

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

MICHAEL E. MANN, PH.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2012 CA 008263 B
	)	Judge Alfred S. Irving, Jr.
NATIONAL REVIEW, INC., et al.,	)	
	)	
Defendants.	)	
	)	

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT  
OF DEFENDANT STEYN’S MOTION FOR SUMMARY JUDGMENT**

Defendant Mark Steyn submits the following Statement of Undisputed Material Facts in support of his Motion for Summary Judgment.

***Mark Steyn’s July 15, 2012 Blog Post***

1. On July 15, 2012, Mark Steyn posted a blog titled “Football and Hockey” on National Review’s online blog “The Corner” (“the Steyn Post”) to *National Review Online*. See Mark Steyn, *Football and Hockey*, National Review Online, July 15, 2012, <https://www.nationalreview.com/corner/football-and-hockey-mark-steyn/>.

2. The Steyn Post states, in full:

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 [at Penn State] 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.

*Id.*

3. The Steyn Post's statement "Rand Simberg writes" referred to a post written by Rand Simberg on July 13, 2012, titled "The Other Scandal in Unhappy Valley." *See* Rand Simberg, *The Other Scandal in Unhappy Valley*, Competitive Enterprise Institute, July 13, 2012, <https://cei.org/blog/the-other-scandal-in-unhappy-valley/>.

4. Steyn titled his post "Football and Hockey" to draw a parallel between the cover-up in the Athletics Department ("Football") and in the Science Department (Mann's Hockey Stick graph). Declaration of Daniel J. Kornstein ("Kornstein Decl.") Ex. AA at 135-36 (Steyn Dep.).<sup>1</sup>

5. National Review identifies itself as a "magazine of conservative opinion." National Review, About Us, <https://www.nationalreview.com/about/> (last visited Jan. 19, 2021).

6. "Football and Hockey" was one of seven posts Steyn published during the week of July 10, 2012 through July 17, 2012. National Review Online, Mark Steyn, <https://www.nationalreview.com/author/mark-steyn/> (last visited Jan. 19, 2021). In these posts,

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<sup>1</sup> Unless otherwise indicated, all exhibit citations are citations to the Declaration of Daniel J. Kornstein dated January 22, 2021.

Steyn covered an array of issues of public importance in polemical, pungent, and provocative fashion. *See id.*

### ***The Freeh Report***

7. On July 12, 2012, an independent investigation commissioned by the Penn State Board of Trustees and led by former federal judge and FBI Director Louis Freeh produced a report (the “Freeh Report”) publicly criticizing Penn State’s failure to respond to and report Penn State football coach Jerry Sandusky’s sexual abuse of children. Freeh Sporkin & Sullivan, LLP, *Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky* at 8, PennLive, July 12, 2012, [http://media.pennlive.com/midstate\\_impact/other/REPORT\\_FINAL\\_071212.pdf](http://media.pennlive.com/midstate_impact/other/REPORT_FINAL_071212.pdf) (“Freeh Report”).

8. Less than a month earlier, on June 22, 2012, Sandusky was convicted of 45 counts of criminal charges stemming from his sexual abuse of several children. *Id.* at 13.

9. The Freeh Report found that Penn State’s leaders, including President Graham Spanier, showed “total and consistent disregard” for the “safety and welfare” of Sandusky’s child victims. *Id.* at 14. It found that Spanier and others “concealed facts” about Sandusky’s misconduct from the university community, *id.*, and that the Board of Trustees was “complacent” and “did not perform its oversight duties” and “failed to inquire reasonably and to demand detailed information from Spanier” in whose “abilities” the Board had “overconfidence,” *id.* at 15.

10. Freeh also found that the “avoidance of the consequences of bad publicity is the most significant” cause of the failure to protect Sandusky’s victims. *Id.* at 16.

11. His investigation “reveal[ed] weaknesses of the University’s culture, governance, administration, compliance policies and procedures.” *Id.* at 127.

12. The Report emphasized “the need for the leaders of” Penn State “to govern in ways that reflect the ethics and values of those entities.” *Id.*

13. According to the Report, “the lack of emphasis on values and ethics-based action created an environment in which Spanier [and other Penn State leaders] were able to make decisions to avoid the consequences of bad publicity.” *Id.* at 130-31.

14. Spanier was convicted of child endangerment as a result of his conduct during the Sandusky affair; he will serve a prison sentence in connection with his conviction. Charles Thompson, *Ex-Penn State President Graham Spanier Should Report to Jail after Losing Latest Appeal, Prosecutors Say*, PennLive, Jan. 13, 2021, <https://www.pennlive.com/news/2021/01/ex-penn-state-president-graham-spanier-loses-latest-appeal-of-conviction-attorney-general-moves-for-enforcement-of-prison-term.html>.

### ***The Hockey Stick Graph***

15. In 1998 and 1999, Mann and coauthors Raymond Bradley and Malcolm Hughes published articles (“MBH98” and “MBH99”, respectively) containing a graph representing global temperatures over the last 1,000 years. The graph looked like a hockey stick with a long flat shaft representing temperatures from the year 1000 to 1850, followed by a sharp upward blade showing a rise. Ex. CC at 83 (Mann Dep. Vol. II); Ex. H (Michael E. Mann et al., *Global-Scale Temperature Patterns and Climate Forcing Over the Past Six Centuries*, *Nature*, Apr. 1, 1998 (“MBH98”)); Ex. SSS (Michael E. Mann et al., *Northern Hemisphere Temperatures During the Past Millennium: Inferences, Uncertainties, and Limitations*, *Geophysical Research Letters*, Mar. 15, 1999 (“MBH99”)).

16. The graph came to be known as the “Hockey Stick” graph because of its shape. Ex. TT at 3 (Expert Report of Judith Curry PH. D (“Curry Report”)).

17. The Hockey Stick graph was published in the 2001 Intergovernmental Panel on Climate Change’s (“IPCC”) 2001 Third Assessment Report (“TAR”). Intergovernmental Panel on Climate Change, *Climate Change 2001: The Scientific Basis* 3, 134 (2001) (“IPCC TAR”), [https://www.ipcc.ch/site/assets/uploads/2018/03/WGI\\_TAR\\_full\\_report.pdf](https://www.ipcc.ch/site/assets/uploads/2018/03/WGI_TAR_full_report.pdf).

18. Mann was a lead author of the chapter of the IPCC Report in which the Hockey Stick was published. *Id.* at 99; Ex. CC at 31.

### ***Statistical Criticisms of the Hockey Stick Graph***

19. Mann and his coauthors did not consult or work with statisticians to create the Hockey Stick graph. Ex. BB at 253-54 (Mann Dep. Vol. I); Ex. DD at 98 (Wyner Dep.); Ex. K at 48 (Edward Wegman Report).

20. Mann does not have a degree in statistics. Ex. BB at 201-02.

21. Numerous scientists and academics have challenged the validity of the Hockey Stick graph’s statistical methods in peer-reviewed journals and in reports commissioned by Congress. *Infra* ¶¶ 22-33.

### **McIntyre and McKittrick**

22. Between 2003 and 2005, Stephen McIntyre and Dr. Ross McKittrick published three articles in peer-reviewed journals criticizing the Hockey Stick’s statistical methodologies and casting doubt on its conclusions. Ex. GG at 26-27, 29 (McIntyre Dep.).

- a. McIntyre and McKittrick’s 2003 paper in the peer-reviewed journal *Energy & Environment* (“MM03”) found statistical “errors and defects” in MBH98 that meant the graph could not support “claims like ‘temperatures in the latter half of

the 20th century were unprecedented.” Ex. G at 766-67 (McIntyre & McKitrick, *Energy & Environment*, 2003); Ex. EE at 51.

