard Muller explaining how the hockey stick is deceptive); Ex. 533 (email about "Mike's Nature trick" and "hide the decline"); Ex. 598 ("cover our a$$es" email); Steyn testimony *supra* at pg. 15. Dr. Abraham Wyner, a statistics professor at Wharton, offered the expert opinion that the hockey stick is misleading. *See* Tr. 78 (1/31/24 PM). It is misleading, among other reasons, because it fails to predict historic global temperatures better than randomly generated information. *See* Tr. 63, 65–67, 74–75 (2/1/24 AM). Mann called no witnesses at trial to defend the hockey stick other than himself and his co-author, Dr. Ray Bradley.

Because of the First Amendment, Steyn is "entitled to [his] opinions on the [hockey stick] and to express them without risk of incurring liability for defamation." *CEI*, 150 A.3d at 1253. Referring in passing to the hockey stick as fraudulent in a blog post without elaboration or emphasis is opinion because "the statement is indefinite and ambiguous." *Ollman v. Evans*, 750 F.2d 970, 979 (D.C. Cir. 1984) (en banc). The offending adjective appears in the middle of an allegorical sentence depicting "Michael Mann [as] the man behind the fraudulent climate-change 'hockey-stick' graph, the very ringmaster of the tree-ring circus." Steyn's short post did not pause to explain how the graph is misleading, because that was not the aim of the post. At trial Plaintiff introduced no evidence on how Steyn's use of the word "fraudulent" would be received by readers.

Steyn's criticism of Mann's hockey stick graph was in keeping with the tenor of the climate science debate, though far less inflammatory than Mann's own discourse. *See*, *e.g.*, Ex. 685 (Mann's email accusing three scholars of "scientific misconduct" and behaving "unethically and dishonestly"); Ex. 603 (Mann's email calling Stephen McIntyre "human filth"); Ex. 1100 (Mann's

tweet calling McIntyre a white supremacist); Tr. 66–67 (1/24/24 PM) (judicial admission). When compared to Mann calling Steyn "this pathetic excuse for a human being," Ex. 554, Steyn calling the hockey stick graph "fraudulent" and Mann "the very ringmaster of the tree-ring circus" is downright tame. Given the tenor of the debate, Steyn's statement would not have moved the needle on Mann's reputation in his communities one iota. The jury found that it was not defamation for Simberg to write that "the emails revealed [Mann] had been engaging in data manipulation to keep the blade on his famous hockey stick graph." Tr. 7 (2/8/24). If it was not defamation for Simberg to say Mann manipulated the data to keep the hockey stick's shape, it was not defamatory for Steyn to say the graph is fraudulent (*i.e.*, misleading).

Nor did Steyn defame Mann by quoting the Jerry Sandusky line from Simberg's post. In Steyn's very next sentence he *distanced* himself from that line, while allowing that Simberg "has a point." Because the jury found that this comment on Simberg's post was *not* defamation, *see* Tr. 10 (2/8/24), it cannot be defamatory for Steyn to quote the text of another author upon which his post was commenting. Quoting other blogs and commenting on them is what bloggers do. Where, as here, the comment is not defamation, the quotation cannot be defamatory either. "The District of Columbia has long recognized and accorded the media the privilege of fair comment on matters of public interest." *Phillips v. Evening Star Newspaper Co*., 424 A.2d 78, 88 (D.C. 1980).

VI. The Grossly Excessive, Unconstitutional, and Otherwise Unlawful Award of Punitive Damages Requires a New Trial.

On this issue, Steyn incorporates the arguments presented in his motion for judgment as a matter of law or remittitur (at 2–13) filed concurrently with this motion.

CONCLUSION

For the foregoing reasons, this Court should grant Defendant Steyn's motion, vacate the judgment, and hold a new trial on liability and punitive damages.

Dated: March 8, 2024

Respectfully submitted,

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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.

Index of Exhibits to
Defendant Mark Steyn's Motion for a New Trial

ADDENDUM A: Ex. 60: Steyn Post

ADDENDUM B: Defendant Mark Steyn's Motion for Sanctions for Bad-Faith Trial Misconduct

ADDENDUM C: Trial Exhibits: 5, 8, 117, 533, 535, 554, 598, 603, 685, 1100

ADDENDUM D: Mann's Post-Verdict Press Release

ADDENDUM E: Excerpted Transcripts:

Pre-Trial Conference, 10/16/23
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ADDENDUM A

NATIONAL REVIEW

Football and Hockey

By Mark Steyn — July 15, 2012

In the wake of Louis Freeh's report on Penn State's complicity in serial rape, Rand Simberg writes of Unhappy Valley's other scandal:

> I'm referring to another cover up and whitewash that occurred there two years ago, before we learned how rotten and corrupt the culture at the university was. But now that we know how bad it was, perhaps it's time that we revisit the Michael Mann affair, particularly given how much we've also learned about his and others' hockey-stick deceptions since. Mann could be said to be the Jerry Sandusky of climate science, except that instead of molesting children, he has molested and tortured data in the service of politicized science that could have dire economic consequences for the nation and planet.

Not sure I'd have extended that metaphor all the way into the locker-room showers with quite the zeal Mr Simberg does, but he has a point. Michael Mann was the man behind the fraudulent climate-change "hockey-stick" graph, the very ringmaster of the tree-ring circus. And, when the East Anglia emails came out, Penn State felt obliged to "investigate" Professor Mann. Graham Spanier, the Penn State president forced to resign over Sandusky, was the same cove who investigated Mann. And, as with Sandusky and Paterno, the college declined to find one of its star names guilty of any wrongdoing.

If an institution is prepared to cover up systemic statutory rape of minors, what won't it cover up? Whether or not he's "the Jerry Sandusky of climate change", he remains the Michael Mann of climate change, in part because his "investigation" by a deeply corrupt administration was a joke.

ADDENDUM B

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Superior Court
of the District of Columbia

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,

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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

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Assisting Trial Counsel for
Defendant Mark Steyn

ADDENDUM C

EXHIBIT 5

Where rising hot air hits cold hard facts

By Mark Steyn

12:00AM BST 01 Apr 2001

EVEN if the Kyoto accords didn't deserve dumping in and of themselves, it would have been worth doing just for the pleasure of watching Europe go bananas. "Mark yesterday's date," wrote Geoffrey Lean in the Evening Standard. "It is no exaggeration to say that 28 March 2001 may prove to be one of the most important days in the history of the world." Michael Meacher thought it could lead to the planet becoming "uninhabitable". John Gummer called it an assault on European sovereignty (whatever that is). Globally warming to his theme, he decided he wasn't going to have Yankee imperialism shoved down his throat like a Tory minister's daughter being force-fed a BSE quarterpounder. "We are not going to allow our climate to be changed by somebody else," he roared, threatening an international trade war against the United States. You go, girl! Why not refuse to sell the Yanks your delightful British beef?

Following Gummem Hussein's attack on the Great Satan, the Express declared "Polluter Bush An Oil Industry Stooge" and The Independent dismissed the President as a "pig-headed and blinkered politician in the pocket of the US oil companies". But enough of his good points. According to the eco-alarmists of the Seventies, there wasn't supposed to be any oil industry to be a stooge of by now. The oil was meant to run out by 2000. Being in the pocket of the oil companies should be about as lucrative as being in the pocket of the buggy-whip manufacturers. But somehow the environmental doom-mongers never learn - so concerned about reducing everybody else's toxic emissions, but determined to keep their own going at full blast.

So now "this ignorant, short-sighted and selfish politician" (Friends of the Earth) is dumping Kyoto because it "irked the American right" (The Independent). It's certainly true that, for a Republican, there's little to be gained in kissing up to what Dubya's dad called "the spotted owl crowd". Indeed, if I understand this global-warming business correctly, the danger is that the waters will rise and drown the whole of Massachusetts, New York City, Long Island, the California coast and a few big cities on the Great Lakes - in other words, every Democratic enclave will be wiped out leaving only the solid Republican heartland. Politically speaking, for conservatives there's no downside to global warming.

But I don't think it will come to that. The UN's report on climate change, issued in January, insists that

the 20th century was the warmest in the last millennium. But it measures the 11th to the 19th centuries with one system (tree ring samples) and the 20th with another (thermometers). The resultant graph looks like a long bungalow tacked on to the side of the Empire State Building - but only because the UN is using incompatible sets of data. That's why, according to their survey, most of the alleged warming occurred in the early 20th century, when America was a predominantly rural economy: if the UN report proves anything, it's that, as soon as folks got off their horses and starting buying automobiles, the rate of global warming slowed down.

Maybe there really is global warming. And maybe the 4.5 per cent of the world's greenhouse gases we humans generate is responsible for it, as opposed to the 95.5 per cent generated by nature. But, as long as the UN and others substitute hot air for hard science, Bush is right to suspect it's eco-bunk. Even American politicians who believe in global warming don't believe in Kyoto. Geoffrey Lean might like to note that the day that will live in infamy is not March 28, 2001 but July 26, 1997 - the date when the US Senate voted against the proposed treaty 95-0. Not one Senator - not even Ted Kennedy - voted in favour. In Kyoto, Al Gore signed anyway, but that old fraud Clinton never bothered sending it to the Senate for ratification because he needed 67 votes and he knew he was 67 short. Mr Lean and his chums have had four years to get used to the idea that Kyoto's dead, not because of one right-wing oil stooge but because of the entire American political establishment. It's doubtful whether even Senator Hillary Clinton would vote for this. When Bush announced he'd be drilling for oil in the Arctic National Wildlife Reserve, Hillary said his "charm offensive" was really a "harm offensive". When Bush decided against Federal regulation of carbon dioxide emissions, Hillary observed that "it looks like we've gone from CO2 to 'See you later'." When he scrapped proposed federally-mandated reductions on arsenic in the water supply, she jeered, "It's arsenic and about face". But when Bush scrapped Kyoto, Hill made no puns whatsoever. Even Hillary knows Kyoto's off the graph.

As for John Gummer's protests about the US invading European sovereignty, the whole treaty is an assault on national sovereignty, especially America's. The US cannot comply with the accords without substantial job losses - 100,000 in Michigan alone, 80,000 in Georgia. Worse, the treaty would set up an international emissions-trading market, whereby the only way to mitigate against the economic shrinkage would be for the US to buy "pollution permits" from Russia, India or various developing countries, which would be allowed to sell their "pollution rights" for billions of dollars which they could then use to reduce their own emissions. The US would wind up paying the Russian mafia or the Congo's nutcake of the month for the privilege of not closing an auto plant in Flint, Michigan. Do you really think the generals and the KGB are going to let the Kremlin spend an estimated $40 billion cheque from Uncle Sam on cleaner factories for lead-free Ladas? At best you'd have a greenhouse-gas version of the European Fisheries Policy, under which the British can't fish in their own waters but any

passing Spaniard trailing his pantyhose off the back of the trawler can. The Kyoto treaty was a deranged proposal to give the world's loopier jurisdictions a veto over America's economy.

The US was supposed to go along with this because it would be a "symbolic gesture". But we've had eight years of symbolic gestures, and Bush feels it's time to get real, especially on the environment. Messrs Gummer, Lean and the overheated Europeans should chill out. Every significant environmental improvement - from lead-free gas to recycling - comes from America, and global warming, such as it is, will be solved - like most problems - by American ingenuity, not Euro-regulation. The era of Clintonian posturing is over, chaps. Wake up and smell the CO2.

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EXHIBIT 8
[EXCERPTED]

Mark Steyn: Climate change myth

The Australian ^ | 09/11/2006 | By Mark Steyn

Posted on **1/10/2006, 10:13:09 AM** by **oxcart**

MICHAEL Crichton's environmental novel State Of Fear has many enjoyable moments, not least the deliciously apt fate he devises for a Martin Sheenesque Hollywood eco-poseur. But, along the way, his protagonist makes a quietly sensible point: that activist lobby groups ought to close down the office after 10 years. By that stage, regardless of the impact they've had on whatever cause they're hot for, they're chiefly invested in perpetuating their own indispensability.

That's what happened to the environmental movement. Denouncing this week's meeting of the Asia-Pacific Partnership, starting today in Sydney, the eco-tists sound more than a little squaresville: fossils running out of fuel. "Clearly, the short-term profits of the fossil fuel companies count for more in Canberra than the long-term health and welfare of ordinary Australians," says Clive Hamilton of the Australia Institute, disregarding the fact that the "long-term health and welfare" that ordinary Australians enjoy is not unconnected to fossil fuels. "Relying solely on technology to deal with greenhouse emissions is like trying to empty a puddle while the tap is still running: you simply cannot do it," says Labor's environment spokesman Anthony Albanese. So Labor's policy is to turn off the tap?

Even if it wasn't driving the global environmental "consensus" bananas, the Asia-Pacific Partnership would still be worth doing. In environmental politics, the short-term interests of the eco-establishment count for more than the long-term health and welfare of ordinary Australians, or New Zealanders, or indeed Indians and Nigerians. They count for more than the long-term reputation of scientific institutions.

Hence, the famous "hockey stick" graph purporting to show climate over the past 1000 years, as a continuous, flat, millennium-long bungalow with a skyscraper tacked on for the 20th century. This graph was almost laughably fraudulent, not least because it used a formula that would generate a hockey stick shape no matter what data you input, even completely random, trendless, arbitrary computer-generated data. Yet such is the power of the eco-lobby that this fraud became the centrepiece of UN reports on global warming. If it's happening, why is it necessary to lie about it?

Well, the problem for the Kyoto cultists is that the end of the world's nighness is never quite as nigh as you'd like. Thirty years ago, Lowell Ponte had a huge bestseller called The Cooling: Has the new ice age already begun? Can we survive?

Answer: No, it hasn't. Yes, we can. So, when the new ice age predicted in the '70s failed to emerge, the eco-crowd moved on in the '80s to global warming, and then more recently to claiming as evidence of global warming every conceivable meteorological phenomenon: lack of global warmth is evidence of global warming; frost, ice, snow, glaciers, they're all signs of global warming, too. If you live in England, where it's 12C and partly cloudy all summer and 11.5C and overcast all winter, that dramatic climate change is also evidence of global warming.

That's the new buzz phrase these days: climate change. We've got to stop it, or change it back before it destroys the planet. And, if it doesn't destroy the planet, circa 2011 the Kyotocrats will be citing lack of climate change as evidence of climate change. They are, literally, a church, and under the Holy Book of Kyoto their bishops demand that the great industrial nations of the world tithe their incomes to them. So they're never going to take Crichton's advice.

MANN-STEYN-27

That being so, the next best thing is the Asia-Pacific Partnership, or the "coalition of the emitting": Australia, the US, India, China, Japan, and South Korea. These nations are responsible for about half of greenhouse gas emissions and, by 2050, will account for roughly 75 per cent of global gross domestic product. In other words, these are the players that matter. And, unlike the Kyotophiles, their strategy isn't a form of cultural self-flagellation. America and Australia will be making Western technology available to developing nations to accelerate their development, so they don't have to spend a century and a half with belching smokestacks glowering over grimy cities the way the first industrialised nations did.

My only problem with this is that, in a government notable for its blunt, healthy disdain for the transnational pieties, Australia's Environment Minister seems to have been spending way too much time snorting the ol' CO2 at the eco-lobby parties. As Matt Price reported in these pages last year:

"Emerging from a bushwalk through the Tarkine forest in northwest Tasmania, Environment Minister Ian Campbell told The Australian that argument about the causes and impact of global warming had effectively ended: 'I think the Australian Government owes it to the public to tell it like it is.'"

Oh, dear. By "telling it like it is", he means telling it like we've been told for the past 30 years: "Australia and other industrialised nations need to take urgent action to avert environmental disaster."

Really? You know, I don't like to complain but maybe that Tarkine forest is part of the problem. Here's a headline from the National Post of Canada last Friday: "Forests may contribute to global warming: study." This was at Stanford University. They developed a model that covered most of the Northern Hemisphere in forest and found that global temperature increased three degrees, which is several times more than the alleged CO2 emissions. Heat-wise, a forest is like a woman in a black burka in the middle of the Iraqi desert. In my state of New Hampshire, we've got far more forest than we did a century or two ago. Could reforestation be causing more global warming than my 700m-per-litre Chevrolet Resource-Depleter? Clearly I need several million dollars to investigate further.

I said above that any day the Kyotophiles will be citing lack of climate change as evidence of climate change. But, in essence, that's what they've been doing for years. For example, just before Christmas, Rutgers University put out a press release headed "Global Warming Doubles Rate of Ocean Rise".

Whoa, sell that beachfront property now! If things keep up like this, Sydney's excitable "youths" will be having to rampage in diving suits. But hang on, what exactly do they mean by the "rate" "doubling"? Kenneth Miller claims to have proved that from 5000 years ago to about 200 years ago the global ocean rise was about 1mm a year.