- b. McIntyre and McKitrick’s 2005 paper in *Energy & Environment* (“MM05a”) found that a corrigendum issued by Mann and his coauthors failed to correct the methodological problems identified in MM03 because Mann “refused to provide the source code to generate the results” and “refused to provide supporting calculations for the individual calculation steps in MBH98.” Ex. I at 70 (McIntyre & McKitrick, *Energy & Environment*, 2005).
- c. McIntyre & McKitrick’s 2005 paper in the peer-reviewed journal *Geophysical Research Letters* (“MM05b”), the same “prestigious” and “credible” journal where Mann et al. published MBH99, Ex. EE at 57; Ex. FF at 9 (Oreskes Dep.), concluded that MBH98 “carried out an unusual data transformation” whose “effect . . . is so strong” that the hockey stick shape “is nearly always generated from (trendless) red noise,” Ex. J at 1, 4 (McIntyre & McKitrick, *Geophysical Research Letters*, 2005).

23. Hockey Stick coauthor Raymond Bradley believes that the publication of MM05b in *Geophysical Research Letters* gave “people critical of the Hockey Stick” a basis to “claim that it had been proven wrong.” Ex. EE at 62-63.

#### The Wegman Report

24. Following the publication of McIntyre and McKitrick’s peer-reviewed criticisms of the Hockey Stick, the U.S. House of Representatives formed a committee of three statisticians, led by Dr. Edward Wegman, to assess the validity of McIntyre and McKitrick’s findings. Ex. K at 7; *see also* Ex. NN at 75-76 (Wegman Dep.).

25. The Wegman Report “found MBH98 and MBH99 to be somewhat obscure and incomplete and the criticisms of MM03/05a/05b to be valid and compelling.” Ex. K at 4; Ex. NN at 77-78. It also “verif[ied] that [McIntyre and McKitrick’s] observations were correct.” Ex. K at 48; Ex. NN at 25.

26. Based on these findings, the Wegman Report concluded that “Mann’s assessments that the decade of the 1990s was the hottest decade of the millennium and that 1998 was the hottest year of the millennium cannot be supported by his analysis.” *Id.* at 4-5.

#### National Research Council Report

27. In response to a Congressional request, the National Research Council (“NRC”) prepared a report (the “NRC Report”) to assess surface temperature reconstructions like the Hockey Stick. Ex. L at ix (NRC Report).

28. The NRC Report found that “Mann et al. used a type of principal component analysis that tends to bias the shape of reconstructions” and that MM03, MM05a, and MM05b “are an important aspect of a more general finding of this committee, which is that uncertainties of the published reconstructions have been underestimated.” *Id.* at 113.

#### McShane and Wyner

29. In 2011, Abraham Wyner, a Professor of Statistics at the University of Pennsylvania, and Blakely McShane, a Professor at Northwestern University, published an article in *The Annals of Applied Statistics*, a peer-reviewed journal, entitled “A Statistical Analysis of Multiple Temperature Proxies: Are Reconstructions of Surface Temperatures over the Last 1000 Years Reliable?” (“MW11”). Ex. N (McShane & Wyner); Ex. DD at 59.

30. MW11 found the Hockey Stick “problematic” because the “superposition” of the instrumental temperature record over the historical proxy records “creates a strong but entirely misleading contrast.” Ex. N at 7.

31. MW11 “conclude[d] unequivocally that the evidence for a ‘long-handled’ hockey stick (where the shaft of the hockey stick extends to the year 1000 AD) is lacking in the data.” *Id.* at 41.

Dr. Richard Muller

32. Dr. Richard Muller wrote in the MIT Technology Review that the Hockey Stick’s data normalization procedure was “mistaken” and “tends to emphasize any data that do have the hockey stick shape, and to suppress all data that do not.” Richard Muller, *Global Warming Bombshell*, MIT Tech. Rev., Oct. 15, 2004, <https://www.technologyreview.com/2004/10/15/274740/global-warming-bombshell/>. He also wrote about letting “science proceed unmolested.” *Id.*

33. Muller relayed McIntyre & McKittrick’s finding that a hockey stick shape emerged when they fed random data into the Hockey Stick’s data normalization procedure. *Id.* Muller concluded that the use of this “improper normalization procedure” led Dr. Muller to conclude that the Hockey Stick is “an artifact of poor mathematics.” *Id.*

***“Deceptive and Misleading” Hockey Stick***

34. The Hockey Stick’s use of tree ring data and other temperature proxy data has also been criticized by scientists and academics. *Infra* ¶¶ 35-61.

35. Dr. Judith Curry, Professor Emerita and former Chair of the School of Earth and Atmospheric Sciences at the Georgia Institute of Technology, has issued an expert report in this case that identifies several “deceptive and misleading” aspects of the Hockey Stick. Ex. TT at 1.



36. Dr. Curry reaches three main conclusions:
- a. “Image falsification”: Mann’s deletion of post-1960 tree ring proxy data that shows temperatures decreasing and his splicing of proxy data with instrumental data “is consistent with most standards of image fraud.” *Id.*
  - b. “Cherry picking”: Mann engaged in selective data cherry picking to create the Hockey Stick, which “contributes to the perception of a ‘fraudulent’ Hockey Stick” among journalists, the public, and scientists in other fields. *Id.* at 1-2.
  - c. “Data falsification”: Mann inverted data from a dataset known as the Tiljander proxies in a version of the Hockey Stick published in 2008, and even after published identification of the mistake, he repeated this in subsequent publications. *Id.* at 2.

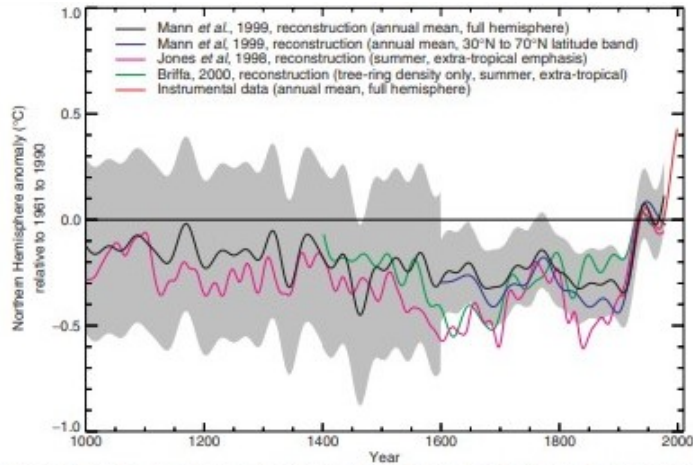
Image Falsification: Deletion of Post-1960 Tree Ring Data

37. The version of the Hockey Stick published as Figure 2.21 in the IPCC TAR included tree ring proxy temperature data from a study published by Keith Briffa (the “Briffa Data”). IPCC TAR at 134.

38. The Briffa Data showed a decline in temperatures after 1960, a result that was inconsistent with the instrumental temperature record, which showed an increase in temperatures since 1960. Ex. HH at 43-44 (Christy Dep.).

39. A draft of Figure 2.21 included the Briffa Data up to 1980 or 1990, the same end date as the other temperature proxy studies shown in IPCC TAR Figure 2.21. *Id.* at 42-43.

40. The final version of Figure 2.21 that was published in the IPCC TAR, reproduced below, only included the Briffa Data, shown in the green line below, up to approximately 1960. *Id.* at 43; IPCC TAR at 134.



**Figure 2.21:** Comparison of warm-season (Jones *et al.*, 1998) and annual mean (Mann *et al.*, 1998, 1999) multi-proxy-based and warm season tree-ring-based (Briffa, 2000) millennial Northern Hemisphere temperature reconstructions. The recent instrumental annual mean Northern Hemisphere temperature record to 1999 is shown for comparison. Also shown is an extra-tropical sampling of the Mann *et al.* (1999) temperature pattern reconstructions more directly comparable in its latitudinal sampling to the Jones *et al.* series. The self-consistently estimated two standard error limits (shaded region) for the smoothed Mann *et al.* (1999) series are shown. The horizontal zero line denotes the 1961 to 1990 reference period mean temperature. All series were smoothed with a 40-year Hamming-weights lowpass filter, with boundary constraints imposed by padding the series with its mean values during the first and last 25 years.

41. The description accompanying Figure 2.21 did not disclose the deletion of post-1960 data from Briffa’s reconstruction or that the Briffa Data reflected a decline in temperatures that was inconsistent with the instrumental temperature record. IPCC TAR at 134.