But since 1850 it's been rising at 2mm a year. In other words, it doubled sometime in the early 19th century and has stayed the same ever since, apparently impervious to the industrialisation of Europe, China, India and much of the rest of Asia, as well as to the invention of the automobile, the aerosol deodorant and the private jet Barbra Streisand used when she flew in to Washington to discuss global warming with president Clinton. Yet nobody thought to headline the story "Rate of ocean rise unchanged for over a century and a half".

If the present rate continues, the Maldives will be under water by 2500. Of course, by then, if the present rate of demographic decline continues, most of Russia and Europe will be empty, and we could resettle the 350,000 residents of the Maldives on the Riviera.

Or we could cripple the global economy now.

One day, the world will marvel at the environmental hysteria of our time, and the deeply damaging corruption of science in the cause of an alarmist cult. The best thing this week's conference could do is inculcate a certain modesty, not least in Senator Ian Campbell, about an issue that is almost entirely speculative. We don't know how or why climate changes. We do know it's changed dramatically throughout the planet's history, including the so-called "little Ice Age" beginning in 600, when I was still driving a Ford Oxcart, and that, by comparison,

the industrial age has been a time of relative climate stability. But, of course, as with that "hockey stick", it depends how you draw the graph.

Question: Why do most global warming advocates begin their scare statistics with "since 1970"?

As in, "since 1970" there's been global surface warming of half a degree or so.

Because from 1940 to 1970, temperatures fell.

Now why would that be?

Who knows? Maybe it was Hitler. Maybe world wars are good for the planet.

Or maybe we should all take a deep breath of CO2 and calm down.

Mark Steyn, a columnist with the Telegraph Group, is a regular contributor to The Australian's opinion page.

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TOPICS: Political Humor/Cartoons
KEYWORDS: marksteyn; steyn

[REDACTED]

EXHIBIT 117
(not admitted)

Funded

Start Date	Year	Project	Sponsor	Budget	Role
8/1/2008	2008	AMS Fellowship (Sabbatelli)	American Meteorologcial Society	$23,000	PI
9/15/2008	2008	Reconstruction of Pacific Climate and Sea-Surface Temperatures	National Oceanic & Atmospheric Administration	$20,279	PI
6/15/2009	2009	ARRA: Quantifying the Influence of Environmental Temperature on Transmission of Vector-borne Disease:	National Science Foundation	$1,884,991	Co-P
6/15/2009	2009	ARRA: Collaborative Research: Toward Improved Projections of the Climate Response to Anthropogenic Forcing: Combining Proxy and Instrumental Observations with an Earth Syster	National Science Foundation	$541,184	PI
8/1/2010	2010	Development of a Northern Hemisphere Gridded Precipitation Dataset Spanning the Past Half Millennium for Analyzing Interannual and Longer-Term Variability in the Monsoons	University of Nebraska Lincoln (NOAA)	$234,800	PI
9/1/2010	2010	Scientific Input on Climate Change Outreach by a Network of Zoos and Aquariums	Chicago Zoological Society (NSF)	$16,499	PI
5/1/2011	2011	Megadrought: Local vs Remote Causal Factors for Medieval North America"	University of Nebraska Lincoln (NSF)	$151,755	PI
5/1/2011	2011	Regional and global sea surface temperature reconstruction and the relationship with sea level during the late Holocene	U.S. Geologocial Survey	$64,919	Co-P
9/1/2011	2011	Advanced Regional And Decadal Predictions Of Coastal Inundation for the U.S. Atlantic and Gulf Coast:	Univeristy of Pennsylvania (NOAA)	$118,670	PI
1/1/2013	2013	WSC-Category 2 Collaborative: Robust decision-making for South Florida water resources by ecosystem service valuation, hydro-economic optimization, and conflict resolution mo	National Science Foundation (NSF)	$300,514	Co-P
1/1/2014	2014	Megadrought: Local VS Remote Causal Factors for Medieval North America"	University of Arkansas (NSF)	$90,612	PI
2/15/2015	2015	Collaborative Research: Quantitative Reconstruction of Past Drought Patterns in Western North America Using Lakes, Stable Isotopes, and Modelin	National Science Foundation	$145,002	PI
9/1/2016	2016	EarthCube Building Blocks: Collaborative Proposal: The Power of Many: Ensemble Toolkit for Earth Science		$391,000	Co-P

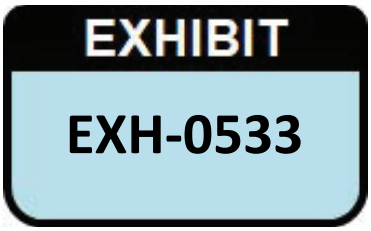
Not Funded

Start Date	Year	Project	Sponsor	Budget	Role
9/1/2008	2008	Improved Projections of Potential Abrupt Changes: Combining Paleo- & Instrumental Observations with an Earth System Mode	National Science Foundation	$692,030	PI
6/1/2010	2010	A Center for Study of Decadel-Length Climate Change Predictability (CDCCP)	University of Southern California	$608,000	PI
6/1/2011	2011	Collaborative research: A quantitative paleoprecipitation network from lake sediment for improved earth system modeling of Pacific Ocean influences on North Americ	National Science Foundation	$165,024	PI
4/1/2012	2012	Climate Change Impacts and Adaptation in West Africa	National Science Foundation	$49,359	Co-PI
6/1/2012	2012	Collaborative Research: A Quantitative Paleoprecipitation Reconstruction Using Lacustrine and Lake Level Records for Improved Earth System Modeling of North American Drough	National Science Foundation	$147,669	PI
9/1/2012	2012	CCEP-II: Climate Literacy Zoo Education Network	Chicago Zoological Society (NSF)	$91,458	PI
7/1/2013	2013	Coupling between the El Nino/Southern Oscillation and Smoke from Biomass Burning within the Indonesian archipelago: ENSO as a Land-Ocean-Atmosphere Process	Scripps Institution of Oceanography (NSF)	$236,862	PI
9/1/2013	2013	Collaborative Research: A Quantitative Paleodrought Network from Lacustrine Stable Isotope and Lake Level Records for Improved Earth System Modeling of North American Climat	National Science Foundation	$244,094	PI
11/1/2013	2013	Building Environmental Literacy of Informal Science Educators at Zoos and Botanic Gardens	National Oceanic & Atmospheric Administration	$273,404	PI
9/1/2014	2014	Collaborative Research: Lakes, drought, and modeling in western North America	National Science Foundation	$161,282	PI
9/15/2014	2014	WAter VariabilitiEs Stressors and Sensitivities (WAVESS) Sustainability Research Network	National Science Foundation	$9,713,924	Co-PI
8/1/2015	2015	Forecasting Fire Risk in the Southeastern U.S. from Atmospheric Circulation Patterns	Joint Fire Sciencies Program (Dept. of Interior)	$354,539	Co-PI
10/1/2016	2016	Collaborative Research: Improved Characterization and Understanding of Internal Decadal-Multidecadal Climate Variability	National Science Foundation	$815,919	PI

	Sponsor	Budget	Role
	National Science Foundation	$692,030	PI
	University of Southern California	$608,000	PI
Jorth Americ	National Science Foundation	$165,024	PI
	National Science Foundation	$49,359	Co-PI
North American Drough	National Science Foundation	$147,669	PI
	Chicago Zoological Society (NSF)	$91,458	PI
e Process	Scripps Institution of Oceanography (NSF)	$236,862	PI
of North American Climat	National Science Foundation	$244,094	PI
	National Oceanic & Atmospheric Administration	$273,404	PI
	National Science Foundation	$161,282	PI
	National Science Foundation	$9,713,924	Co-PI
	Joint Fire Sciencies Program (Dept. of Interior)	$354,539	Co-PI
	National Science Foundation	$815,919	PI

EXHIBIT 533

From: Phil Jones [p.jones@uea.ac.uk]
Sent: 11/16/1999 1:31:15 PM
To: ray bradley [rbradley@geo.umass.edu]; mann@virginia.edu; mhughes@ltrr.arizona.edu
CC: k.briffa@uea.ac.uk; t.osborn@uea.ac.uk
Subject: Diagram for WMO Statement



Dear Ray, Mike and Malcolm,
Once Tim's got a diagram here we'll send that either later today or first thing tomorrow.
I've just completed Mike's Nature trick of adding in the real temps to each series for the last 20 years (ie from 1981 onwards) amd from 1961 for Keith's to hide the decline. Mike's series got the annual land and marine values while the other two got April-Sept for NH land N of 20N. The latter two are real for 1999, while the estimate for 1999 for NH combined is +0.44C wrt 61-90. The Global estimate for 1999 with data through Oct is +0.35C cf. 0.57 for 1998.
Thanks for the comments, Ray.

Cheers
Phil

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Norwich Email p.jones@uea.ac.uk
NR4 7TJ
UK

EXHIBIT 535

EXHIBIT

EXH-0535

From: Michael Mann [mann@meteo.psu.edu]
Sent: 7/17/2012 10:16:44 PM
To: climatebloggers@googlegroups.com
Subject: right wing smear comparing me to Sandusky

folks, see National Review yesterday:
http://www.nationalreview.com/corner/309442/football-and-hockey-mark-steyn
and now the Chronicle of Higher Education (!) has allowed themselves to be hijacked by
Richard Mellon Scaife front group hack Peter Wood (http://scienceblogs.com/deltoid/2011/07/06/peter-wood/)
for similar attack:
http://chronicle.com/blogs/innovations/a-culture-of-evasion/33485

Obviously this is a coordinated right wing smear. But the greatest atrocity is actually the editor at the Chronicle of Higher Education
who allowed this. She will need to answer for this.

Eric Berger has helpfully commented already,
m

Eric Berger @chronsciguy 29s
Reprehensible: @Chronicle of Higher Ed. runs attack on @MichaelEMann that draws parallels to Sandusky. bit.ly/Q4MLvF
Expand

Michael E. Mann @MichaelEMann 9m
Who is the @Chronicle editor (?) facilitating libelous attack bit.ly/Q4MLvF by head of Scaife-funded front group bit.ly/Lq8xCo
Expand

--
Michael E. Mann
Professor
Director, Earth System Science Center (ESSC)

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Phone: (814) 863-4075
FAX: (814) 865-3663
email: mann@psu.edu
www.michaelmann.net

"The Hockey Stick and the Climate Wars": www.thehockeystick.net
"Dire Predictions": www.direpredictions.com

EXHIBIT 554

EXHIBIT

EXH-0554

From: D. R. Tucker [tuc40_2005@yahoo.com]
Sent: 10/24/2012 10:33:57 PM
To: Michael Mann [mmann00@comcast.net]
CC: greenman@tm.net; betsy@thegreenfront.com
Subject: Re: Doctor Dropout Calls You A "Fake Nobel laureate"

Agreed.

--D.R.
------Original Message------
From: Michael Mann
To: tuc40_2005@yahoo.com
Cc: greenman@tm.net
Cc: betsy@thegreenfront.com
Subject: Re: Doctor Dropout Calls You A "Fake Nobel laureate"
Sent: Oct 24, 2012 6:29 PM

My hope is that we can ruin this pathetic excuse for a human being through this lawsuit. He has been libeling and lying his whole life. We will put an end to it.

--
Michael E. Mann
Professor
Director, Earth System Science Center (ESSC)
www.michaelmann.net
www.thehockeystick.net
www.direpredictions.com

On Oct 24, 2012, at 6:12 PM, "D. R. Tucker" <tuc40_2005@yahoo.com> wrote:

> Mike,
>
> One of these days, I'm going to find the high school teacher who introduced me to National Review and tell him how sorry I was to have ever read a copy.
>
> http://www.nationalreview.com/corner/331552/litigious-laureate-mark-steyn
>
> --D.R.
> Sent from my Verizon Wireless BlackBerry
>

Sent from my Verizon Wireless BlackBerry

EXHIBIT 598

From: Michael Mann [mmann00@comcast.net]
Sent: 2/17/2010 11:59:02 PM
To: Ray Weymann [raywey@charter.net]
Subject: Re: draft letter to Science//Cicerone response

EXHIBIT
EXH-0598

thanks Ray, will certainly do.

in truth, I think charge #4 is the "cover our a$$es" charge, i.e. it's non-specific enough that it allows Penn State to say that they fully investigated at least some aspect of the allegations, while allowing them to dismiss in short order the truly serious allegations (i.e. those that would be indicative of scientific misconduct).

It allows Penn State to, at some level, try to brush off the charge that the investigation was a simple 'white wash' (which is what the climate change deniers were charging from the start anyway).

I'm not too concerned about it. I got a very nice phone call from our president (Graham Spanier) a couple weeks ago, that was quite re-assuring.

but it does mean that this thing sort of hangs over me for a few months,

mike

On Feb 17, 2010, at 6:45 PM, Ray Weymann wrote:

I had a brief and cordial note from Ralph Cicerone, so I think there are no bruised feelings. Let me know when the final Penn State inquiry report is released. I must confess I could not figure out what in hell charge #4 was supposed to be about.

On Feb 17, 2010, at 11:53 AM, Michael Mann wrote:

sounds good Ray,
mike

On Feb 17, 2010, at 2:02 PM, Ray Weymann wrote:

Its a deal--next time I head east (if ever) maybe I can drop by. Give Don Schneider a buzz and say hello for me.
If I do, I'd like to meet Richard Alley as well. Caught the show on NOVA (Extreme Ice) with him--Great show (though sobering)

-Ray

On Feb 17, 2010, at 10:53 AM, Michael Mann wrote:

thanks again Ray, this is wonderful. I don't know how to repay you for your efforts. I do look forward to buying you a beer one day,

mike

On Feb 17, 2010, at 1:44 PM, Ray Weymann wrote:

As submitted: (I will email Cicerone with bcc to you)
-Ray

<letter_science_mag.doc>

On Feb 17, 2010, at 10:08 AM, Michael Mann wrote:

Ray this is wonderful.

only two comments:

1. the sentence your wrote is correct to my knowledge. In fact, it could even go further:

Penn State University, in their own initial inquiry, has exonerated Dr. Michael Mann of all charges involving scientific misconduct (and this after the U.S. National Academy of Sciences similarly dismissed any such charges in their own 2006 review).

but this is of course entirely up to you.

2. In 3rd paragraph, 1st sentence, you used "anthropomorphic" where you meant "anthropogenic"

I think the tone of the letter is just right,

mike

On F

EXHIBIT 603

From: Michael Mann [mann@meteo.psu.edu]
Sent: 11/12/2008 1:23:13 PM
To: santer1@llnl.gov
CC: Gavin Schmidt [gschmidt@giss.nasa.gov]
Subject: Re: [Fwd: FOI Request]

EXHIBIT

EXH-0603

HI Ben,

More pitiful, ugly behavior from that human filth we call McIntyre. Tom needs too stand up to bogus and frivolous requests. As always, McIntyre and his ilk seem to think they that they have the right to demand every detail of our scientific lives. Increasingly, I hope, people are seeing why we were so averse to give into the bogus demands on us for source codes, etc.--it was clear to me at the time what a slippery slope, and bad precedent, that would be. The asshole has everything he would need to attempt the analyses himself, apparently he's simply too lazy and/or stupid to do it.

I think a sternly worded and authoritative letter from NOAA officials is required, warning him against repeated frivolous attempts that waste the time of serious people.

The new administration cannot start soon enough. Its reassuring to know at least that in a matter of some months, we will have legitimate directors at NOAA and NASA. Excessive foot dragging may be the best policy at this point,

mike

On Nov 11, 2008, at 10:57 PM, Ben Santer wrote:

Dear Tom,

Thanks for your email regarding Steven McIntyre's twin requests under the Freedom of Information (FOI) Act. Regarding McIntyre's request (1), no "monthly time series of output from any of the 47 climate models" was "sent by Santer and/or other coauthors of Santer et al 2008 to NOAA employees between 2006 and October 2008".

As I pointed out to Mr. McIntyre in the email I transmitted to him yesterday, all of the raw (gridded) model and observational data used in the 2008 Santer et al. International Journal of Climatology (IJoC) paper are freely available to Mr. McIntyre. If Mr. McIntyre wishes to audit us, and determine whether the conclusions reached in our paper are sound, he has all the information necessary to conduct such an audit. Providing Mr. McIntyre with the quantities that I derived from the raw model data (spatially-averaged time series of surface temperatures and synthetic Microwave Sounding Unit [MSU] temperatures) would defeat the very purpose of an audit.

I note that David Douglass and colleagues have already audited our calculation of synthetic MSU temperatures from climate model data. Douglass et al. obtained "model average" trends in synthetic MSU temperatures (published in their 2007 IJoC paper) that are virtually identical to our own.

McIntyre's request (2) demands "any correspondence concerning these monthly time series between Santer and/or other coauthors of Santer et al 2008 and NOAA employees between 2006 and October 2008". I do not know how you intend to respond this second request. You and three other NOAA co-authors on our paper (Susan Solomon, Melissa Free, and John Lanzante) probably received hundreds of emails that I sent to you in the course of our work on the IJoC paper. I note that this work began in December 2007, following online

publication of Douglass et al. in the IJoC. I have no idea why McIntyre's request for email correspondence has a "start date" of 2006, and thus predates publication of Douglass et al.