42. Plaintiff Mann was a lead author of Chapter 2 of the IPCC TAR where Figure 2.21 appeared. IPCC TAR at 99; Ex. CC at 31. As a lead author, Mann had authority to determine which version of Figure 2.21 was published in the report. IPCC TAR at 99; Ex. HH at 14, 16, 50; *see also* House of Representatives Committee on Science, Space, and Technology, Climate Change: Examining the Process Used to Create Science and Public Policy at 45-56 (Mar. 31, 2011) (“Christy Congressional Testimony”), <https://www.govinfo.gov/content/pkg/CHRG-112hhr65306/pdf/CHRG-112hhr65306.pdf>.

43. Emails leaked from a server at the Climatic Research Unit (“CRU”) at the University of East Anglia in the United Kingdom, *see infra* ¶¶ 62-63, included the following exchange of emails among Plaintiff Mann, Phil Jones, Chris Folland, and Keith Briffa concerning inconsistencies between tree ring temperature proxy data and the instrumental temperature record:

- a. On September 22, 1999, Chris Folland wrote: “A proxy diagram of temperature change is a clear favourite for the Policy Makers summary. But the current diagram with tree ring only data somewhat contradicts the multiproxy curve and dilutes the message rather significantly. . . . The tree ring results may still suffer from lack of multicentury time scale variance. This is probably the most important issue to resolve in Chapter 2 at present.”
- b. On September 22, 1999, Keith Briffa responded to Folland: “[L]ike Phil, I think that the supposed separation of the tree-ring reconstruction from the others on the grounds that it is not a true ‘multi-proxy series’ is hard to justify. . . . I know there is pressure to present a nice tidy story as regards ‘apparent unprecedented warming in a thousand years or more in the proxy data’ but in reality the situation is not quite so simple. We don’t have a lot of proxies that come right up to date and those that do (at least a significant number of tree proxies) some unexpected changes in response that do not match recent warming. I do not think it wise that this issue be ignored in the chapter.”
- c. On September 22, 1999, Plaintiff Mann responded to Briffa and Folland; “So, if we show Keith’s series in this plot, we have to comment that ‘something else’ is responsible for the discrepancies in this case. . . . Otherwise, the skeptics will have an [sic] field day casting doubt on our ability to understand the factors that influence these estimates and, thus, can undermine faith in the paleoestimates. I don’t think that is scientifically justified, and I’d hate to be the one to have to give it fodder!”

Ex. M (Sept. 22, 1999 Email from Mann to Keith Briffa, Chris Folland, and Phil Jones).

44. The deletion of Briffa's post-1960 data, according to Dr. Curry, "concealed" the divergence between tree ring temperature proxy data and the instrumental temperature record, "rais[ing] serious doubts about the reliability of paleoclimate temperature reconstructions using tree rings." Ex. TT at 22.

45. Dr. Curry also concluded that "Mann's splicing of proxy and instrumental data" enhanced his concealment of the divergence problem. *Id.* She concludes that Mann's "manipulations"—his deletion of the Briffa data and splicing of proxy and instrumental data—are together "consistent with most definitions of image fraud." *Id.*

#### Data Cherry-Picking

46. The Hockey Stick graph has been challenged for "cherry picking" data relating to bristlecone pine trees, relying heavily on bristlecone pines to produce the hockey stick shape. *Id.*

47. Mann weighted these proxies more heavily than other datasets to produce the outcome. *Id.*

48. When McIntyre removed bristlecone pine trees from the Hockey Stick dataset, the results lost the graph's hockey stick shape. Ex. GG at 118-19.

49. McIntyre and McKittrick found that MBH98 relied exclusively on bristlecone pine trees to produce the "controversial" North American PC1, Ex. J at 1, 3, and "a number of examples[] where results adverse to [Mann's] claims were not reported" or were even "misrepresent[ed]," including "calculations excluding bristlecone pines" and "results from calculations using archived Gaspé tree ring data." Ex. I at 93.

50. The Wegman Report concluded that the bristlecone pine trees relied on in MBH98 and MBH99 "are not a reliable temperature proxy for the last 150 years as [they] show[]

an increasing trend in about 1850 that has been attributed to atmospheric CO<sub>2</sub> fertilization.” Ex. K at 49.

51. The use of tree rings as temperature proxies has received widespread criticism because the size of tree rings may be affected by factors other than temperature, including atmospheric carbon dioxide. Ex. HH at 37, 44, 76; Ex. K at 49; Ex. L at 117.

52. In a 2003 email to Keith Briffa, Mann admitted to data cherry-picking; he wrote: “We actually eliminate records with negative correlations . . . .” Ex. P (June 24, 2003 Email from Mann to Briffa).

53. In 2000, Hockey Stick coauthor Malcolm Hughes emailed Mann expressing concern about the result’s dependence on a single temperature record: “That this new version of your post-1980 calculations should be so sensitive to the omission of a single record is very worrying indeed. . . . I fear this would give a wonderful opportunity to those who would discredit the approach we used in MBH 1998 and 1999.” Ex. Q (July 31, 2000 Email from Hughes to Mann).

54. Dr. Curry concluded that “Mann’s data cherry-picking ‘straddles the fine line between sloppy science and scientific conduct’” that “contribute[s] to the perception of a ‘fraudulent Hockey S[t]ick’ among journalists, the public and scientists from other fields.” Ex. TT at 24-25.

#### Upside-Down Tiljander Proxies

55. A version of the Hockey Stick published in 2008 in the Proceedings of the National Academies of Sciences (“PNAS”) relied on temperature proxy data from sediments taken from Lake Korttajarvi in Iceland (the “Tiljander Proxies”). *Id.* at 25.

56. The Tiljander Proxy dataset was flipped upside-down in the 2008 PNAS paper. *Id.* at 26.

57. Mann published subsequent versions of the Hockey Stick, including in the IPCC Fourth Assessment Report, that included the upside-down Tiljander Proxies even after the error was made public. *Id.*

58. Mann never issued a corrigendum to correct his misuse of the Tiljander proxies. *Id.*

59. Two coauthors of the paper in which the Tiljander proxies appeared criticized Mann's use of the upside-down Tiljander proxies. Jean S, *Say My Name – February Rerun*, CLIMATE AUDIT, Feb. 6, 2010, <https://climateaudit.org/2010/02/06/say-my-name-%e2%80%93-february-rerun/>; Ex. TT at 25-26. One stated that Mann “distorted” the “research result” “in public.” *Id.* at 25. The other stated: “Normally, this would be considered as a scientific forgery, which has serious consequences.” *Id.* at 26.

60. Dr. Curry concluded that Mann “[c]ontinuing to misuse the incorrect version of the data after being notified of the issue is a clear example of data falsification.” *Id.*

61. Dr. John Christy, Mann's co-lead author on Chapter 2 of the IPCC TAR, testified to Congress in 2011 that the Hockey Stick “misrepresented the temperature record of the past 1,000 years.” Christy Congressional Testimony at 45.

### ***Climategate***

62. In November 2009, a series of emails among Plaintiff Mann and other climate scientists, some of which concerned the Hockey Stick graph, were leaked from a server at the Climatic Research Unit (“CRU”) at the University of East Anglia in the United Kingdom. Ex. II at 15 (Pielke Dep.); Ex. JJ at 181 (Abraham Dep.); Ex. CC at 33.

63. The leaked emails have been referred to in the media as “Climategate” because of the controversy and accusations they sparked. Ex. II at 15; Ex. GG at 43; Ex. EE at 87; Ex. CC at 33.

64. A November 16, 1999 email leaked during Climategate, from then-CRU Director Phil Jones of the University of East Anglia to Plaintiff Mann and Hockey Stick coauthors Raymond Bradley and Malcolm Hughes, stated: “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) and from 1961 for Keith’s to hide the decline.” Ex. C (Nov. 16, 1999 Email from Phil Jones to Ray Bradley, Michael Mann, Malcolm Hughes, Keith Briffa, and Tim Osborn); Ex. PP at 5 (Lindzen Dep.).

65. There was “a burst . . . of accusations” of “fraud and scientific and academic misconduct” that received “wide national” and “international attention” after the release of the Climategate emails. Ex. CC at 84-85, 94.

### ***The Public Controversy Surrounding the Hockey Stick***

66. The Hockey Stick graph has been the subject of significant public and scientific controversy. Ex. OO at 158 (Curry Dep.).

67. The Hockey Stick graph been characterized as a “political football” that caused a “media frenzy.” Ex. EE at 40-41; Ex. UU at 39, 69 (Raymond Bradley, *Global Warming and Political Intimidation* (2011)).

68. On March 16, 2005, BBC News published an article entitled “Row Over Climate ‘Hockey Stick.’” Paul Rincon, *Row Over Climate ‘Hockey Stick’*, BBC NEWS, Mar. 16, 2005, <http://news.bbc.co.uk/2/hi/science/nature/4349133.stm>. The article discussed McIntyre’s and McKittrick’s criticisms of the Hockey Stick in *GRL. Id.* It stated that “even those scientists who

agree with evidence for recent, strong anthropogenic warming have reservations about models such as the hockey stick.” *Id.*

69. Professor John Waterhouse of the Anglia Polytechnic University in Cambridge, UK, said of the absence of the “so-called Medieval Warm Period (AD 800 to 1400) and the Little Ice Age (AD 1600-1850)” from the Hockey Stick: “Most climate researchers expected them to be there.” *Id.* He added that “uncertainties in the methods used for climatic reconstruction underestimate the changeability of climate in the past.” *Id.*

70. The Hockey Stick graph has been criticized for its “dubious estimates of historic temperatures based on the size of tree rings.” Steve Milloy, *Tree Ring Circus*, FOX News, July 31, 2005, <https://web.archive.org/web/20110208112922/http://www.foxnews.com/story/0,2933,163999,00.html>. The estimates are considered “dubious” in part because temperature is only one factor that contributes to tree ring growth, and because “a 15th century portion of the hockey stick graph is based on tree ring measurements from a single tree.” *Id.*

71. On July 14, 2006, the Wall Street Journal published an editorial stating, “[T]here’s no reason to believe that Mr. Mann, or his ‘hockey stick’ graph global temperature changes, is right.” *Hockey Stick Hokum*, Wall St. J., July 14, 2006, <https://www.wsj.com/articles/SB115283824428306460>.

72. The Wall Street Journal noted that questions were raised about the Hockey Stick graph almost immediately after it was published. *Id.* It also recounted the findings of the 2003 McIntyre and McKittrick article and the Wegman Report regarding the flaws in Mann’s methodology and the “insular and close-knit” nature of Mann’s reviewers that prevented independent review. *Id.*



73. Stephen McIntyre founded a blog called Climate Audit in January 2005. Ex. GG at 31.

74. Ten percent of the articles published on Climate Audit concern Plaintiff Mann. *Id.* at 248-49.

75. On November 20, 2009, Climate Audit published an article explaining that “actual reconstructions” from proxy data “‘diverge’ from the instrumental series in the last part of the 20th century.” Jean S, *Mike’s Nature Trick*, Climate Audit, Nov. 20, 2009, <https://climateaudit.org/2009/11/20/mike%E2%80%99s-nature-trick/>. “For instance, in the original hockey stick (ending in 1980) the last 30-40 years of data points slightly downwards. In order to smooth those time series one needs to ‘pad’ the series beyond the end time, and no matter method one uses, this leads to a smoothed graph pointing downwards in the end whereas the smoothed instrumental series is pointing upwards – a divergence. So Mann’s solution was to use the instrumental record for padding . . . .” *Id.*

76. A 2010 article in The Guardian states that, in September 1999, paleoclimatologist Keith Briffa “sent a long and passionate email demanding caution over the use of Mann’s Hockey Stick.” Fred Pearce, *Hockey Stick Graph Took Pride of Place in IPCC Report, Despite Doubts*, The Guardian, Feb. 9, 2010, <https://www.theguardian.com/environment/2010/feb/09/hockey-stick-graph-ipcc-report>.

77. Briffa’s email stated: “‘It should not be taken as read that Mike’s series is THE CORRECT ONE’” . . . . “‘I know there is pressure to present a nice tidy story as regards “apparent unprecedented warming in a thousand years or more in the proxy data”, but in reality the situation is not quite so simple . . . For the record, I believe that the recent warmth was probably matched about 1,000 years ago.’” *Id.* (second alteration in original).

78. The Guardian article stated that “Briffa was saying not only that the hockey stick might not be right, but that any graph of the last thousand years could not be taken to represent the limits of natural variability.” *Id.*

79. On February 22, 2011, Dr. Judith Curry published an article stating, “There is no question that the diagrams and accompanying text in the IPCC TAR . . . are misleading. . . . It is obvious that there has been deletion of adverse data . . . .” Judith Curry, *Hiding the Decline*, Climate Etc., Feb. 22, 2011, <https://judithcurry.com/2011/02/22/hiding-the-decline/>; Ex. OO at 91.

80. A.W. Montford leveled his own criticisms of the Hockey Stick and its proponents in his 2010 book “The Hockey Stick Illusion,” A.W. Montford, *The Hockey Stick Illusion* (2010), including:

- a. asserting the Hockey Stick was “a dud” and “a dreadful example of scientific graphics,” *id.* at 33, 387;
- b. using the phrase “torturing numbers” in connection to the Hockey Stick, *id.* at 41;
- c. stating “supporters from both sides had been hurling brickbats at each other on the Internet . . . the war of words was beginning to be stepped up, and looked as though it might explode,” *id.* at 177;
- d. stating “Mann’s paper had been oversold both to the press and the public,” *id.* at 248;
- e. wondering how “a paper as flawed as Mann’s had managed to slip through the peer review process,” *id.* at 252;
- f. noting that “several of the independent confirmations of the Hockey Stick . . . leave much to be desired” and “appear to be fatally flawed,” *id.* at 302, 374;

- g. stating that “by now [there are] a lot of nails in the coffin of Mann’s reconstruction” and that “the Hockey Stick was not a credible reconstruction,” *id.* at 326, 308;
- h. after concluding that “Mann used incorrect statistics to force his temperature reconstruction into the hockey stick shape,” writing that, “now the Hockey Stick was broken once and for all,” *id.* at 361; and
- i. asserting that Mann “sought to undermine the peer review process and bully journals into suppressing dissenting views,” *id.* at 449.

81. In 2009, Dr. Madhav Khandekar wrote in the Canadian Frontier Centre for Public Policy Newsletter that “most scientists dismiss the Hockey Stick.” Ex. VV Response to Request for Admission (hereinafter “RFA”) No. 15 (Pl.’s Resp. to Def. Steyn’s First Set of Requests for Admission).

82. The public domain contains multiple examples of published commentary on the Hockey Stick that describe it as a “fraud”:

- a. “Michael Mann hockey stick update: now definitely established to be fraud.” Franics Menton, *Michael Mann “Hockey Stick” Update: Now Definitively Established To Be Fraud*, Monhattan Contrarian, Aug. 26, 2019, [https://www.manhattancontrarian.com/blog/2019-8-26-michael-mann-hockey-stick-update-now-definitively-proven-to-be-fraud](https://www.manhattancontrarian.com/blog/2019-8-26-michael-mann-hockey-stick-update-now-definitively-proven-to-be-fraud;);
- b. “Since 2001, there have been repeated claims that the reconstruction is at best seriously flawed and at worst a fraud.” Michael Le Page, *Climate myths: The ‘hockey stick’ graph has been proven wrong*, NewScientist, May 16, 2007,

<https://www.newscientist.com/article/dn11646-climate-myths-the-hockey-stick-graph-has-been-proven-wrong/>;