My personal opinion is that both FOI requests (1) and (2) are intrusive and unreasonable. Steven McIntyre provides absolutely no scientific justification or explanation for such requests. I believe that McIntyre is pursuing a calculated strategy to divert my attention and focus away from research. As the recent experiences of Mike Mann and Phil Jones have shown, this request is the thin edge of wedge. It will be followed by further requests for computer programs, additional material and explanations, etc., etc.

Quite frankly, Tom, having spent nearly 10 months of my life addressing the serious scientific flaws in the Douglass et al. IJoC paper, I am unwilling to waste more of my time fulfilling the intrusive and frivolous requests of Steven McIntyre. The supreme irony is that Mr. McIntyre has focused his attention on our IJoC paper rather than the Douglass et al. IJoC paper which we criticized. As you know, Douglass et al. relied on a seriously flawed statistical test, and reached incorrect conclusions on the basis of that flawed test.

I believe that our community should no longer tolerate the behavior of Mr. McIntyre and his cronies. McIntyre has no interest in improving our scientific understanding of the nature and causes of climate change. He has no interest in rational scientific discourse. He deals in the currency of threats and intimidation. We should be able to conduct our scientific research without constant fear of an "audit" by Steven McIntyre; without having to weigh every word we write in every email we send to our scientific colleagues.

In my opinion, Steven McIntyre is the self-appointed Joe McCarthy of climate science. I am unwilling to submit to this McCarthy-style investigation of my scientific research. As you know, I have refused to send McIntyre the "derived" model data he requests, since all of the primary model data necessary to replicate our results are freely available to him. I will continue to refuse such data requests in the future. Nor will I provide McIntyre with computer programs, email correspondence, etc. I feel very strongly about these issues. We should not be coerced by the scientific equivalent of a playground bully.

I will be consulting LLNL's Legal Affairs Office in order to determine how the DOE and LLNL should respond to any FOI requests that we receive from McIntyre. I assume that such requests will be forthcoming.

I am copying this email to all co-authors of our 2008 IJoC paper, to my immediate superior at PCMDI (Dave Bader), to Anjuli Bamzai at DOE headquarters, and to Professor Glenn McGregor (the editor who was in charge of our paper at IJoC).

I'd be very happy to discuss these issues with you tomorrow. I'm sorry that the tone of this letter is so formal, Tom. Unfortunately, after today's events, I must assume that any email I write to you may be subject to FOI requests, and could ultimately appear on McIntyre's "ClimateAudit" website.

With best personal wishes,

Ben

Thomas.R.Karl wrote:

FYI --- Jolene can you set up a conference call with all the parties listed below including Ben.

Thanks

-------- Original Message --------

Subject: FOI Request

Date: Mon, 10 Nov 2008 10:02:00 -0500

From: Steve McIntyre <stephen.mcintyre@utoronto.ca>

To: FOIA@noaa.gov

CC: Thomas R Karl <Thomas.R.Karl@noaa.gov>

Nov. 10, 2008

National Oceanic and Atmospheric Administration

Public Reference Facility (OFA56)

Attn: NOAA FOIA Officer

1315 East West Highway (SSMC3)

Room 10730

Silver Spring, Maryland 20910

Re: Freedom of Information Act Request

Dear NOAA FOIA Officer:

This is a request under the Freedom of Information Act.

Santer et al, Consistency of modelled and observed temperature trends in

the tropical troposphere, (Int J Climatology, 2008), of which NOAA employees J. R. Lanzante, S. Solomon, M. Free and T. R. Karl were co-authors, reported on a statistical analysis of the output of 47 runs of climate models that had been collated into monthly time series by Benjamin Santer and associates.

I request that a copy of the following NOAA records be provided to me: (1) any monthly time series of output from any of the 47 climate models sent by Santer and/or other coauthors of Santer et al 2008 to NOAA employees between 2006 and October 2008; (2) any correspondence concerning these monthly time series between Santer and/or other coauthors of Santer et al 2008 and NOAA employees between 2006 and October 2008.

The primary sources for NOAA records are J. R. Lanzante, S. Solomon, M. Free and T. R. Karl.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I have 5 peer-reviewed publications on paleoclimate; that I was a reviewer for WG1; that I made a invited presentations in 2006 to the National Research Council Panel on Surface Temperature Reconstructions and two presentations to the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee.

In addition, a previous FOI request was discussed by the NOAA Science Advisory Board's Data Archiving and Access Requirements Working Group (DAARWG). http:// www. joss.ucar.edu/daarwg/may07/presentations/KarL_DAARWG_NOAAArchivepolify-v0514.pdf. I believe a fee waiver is appropriate since the purpose of the request is academic research, the information exists in digital format and the information should be easily located by the primary sources.

I also include a telephone number (416-469-3034) at which I can be contacted between 9 and 7 pm Eastern Daylight Time, if necessary, to discuss any aspect of my request.

Thank you for your consideration of this request.

I ask that the FOI request be processed promptly as NOAA failed to send me a response to the FOI request referred to above, for which Dr Karl apologized as follows:

due to a miscommunication between our office and our headquarters, the response was not submitted to you. I deeply apologize for this oversight, and we have taken measures to ensure this does not happen in the future.

Stephen McIntyre
25 Playter Blvd
Toronto, Ont M4K 2W1

--

Benjamin D. Santer
Program for Climate Model Diagnosis and Intercomparison
Lawrence Livermore National Laboratory
P.O. Box 808, Mail Stop L-103
Livermore, CA 94550, U.S.A.
Tel: (925) 422-3840
FAX: (925) 422-7675
email: santer1@llnl.gov

--

Michael E. Mann
Associate Professor
Director, Earth System Science Center (ESSC)

Department of Meteorology Phone: (814) 863-4075
503 Walker Building FAX: (814) 865-3663
The Pennsylvania State University email: mann@psu.edu
University Park, PA 16802-5013

website: http://www.meteo.psu.edu/~mann/Mann/index.html
"Dire Predictions" book site:
http://www.essc.psu.edu/essc_web/news/DirePredictions/index.html

<br<?xml version=.0" encoding=TF-8"

EXHIBIT 685

From: Michael E. Mann [mann@meteo.psu.edu]
Sent: 4/18/2006 4:19:41 PM
To: Malcolm Hughes [mhughes@ltrr.arizona.edu]
CC: Scott Rutherford [srutherford@rwu.edu]; Wahl, Eugene R [wahle@alfred.edu]; Caspar Ammann [ammann@ucar.edu]; Raymond S. Bradley [rbradley@geo.umass.edu]
Subject: Re: draft for comment

Hi Malcolm,

Well I'll remove thatphrasing, but VOn Storch, Zorita, and Cubasch are guilty of scientific misconduct. they have intentionally tried to hide the original errors in their work, and are creating smoke and mirrors to try to distract. they have also made "actionable" comments against us in the European media, and there are some in Germany looking into the possibility of bring a scientific misconduct suit again one ore more of them. they have behaved unethically and dishonestly, and have lost (in my view) their right to serve as reviewers. So they must be on our "black list". The editor (Jose Fuentes) will be fine with this, I am sure...

mike

Malcolm Hughes wrote:

> Michael E. Mann wrote:
>
>> attached is a draft cover letter,
>>
>> mike
>>
>> Michael E. Mann wrote:
>>
>>> Dear All,
>>>
>>> What was once a modest reply to Burger and Cubasch has turned into a
>>> substantial article in its own right, which serves to refute just
>>> about every criticism out there right now, but in a pro-active
>>> "best defense is a good offense" manner. There is a lot of
>>> substantial good new science here. Particularly interesting are some
>>> hard results which strongly back up Gene and Caspar's point about
>>> type II errors using r^2 as a skill diagnostic, but there is a lot
>>> here.
>>>
>>> Unfortunately, for logistical reasons, we need to submit this
>>> quickly (within a week), in part so I can refer to it as "submitted"
>>> in my review of Cubasch's latest garbage GRL submission (which is
>>> due in a week). I realize its changed a lot since you all last saw
>>> this in its original form (as a response to Burger and Cubasch), so
>>> much thanks for any efforts you can make to get back to me quickly
>>> w/ comments.
>>>
>>> I'm pretty sure I've just about nailed it, so hopefully we won't
>>> need too much iteration or revision. yellow highlighting indicates a
>>> few details that need to be filled in w/ Scott's help over the next
>>> few days. will draft a cover letter in the meantime. thanks in
>>> advance for your help...
>>>
>>> mike
>>>
>>
>>
> Mike - I'd for sure remove the following phrase -
>
> and/or a history of questionable scientific conduct.
>
> The way this is phrased will put the editor off having anything to do
> with this mss, and in any case it probably unfairly tars the misguided
> with the same brush as the malign. Further, this phrasing would almost
> certainly be actionable in the coursts of some European countries. The

> conflict of interest phrase would be enough. I also fear that we will
> be seen as profoundly self-contradictory at least, and almost
> certainly worse, by asking that VS, Cubash, et al. be denied the same
> right of reply that we have complained about not receiving. Mand M are
> a different case, in terms of the conflct of interest.
> Cheers, Malcolm
>

--
Michael E. Mann
Associate Professor
Director, Earth System Science Center (ESSC)

Department of Meteorology
503 Walker Building
The Pennsylvania State University
University Park, PA 16802-5013

Phone: (814) 863-4075
FAX: (814) 865-3663
email: mann@psu.edu

http://www.met.psu.edu/dept/faculty/mann.htm

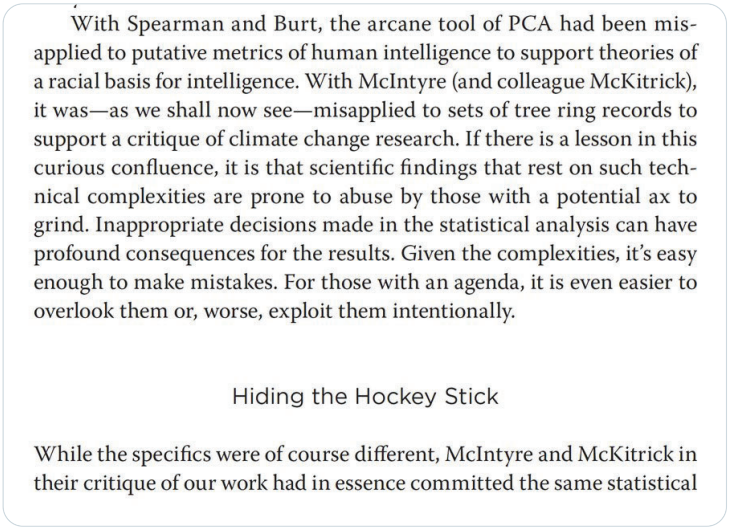
EXHIBIT 1100

Settings

Post

Prof Michael E. Mann
@MichaelEMann

In "The Hockey Stick & the Climate Wars" (amazon.com/Hockey-Stick-C…) I show how [redacted] Steve McIntyre played "hide the hockey stick" (there's a disturbing connection w/ the bad stats used to support early theories of white supremacy): upenn.box.com/s/juskp4a24spm… #HSCW



With Spearman and Burt, the arcane tool of PCA had been misapplied to putative metrics of human intelligence to support theories of a racial basis for intelligence. With McIntyre (and colleague McKitrick), it was—as we shall now see—misapplied to sets of tree ring records to support a critique of climate change research. If there is a lesson in this curious confluence, it is that scientific findings that rest on such technical complexities are prone to abuse by those with a potential ax to grind. Inappropriate decisions made in the statistical analysis can have profound consequences for the results. Given the complexities, it's easy enough to make mistakes. For those with an agenda, it is even easier to overlook them or, worse, exploit them intentionally.

Hiding the Hockey Stick

While the specifics were of course different, McIntyre and McKitrick in their critique of our work had in essence committed the same statistical

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EXHIBIT
1100

ADDENDUM D

Punitive Damages Awarded to Climate-Change Scientist Dr. Michael Mann in Decade-Long Defamation Case

We secured a decisive victory in our long-running defamation claims against an adjunct scholar with the Competitive Enterprise Institute (CEI), Rand Simberg, and a TV/radio personality who wrote for the National Review, Mark Steyn. Following a four-week jury trial, we were awarded punitive damages of $1000 against Simberg and $1,000,000 against Steyn by a jury in the District of Columbia Superior Court.

Dr. Mann's trial team was led by John Williams, a Washington, D.C. based defamation lawyer, and Pete Fontaine, a Philadelphia-based environmental lawyer with Cozen O'Connor. Williams and Fontaine were joined by Patrick Coyne of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP and Amorie Hummel of Cozen O'Connor.

Today's verdict followed 12 years of litigation by Dr. Mann and the entire legal team.

Dr. Mann, a member of the National Academy of Sciences and currently a Presidential Distinguished Professor at the University of Pennsylvania, was a lead author with Dr. Raymond Bradley and Dr. Malcolm Hughes of groundbreaking research in 1998 and 1999 which demonstrated a sharp increase in global temperatures linked to increasing greenhouse gas emissions. Dr. Mann's research reconstructed historical temperatures over the past 1,000 years using natural temperature archives. That temperature reconstruction is represented on a graph shaped like a hockey stick lying on its side with the blade pointing upward. The graph, which came to be known as the "Hockey Stick" graph, was prominently featured by the Intergovernmental Panel on Climate Change (IPCC) in its 2001 report on climate change.

Dr. Mann filed his defamation suit in 2012 after Rand Simberg writing for CEI and Mark Steyn writing for National Review published articles comparing Dr. Mann to the convicted child molester and former Penn State football coach, Jerry Sandusky. The articles asserted that Dr. Mann had falsified his Hockey Stick research and called Dr. Mann "the Jerry Sandusky of climate science" who "molested and tortured data" and committed "scientific and academic misconduct."

Under the Supreme Court's *New York Times v. Sullivan* standard, Dr. Mann was required to show by clear and convincing evidence that the defendants published their writings with "actual malice," a heavy burden under the First Amendment of the U.S. Constitution. The trial team showed that the defendants either knew or recklessly disregarded multiple investigations clearing Dr. Mann of misconduct in the wake of the 2009 Climategate controversy involving stolen emails from a research unit in the United Kingdom. Two of those investigations were key pieces of evidence in the case: one completed by Pennsylvania State University (where Dr. Mann was a professor for 17 years) and a second by the National Science Foundation, which funded the research.

According to Mr. Fontaine, "Today's verdict vindicates Mike Mann's good name and reputation. It also is a big victory for truth and scientists everywhere who dedicate their lives answering vital scientific questions impacting human health and the planet."

According to Dr. Mann, "I hope this verdict sends a message that falsely attacking climate scientists is not protected speech."

ADDENDUM E

PRE-TRIAL CONFERENCE TRANSCRIPT 10/16/23 [EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

MICHAEL E. MANN, PH.D,	:	
	:	
Plaintiff	:	Civil Action No.
	:	
v.	:	2012-CAB-8263
	:	
NATIONAL REVIEW. INC.,	:	
Et al,	:	
	:	
Defendant		

Washington, D.C.
Monday, October 16, 2023

The above-entitled matter came on for MOTIONS before the Honorable Alfred Irving, associate judge, in Courtroom Number 518, commencing at 10:04 a.m.

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

APPEARANCES:

On behalf of the Plaintiff:

John Williams, Esquire
Peter Fontaine, Esquire
Patrick Coyne, Esquire
Ammery Hummel, Esquire
Washington, D.C.

On behalf of the Defendant:

Mark DeLaquil, Esquire
Victoria Weatherford, Esquire
Mark Bailen, Esquire
Washington, D.C.

Mark Stey, Pro se

Mahalia M. Davis, RPR
Official Court Reporter (202) 879-1029

It's squarely at issue in this case.

THE COURT: Alright. And it's going to come up. I'm curious as well the need for McIntyre and McKitrick. But we'll talk about both witnesses when we go through the list of witnesses. And I will give that some additional thought.

The Court of Appeals, though, did not consider the NRC report, and identified very specifically what we should be considering in this case. And it seemed it went through great efforts to ensure that the case remains as streamlined as possible so that we do not get into the realm whether there is or is not global warming, or climate change.

MR. FONTAINE: Your Honor, if I can respond.

THE COURT: Yes.

MR. FONTAINE: The Court of Appeals referenced the National -- the NRC Report. They identified the reports that go directly to the issue of malice, and that would include, you know, the different reports that Your Honor has allowed in. But this report goes to truth, which is another obvious element in our case. We need to prove that the hockey stick is valid science and it is not the product fraud, as has been alleged.

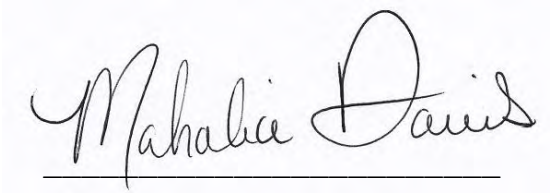
The NRC report is critical to that. And so, even though the Court of Appeals may not have focused on that, it is clearly part of our case. And, you know, it is an

CERTIFICATE

I, Mahalia Davis, an Official Court Reporter for the District of Columbia Courts, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the trial in the case of Michael Mann, PH.D v National Review, Inc., et al, Civil Action Number 2012-CAB-8263, in said Court, on the 16th day of October, 2023.

I further certify that I have transcribed the foregoing 153 pages from said machine shorthand notes and reviewed same with the backup tapes, if any, to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 19th day of October, 2023.



Official Court Reporter

TRIAL TRANSCRIPT
1/16/24 AM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF,

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANT. Tuesday, January, 16, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 518, commencing at approximately 11:05 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT 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 & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se & Melissa Howes, Esquire, POA

Juanita N. Price, RPR, FCRR

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 GOVERNMENT:	DIRECT	CROSS	REDIRECT	RECROSS

FOR THE DEFENDANT:

EXHIBITS

	ADMITTED
FOR THE GOVERNMENT:	
FOR THE DEFENDANT:	ADMITTED

questions of data manipulation and whether the Hockey Stick is misleading. The core issues that the Court of Appeals have said is in the case.

Now, when we submitted an expert report for Dr. Wyner it wasn't quite as clear to us what was in and what was out, and this was included in the expert report. I said that previously.

But I'm also telling you we're not going to use it, because we don't think it's admissible under your -- under Your Honor's rulings.

They have --

THE COURT: And I will say it is not admissible pursuant to my ruling as well as the Court of Appeals' ruling.

MR. DELAQUIL: Thank you. So, then, this one can't go to the jury at all?

THE COURT: There's no reason for it to.

MR. FONTAINE: Well, Your Honor, if Dr. Wyner is going to testify --

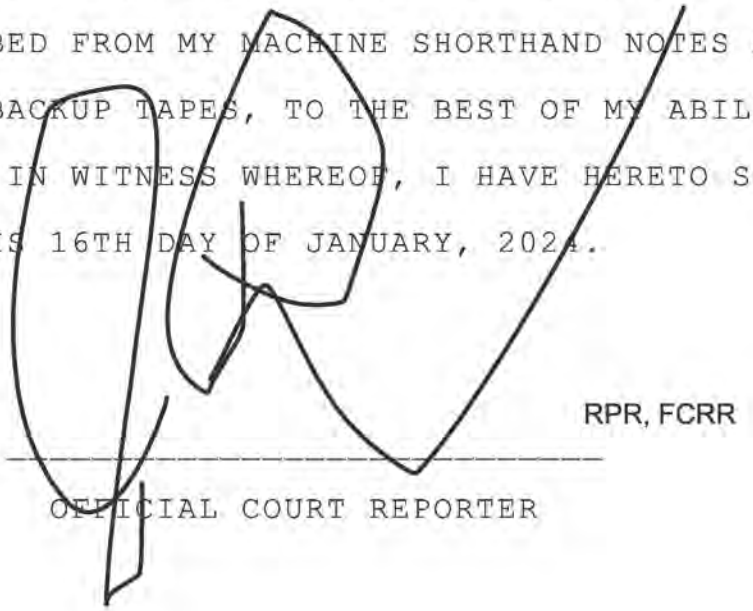
THE COURT: You're going to be on your tippy toes objecting if he attempts to get into evidence anything that I have already precluded as part of this case. It's not a climate change case. It has nothing to do with the underlying science. And so I expect objections if Mr. Delaquil or one of his colleagues is attempting that

CERTIFICATE OF THE REPORTER

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

I FURTHER CERTIFY THAT THE FOREGOING 49 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

IN WITNESS WHEREOF, I HAVE HERETO SUBSCRIBED MY NAME, THIS 16TH DAY OF JANUARY, 2024.



RPR, FCRR

_____

OFFICIAL COURT REPORTER

TRIAL TRANSCRIPT
1/17/24 AM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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

Washington, D.C.
Wednesday, January 17, 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 9:16 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
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PETER FONTAINE, Esquire
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(Appearances continued on the next page.)

(Continued from the previous page.)

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901 New York Avenue, N.W.
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On behalf of the Defendant Simberg:

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MARK W. DeLAQUIL, Esquire
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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)

MS. WEATHERFORD: Not right now, Your Honor.

THE COURT: All right.

MR. WILLIAMS: Could I ask a question?

THE COURT: Yes.

MR. WILLIAMS: We have this list -- sort of list that indicates your occupation. You say watch analyst. What does that mean?

THE JUROR: So I work for the federal government as a watch analyst, so information will come in on a variety of things, including demonstrations that are affecting my agency, to natural disasters that are affecting other aspects of my agency, to police activity, stuff like that. So I'll take in the information, dissect it and give it to key stakeholders in order to better give situation awareness to decisionmakers.

MR. WILLIAMS: That's interesting. And what agency do you work for?

THE JUROR: I work for the United States Senate in a nonpartisan office.

MR. WILLIAMS: What is that? So --

THE JUROR: The sergeant at arms, so the overall operations of the Senate. No specific member.

MR. WILLIAMS: I see. You've been pretty busy recently.

THE JUROR: Yeah.

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., Civil Action Number 2012-CA-8263(B), in said court on the 17th day of January, 2024.

I further certify that the foregoing 113 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 17th day of January, 2024.

Jurtiana Jeon

Jurtiana Jeon, CSR, RPR
Official Court Reporter

TRIAL TRANSCRIPT
1/18/24 AM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, MORNING SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Thursday, January, 18, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 518, commencing at approximately 9:17 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT 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 & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se

Juanita N. Price, RPR, FCRR

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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FOR THE GOVERNMENT:	DIRECT	CROSS	REDIRECT	RECROSS
FOR THE DEFENDANT:				

EXHIBITS

FOR THE GOVERNMENT:	ADMITTED
FOR THE DEFENDANT:	ADMITTED

bounds of common decency and the bounds of any First Amendment right by launching an attack on the professional and personal integrity of a respected Scientist, my client Dr. Michael Mann.

And they did it for one reason, they were hostile to his findings and his warnings about Climate Change, which showed that Climate Change was real.

MS. WEATHERFORD: Objection, Your Honor.

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

MS. WEATHERFORD: Your Honor, you've made it repeatedly clear during the course of this trial, this case is not about Climate Change Research at issue in this case. Does not involve it. It is about historical temperatures, and I think you need to give an instruction to the jury to disregard with what Mr. Williams just said and an instruction to Mr. Williams to not say that this case is about Climate Change.

Thank you.

MR. WILLIAMS: I didn't say this case was about Climate Change. I said it's a defamation case. I simply said that the attack was based upon the views on Climate Change. That is it. It goes to their state of mind in attacking Dr. Mann.

MS. WEATHERFORD: Your Honor, I have the

transcript right here. I've got the real time. It says they were hostile to his findings and his warnings about Climate Change. The findings are not about Climate Change, Your Honor.

THE COURT: I'm not going to sustain the objection, but I am going to admonish you, Mr. Williams, to ensure that this opening remains within the confines of what the case is about as established by both the Court of Appeals and this Court. All right.

MS. WEATHERFORD: Thank you, Your Honor.

(Whereupon, bench conference concludes at this time.)

MR. WILLIAMS: Let me continue.

The Judge has briefly described what the Defendants wrote about Dr. Mann. They have attacked his integrity, calling his research fraudulent and deceptive, and they attacked his character, as well, comparing him to a sexual predator. A man convicted of raping and sodomizing dozens of young boys. The accusations about Dr. Mann's research were professionally damaging, and the comparisons to a sex predator were simply vile.

Thank you.

And as you heard yesterday, my name's John Williams. I'm a lawyer here in town, and with me is Pete Fontaine, Amorie Hummel, and Patrick Coyne. We're going

(Whereupon, luncheon recess is taken at this time.)

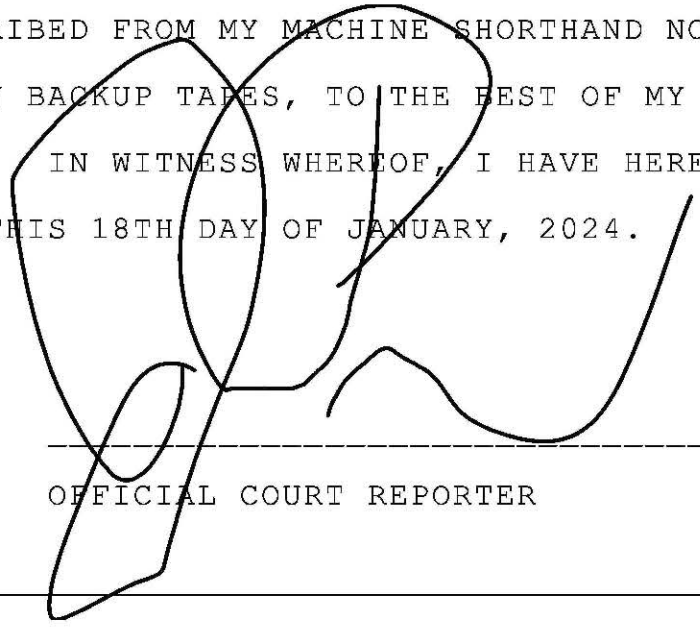
(Whereupon, hearing concluded.)

CERTIFICATE OF THE REPORTER

I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF tHE DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D. VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE NUMBER 2012 CAB 8263, IN SAID COURT ON THE 18TH DAY OF JANUARY 2024.

I FURTHER CERTIFY THAT THE FOREGOING 115 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

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



RPR, FCRR

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OFFICIAL COURT REPORTER

TRIAL TRANSCRIPT
1/22/24 PM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, AFTERNOON SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Monday, January, 22, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 518, commencing at approximately 2:23 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT 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 & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se

Juanita N. Price, RPR, FCRR

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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Q. What do you mean by funnier?

A. Because I think it was a -- I think it wasn't anything I did. It wasn't anything I paid for. I was just giving it the once-over before the deadline at The Collegian.

But it seemed to me that it was a light-hearted bit of fun at the thin-skinned Plaintiff's expense, and I thought the light-hearted bit of fun would be more fun with the prefix of his title in there.

Q. The purpose of your fun was to mock Dr. Mann in his hometown, correct?

A. It wasn't me.

MR. DeLAQUIL: Objection. Relevance.

THE WITNESS: Well --

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

MR. DeLAQUIL: This post-publication thing that we've been on a long time, I just don't see how it's relevant to the issues in this case. The National Review ran that ad. Steyn said he didn't.

MR. WILLIAMS: He said he approved it, he made changes.

THE WITNESS: I did not. I did not say I approved it.

THE COURT: Sir.

MR. DeLAQUIL: He never said he approved it. He said they showed it an hour beforehand and he added one abbreviation. Something paid for by National Review. I think we're just far afoot of anything relevant in this case.

MR. WILLIAMS: Oh, no, we're not. Under the Supreme Court decisions, pre and post-publication statements may be used to show actual malice. And I will be happy, again, to provide you with those cases.

MR. DeLAQUIL: It's National Review's statement.

MR. WILLIAMS: No. It's a statement that he approved.

MR. DeLAQUIL: But that is --

THE WITNESS: What I --

MR. DeLAQUIL: That misstates the record. He never approved it.

THE COURT: I'm going to sustain the objection. It's irrelevant. And he did not write the statement.

(Whereupon, bench conference concludes at this time.)

THE COURT: The objection is sustained.

BY MR. WILLIAMS:

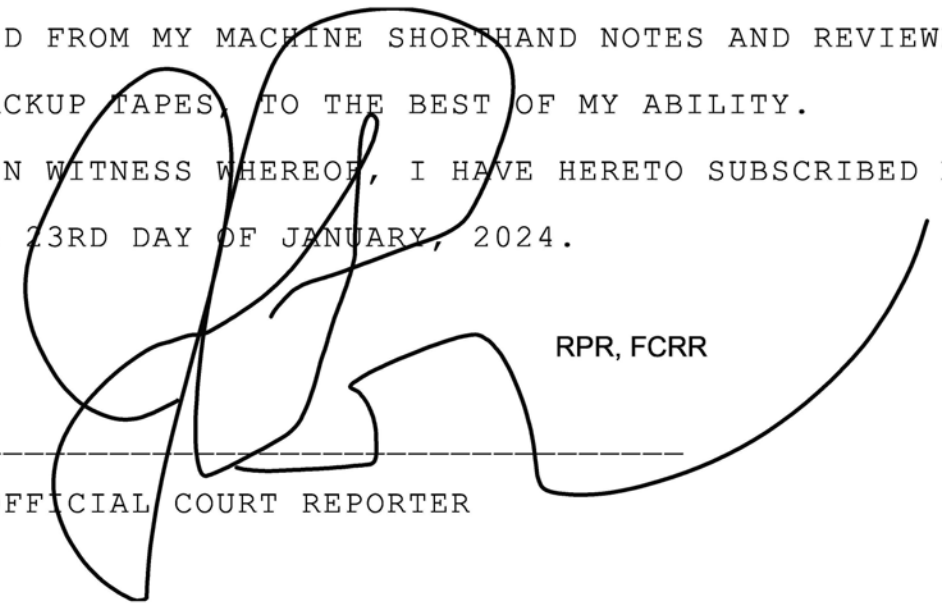
Q. Let's come back to your opening statements, sir. You said on page 34, I have a transcript, so I know it word-for-word.

CERTIFICATE OF THE REPORTER

I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D. VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE NUMBER 2012 CAB 8263, IN SAID COURT ON THE 22ND DAY OF JANUARY 2024.

I FURTHER CERTIFY THAT THE FOREGOING 97 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

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



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OFFICIAL COURT REPORTER

TRIAL TRANSCRIPT
1/23/24 AM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, MORNING SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Tuesday, January 23, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 518, commencing at approximately 9:33 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT 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 & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se

Juanita N. Price, RPR, FCRR

Official Court Reporter (202) 879-1063

APPEARANCES CONT'D:

On behalf of Defendant Simberg:

Mark DeLaquil, Esquire

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& Renee Knudsen, Esquire

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the UK East Anglia Report and the Penn State Report, which I had read.

Q. My question was a little different. Did you do any fact-checking to determine the correctness of the Simberg article?

A. Well, as I said, I checked it in the context of the Louis Freeh Report, the Penn State inquiry, and Lord Oxburgh's Report and Muir Russell Report.

Q. So, you looked at all four of those things to make sure that the Simberg article was correct; right?

A. Yes. The Louis Freeh -- I couldn't honestly recall this distance when I looked at the Louis Freeh Report into Penn State; but I'd read it when it had come out, I think it was just 48 hours earlier or something. So, it was still relatively fresh in my mind.

Q. Very good. Thank you.

Now, I do want to talk about the NSF Report, because we had a discussion about that at your deposition.

Do you remember that?

MR. BARTOLOMUCCI: Your Honor, objection.

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

MR. BARTOLOMUCCI: Your Honor, my understanding is that the NSF Report has not been admitted into evidence, so I think this is an improper topic.

A. I think I said to you that I remember its rather distinctive formatting, which was certainly different from Lord Oxburgh's or Muir Russell. So I was speaking about it.

As I said to you, I had seen it physically, because the formatting of the page layout was memorable to me.

Q. What did you just say? So, you saw its format?

A. No. I said I had seen it -- this is in the deposition. You've got the transcript of this.

I said I had seen it physically, because its page formatting, and its layout, and its slighty wacky page indentations were memorable to me.

Q. Okay. And did you see it before you wrote the article?

A. Well, as I think I testified to you, I couldn't reliably -- I reliably -- whenever the deposition was, two years ago, I couldn't reliably say then and I can't reliably say now whether I'd seen it before or after writing my piece.

MR. WILLIAMS: All right. Your Honor, I would like to play a portion of his video. We've actually played a portion of the video during my opening, and now I would like to play it right now while he's on the stand.

THE COURT: Any objection?

MR. BARTOLOMUCCI: No, Your Honor.

THE COURT: All right.

(Pause in Proceedings.)

(Whereupon, video/tape recording is played at this time.)

MR. WILLIAMS: Hold up. Turn it up, please.

(Whereupon, video/tape recording is played at this time.)

BY MR. WILLIAMS:

Q. Okay. Thank you.

And what did you mean by a casual acquaintance with the report?

A. Well, I knew with all of the reports, as I've testified to you, I followed the UK Reports in real time and read them, as I think I said, that was the scene of the crime and they seemed the more relevant reports.

And the U.S. ones were slightly more remote to me. I read Steve McIntyre's Report as they came out, and I read the conclusions of the reports in various other pieces, and the summaries of the reports are reported in the papers such as The Guardian and The New York Times.

But as I told you back then, I could not recall reading those reports in full at that time.

Q. Now you said in full, does that mean you read part of it?

A. Well, as I said, I read the summaries, I may have read the press releases from some of these bodies, and I read reports of them. But I have a very vivid memory.