- c. “Others have described it [the Hockey Stick] as rubbish or even as a downright fraud.” Fred Pearce, *Climate: The great hockey stick debate*, NewScientist, Mar. 15, 2006, <https://www.newscientist.com/article/mg18925431-400-climate-the-great-hockey-stick-debate/>;
- d. “The Hockey Stick Hoax was perpetrated by Michael Mann in the form of a fraudulent reconstruction of the Earth’s atmosphere temperature created by Michael Mann.” *Hockey Stick Hoax*, Conservapedia, July 20, 2016, [https://www.conservapedia.com/Hockey\\_Stick\\_Hoax](https://www.conservapedia.com/Hockey_Stick_Hoax);
- e. “The messages . . . reveal correspondence between British and American researchers engaged in fraudulent reporting of data to favor their own climate change agenda.” Rebecca Terrel and Ed Hiserodt, *IPCC Researchers Admit Global Warming Fraud*, The New American, Nov. 23, 2009, <https://www.thenewamerican.com/tech/environment/item/6748-ipcc-researchers-admit-global-warming-fraud>;
- f. “Climate sceptics accused Mann of science fraud.” Suzanne Goldenberg, *Michael Mann cleared of science fraud charges made by climate sceptics*, The Guardian, July 2, 2010, <https://www.theguardian.com/environment/2010/jul/02/michael-mann-cleared>;
- g. “Inventor of fraudulent temperature ‘hockey stick’ is humiliated in Canadian court.” John O’Sullivan, *Inventor Of Fraudulent Temperature ‘Hockey Stick’ Is Humiliated In Canadian Court*, Technocracy, July 4, 2017,

<https://www.technocracy.news/fatal-courtroom-act-ruins-michael-hockey-stick-mann/>;

- h. “Climate’s long arc and fraud.” Don Polson, *Climate’s long arc and fraud*, Daily News, Aug. 26, 2019, <https://www.redbluffdailynews.com/2019/08/26/climates-long-arc-and-fraud/>;
- i. “But the hockey stick graph is a fraud.” Mike Adams, *Climate change hoax collapses as Michael Mann’s bogus “hockey stick” graph defamation lawsuit dismissed by the Supreme Court of British Columbia*, Climate.News, Aug. 26, 2019, <https://climate.news/2019-08-26-climate-change-hoax-collapses-as-michael-mann-bogus-hockey-stick-graph.html>;
- j. “The 100% fraudulent hockey stick.” Tony Heller, *The 100% Fraudulent Hockey Stick*, Real Climate Science, June 10, 2016, <https://realclimatescience.com/2016/06/the-100-fraudulent-hockey-stick/>;
- k. “Mann’s hockey stick established to be a fraud.” Francis Merlton, *Mann’s ‘Hockey Stick’ Established to Be a Fraud*, Manhattan Contrarian, Aug. 30, 2019, [https://www.realclearpolitics.com/2019/08/30/manns\\_hockey\\_stick\\_established\\_to\\_be\\_a\\_fraud\\_484829.html](https://www.realclearpolitics.com/2019/08/30/manns_hockey_stick_established_to_be_a_fraud_484829.html);
- l. “The hockey stick graph was a fraud the day it was generated.” Ken Billings, *Climate Change Hoax Collapses as Michael Mann’s Bogus ‘Hockey Stick’ Graph Defamation Lawsuit Dismissed by the Supreme Court of British Columbia*, Aug. 27, 2019, <http://www.ccfsh.org/climate/climate-change-hoax-collapses-as-michael-manns-bogus-hockey-stick-graph-defamation-lawsuit-dismissed-by-the-supreme-court-of-british-columbia/>;

- m. “Should Michael ‘hockey stick’ Mann be prosecuted for climate fraud?” John O’Sullivan, *Should Michael ‘Hockey Stick’ Mann Be Prosecuted For Climate Fraud?*, Principia Scientific Int’l, May 23, 2018, <https://principia-scientific.org/should-michael-hockey-stick-mann-be-prosecuted-for-climate-fraud/>;
  - n. “Hockey stick graph and other notable frauds.” Onar Am, *The Hockey Sitck Graph and Other Notable Frauds*, Liberty Nation, Feb. 20, 2019, <https://www.libertynation.com/the-hockey-stick-graph-and-other-notable-frauds/>; and
  - o. “Michael Mann is a fraud and a liar, as well as a bully.” John Hinderaker, *Michael Mann is a Liar and a Cheat. Here’s Why*, Powerline, May 11, 2014, <https://www.powerlineblog.com/archives/2014/05/michael-mann-is-a-liar-and-a-cheat-heres-why.php>.
83. Public coverage of the Hockey Stick controversy is similar to public coverage of other scientists and public research:
- a. Nobel Prize-winner Ronald H. Coase (Economics 1991) wrote in his 1994 book *Essays on Economics and Economists*: “if you torture the data long enough, it will confess to anything.”
  - b. Abraham Wyner testified that “torturing data” is a common colloquialism in the statistics world. Ex. DD at 163.

***Additional Climategate Investigations***

84. In response to a letter from United States Senator James Inhofe, the Inspector General’s Office of the United States Department of Commerce conducted an investigation (the

“IG Investigation”) to determine whether the NOAA carried out an internal review of the Climategate emails and whether the Climategate emails revealed any misconduct by the NOAA. Letter from Todd J. Zinser to the Honorable James M. Inhofe, at 1-2, Feb. 18, 2011, (“Zinser Letter”), <https://www.oig.doc.gov/OIGPublications/2011.02.18-IG-to-Inhofe.pdf>.

85. The IG Investigation did not investigate the activities of Plaintiff Mann or reach any conclusions about whether Plaintiff Mann manipulated data or engaged in scientific or academic misconduct. Ex. QQ at 14, 24-25 (Zinser Dep.); *see also* Zinser Letter. The IG Investigation also did not reach any conclusions about whether the Hockey Stick graph was fraudulent. Ex. QQ at 25-26. The IG Investigation does not mention Plaintiff Mann or the Hockey Stick graph by name. *See generally* Zinser Letter.

86. In 2011, the National Science Foundation (“NSF”) Office of the Inspector General published a “Closeout Memorandum” that summarized its examination of the Pennsylvania State University Inquiry and Investigation Reports. Ex. U (NSF Closeout Memorandum).

87. The NSF Closeout Memorandum concluded: “There are several concerns raised about the quality of the statistical analysis techniques that were used in [Mann]’s research” and that the concerns were “appropriate for scientific debate.” *Id.*

88. In 2010, the British House of Commons published a report on its investigation of the CRU offering “three broad conclusions.” House of Commons, *The disclosure of data from the Climatic Research at the University of East Anglia*, Eighth Report of Session 2009-10, 46 ¶ 135, Mar. 31, 2010, <https://publications.parliament.uk/pa/cm200910/cmselect/cmsctech/387/387i.pdf>.

89. The “three broad conclusions” do not state anything about the conduct of Plaintiff Mann and do not mention or address the methods of the Hockey Stick graph. *Id.* ¶¶ 135-38. “Conclusion 2” states, in part, “It was not our purpose to examine, nor did we seek evidence on, the science provided by CRU.” *Id.* ¶ 137.

90. The “Conclusions” section also states twenty-four “Conclusions and Recommendations.” *Id.* at 47-51. None of the twenty-four “Conclusions and Recommendations” mention Plaintiff Mann or the Hockey Stick graph by name, nor do they discuss the Hockey Stick graph’s methodology. *See id.*

91. In September 2010, the United Kingdom Secretary of State for Energy and Climate Change published its response to the House of Commons Report (the “Response”). *See* Secretary of State for Energy and Climate Change by Command of Her Majesty, Government Response to the House of Commons Science and Technology Committee 8th Report of Session 2009-10: The disclosure of climate data from the Climatic Research Unit at the University of East Anglia, Sept. 2010, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228975/7934.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228975/7934.pdf).

92. The Response assesses each “recommendation or group of recommendations” in the House of Commons Report. *Id.* ¶ 10.

93. The Response does not mention Plaintiff Michael Mann by name or reach any conclusions about the methods of the Hockey Stick graph. *See id.* ¶¶ 11-35.

94. On April 12, 2010, a panel chaired by Professor the Lord Oxburgh submitted a report to the University of East Anglia examining the research of the Climatic Research Unit (the “Oxburgh Panel Report”). Ex. X (Oxburgh Panel Report).



95. The Oxburgh Panel examined “eleven representative publications” from the CRU. *Id.* at 1. Plaintiff Mann was not a named author on any of the eleven publications examined by the Oxburgh Panel. *Id.* at 8-9. The Oxburgh Panel Report does not mention by Plaintiff Michael Mann or the Hockey Stick graph by name. *See generally id.*

96. The Oxburgh Panel Report “was not concerned with the question of whether the conclusions of the published research were correct.” *Id.* at 1.