As I said, the UK East Anglia was the scene of the crime. I read the report by Muir Russell, the report by Sir Lord Oxford, the House of Commons in London. But the U.S. Reports, I don't recall reading in full in 2009, 15 years ago.

Q. Okay. Now, I want to show you one more clip and ask you one more question about it, please.

(Whereupon, video/tape recording is played at this time.)

BY MR. WILLIAMS:

Q. Well, Mr. Steyn, there were only three American reports beginning with the letter N; correct?

A. I have no idea.

Q. You don't know how many American reports there were at all?

A. Beginning with N? No. That's -- if I ever get on a highly-specialized quiz show, I might pick that for my specialized subject. But it is a specialized subject and there is no reason -- I am a Canadian. I'm a subject of his Canadian Majesty, and there's no reason.

And actually in Canada, if it's an agency beginning with N, it's generally a Canadian agency.

Q. Uh-huh. And you published this article in the National Review, right?

A. Correct.

Q. National Review is an American company, isn't it?

A. Correct.

Q. Did it ever occur to you that if you were writing for an American publication you have a responsibility to educate yourself about the findings of the American Government?

A. Actually, no. I've never pretend -- I know there are a lot of foreigners running around to be American, more Americans than Americans. I've never been one of them.

They hired me as a Canadian, and I take it they knew what they were hiring when they did that.

Q. So, your answer to the question is, no, correct?

A. I don't -- I was writing about Penn State, Penn State University. I don't generally -- and Penn State connected to a United Kingdom Scandal. I don't think getting up to speed on American agencies beginning with N is part of that agreement.

Q. Okay. My question is real simple, did it ever occur to you that writing for an American publication you had a responsibility to educate yourself about the findings of the American Government, is the answer no?

BY MR. WILLIAMS:

Q. So, you did look at, at least, one other article by Rand Simberg, right?

A. You're -- you're saying to me that those words link to another piece by Rand Simberg?

Q. Yes.

A. Well, you seem an agreeable enough fellow, so I'll take your word for it.

Q. Thank you, okay. Did you do any other research into Mr. Simberg's writings?

A. I knew Rand Simberg's website Trans-Terrestrial Musings where he's a Rocket Scientist, as Miss Weatherford was saying. So, he writes mainly on rocket science, and outer space, and a few other issues. And I had read various posts on Mr. Simberg's Trans-Terrestrial Musings.

Q. Okay, good. This one is Death Of The Hockey Stick, we showed it to the jury during the opening, and it concludes with a call for Governments to stop funding Dr. Mann's research.

Do you recall that?

A. No.

Q. Were you hoping to achieve that goal by linking to the article by Mr. Simberg?

A. Well, as I said, I don't remember that. As a general proposition, I do -- I agree with, I think it was

Scientists are not in doubt.

Did I read that correctly?

A. Yes.

Q. Thank you. And then the next finding is, quote, in addition, we do not find that their behavior has prejudiced the balance of advice given to policymakers, in particular, and bolded again, we did not find any evidence of behavior that might undermine the conclusions of the IPCC assessments.

Did I read that correctly?

A. Yes.

Q. And you read this before you wrote your article of Football and Hockey?

A. Yes, I read it at the time that it came out.

Q. Okay.

A. And the conclusions that I remember Mr. Mann's World Theological Organization Graph, that version of the Hockey Stick, was said by Sonia (phonetic) to be misleading.

Q. And where did he say that in the report? Show us.

A. It's -- it's somewhere there --

Q. Show --

A. Well, do you have the whole report?

Q. Yes.

Do you remember that? Corrupt institution?

A. Absolutely, stinkingly corrupt.

Q. And I recall you saying that you followed the Sandusky matter with considerable interest, correct?

A. Correct. At the time I wrote the allegedly defamatory but entirely truthful publication, I had been writing, on and off, about Penn State and Sandusky for most of the previous year.

Q. This Penn State Scandal and Sandusky was right in your wheel-house, right?

A. I wouldn't say it was in my wheel-house. I was morally revolted at what happened at Penn State. I don't think -- I don't recall the rape of middle school boys of being in my wheel-house. I don't think you should have to have that in your wheel-house. If it is in your wheel-house, you should object to the rape of middle school boys.

Q. You actually had your assistant download a copy of the indictment and send it to you when you were on vacation; correct?

A. I wasn't actually on vacation, but I was in the Carribean. My recollection is that it was somewhere in the Turks and Caicos, possibly Grand Turks, and the internet -- actually, I believe, if I think about it, Melissa Howes, who's sitting there, was first alerted to

well understood, and, indeed, that was why Mr. Mann reported to his friend that he had -- he had had a quietly reassuring telephone call from President Spanier, quietly reassuring him, you know, that these guys were doing his bidding.

Q. Let me ask you this, do you know the names of these individuals on the investigative and inquiry committee who were doing the bidding of President -- excuse me, let me finish -- President Spanier?

A. I couldn't recall them right now, no.

Q. Do you know how many there were?

A. Of the Investigators in total?

Q. Correct.

A. No.

Q. Now, you said on Thursday that you had maintained that the Hockey Stick was fraudulent since the time it first came out.

Do you remember that?

A. Correct.

Q. And you first developed that view right after the Hockey Stick did come out in the -- I think you wrote an article in the Telegraph, right?

A. Correct. I believe that was the first one, April 2001.

Q. Yes. And that's Exhibit 5, which I believe you

pattern. It's natural variability, a concept your -- the Plaintiff's morals entirely eliminated.

Q. And you said in the deposition that you reached this obvious conclusion that there was natural variability in two minute's time, if that.

Do you remember that?

A. Yeah, I think as I said that's what in less litigious cultures, not a great joke, not as to why the chicken crossed the road, but that is not to literally indicate that I devoted just one minute and 43 seconds to the question.

Q. Well, why didn't you tell me in the deposition that that was a joke?

A. Because you didn't seem like the type.

Q. To get a joke?

A. Well, you were taking everything very, very seriously that day, and I was trying to rise to the level of your somberness.

Q. And you were not taking the deposition seriously, is that what you're saying?

A. That's good. That's actually quite where I like you. That's a good point, but it doesn't react to the reality of the situation.

Q. Now, since you took this position back in 2001, my understanding is you've been resolute in that position

ever since, right?

A. With regard to the Hockey Stick?

Q. Yeah.

A. Yes.

Q. Uh-huh. No reason to doubt it, right?

A. No reason to doubt my position on the Hockey Stick?

Q. Right.

A. Well, in those -- in that -- in those first pieces that you just mentioned from Australia, Canada, the UK, whatever, I was making a layman's judgement on the combination of proxy data and observed temperatures, which a lot of people -- as I mentioned, my friend Jennifer Marohasy from the Central Queensland University in Central pion the end, the Hockey Stick was not a widely-known term. We used it a banana with an orange on the end. In other words, we're just making the observation that it's two different things.

Q. All right --

A. And then when McIntyre and McKitrick --

MR. WILLIAMS: Your Honor, this is a very simple --

THE COURT: Why don't we -- this is a good break point?

MR. WILLIAMS: Yes, Your Honor.

(Pause in Proceedings.)

THE WITNESS: Awe, here it is. I'm sorry, it was page 13.

In respect of a 1999 well-known Meteorology Organization Report figure, showing evidence of intent to paint a misleading picture, we find that given its subsequent iconic significans, not least the use of a similar figure in the IPCC third assessment report, the figure supplied for the WMO Report was misleading.

BY MR. WILLIAMS:

Q. That wasn't Dr. Mann's Hockey Stick, was it?

A. It's -- it's included among his works on his website.

Q. Excuse me. That is not the Hockey Stick Research and MBH98 or 99, is it?

A. He --

Q. Yes or no.

A. No, sir. You -- I said, when this came up in my statement --

THE COURT: Mr. Steyn. Mr. Steyn. I want you to answer yes or no first, and there might be a followup.

MR. WILLIAMS: Yes or no, please.

THE WITNESS: I wasn't asked about MBH98 or 99, and I didn't answer it.

I talked about the WMO figure of which he is an

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

MR. DeLAQUIL: Do you have your headsets on? I think we're here into something that impacts both Defendants and gets on the order.

I mean this is -- to the extent there is any relevance, clear 403 ground, and I think it's going to be very difficult for the jury to segregate this out between them, and it goes to your MIL Order, also.

MR. WILLIAMS: It goes to what? I didn't hear.

THE COURT: Motion In Liminae.

MR. WILLIAMS: Oh, MIL. I'm not saying this is something Mr. Simberg wrote, this is something Mr. Steyn wrote.

THE COURT: As you well know and as we discussed extensively that this is not a case of Climate Change. And I know that everyone -- I know that there is going to be a push to insert it at every turn. But I do think that this poses more confusion than -- than its relevance.

MR. WILLIAMS: Your Honor, here, he is including Dr. Mann in what he says is a criminal conspiracy. That clearly goes to malice.

THE COURT: All right. And you've done that.

MR. WILLIAMS: Okay. Then I'll move on.

THE COURT: All right.

And what was your answer?

A. I said I don't believe they used that word, although I couldn't. I think I'll say that I can't state that any of them used that word.

Q. Thank you.

A. And you said that any of them used the word deceptive?

And I said I couldn't say, I don't remember adjectives from that paper.

THE COURT: Sir.

BY MR. WILLIAMS:

Q. Very good. And then I asked you if you had consulted with any Scientists to find out their views whether the Hockey Stick was fraudulent.

On page 87, please.

A. Page 87?

Q. Yes, that's where it starts. And then I'm going to come down to page 88, Mr. Steyn, and ask you to look at line five.

A. Yes. You'd asked me here --

Q. May I ask the question, Your Honor?

THE COURT: Yes. Please.

BY MR. WILLIAMS:

Q. Mr. Steyn, on line five, I said prior to July 2012, did you consult with any Scientists to find out

Nobel Prize?

A. It had a headline about his appearance on a radio show, the headline being Our Climate Guy Nobel Prize Winner, Michael E. Mann.

Q. Okay. Let's move on.

Also yesterday do you remember when Mr. Williams asked -- asked if Dr. Mann asked you to apologize for the Football and Hockey post?

A. Yes.

Q. And, in fact, did Dr. Mann ever ask you to apologize to him?

A. I was never contacted directly by Mr. Mann and asked for an apology. And if he demanded an apology on my behalf from anybody at National Review, I did not see it.

Q. Did Dr. Mann ever ask you to retract your 2012 posts or any part of it?

A. No.

Q. If Dr. Mann had asked you for an apology, would you have apologized?

A. No. I think it's -- I think corruption is important for the reasons I stated, and that's why I think it's important to be able to talk honestly about the lot at Penn State University.

Q. If Dr. Mann had asked you to retract your posts or part of it, would you have done that?

A. No. I stand by every word of that post. In fact, it wasn't really -- it was about Penn State and corruption more than anything else.

But I stand -- I stand by every word in that post, because that post is the truth.

Q. Final question in this series.

Do you know if the Competitive Enterprise Institute retracted part of Mr. Simberg's post after it was published?

A. Well, Mr. Williams said that yesterday, but I, to the best of my knowledge, have never gone on the CEI website. I'm not a -- you know, it's a Washington Think Tank, but it's not my bag. And I only knew this post from Mr. Simberg's own website, which is where I first became apprised of it.

Q. Now, yesterday Mr. Williams also asked you about one of your specific criticisms of the Hockey Stick, do you remember Mr. Williams asking you about the one reliable tree criticism?

A. Correct.

Q. Could you explain to us what your one reliable tree criticism is?

A. Well, as Mr. Bradley said yesterday, there is no new research, in that sense, for the Hockey Stick.

Mr. Mann didn't go out collecting tree rings from

hither and yon, instead there was a statistical model built around existing data. And so the question then becomes how you choose the existing data and what you do with it.

As I mentioned yesterday, for the years 1400 to 1404, there was no data, so he just cut and pasted some data from later in the 15th Century.

But even when the data is actually pretty good, the Central European temperature record, which I think starts in 1525, but he only chose to use it from the year 15 --

THE COURT REPORTER: Excuse me, sir, did you say 50?

THE WITNESS: 50. 1550.

THE COURT REPORTER: 5-0?

THE WITNESS: 5-0. And the great advantage of starting in 1550 is that you eliminate what has always been known to be the warmest decade in Europe, which is the 1530s, culminating in 1540 when forests, and towns, and cities from France to what's now the Czech Republic, Auburn, River Beds died, livestock died in the fields. And there's very good documentation for that. A disease was rampant in Central Europe.

And instead Mr. Mann conveniently eliminates the hottest decade in Europe, because it doesn't start off his

broader narrative. So, it's a lot of cherry-pick. And when are there are no cheeries to pick, he cuts and pastes other cheeries.

BY MR. BARTOLOMUCCI:

Q. Well, let's move on to the next document.

Can we put on the screen, Brian, Exhibit 5?

(Pause in Proceedings.)

BY MR. BARTOLOMUCCI:

Q. And let's focus in on the tops, so we can get information about the article.

Do you recognize this article, Mr. Steyn?

A. Yeah, that's my column from the Sunday Telegraph in London from 2001.

Q. So, that's, obviously, written before your 2012 Blog posts that is at issue in this trial, correct?

A. Correct.

Q. And could you tell us a little bit about what The Telegraph is?

A. Well, The Telegraph, at that time, was the biggest-selling broad sheet newspaper in the UK, and I believe the biggest-selling broad sheet newspaper in Europe. That means one of the wide papers, like The Washington Post, I think, is a broad sheet. Whereas, The New York Post is a tabloid.

But all of these papers have been getting less

smaller and smaller in recent years. But at that time it was a big meaty, thick big-selling broad sheet.

Q. Now, if we could call out the paragraph that carries over from the bottom of the first page to the top of the second page.

Do you see the reference on the first line to the U.N.'s Report on Climate Change?

A. Yeah.

Q. Tell us what that is?

A. That's a reference to the IPCC, which is this body, I think as Miss Oreskes was talking about yesterday, was setup to bring together Scientists from all over -- from the Member States to the United Nations.

Q. Now, in the next sentence you wrote that the U.N.'s Report on Climate Change, quote, measures the 11th to the 19th Century with one system, Tree-Ring Samples, and the 20th with another, thermometers.

Did I read that correctly?

A. Correct.

Q. Is this what's been called the divergence criticism of the Hockey Stick?

A. Yes, the reference to Hide The Decline is made with reference to the fact that as the Tree Rings do not correlate with the temperature record in our lifetime.

So, in other words if you were born in 1956,

1967, 1972, whatever, the Tree Rings can't tell you the correct temperature for your life.

But we're supposed to believe that they can accurately tell you the temperature for the year 1512 or 1482. Oh, in fact, in MBH1999, the year 1103.

Q. Well, let's put up another article that you published.

Let's, Brian, pull up Exhibit 8? And let's start at the top.

Can you tell us what this publication is, Mr. Steyn?

A. This looks like an American website lifting my column from The Australian, which is the National Newspaper of Australian.

Q. So, you published an article in The Australia on this date in 2006?

A. Yeah. I have vague memories of why I was asked to write about this.

Q. But once again this is a publication done by you before the Blog posts at issue in 2012?

A. Correct.

Q. Now, if we could drop down to the fourth paragraph. There's a reference to the famous Hockey Stick Graph.

Do you see that?

A. Yeah.

Q. And did you go on to write the following in the next sentence: This graph was almost laughably fraudulent, not least because it uses a formula that would generate a Hockey Stick shape, no matter what data you input, even completely random, trendless, arbitrary computer-generated data.

Did I read that correctly?

A. Yes.

Q. Now, can you -- can you unpack that for us, and tell us what you're describing there?

A. Well, as we saw, Miss Weatherford put up two contrasting data sets in her opening presentation, and the formula that Mr. Mann devised what they wanted to do is to show that nothing had happened for 900 years, and then the graph -- the line shoots up out the top right-hand corner of the graph, and we're all going to die. And that would be disturbing, if it were true.

But, in fact, it isn't true. And the data that they used to get that result is -- has always been slightly odd to me. It's an unrequisite. It's un -- as Mr. Bradley was talking about, they don't have a lot of data.

So, for example, I mentioned the one reliable tree from the Gaspe Peninsula, and then there are these

Stick Graph was almost laughably fraudulent?

A. Correct.

Q. In 2012 it was your view that the Hockey Stick is fraudulent?

A. Correct.

Q. And it's your view today that the Hockey Stick is fraudulent?

A. Oh, yes.

Q. And at all points in between that was your consistently-held view?

A. Absolutely.

Q. Okay. Could we put up a document, 60, this is the Football and Hockey post?

And do you recognize this, Mr. Steyn?

A. Yes, I do.

Q. And this is your post, the post at issue in this case?

A. Correct.

Q. Okay. What I want to focus on is a pretty discreet issue.

The large indented words are first published by Mr. Simberg, correct?

A. Correct.

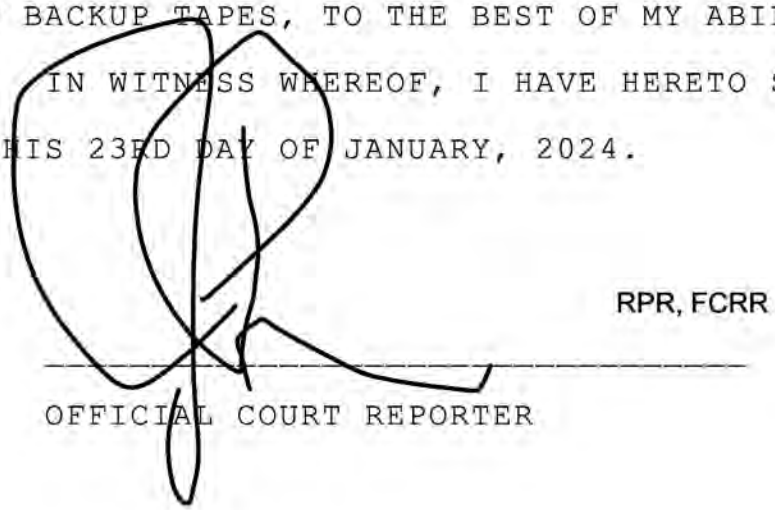
Q. And there are a few words that are underlined. We've also learned, do you see that?

CERTIFICATE OF THE REPORTER

I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D. VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE NUMBER 2012 CAB 8263, IN SAID COURT ON THE 23RD DAY OF JANUARY 2024.

I FURTHER CERTIFY THAT THE FOREGOING 89 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

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



RPR, FCRR

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OFFICIAL COURT REPORTER

TRIAL TRANSCRIPT
1/23/24 PM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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

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.

APPEARANCES:

On behalf of the Plaintiff:

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PETER FONTAINE, Esquire
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(Appearances continued on the next page.)

(Continued from the previous page.)

PATRICK COYNE, Esquire.
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On behalf of Defendant Steyn:

H. CHRISTOPHER BARTOLOMUCCI, Esquire
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Washington, D.C. 20006

Also present:

Melissa Howes (Power of Attorney for Steyn)

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

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

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

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

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

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

Jurtiana Jeon, CSR, RPR
Official Court Reporter

TRIAL TRANSCRIPT
1/24/24 PM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, AFTERNOON SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Wednesday, January, 24, 2024

.....x

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

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT 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 & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se

Juanita N. Price, RPR, FCRR

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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MR. WILLIAMS: Yes.

MS. WEATHERFORD: The questions are going to be how much has he paid out of pocket, and confirming that he does not have a debt that he has to pay, win or lose.

MR. WILLIAMS: I think that's fine. That's fine. If those are two questions, that's fine.

MS. WEATHERFORD: Those two questions.

MR. WILLIAMS: Yup.

(Pause in Proceedings.)

THE COURT: With respect to 37, Defendant Simberg is requesting that it be read. You have raised objections, but, though, you are agreeing to its reading with the caveat that later there might be context provided by Dr. Mann?

MR. FONTAINE: For all of them, yeah. For every one of these, Your Honor, yeah.

THE COURT: All right. All right.

(Pause in Proceedings.)

(Whereupon, the Jury enters the courtroom at this time.)

THE COURT: You may be seated.

All right. So, Members of the Jury, before the testimony is continuing, I am first going to read to you some statements that have been determined to be admitted. I'm first going to read you the jury instruction

concerning judicial admissions.

Use of judicial admission. Judicial admission is an admission of a fact which relieves the other party of the necessity of introducing evidence to establish such a fact. These admissions were given in writing before the trial and a response and request were submitted under established Court procedures. You must treat these facts as having been proved.

So, I'm going to read facts 10 through 32 and 37, and Plaintiff will be given an opportunity, these are Plaintiff's statements, Plaintiff will be given an opportunity to provide context, if he deems context is necessary for your deliberations.

All right. So, the first one, Professor Mann does not know whether the reviewers for the National Science Foundation, and I'm not certain of the pronunciation still, Decadal, Multi-decadal Climate Variability Grant considered the Steyn post or the Simberg post.

The next one, Professor Mann does not know if the person or persons who, ultimately, decided whether or not to fund the National Science Foundation, Decadal, Multi-Decadal Climate Variability Grant considered the Simberg or Steyn post.

The next one, Dr. Mann does not know if the

reviewers for the National Science Foundation View In Africa Grant considered either the Simberg post or the Steyn post.

The next judicial admission, Professor Mann does not know if the person or persons who, ultimately, decided whether to fund the National Science Foundation View In Africa Grant considered the Simberg or Steyn post.

The next judicial admission, Professor Mann does not know the identities of the reviewers for the Forecasting Fire Risk Grant.

The next judicial admission, Professor Mann does not know if the reviewers for the Forecasting Fire Risk Grant considered the Simberg post or Steyn post.

The next judicial admission, Professor Mann does not know if the person or persons who, ultimately, decided whether to fund the Forecasting Fire Risk Grant discussed the Simberg or Steyn post.

The next judicial admission, Professor Mann does not know the identity of the reviewers for the National Science Foundation Wavess, or W-a-v-e-s-s, Grant.

The next judicial admission, Professor Mann does not know if the reviewers for the National Science Foundation Wavess Grant considered the Simberg post or the Steyn post.

The next admission, Professor Mann does not know

if the person or persons who, ultimately, decided whether to fund the National Science Foundation Wavess Grant considered the Simberg post or Steyn post.

The next judicial admission, Professor Mann does not know the identity of the reviewers for the Building Environmental Literacy Grant.

The next judicial admission, Professor Mann does not know if the reviewers for the Building Environmental Literacy Grant considered the Simberg post or Steyn post.

The next judicial admission, Professor Mann does not know if the person or persons who, ultimately, decided whether to fund the Building Environmental Literacy Grant considered the Simberg post or Steyn post.

The next judicial admission, Professor Mann does not know the identity of the reviewers for the National Science Foundation Modeling In Western North America Grant.

The next judicial admission, Professor Mann does not know if the reviewers for the National Science Foundation Modeling In Western North America Grant discussed the Simberg post or Steyn post.

The next judicial admission, Professor Mann does not know if the person or persons who, ultimately, decided whether to fund the National Science Foundation Modeling In Western North America Grant considered the Simberg post

or Steyn post.

The next judicial admission, Professor Mann does not know the identity of the reviewers for the ENSO, E-n-s-o, a Land Ocean Atmosphere Process Grant.

The next judicial admission, Professor Mann does not know if the reviewers for the ENSO, E-n-s-o, is a Land Ocean Atmosphere Process Grant have discussed the Simberg post or Steyn post.

The next judicial admission, Professor Mann does not know if the person or persons who, ultimately, decided whether to fund the ENSO, a Land Ocean Atmosphere Process Grant considered the Simberg post or Steyn post.

The next judicial admission, Professor Mann does not know the identity of the reviewers for the National Science Foundation Paleo-drought Network Grant.

The next judicial admission, Professor Mann does not know if the reviewers for the National Science Foundation, Paleo-drought Network Grant discussed the Simberg post or Steyn post.

The next judicial admission, Professor Mann does not know if the person or persons who, ultimately, decided whether to fund the National Science Foundation Paleo-drought Network Grant considered the Simberg post or Steyn post.

And then, finally, if Professor Mann has Tweeted

on Twitter that people with contrary views on Climate Science are, quote/unquote, hired guns, quote, tin-foil hat-wearing conspiracy theory mongers, end quote. Quote, Climate Change deniers, end quote. Quote, horrible human beings, end quote. Quote, cowardly trolls, end quote. And a, quote, misogynistic ogre, end quote.

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

THE COURT: All right.

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

All right.

MS. WEATHERFORD: Thank you, Your Honor.

THE COURT: All right. You may continue.

BY MS. WEATHERFORD:

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

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

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

the clerk.

MS. WEATHERFORD: That's what I figured.

THE COURT: Yes.

MS. WEATHERFORD: Okay.

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

All right. See you tomorrow.

(Whereupon, hearing concluded.)

CERTIFICATE OF THE REPORTER

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

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

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

RPR, FCRR

OFFICIAL COURT REPORTER

TRIAL TRANSCRIPT
1/30/24 PM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, AFTERNOON SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Tuesday, January, 30, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 132, commencing at approximately 2:07 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT 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 & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se

Juanita N. Price, RPR, FCRR

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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A. Gap-filling, signal-to-noise variability, and, especially Ocean atmospheric interactions.

Q. Okay. Did you have knowledge at that time when you were putting together the team of Dr. Mann's reputation?

A. Yes, I did.

Q. And what was your knowledge of his reputation?

A. Well, my knowledge of his reputation, especially in paleoclimate is excellent and atmospheric oceanic interactions. And he has an excellent reputation for publishing top-quality research, and he also been the forefront of research endeavors.

Q. In 2012, had you read Dr. Mann's publications?

A. Oh, yes, of course.

Q. Okay. And did you consider adding Dr. Mann to your research team?

A. I did.

Q. Did you add him to the team?

A. I did not.

Q. Why did you not include him in the team?

A. It was too risky.

Q. Why did you conclude it was too risky?

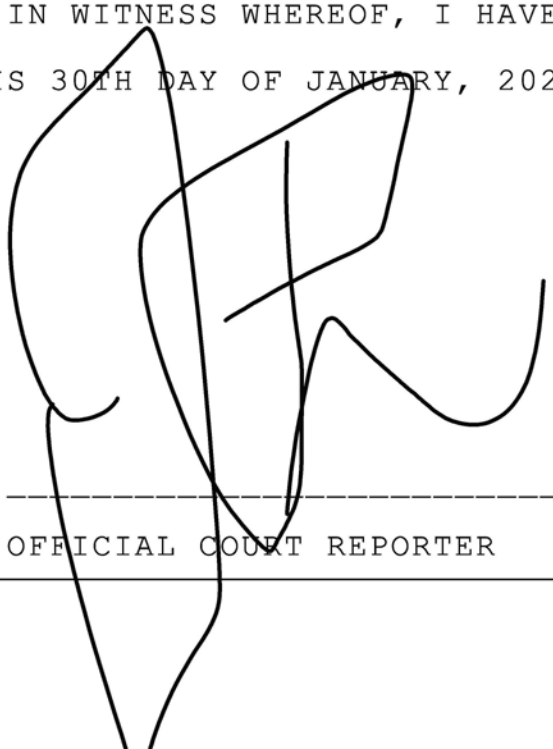
A. Because I was concerned that other co-authors would not be willing to have their name on a paper that Dr. Mann was also a co-author of.

CERTIFICATE OF THE REPORTER

I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D. VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE NUMBER 2012 CAB 8263, IN SAID COURT ON THE 30TH DAY OF JANUARY 2024.

I FURTHER CERTIFY THAT THE FOREGOING 103 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

IN WITNESS WHEREOF, I HAVE HERETO SUBSCRIBED MY NAME, THIS 30TH DAY OF JANUARY, 2024.



RPR, FCRR

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OFFICIAL COURT REPORTER

TRIAL TRANSCRIPT
1/31/24 AM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, MORNING SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Wednesday, January 31, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 132, commencing at approximately 9:34 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL COURT 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 & Peter Fontaine, Esquire

Amorie Hummel, Esquire & Patrick Coyne, Esquire

On behalf of Defendant Steyn:

Mark Steyn, Pro Se

Juanita N. Price, RPR, FCRR

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

EXHIBITS

Q. Okay. And were you working on this study at the time the -- you testified yesterday that you were aware of the publications by Mr. Simberg and Mr. Steyn in July of 2012; correct?

A. Correct.

Q. And you were working on this study at the time of those publications; correct?

A. That is correct.

Q. Okay. Now, we talked a little bit yesterday about Dr. Mann's reputation.

You testified that you've attend scientific conferences with Dr. Mann, and that you generally had a understanding of his reputation as a Scientist; correct?

A. Yeah, I mean it's more than that. I've read his papers. I know he's been in the IPCC, and his paleo work. His work is highly regarded in the Scientific Community.

Q. Okay. And at the conferences and other meetings that you've attended among Climate Scientists, have you developed an understanding of things that people talk about at those committee meetings and things?

A. Of course.

Q. What kind of things are discussed at scientific meetings?

A. Well, it's pretty boring. Most of it is science. And we are often discussing breaking science, what is the

Q. And when was that?
A. I believe it was 2020.
Q. Okay. And why did you bring him in in 2020?
A. Well, as I mentioned yesterday in testimony, he has special knowledge that is important to us, and I felt enough time had lapsed for this whole ClimateGate thing to die down that I could venture to include him on a paper with many of these international contributors.
Q. And when you say this ClimateGate thing, are you referring to the close-out by the NSF or are you referring to what happened after that?
A. I'm referring to the two articles.
MR. FONTAINE: Okay. And, yup, I think that's it. I don't have any further questions.
THE COURT: All right. Cross examination?
THE COURT REPORTER: Judge?
THE COURT: Yes, it's 11. We'll take a -- so we'll return at about 11:10.
(Whereupon, Jury exits the courtroom at this time.)
(Whereupon, brief recess is taken at this time.)
THE DEPUTY CLERK: Your Honor, recalling the matter of case number 2012 CAB 8263, Michael E. Mann, Ph.D. versus Rand Simberg and Mark Steyn.
Your Honor, all parties are present as before.

representing Rand Simberg in this matter.

My colleague, Renee Knudsen, is going to distribute a binder that are read well, it's going to look like a lot of documents, but, rest assured, we're not going to be looking at most of them.

(Pause in Proceedings.)

(Handing)

BY MR. DeLAQUIL:

Q. Now, Dr. Abraham, I think we can start while Miss Knudsen delivers the document.

You've written that Dr. Mann is a hero; right?

A. Yeah, I think I wrote he's a hero to his colleagues, something like that.

Q. Okay. Okay. And that's a good thing, isn't it?

A. Yes, it is a good thing.

Q. Okay. And you yourself have co-authored about seven peer reviewed articles with Dr. Mann, haven't you?

A. I don't -- I have co-authored peer review articles. I don't know if it's exactly seven. But, yes, I have written papers with him.

Q. I don't want to walk the jury through seven articles in his CV. Would you agree with me it's about seven?

A. Yes.

Q. And thank you. And that included publishing

Estimates And Climate Change Published And Reviewed Of Geophysics.

We're on the same page about that, correct?

A. Yes, we are.

Q. Okay. And your testimony today is, essentially, that the basis for your decision not to include Dr. Mann to participate in this article is that you perceived it might upset one of the nearly 30-co-authors; right?

A. Not -- not quite. My decision not to include him as a co-author was I was concerned that multiple co-authors would be skittish about being listed as a co-author on the paper with him.

Q. Okay. But you don't know whether any of those co-authors had read Mr. Simberg's Blog post, right?

A. I do not know that.

Q. And you don't know if any of those co-authors had read Mr. Steyn's Blog post, right?

A. I don't know which co-authors could have read either of the two articles.

Q. You don't know if any of them read any of the articles, right?

A. I don't know for a fact that they did. But I am quite sure some of them did.

MR. DeLAQUIL: Objection. Motion to move to strike the last sentence -- the last clause.

And if you call-out the one, two, three, four, fifth from the bottom.

We'll see another article this time titled Comment On Influences Of The Southern Oscillation On Tropospheric Temperature.

Do you see that?

A. I see that 2010 paper.

Q. That's another one where Dr. Treneberth published with Dr. Mann; right?

A. Correct.

Q. Okay. And I don't think that I need to show you anymore documents for you to know that Dr. Treneberth has published with Dr. Mann after the allegedly defamatory articles in this case; right?

A. No, you don't.

Q. Okay. Now, besides your personal example you do not know of any researchers, other than yourself, who have refused to collaborate with Dr. Mann, because of the Steyn or Simberg Blog posts; right?

A. That is correct.

Q. And you're not aware of any other Scientists who does not want to work with Dr. Mann, because of Mr. Simberg's or Mr. Steyn's Blog posts; are you?

A. I am aware of people who were concerned, but no one said that they would not.

a picture. Can we pull the picture up?

Do you recognize anyone on that screen, Dr. Abraham?

A. Yes, I do. So, on the right-hand side is former President Clinton.

The fellow with his right hand raised is, I believe, Terry McAuliffe.

And then Michael Mann is on the left.

Q. Okay. So, one month after your article was published, Former President Clinton, and Virginia Gubernatorial Candidate, Terry McAuliffe, were appearing on stage with Dr. Mann, presumably, to try to get the residents of Virginia to vote for Mr. McAuliffe.

But you were concerned to include Dr. Mann on your 2013 article; is that your testimony?

A. Yeah, I was concerned my scientific colleagues would be skittish about being listed as a co-author on that paper.

Q. National Science Foundation is located in Virginia, isn't it?

A. It's either DC -- maybe -- is there a city called Crystal City? It's -- I'm from Minnesota, so I don't know the geography perfectly. But it's very close to here.

Q. And Crystal City, I'll represent to you, it's part of Arlington, Virginia. No further questions.

Go on, I'm sorry.