97. The Oxburgh Panel expressed surprise that “research in an area that depends so heavily on statistical methods has not been carried out in close collaboration with professional statisticians” and recommended increased collaboration with “a much wider scientific group outside the relatively small international circle of temperature specialists.” *Id.* at 5.

98. In July 2010, a panel commissioned by the University of East Anglia and chaired by Sir Muir Russell published the “Independent Climate Change E-Mails Review.” Sir Muir Russell, *The Independent Climate Change E-mails Review*, July 2010, <http://cce-review.org/pdf/FINAL%20REPORT.pdf> (“Russell Report”).

99. The Russell Report “offer[ed] no opinion on the validity” of the Hockey Stick graph and other climate research in the Climategate emails. *Id.* at 10.

100. The Russell Report found that a version of the Hockey Stick graph published in a 1999 World Meteorological Organization report “was misleading in two regards. It did not make clear that in one case the post 1960 data was excluded, and it was not explicit on the fact that proxy and instrumental data were spliced together.” *Id.* at 62.

101. Most of the Climategate investigations were not specifically looking at “evidence of any fraud, data falsification, statistical manipulation or misconduct of any kind by Dr. Mann.”

Ex. CC at 35-36. Nor did many of the Climategate investigations “look[] specifically at the details, for example, of the hockey stick studies.” *Id.* at 36.

***Pennsylvania State University Inquiry and Investigation***

102. Penn State University’s research misconduct investigation of Dr. Mann began on November 24, 2009, when Dr. Eva J. Pell, then Senior Vice President for Research and Dean of the Graduate School, decided that the public outcry around Climategate necessitated a formal investigation. Ex. KK at 8-9.

103. Penn State University’s Research Administration Policy No. 10 (“RA10”) governs investigations of faculty research. Ex. WW (RA10).

104. Pursuant to RA10, Dr. Pell initiated a meeting with the Dean of the College of Earth and Mineral Sciences, Dr. William Easterling, the Associate Dean for Graduate Education and Research from the College of Earth and Mineral Sciences, Dr. Alan Scaroni, the Director of the Office for Research Protection, Ms. Candice Yekel, and the Head of the Department of Meteorology, Dr. William Brune. Ex. KK at 24.

105. Based on the Climategate emails released in late 2009, Penn State brought four charges against Dr. Mann: 1) actions with the intent to suppress or falsify data, 2) actions, “directly or indirectly... with the intent to delete... emails... related to AR-4, as suggested by Phil Jones,” 3) misuse of privileged or confidential information, and 4) any actions that seriously deviated from accepted practices within the academic community. *Id.* at 66-67.

106. Dr. Easterling recused himself from the investigation on grounds of conflict of interest due to his close personal and professional relationship with Dr. Mann. *Id.* at 26-27.

107. In a January 27, 2009 email from Dr. Mann to Pete Altman, Dr. Mann wrote, “Bill is dean of my college (Earth and Mineral Sciences). He had to formally recuse himself

from the process owing to his close personal/professional relationship with me. He's been on the sidelines helping out where he can." *Id.* at 146, 148.

108. Despite Dr. Easterling's recusal, Dr. Eva Pell informed Dr. Easterling that the Committee would contact him if needed, and that Dr. Easterling "should not hesitate to get in touch" with the Committee with concerns or questions. *Id.* at 28.

109. Dr. Easterling also sent emails and provided information about the inquiry to the Committee. *Id.* at 37-39. ; Ex. XX (Nov. 24, 2009 Email from Eva Pell from Henry C. Foley, et al.).

110. Dr. Easterling was given a preliminary draft of the Inquiry Report for review and comment. Ex. KK at 126.

111. Dr. Easterling testified as a witness at the Investigatory stage without mentioning his prior recusal on personal and professional conflict of interest grounds. *Id.* at 167.

112. In an October 6, 2010 letter to the NSF, Dr. Foley mentioned Dr. Easterling's role in the Inquiry phase of Dr. Mann's RA10 investigation. *Id.* at 165-66.

113. The Inquiry phase is a confidential proceeding, whereby the privacy of the accused and the accuser, and the confidentiality of the information related to the proceedings shall be protected to the maximum extent possible. *Id.* at 12-13.

114. Preliminary drafts of the Inquiry report nonetheless were shown for review and comment to several people not on the Inquiry Committee. *Id.* at 126.

115. Another important part of the proceeding is "to gather as much information as they can from all sides." Ex. RR at 104-05 (Yekel Dep.).

116. The Inquiry Committee, as a committee, interviewed only one witness—Dr. Mann. Ex. KK at 54.

117. The Inquiry Committee did not interview a single witness that was critical of Dr. Mann. *Id.* at 57.

118. On the morning of January 25, 2010, Dr. Foley prepared for the Inquiry Committee members a summary of the Committee members' findings to date. Ex. YY (Jan. 25, 2010 Email from Hank Foley to Candice Yekel, Alan Scaroni and Wendell Courtney); Ex. KK at 60.

119. In the summary, Dr. Foley stated, we "cannot prove that he is not guilty" of the first three allegations and therefore the Inquiry Committee should set aside the first three allegations as "indeterminate." Ex. YY.

120. Dr. Foley also stated that a "majority of us agree that we have found nothing to suggest that Dr. Mann is guilty" of the first three charges. *Id.*

121. As to the fourth allegation, Dr. Foley stated, "there is evidence to suggest that [Dr. Mann] indeed may have compromised these principles [in RA10 and AD47] in the conduct displayed in these emails." *Id.*

122. Dr. Foley continued, "if we cannot find him guilty then we must do an investigation." *Id.*

123. Dr. Foley then stated that he favored a "censure" of Dr. Mann by the Inquiry Committee on the fourth allegation. *Id.*

124. The summary ends with the Committee's stated intention to proceed to the second phase of the RA10 process by a faculty committee investigation. *Id.*

125. Later that same day, Committee member Alan Scaroni responded to Dr. Foley, saying "I am uncomfortable with applying the word 'innocent' in regard to any of the charges. My willingness to 'set aside' accusation 1-3 was not because I find him to be innocent, rather

because it is unlikely that a faculty committee will have access to the depth of information needed to make a definitive finding, one way or the other.” Ex. E (Jan. 25, 2010 Email from Alan Scaroni to Hank Foley, Candice Yekel and Wendell Courtney).

126. At his deposition, Dr. Scaroni testified that Dr. Foley’s summary of the Inquiry Committee’s position on the Dr. Mann investigation was “not a fair summary.” Ex. LL at 124 (Scaroni Dep.).

127. Early the next day, on January 26, 2010, Candice Yekel, the third member of the Inquiry Committee, wrote “we felt Mann did in fact breach the ethical standards described in AD47.” Ex. E.

128. Foley testified that the Committee “never stated that we had found [Mann] innocent of anything.” Ex. KK at 84. They “could not find anything to prove [Mann’s] innocence.” *Id.* at 93. They did not “exonerate” Mann. *Id.* at 93.

129. On January 27, 2009, Dr. Foley then prepared a “first draft” of the Inquiry Committee Report in the form of a letter to Dr. Mann, which stated that as to the first three charges, “We found nothing to warrant an investigation and we will not pursue this further.” Ex. ZZ (Jan. 26, 2010 Draft Mann RA10 Inquiry Report).

130. Dr. Foley’s “first draft” of the Inquiry Committee Report further stated that, as to the fourth charge, it “should be remanded to a faculty investigative committee for deeper consideration.” *Id.*

131. Without the Inquiry Committee’s knowledge, Dr. Foley emailed this draft to Graham Spanier, then-President of the University, stating, “For your information,” in the body of the email. Ex. KK at 94; Ex. ZZ.

132. President Spanier was not a member of the Inquiry Committee and had not reviewed any of the Climategate emails that formed the basis of the Inquiry. *Id.*; Ex. SS at 22 (Spanier Dep.).