Q. No, no, that's fine. I'd like to ask you, because your curriculum vitae has been entered into evidence. But there are a couple of additional things that you've done.

You were founder of the Climate Science Legal Defense Fund.

Correct?

A. Yes. I was involved in the founding of that organization.

Q. And, in fact, Michael Mann was one of the reasons you founded that organization, was it not?

A. I would say it was founded to protect Scientists who were under attack.

Q. But Michael Mann specifically was one of the reasons you founded it?

A. I would say Michael Mann was one of the -- one of the typical cases that organization would assist with.

Q. Well, he was a little more than typical, wasn't he, because he was the first recipient, I believe, of Climate Science Legal Defense Fund monies?

A. I don't know about that. I was involved in the foundation of that, the conceptualization, and I have not been involved since it was conceptualized. So, I don't know what -- I don't know what has become of that

public seats getting together and forming a group that like the X-Men or whatever?

This is a formal Government-conferred status, is it not?

A. I don't know. I don't know. I don't know. I don't know if 501(c)(3) is a formal Government status. I'm sorry, I just don't know the answer to your question.

Q. No, no, no, that's fine. That's splendidly and worldly of you.

So, just to wrap up here. You're skittish about Dr. Mann regarding your fellow Scientists, but at the same time you were willing to help found a group and lend your name to this group in order to protect him from lawsuits; correct?

A. I was concerned about adding him as a co-author, and at the same time I helped conceptualize and found an organization that would help Scientists, not just Mike Mann, but Scientists. Both of those things are true.

Q. But Mike Mann was the example you chose to focus on in your column?

A. Well, there are two examples. Ben Santer was the first example, and Mike Mann was the second. Those are the two samples that I used in my column, that's correct.

Q. Why did you wait until 2020 to add him to your Ocean Heat Group, if it was to do with your skittishness?

MR. FONTAINE: We're going to respond orally, too.

MR. WILLIAMS: Well, I don't know.

THE COURT: You'll decide that over lunch.

MR. WILLIAMS: Okay. Thank you.

(Whereupon, luncheon recess is taken at this time.)

(Whereupon, hearing concluded.)

CERTIFICATE OF THE REPORTER

I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D. VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE NUMBER 2012 CAB 8263, IN SAID COURT ON THE 31ST DAY OF JANUARY 2024.

I FURTHER CERTIFY THAT THE FOREGOING 110 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

IN WITNESS WHEREOF, I HAVE HERETO SUBSCRIBED MY NAME, THIS 31ST DAY OF JANUARY, 2024.

OFFICIAL COURT REPORTER RPR, FCRR

TRIAL TRANSCRIPT
1/31/24 PM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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

Washington, D.C.
Wednesday, January 31, 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 2:08 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.)

(Continued from the previous page.)

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Also present:

Melissa Howes (Power of Attorney for Steyn)

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

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

MR. WILLIAMS: Yes, I have.

THE COURT: All right. So --

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

THE COURT: No, it was not clear.

MR. WILLIAMS: It was a before and after.

THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Yes, please.

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

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

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

THE COURT: All right.

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

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

MR. WILLIAMS: I will --

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

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

THE COURT: All right.

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

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

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

THE COURT: All right.

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

MR. DELAQUIL: Thank you, Your Honor.

BY MR. DELAQUIL:

Q. Dr. Wyner, do you have an opinion as to whether the techniques used in Dr. Mann's Hockey Stick research are manipulative?

A. Yes.

Q. What is your opinion?

A. It's my opinion that the techniques used by Dr. Mann in his earliest work, '98 and '99, and to some degree in his later works, are manipulative.

Q. Dr. Wyner, do you have an opinion as to whether Dr. Mann's manipulative statistical techniques caused the Hockey Stick to be misleading?

A. I do.

Q. And what is that opinion?

A. That it is misleading.

Q. We're going to dig into these opinions in your analysis in just a moment. But before we do, I'd like to ask you first some questions about the scientific work that's at issue in this case generally. We can move through it pretty quickly, because some of this the jury has heard over the course of the last many days we have been here.

For how long have we had reasonably reliable thermometer data?

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

Jurtiana Jeon, CSR, RPR
Official Court Reporter

TRIAL TRANSCRIPT
2/1/24 AM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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

Washington, D.C.
Thursday, February 1, 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 9:45 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.

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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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we call that regressing -- moving back towards the average. The average is -- in the instrumental period is a dotted line right over there.

Q. As a statistician, are the differences in uncertainty here meaningful?

A. They're the entire story, the entire reason why I got a paper published. And why we had so much discussion and rejoinder as to why was because of the uncertainty. That's the interesting thing. As a statistician, that's what we bring to the scientific inquiry, uncertainty.

Q. What does this have to do with the Hockey Stick being misleading?

A. Almost everything. Because the idea of the -- of the '99 Hockey Stick, which was in IPCC, was that this is the reconstruction. And while we didn't claim to know it precisely, it produced a confidence band -- it wasn't a band, but intervals that are sufficiently narrow to point out that the current temperatures are way, way outside it.

Now I'm getting current temperatures that are at the upper end, but the whole story is much, much larger and much more uncertainty.

Q. Catches the eye, right?

A. Oh, the original Hockey Stick certainly catches the eye, and the McShane-Wyner is unfortunately rather boring.

one has an incredible amount of uncertainty -- sorry -- is very different than the others.

So here we have possible reconstructions, all perfectly -- all drawn and created by the same model, and they have very different look to it.

Q. And so the jury is clear, how did you get each of these red, orange, blue, green lines?

A. We built a model using the proxy data, the instrumental temperature data. And then our model specifically had components of parameter randomness and data randomness. And then we reconstructed -- we essentially redrew from that model to create all the -- all the reconstructions that are consistent with the data that we have. We don't claim that these are truths. We claim them all as equally plausible given the data that we have.

Q. And so are each of the lines we're seeing here valid reconstructions?

A. Each of them are all statistically valid possibilities of what the Earth's temperature were going back a thousand years, roughly equally consistent with the data that we have, the flat ones and the non-flat ones.

Q. All right. Why don't you head back to the witness box, Dr. Wyner.

A. (Complies.)

Q. In your opinion, Dr. Wyner, what are the

implications of the inability of the Hockey Stick to predict temperatures better than randomly generated information to claim that the Hockey Stick is deceptive or misleading?

A. So, first, I think the most important implication is you have to recognize that proxies over a short time series -- and I mean short. I mean, it might sound like a lot to you and me, a thousand years, but this is -- the world has been around a long time. We're trying to do something in a very, very short time scale. And the proxies that are collected locally over a short time scale are very poor predictors of global temperature. At least they were at the time of my analysis. If there's been scientific progress made, I haven't seen it, but I won't -- I didn't do an investigation to know what has happened since. That's the first thing.

The second thing. The flat line of that -- of the handle, that's -- again, that's the graph of ignorance. That follows from the fact that proxies are not good -- local proxies are not good predictors of global temperature. What you end up with is a flat line. That's just what happens. There's an honest statistical analysis that takes all the data and produces a flat line.

Thirdly, they don't validate well, meaning that there's lots of uncertainty unless you use this adaptive

process, meaning that the uncertainty is really, really big, and that's important to recognize that the uncertainty is really, really big.

And, finally, the biggest misleading component, I would say, is if -- if you -- once you take into account they can't predict that well, is it gives you the impression that you have a technology that works a lot better than it does.

Q. I'd like to turn to --

THE COURT REPORTER: Can we take a break?

THE COURT: Yes. How many more questions?

MR. DELAQUIL: I've probably got no more than ten minutes, maybe five minutes.

THE COURT: All right. But we'll take a break.

All right. So it's 11:30. We'll return at 11:40.

THE DEPUTY CLERK: This Court stands at recess until 11:40 a.m.

(Jury out at 11:30 a.m.)

THE COURT: All right. Thank you.

(Recess.)

THE COURT: All right. You may be seated. Welcome back. We'll call in the jury, if we're ready. Recall the case.

THE DEPUTY CLERK: Recalling 2012-CA-8263 B,

informative. There's statistics to it. It's revealing. It's certainly not an independent replication.

Q. Have you created a slide summarizing your ultimate conclusions, whether there's a basis in fact for Mr. Simberg's allegedly defamatory statements that Dr. Mann molested and tortured data and he engaged in data manipulation to keep the blade on his famous Hockey Stick graph?

A. Yes. There's a graph that summarizes it.

MR. DELAQUIL: Would you to turn to slide 19, please.

BY MR. DELAQUIL:

Q. And would you please walk the jury through your ultimate conclusions.

A. So just to reiterate, we're talking about -- remember, manipulation of data has no meaning until you actually give it a context. And so what I'm essentially saying is there's an adaptive selective process which is used to create the uncertainty, in particular, components of the '98 and '99 and then IPCC report Hockey Stick. And that adaptive process of selecting and snooping and going back and forth, that's -- another name for it is p-hacking, and that's there. That's the first one.

The second is it's important to recognize that these proxies are much, much less connected to

temperatures -- global temperatures than you want to think. They are very loosely connected, particularly for the task of recreating a global temperature over a short period and that -- I found that you can get equally good results from a very good method of connecting all the temperatures to each other but don't use any proxies; use sequences that are unrelated, like drawing cards from a deck.

The second bullet point or heading is that what you're seeing is -- back in '99 and 2000 and -- and in the IPCC report, what you're looking at is misleading because it gives you the impression that something is much more certain, much more known than it truly is.

And, in fact, one of the reasons for that is the -- what I consider to be an inappropriate splicing of both the reconstructed temperatures and the actual thermometer data in a way that is eye-catchy, but I think misleading.

MR. DELAQUIL: No further questions. I have some things I'd like to move in.

THE COURT: All right.

MR. DELAQUIL: And I believe two are objected to. So the ones that I believe are not objected to are Exhibits 1117, 1118, 1119, 1120, and 1122. Is that right, Counsel?

MR. COYNE: Those are all demonstratives?

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 1st day of February, 2024.

I further certify that the foregoing 125 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 2nd day of February, 2024.

Jurtiana Jeon

Jurtiana Jeon, CSR, RPR
Official Court Reporter

TRIAL TRANSCRIPT
2/7/24 AM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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

Washington, D.C.
Wednesday, February 7, 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 9:36 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.

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(Appearances continued on the next page.)

(Continued from the previous page.)

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And, of course, she did. She cross-examined Dr. Mann about this.

THE COURT: But you sort of have to own this problem. Because it was placed before the jury, the numbers, the $9 million. And you queried Dr. Mann on it. And it is your evidence, all of it. And so, certainly, you should have appreciated that that was -- especially seeing $9 million on a board that's been published to the jury, it should have been clear to someone on the team that that board is incorrect, and if we're putting information in front of the jury, they're -- even if there's -- even if there's been no connection shown whatsoever to the statements and the reduced funding, they're going to walk away with numbers in their head, and the 9 million is going to strike them as quite impressive, and it was not corrected until the recross examination.

MR. FONTAINE: Your Honor, the defendants had their exhibit to cross-examine Dr. Mann prepared. This was part of their effort to keep out Exhibits 102 and 103, which were the subject of his supplemental discovery responses, which he had a continuing duty to provide even if discovery was closed.

He did provide those. He went back through. We provided them with the accurate numbers. And then defense counsel put into evidence redacted discovery responses that

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 7th day of February, 2024.

I further certify that the foregoing 77 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 8th day of February, 2024.

Jurtiana Jeon

Jurtiana Jeon, CSR, RPR
Official Court Reporter

TRIAL TRANSCRIPT
2/7/24 PM
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

.....x

MICHAEL E. MANN, Ph.D.,

PLAINTIFF, AFTERNOON SESSION

VS.

NATIONAL REVIEW, ET. AL., 2012 CAB 8263

DEFENDANTS. Wednesday, February 7, 2024

.....x

The above-mentioned matter resumed for a trial before the Honorable Alfred S. Irving, Jr., in Courtroom 132, commencing at approximately 1:02 p.m.

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

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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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nothing there. Nothing there. That allegation that they continued to raise and continued to make was investigated, rejected by Penn State Investigators and rejected by NSF.

And let me get briefly to the issue of damages. You've heard Dr. Mann testify that after the NSF Report came out things quieted down.

Dr. Abraham testified after the ClimateGate investigations, reputation restored.

Judith Curry testified that as of 2012, Mike was pretty quiet.

But then we had the defamations. And let's talk about the effect of those defamations. Dr. Mann testified to you credibly, very credibly that he was horrified by the comparison to a serial rapist of young boys not much older than his daughter.

He testified he felt like a pariah. He testified it still effects him emotionally. He recounted that incident at the supermarket, which caused him not to go on family outings again for awhile.

He testified that he still sees references to the Simberg and Steyn writings on the internet. They're still there. Even after 12 years. You know, something goes on the internet, it never dies.

We saw his grant funding drop. Grant funding is, sort of, just to show you that it effected his reputation.

He testified that after the publications, total funding went down, three million to 500,000, thereabouts. The big thing, the success rate on grant applications fell from 60 percent to 22 percent. Evidence of harm to his reputation.

He doesn't know what was in the minds of the grant reviewers, but he knows his funding declined. He testified about this decline.

And Miss Weatherford pointed out that we had made errors in his testimony -- excuse me, in previously when we provided information to them listing the grant funding, we made errors, and then we corrected the errors.

And she went -- I don't know why, but we went on and on for hours and hours about these mistakes. And he testified, yeah, we made mistakes. I work with my lawyers. I make mistakes.

What have we learned about all of that? We learned two things. Mike Mann admits his errors, and he corrects them. And guess what? After he corrected them, the amount of the loss grant funding went down. And if you have any questions about that, you can take a look at his CV, curriculum vitae, Exhibit 112 pages six to seven. And it shows how his grant funding went down after the defamations.

And it also shows that grant funding stayed

constant, pretty much constant after ClimateGate. It was the defamations that led to this decline.

They say he stopped submitting proposals. That was the big thing in Miss Weatherford's openings. He did not.

You heard Dr. Abraham's testimony, a colleague, he was going to include Dr. Mann on a major project involving ocean heat, but then the Steyn Simberg articles come out. Dr. Abraham said, here we go again. We got to wait this out.

He testified that Mann's reputation was damaged again by these dredged-up false allegations, and that because of them we left him off of projects because he was considered too risky.

These articles had significant reach. Simberg testified that the reason he didn't put it on his Blogs, he wanted to go to CEI, which -- what did he say? A much more prominent publication.

Dr. Mann testified about the reach of the National Review. You heard Defendants repeatedly question Dr. Mann about why he didn't sue other climate deniers who repeated some of these lies about data manipulation. He told you why. He told you that it was these lies spread nationally.

The targeted reach to Washington policymakers --

Mr. Steyn said if you believe it, it's not defamation. Number one, that's not true. You've just been instructed by the Judge. It's either a knowing falsehood or a statement with reckless disregard of the truth. It's two things. And when you see the jury verdict, you're going to see that your -- you're asked to answer two things.

You see, they don't really have any proof that they didn't act recklessly. We have given it to you.

MS. WEATHERFORD: Objection.

MR. STEYN: Yeah, I'll join the objection, too.

(Whereupon, bench conference concludes at this time.)

MS. WEATHERFORD: Your Honor --

THE COURT: Hold on.

MS. WEATHERFORD: Your Honor, Mr. Williams continues to conflate reckless with recklessly. It's incorrect. It's misleading to the jury.

We went over this when we were working on the jury instructions a very long time ago. I would like an instruction to the jury, Your Honor.

MR. STEYN: Yes.

MS. WEATHERFORD: Highly prejudicial and legally incorrect. Thanks.

MR. WILLIAMS: I'm regarding the truth, Your Honor, reckless -- I'll clarify.

MR. STEYN: But I would like to -- I would like to join Miss Weatherford in that request for a jury instruction. The Supreme Court has recognized that malice is a term of art and not used in the every day sense. That was whatever their decision was in 1972.

MR. WILLIAMS: May I continue, Your Honor?

MS. WEATHERFORD: Your Honor, I do want an instruction.

THE COURT: I will reread the instructions after you're done.

MR. WILLIAMS: Sure, sure.

(Whereupon, bench conference concludes at this time.)

MR. WILLIAMS: They acted with reckless disregard of the truth.

But here's what I want to say, even if they believed it, you have to question that. Just because they say they believe it, doesn't make it so. And this raises the issue of credibility on the part of the Defendants.

You're the judge of their credibility, and you can take into account their credibility, and there's a reason to question their credibility.

You heard Mr. Simberg on the stand just yesterday trying to deny that he did not accuse Dr. Mann of misconduct, he was impeached, and shown that he had

It's the second point here that is so important in this case.

When we started this trial you may recall Miss Weatherford made some sort of analogy to Donald Trump, I can't remember what it was, but it got me thinking about election deniers. The people who continued to deny that Trump loss the election. We don't know for certain why they continued to deny that in the face of overwhelming evidence to the contrary.

Is it because they truly believe it? Or is it because they think it's false? But they say it anyways to further their agenda? Or is it because they are just reckless at showing reckless disregard of the truth, which the Judge may instruct you again on?

Despite having serious doubts, the same issue is true here. Did Mr. Steyn and Mr. Simberg make these accusations because they believed them or because they just advanced their political agenda? But whatever the reason, that is malice. That is actual malice. Constitutional malice.

And as you've been instructed, if you find punitive damages are appropriate for outrageous behavior, you can set an amount not just to punish, but to serve as an example to prevent others from acting in the same -- in a same or similar way.

These attacks on Climate Scientists have to stop, and you now have the opportunity --

MS. WEATHERFORD: Objection.

MR. STEYN: Objection.

THE COURT: Sustained.

MR. WILLIAMS: Sustained?

I am saying this heated --

MR. STEYN: Mr. Williams.

He's continuing to talk.

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

THE COURT: You received an admonition really from the Court of Appeals, Climate Science discussions, discourse are not part of this case.

MR. WILLIAMS: I understand.

THE COURT: And so you're raising this, and the jury will think that Climate Science is the subject of this case. This is a defamation case.

MR. WILLIAMS: All right.

THE COURT: And I'm going to let you know once again, all right?

MR. STEYN: Before we -- Judge Anderson specifically told the Plaintiff that he does not represent Science. So, the idea that, for the sake of every other Climate Scientists out there, that's not what this case is

about.

It's him, and me, and Simberg. And to try to expand it to the mass trenches of Science or whatever you call it, the law of the case, as the Court --

MR. WILLIAMS: I will clarify.

MR. STEYN: No, no, no. Let's have the Judge clarify.

MR. WILLIAMS: That's fine.

(Whereupon, bench conference concludes at this time.)

THE COURT: The objection is sustained.

Members of the Jury, this case is a defamation case. And, yes, as we've told you that there are aspects of the case concerning Science that sort of -- it's an underlay or an overlay, but this case is not about the Climate Science, Climate Change debate.

All right. So, it will be helpful if you keep that clear when you're reviewing the facts. This is not a Science, whether there's Global Warming or not. That's not the subject of this case.

All right. And then with respect to defamation, I will give you the instruction once again.

MR. WILLIAMS: Go ahead, and do it now.

THE COURT: All right. I'll let you finish.

MR. WILLIAMS: Okay.

The purpose of punitive damages is to punish for outrageous conduct. And so I get the words straight to prevent this from happening in a similar way.

Dr. Mann is tired of the attacks. And you have the opportunity to set -- excuse me. You have the opportunity, and I'll get the word straight right here, you have the opportunity not just to punish, but to serve as an example to prevent others from acting in a similar way.

With that, I thank you very much for your time and your attention.

THE COURT: All right. Thank you, Mr. Williams.

And so, Members of the Jury, we've given you final instructions, but given an aspect of Mr. Williams presentation, it's -- the Court finds it necessary just to remind you of the four elements of defamation libel, burden of proofs, and I'll reread it in its entirety.

The Plaintiff has alleged that Mr. Simberg's online post and Mr. Steyn's online post defamed him.

To find in favor of the Plaintiff, must find by a preponderance of the evidence:

One, that the Defendant published a false statement about the Plaintiff. That the statement was defamatory.

Three, that the Plaintiff suffered actual injury

as a result.

And four, by clear and convincing evidence that the Defendant published this statement either knowing that the statement was false or with reckless disregard of whether it was false or not.

To publish a statement means to communicate the statement to a third person. A false statement is one that is not substantially true. A statement is defamatory, if it tends to injure a person in his or her trade, profession, or community standing, or lowers him or her in the estimation of the community.

In determining whether the statement defamed the Plaintiff, you must consider how those persons who read the statement reasonably understood the meaning that this statement was intended to express.

You must consider the plain and natural meaning of the words of the statement and you must consider the statement in the context of the entire publication taken as a whole.

You must also consider the broader social context in which the statement fits.

Statements of opinion can be false, only if they imply provably false fact or rely on stated facts that are provably false. You may find that the Defendant acted with reckless disregard of truth and falsity if the

Defendant, in fact, entertained serious doubts about the truth of the statement when he published it, or to put it another way, that he had a high degree of awareness that the statement was probably false.

The Plaintiff bears the burden of proof on each of these elements, but the burden differs somewhat on the various elements. Thus, the Plaintiff must prove that the statement is false, that it was defamatory, and that the Plaintiffs suffered actual injury all by a preponderance of the evidence.

The Plaintiff bears a higher burden in proving the Defendant's knowledge of falsity or reckless disregard for the truth. For this element Plaintiff's proof must be by clear and convincing evidence.

When I say that a party must prove an element by clear and convincing evidence, the party must show evidence that proves that a fact is highly probable. This is, quote/unquote, clear and convincing evidence standard requires you to decide that the fact is not just more likely true than not true, but that the fact is highly probable to be true.

So, these are the instructions. And once again as I indicated earlier when I read them to you, that you are to consider them as a whole, and not focus on one particular instruction, but, again, as a whole. And we're

going to send them back to you. So you will have all of them to refer during your deliberations.

Now, that we've heard closing arguments from all three parties in the case, I have a few final instructions, and I'll read the headings first and the instruction will flow therefrom.

Selection of foreperson. When you return to the jury room, you should first select a foreperson to preside over your deliberations and to be your spokesperson here in Court. Consider selecting a foreperson who will encourage civility and mutual respect, who will invite each juror to speak up regarding his or her views about the evidence, and who will promote full and fair consideration of the evidence.

Unanimity and duty to deliberate. The verdict must represent the considered judgement of each juror. In order to return a verdict, your verdict must be unanimous, that is, each juror must agree to the verdict.

Each of you has a duty to consult with other jurors in an attempt to reach a unanimous verdict. You must decide the case for yourself, and you should not surrender your honest beliefs about the effect or weight of evidence merely to return a verdict or solely because of the other jurors' opinions. However, you should seriously consider the views of your fellow jurors just as

you expect them seriously to consider your views, and you should not hesitate to change an opinion if you are convinced by the other jurors.

Remember, you are not advocates, but neutral judges of the facts. You will make an important contribution to the cause of justice, if you arrive at a just verdict in this case.

Therefore, during your deliberations, your purpose should not be to support your own opinion, but to determine the facts.

Beginning of deliberations. It may not be useful for a juror, at the start of deliberations, to announce a determination to stand for a particular verdict. When a juror announces a firm position at the outset, the juror may hesitate to back away after discussion with other jurors.

Furthermore, many juries find it useful to avoid a vote at the very beginning of deliberations. Calmly reviewing and discussing the case is often a more useful way to begin.

Remember, you are not partisans or advocates, but judges of the facts.

Communications between the Court and jury. If it becomes necessary during your deliberations to communicate with me, you may send a note signed by your foreperson and

by one or more members of the jury.

If you have a note, the foreperson should knock on the courtroom door, but I think you have a remote method of reaching the courtroom, and the clerk will get the note and give it to me. If you are divided on any matter, you should not reveal in any note or otherwise how the jury is divided.

Delivering the verdict. When you have reached your verdict, send me a note signed by the foreperson, and signing means adding your juror number, not your name. All right. Telling me you have reached your verdict. Do not tell me in the note what your verdict is.

I will put a verdict form in the front of the binder with instructions. The foreperson should fill out and sign the verdict form. I will then call you into the courtroom and ask the foreperson for the verdict form and for your verdict.

And, unfortunately, you had a question that I must address.

Instructions to alternate jurors. We started the case with four alternates, given the anticipation of the duration of the case, and because of winter weather or winter illnesses like flu, COVID, and RSV. We thought it prudent to ensure that we would have enough to deliberate and make a verdict in this case.

We have 10 jurors now, and only six may deliberate. The remaining alternates are located in seats: Seven, eight, nine, and 10.

And our juror's numberd 740, 444, 250, 381.

The parties, the Chief Judge of this Court, and I sincerely appreciate the manner in which you have approached this case. I have observed your attentiveness, the time you have expended, and the service you have provided. Please know that our system of justice in this Country cannot work without dedicated, responsible, and attentive residents of the District of Columbia.

So, we thank you for your service. But, again, I must admonish, please continue not to talk to anyone about this case until there is a verdict. We must require this of you, because there may still be a chance that you may be needed to join the deliberating jurors.

I know it must be tough to have to have sat through and listened to the testimony and arguments and not be involved in the process you have been anticipating. And I'm sorry that we had to have alternates. But that's how it has to be.

So, before you leave, we'll ask Miss Anderson to either take your email addresses or your cell phone numbers so that we can reach you, if we need you for continued service. If you'd like to be present when the

verdict is announced, we can call you. If you want, you can also stick around in the courtroom, but it's a little after 4, so -- but we can otherwise let you know what the verdict is.

All right. And I'll read this to the balance of you instructions not to communicate. As I instructed when you were first sworn in as jurors, and as you have done throughout this trial, you are not to communicate with anyone about this case during deliberations. This includes discussing the case with any one in person, over the phone, or using the internet including emails, texting, Blogs, or social media like Facebook, or Twitter.

You may only talk about the case when all six of you are present in the jury room. If one of you were to step out, for example, to use the restroom or to answer a phone call, the rest of you must stop deliberations and wait until the juror has returned.

So, at this time, Miss Anderson will escort you back to the jury room to deliberate until 4:45. She'll bring back, as well, the exhibits that the Court received into evidence.

And it's up to you if you'd like to return tomorrow at 9 o'clock instead of 9:30 so that your deliberations can continue, just let us know.

And you will not have to check in with the

courtroom, but just return to the jury room, and, again, do not start the deliberations until all six of you are present.

THE JUROR: Can we take our books? Our notes?

THE COURT: Leave them in the chair for now. And we'll get them to you tomorrow morning. Well, actually if you're going to be deliberating, yes, please take them.

THE JUROR: Okay.

THE COURT: All right. Again, many thanks.

THE JUROR: Are we staying? Are we all going out?

THE COURT: Yes.

(Whereupon, Jury exits the courtroom at this time.)

THE COURT: All right. Anything else?

MR. WILLIAMS: Your Honor, should we just leave our phones with the clerk?

THE COURT: Yes.

MS. WEATHERFORD: Your Honor, are we going to be on a one-hour recall? What do you want?

THE COURT: I would say someone should be near the courtroom so that if there's a question, we can answer it right away.

MS. WEATHERFORD: So 15, 30 minutes?

MR. DeLAQUIL: By near, if you like someone

THE COURT: Yes, yes, finally. Enjoy your evening.

MR. BAILEN: Your Honor, have they selected a foreperson?

THE COURT: I'm not sure.

MR. BAILEN: Okay.

(Whereupon, hearing concluded.)

CERTIFICATE OF THE REPORTER

I, JUANITA NOCK PRICE, REGISTERED PROFESSIONAL REPORTER AND FEDERAL CERTIFIED REALTIME REPORTER, AN OFFICIAL COURT REPORTER FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, DO HEREBY CERTIFY THAT I TRANSCRIBED FROM MACHINE SHORTHAND NOTES THE PROCEEDINGS HAD AND TESTIMONY ADDUCED IN THE CASE OF MICHAEL E. MANN, Ph.D. VERSUS MARK STEYN AND RAND SIMBERG, CIVIL DIVISION, CASE NUMBER 2012 CAB 8263, IN SAID COURT ON THE 7TH DAY OF FEBRUARY 2024.

I FURTHER CERTIFY THAT THE FOREGOING 121 PAGES CONSTITUTE AN OFFICIAL TRANSCRIPT OF SAID PROCEEDINGS AS TRANSCRIBED FROM MY MACHINE SHORTHAND NOTES AND REVIEWED WITH MY BACKUP TAPES, TO THE BEST OF MY ABILITY.

IN WITNESS WHEREOF, I HAVE HERETO SUBSCRIBED MY NAME, THIS 7TH DAY OF FEBRUARY, 2024.

RPR, FCRR

_____

OFFICIAL COURT REPORTER

TRIAL TRANSCRIPT
2/8/24
[EXCERPTED]

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

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

Washington, D.C.
Thursday, February 8, 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 4:30 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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Also present:

Melissa Howes (Power of Attorney for Steyn)

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MISCELLANY

a high degree of awareness that the statement was probably false.

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. For each statement from I(A)(4) that you found defamatory, relied on provably false facts, was false, and was made with either knowledge of falsity or reckless disregard for whether the fact was false, do you find that, for any one of them, plaintiff proved by a preponderance of the evidence that plaintiff suffered actual damage -- I'm sorry -- suffered actual injury as a result of the statement written or quoted by Defendant Simberg?

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. If you answered yes to question I(A)(5), please identify which statements by Defendant Simberg (listed as "a" through "d" above), for which you answered yes to all of the above questions in this section I(A).

Did you do that?

THE FOREPERSON: Yes, Your Honor.

THE COURT: And what were they?

THE FOREPERSON: Statement "c" and statement "d."

THE COURT: All right. As to damages -- compensatory damages, number 1, what amount of compensatory damages do you award to plaintiff against Defendant Simberg

for damages resulting from the statements for which you answered yes to the question in I(A)?

THE FOREPERSON: $1.

THE COURT: All right. And punitive damages. Do you find that plaintiff has proved by clear and convincing evidence that Defendant Simberg's conduct in publishing his July 13, 2012, post showed maliciousness, spite, ill will, vengeance, or deliberate intent to harm plaintiff?

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. What amount of punitive damages do you award to plaintiff against Defendant Simberg?

THE FOREPERSON: $1,000.

THE COURT: All right. Now, as to defendant Mark Steyn, question number 1: Do you find that plaintiff has proved by a preponderance of the evidence that one or more of the above statements for [sic] Defendant Steyn's July 15, 2012, post was defamatory or had a defamatory implication that was intended by Mr. Steyn?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Number 2. For each statement from II(A)(1) that you found defamatory, do you find that, for any one of them, plaintiff has proved by a preponderance of the evidence that the defamatory meaning conveyed by Defendant Steyn's statement or statements asserted or

implied a provably false fact or relied upon stated facts that are provably false?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Paragraph number 3 -- or question number 3. For each statement from II(A)(2) that you found both defamatory and relied on provably false facts, do you find that, for any one of them, plaintiff has proved by a preponderance of the evidence that the provably false fact asserted, implied, or relied upon by the defamatory meaning conveyed by Defendant Steyn's statements was false?

THE FOREPERSON: Yes, Your Honor.

THE COURT: And number 4. For each statement from II(A)(3) that you found defamatory, relied on provably false facts, and was false, do you find that, for any one of them, plaintiff has proved by clear and convincing evidence that Defendant Steyn published his post with either, (a), knowledge of the falsity of that fact?

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. And, (b), reckless disregard -- and this is 4(b), I'm sorry -- reckless disregard for whether that fact was false? Reckless disregard means that Defendant Steyn published the statement while entertaining serious doubts about its truth or that he had a high degree of awareness that the statement was probably false.

THE FOREPERSON: Yes, Your Honor.

THE COURT: All right. And number 5. For each statement from II(A)(4) that you found defamatory, relied on provably false facts, was false, and was made with either knowledge of falsity or reckless disregard for whether the fact was false, do you find that, for any one of them, plaintiff proved by a preponderance of the evidence that plaintiff suffered actual injury as a result of the statement written or quoted by Defendant Steyn?

THE FOREPERSON: Yes, Your Honor.

THE COURT: And if you answered yes -- and you did, please identify which statements by Defendant Steyn (listed as "a" through "c" above), for which you answered yes to all of the above questions in section II(A), and then proceed to -- please state the statements.

THE FOREPERSON: Statement "a" and statement "c."

THE COURT: All right. And compensatory damages. What amount of compensatory damages do you award to plaintiff against Defendant Steyn for damages resulting from the statements for which you answered yes to the questions in I(A) [sic]?

THE FOREPERSON: $1.

THE COURT: All right. And for punitive damages. Do you find that plaintiff has proved by clear and convincing evidence that Defendant Steyn's conduct in

publishing his July 15, 2012, post showed maliciousness, spite, ill will, vengeance, or deliberate intent to harm plaintiff?

THE FOREPERSON: Yes, Your Honor.

THE COURT: What amount of punitive damages do you award to plaintiff against Defendant Steyn?

THE FOREPERSON: $1 million.

THE COURT: All right. Thank you. You may be seated.

Hushers.

(Whereupon, a sealed bench conference was taken but not transcribed.)

THE COURT: All right. Before I let you go, I am going to poll each one of you to determine whether you are in agreement with the verdict. And as I call you from seat closest to the bench to the far end, please state your juror number and then answer the question whether you agree with the verdict yes or no. So --

JUROR #931: Step up to the mic?

THE COURT: Yes. State your juror number once more, sir.

JUROR #931: Juror Number 931.

THE COURT: All right. And do you agree with the verdict?

JUROR #931: Yes, Your Honor.

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 8th day of February, 2024.

I further certify that the foregoing 15 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 8th day of February, 2024.

Jurtiana Jeon

Jurtiana Jeon, CSR, RPR
Official Court Reporter