133. President Spanier had no role in the work of the Inquiry Committee. Ex. LL at 130 (Scaroni Dep.).

134. Just hours after receiving Dr. Foley’s email, President Spanier wrote back to Dr. Foley—without copying the other two members of the Inquiry Committee—with a two-page single-spaced email containing ten specific suggestions for changing Dr. Foley’s “first draft.” Ex. AAA (Jan. 27, 2010 Email from Graham Spanier to Hank Foley, et al).

135. President Spanier’s recommendations to Dr. Foley included saying “you found no [other] further” evidence of wrongdoing because “we will be blasted if we say only what is here.” *Id.*

136. The then-President continued, “[t]he world is watching and we have to be brave enough to say what we really mean.” *Id.*

137. President Spanier “urged” Dr. Foley to take into account “international media attention, the firestorm from elected officials, and the consequences to the reputation of the University and its leadership.” *Id.*

138. President Spanier believes that public relations, bad publicity, and media attention should not play a role in an academic misconduct inquiry or investigation. Ex. SS at 17, 25-26, 46-47.

139. President Spanier wanted to meet with Dr. Foley in person to discuss the “first draft” of the report further, but there is no evidence that such a meeting took place, as both President Spanier and Dr. Foley deny it. Ex. KK at 101.

140. Without the Inquiry Committee's knowledge, Dr. Foley replied to President Spanier's recommendations, "I will make sure we make many of your changes." Ex. AAA.

141. After this email exchange between Dr. Foley and President Spanier, Dr. Foley's "first draft" expanded from two and a half pages to ten pages in length. Ex. KK at 92, 126-27.

142. As to each of the first three charges, the final Investigation Report finds "no substance to the allegation," "no credible evidence" that Dr. Mann committed the acts charged and no "basis for further examination." Ex. BBB at 5 (RA-10 Inquiry Report Concerning the Allegations of Research Misconduct against Dr. Mann).

143. Charge 4, which focused on "accepted practices," was the only one the Inquiry Committee recommended should proceed to an Investigation. *Id.* at 9.

144. Dr. Mann's Climategate emails were considered nasty, ad hominem, snarky, and totally inappropriate, Ex. KK at 78-79, and "emails that you would not expect from people who are high minded and scientifically inclined." *Id.* Dr. Foley believed it appropriate to "call him out on it." *Id.* at 80.

145. Dr. Mann had not satisfied the Inquiry Committee with his answers. Ex. LL at 99-100.

146. Issues of fraud were not covered by the Inquiry Committee. *Id.*; Ex. RR at 123-25.

#### Deleted Emails

147. On May 29, 2008, Phil Jones, a School of Environmental Sciences Professor at the University of East Anaglia, sent an email to Dr. Mann, instructing him to "delete any emails you may have had with Keith [Briffa] re AR4" and to "email Gene [Wahl] and get him to do the same[.]" Ex. CCC (May 29, 2008 Email from Phil Jones to Michael Mann).

148. Dr. Mann replied to Prof. Jones, “I’ll contact Gene about this asap.” *Id.*; Ex. CC at 175-76.

149. At Prof. Jones’ request, Dr. Mann forwarded that email to Eugene Wahl, an Environmental Studies Professor at Alfred University. Ex. CCC.

150. Dr. Wahl deleted the referenced emails in response to the email he received from Dr. Mann. Ex. Z at 134 (Wahl Dep.).

151. Dr. Mann offered a written explanation of these emails in a January 15, 2010 letter to the Inquiry Committee, which stated, “when I forwarded Mr. Jones’ email to Gene Wahl without comment, so that he would know that his name was being invoked in the context, I wish that I had made explicit to him that I disapproved of Mr. Jones’ request.... For my own part, I did nothing wrong.” Ex. EEE (Jan. 15, 2010 Letter from Michael Mann to Henry C. Foley).

152. The Inquiry Committee accepted Dr. Mann’s claim at face value. Ex. KK at 73.

153. The Inquiry Committee was not aware that Dr. Mann, after forwarding the email to Dr. Wahl, had a conversation with Dr. Wahl where he told Dr. Wahl that the deletion request was in connection with criticism of climate research. Ex. KK at 65-69; Ex. Z at 136, 238-40 (Wahl Dep.). It was also not aware that Dr. Mann failed to ask Dr. Wahl not to delete the emails in that conversation. Ex. KK at 65-69; Ex. Z at 136, 238-40.

154. The Inquiry Committee did not at any point ask Dr. Mann if Dr. Wahl had deleted any emails in response to the email Dr. Mann forwarded to him. Ex. KK at 67.

155. Despite Dr. Mann’s involvement in an email chain concerning the deletion of emails, the Inquiry Committee did not consider the second charge, which focused on whether Mann participated either “directly or indirectly... with the intent to delete... emails,” worthy of further investigation. *Id.*; Ex. LL at 103.



156. On January 28, 2009, Dr. Foley met with Dr. Mann, before the final report was released, to communicate the Committee's decisions. Ex. KK at 111.

157. Dr. Foley has testified that an email from Dr. Mann to his friends describing his meeting with Dr. Foley, was "astonishing" and "not very truthful" in his description of the conversation. Ex. FFF, (Jan. 28, 2010 Email from Michael Mann to Scott Stapf, et al.); Ex. KK at 113-14.

158. Dr. Mann's email to his friends raised a question in Dr. Foley's mind about Dr. Mann's truthfulness during the Penn State inquiry. Ex. KK at 117-18.

#### Investigatory Report

159. As the fourth charge, which was ultimately the only charge to move to the investigation phase, Dr. Mann, in a February 17, 2010 email to Ray Weymann, called the charge a "cover our a\$\$es" charge, in that "it allows Penn State to say that they fully investigated at least some aspect of the allegation, while allowing them to dismiss in short order the truly serious allegations." Ex. GGG, (Feb. 17, 2010 Email from Michael Mann to Ray Weymann).

160. The final Investigation Report was issued on June 4, 2010. Ex. HHH (June 4, 2010 RA-10 Final Investigation Report Involving Dr. Michael E. Mann).

161. Richard Lindzen, an eminent climatologist from MIT, was the only witness interviewed by the Investigatory Committee who was critical of Dr. Mann. *Id.* at 13.

162. The Investigatory Report noted that, "When told that the first three allegations against Dr. Mann were dismissed at the inquiry stage of the RA-10 process, Dr. Lindzen's response was: 'It's thoroughly amazing. I mean these are issues that he explicitly stated in the emails. I'm wondering what is going on?'" *Id.*

163. The Report continues, “The Investigatory Committee members did not respond to Dr. Lindzen’s statement.” *Id.*

164. Dr. Lindzen believes that Penn State was “obviously intent on finding nothing. . . . [T]here was something there. . . . [Mann’s] most famous work was, in fact, incorrect and primitive.” Ex. PP at 110-11, 139 (Lindzen Dep.).

165. The Investigatory Committee considered finding that Mann had received awards as well as honors and professional recognition as evidence of his innocence. Ex. HHH at 15, 18.

166. While the Investigatory Committee found “no substance” to the fourth charge, one member of the Committee, Sarah Assmann, disagreed and on May 25, 2010, wrote an email saying: “I definitely do think we need the ‘hand slap.’ No interviewee said that the type of action MM engaged in on that were clearly acceptable practice.” *Id.* at 19; Ex. III (May 25, 2010 Email from Sarah Assmann to Nina Jablonski, et al.).

#### Public Criticism of Penn State’s Investigation

167. The NSF reviewed Penn State’s investigation and found that the University “did not provide the supporting evidence and documentation necessary for OIG to concur with [its] conclusions” and “did not adequately review the allegation [of data falsification].” Ex. U at 1, 2.

168. The NSF was also “concerned that the University did not interview any of the experts critical of [Mann’s] research.” *Id.* at 2.

169. In 2010, an article in *The Atlantic* said “The Penn State Inquiry . . . would be difficult to parody. . . . [T]he case for the prosecution is never heard. Mann is asked if the allegations (well, one of them) are true, and he says no. His record is swooned over. Verdict: case dismissed.” Clive Cook, *Climategate and the Big Green Lie*, *The Atlantic*, July 14, 2010, <https://www.theatlantic.com/politics/archive/2010/07/climategate-and-the-big-green-lie/59709/>.

170. The Atlantic article identified “a wave of criticism accusing the university panel of failing to interview key people, neglecting to conduct more than a cursory review of the allegations and structuring the inquiry so that the outcome—exoneration—was a foregone conclusion.” *Id.*

171. A 2010 *Fox News* article led with the headline: “Penn State probe into Mann’s Wrongdoing a ‘Total Whitewash.’” Ed Barnes, *Penn State’s Probe Into Mann’s Wrongdoing a ‘Total Whitewash*, FOX News, Feb. 5, 2010, <https://www.foxnews.com/science/penn-state-probe-into-manns-wrongdoing-a-total-whitewash>.

172. The Pittsburgh Tribune said that Penn State “has clearly demonstrated that it is incapable of monitoring violations of scientific standards of behavior internally.” In that same article, the Pittsburgh Tribune quoted scientist Richard Lindzen as calling the Penn State investigation a “whitewash.” Ex. PP at 57-58 .

### ***Mann’s Public Responses to Criticism***

173. Dr. Mann has engaged in negative public rhetoric against individuals, organizations, and institutions that have criticized him or with whom he has scientific disagreement, including using the word “fraud” against some of these critics. *Infra* ¶¶ 174-85.

174. Dr. Mann has a “relish [for] battle” and “take no prisoners attack,” and sometimes speaks against his critics in “nasty” and “angry” ways, pouring out “vitriol.” Ex. EE at 69-72, , 77-78, 94. He is “obsessed. . . more than is normal,” “more than any other scholar,” and in a “not healthy” way with people who criticize his work. Ex. LL at 107-09.

175. Dr. Mann’s demeanor has been considered “arrogant,” “confrontational,” and possessing a “conspiratorial world view” even by colleagues. Ex. EE at 27, 37, 69-71. Dr. Mann’s colleague and collaborator Dr. Stephen Bradley testified, “I would like to disassociate myself from Michael Mann’s view,” adding “Vomit. Puke.” *Id.* at 37-38. Dr. Bradley believes

that science “does not advance through ad hominem attacks.” Ex. UU at 50; *see also* Ex. EE at 38, 45-48.

176. Dr. Mann has made the following statements on Twitter using the Twitter account @MichaelEMann addressing those with whom he has scientific disagreement:

- a. March 17, 2012: “Telegraph’s climate change denier and dissembler Miranda Devine doesn’t like my book (and lies about my work).”;
- b. March 19, 2012: “@mirandadevine wow, do you actually [even] believe your own nonsense? Disappointingly, I suspect not. As I said, shameful. Truly shameful.”;
- c. June 29, 2012: “Is there *\*anyone\** left who believes *\*anything\** #Heartland Institute has to say?? #dishonest #hackery #fail.”;
- d. July 22, 2012: “@RyanRadia, Oh, you are with *\*CEI\**, front group dedicated to dishonest smears & promotion of disinformation.”;
- e. October 22, 2012: “Hmmm. Was #climatechange #contrarian Judith Curry taken in by a denialist ‘Sokal Hoax’ (hint: Lakos spelled backwards)?”;
- f. October 25, 2012: “Christopher Horner—hired gun of fossil fuel industry front groups #ATI and #CEI—lied about [me] ‘demonstrably.’”;
- g. March 17, 2013: “#JamesTaylorNotMusician of discredited #HeartlandInst & other hacks spin disinformation about new #ExtendedHockeyStick study #KochMachine.”;
- h. April 2, 2013: “On #denier ‘Lord’ #Monckton: ‘has no training & has studiously avoided learning anything about science’ via @NZHerald [web link].”;

- i. August 2, 2013: “What’s more pathetic? The discredited #HeartlandInstitute [web link] or the mindless #trolls who promote their ignorance?”;
- j. August 12, 2013: “Sorry Sam, but your quick turn to name-calling betrays a lack of substantive ideas on your part. Bye.”;
- k. August 28, 2013: “Being attacked by the #WashingtonTimes is like being attacked by a discount brand toilet paper. Best response is to flush . . .”;
- l. December 24, 2014: “Read about tinfoil hat-wearing conspiracy theory monger & climate change denier #JamesDelingpole in #HSCW [web link] #Nutters.”;
- m. October 3, 2015: “I had to block convicted felon #ConradBlack who has been reduced to an online troll. His rap sheet: [web link].”;
- n. June 27, 2016: “Cowardly troll of the day: [personal email address redacted].”;
- o. September 10, 2017: “I was shocked, SHOCKED when I looked at your twitter feed and learned you’re a right wing troll. Please stay & play in your troll sandbox.”;
- p. December 5, 2017: “Yes, professional climate change deniers are basically just horrible human beings.”;
- q. December 25, 2017: “Pruitt and his ilk are toxic and dangerous-to the entire planet. They represent an existential threat to humanity and must be treated that way.”;

- r. January 7, 2018: “To get a sense of just how awful a human being #TimBlair actually is, read this [website link] No surprise of course that only #RupertMurdoch would promote such a misogynistic ogre.”;
- s. January 7, 2018: “Tim Blair is ONE of the worst people in the world. But it is his employer, Rupert Murdoch—THE worst person in the world—who facilitates his indecent, bilious assaults on humanity. There’s a special place down under for them both—they better hope there isn’t a hell.”;
- t. January 31, 2019: “Your avatar is clearly not you. No actual dog could be this ignorant . . .”;
- u. June 6, 2019: “I feel very sorry for your kids. They’ve got a doofus for a dad.”; and
- v. September 5, 2019: “Calling the hockey stick a ‘theory’ is a dead giveaway that you haven’t the faintest clue what you’re talking about. You’re just brandishing a tribal shibboleth (no worries—I defined that for you too).”

Ex. VV at RFA No. 1.

177. Dr. Mann has privately described a critic as a “putz,” and “a fucking embarrassment of a human being . . .” Ex. MM, (Oct. 21, 2007 Email from Michael Mann to Gavin Schmidt).

178. After Wikipedia editor Dave Souza refused to restore Dr. Mann’s Wikipedia page with the erroneous statement that he was a winner of the Nobel Peace Prize based on lack of verifiable support, Dr. Mann called his refusal “fundamentally dishonest and in bad faith.” Ex. Y (Oct. 2012 Emails Between Michael Mann and Dave Souza); Ex. CC at 267-69.

179. Dr. Mann has publicly called the articles by Steve McIntyre and Ross McKittrick “pure scientific fraud,” Ex. VV at RFA No. 3, and “pure crap.” Ex. DDD (Jan. 20, 2005 Email from Michael Mann to Tom Wigley, et al.). On his Twitter account, Dr. Mann said: “McIntyre is a professional liar/denier-for-hire,” Michael E. Mann (@MichaelEMann), Twitter, Oct. 7, 2019, 3:22PM, <https://twitter.com/michaelemann/status/1181288692490604545>. In an email, Dr. Mann referred to “that human filth we call McIntyre.” Ex. PPP (Nov. 12, 2008 Email from Michael Mann to Ben Santer).

180. In a January 27, 2005 post to the website [realclimate.org](http://realclimate.org), Dr. Mann and Gavin Schmidt wrote, “Following the all-too-familiar pattern, this deeply flawed paper was heavily promoted by special interests as somehow challenging the scientific consensus that humans are altering the climate.” Ex. VV at RFA No. 4. The statement was in reference to a 2003 article by Steve McIntyre and Ross McKittrick that was published in *Energy & Environment*. *Id.* at RFA No. 5.

181. In a January 27, 2005 post to the website [realclimate.org](http://realclimate.org), Dr. Mann and Gavin Schmidt wrote, “MM however, continue to promote false and specious claims.” *Id.* at RFA No. 6. In the same post, Dr. Mann and Schmidt wrote “Sifting through a large number of false and misleading statements in this latest paper, there are two primary criticisms of MBH98 that they raise, both of which are demonstrably specious.” *Id.* at RFA No. 8. The statements were in reference to a 2005 paper by Steve McIntyre and Ross McKittrick that was published in *Geophysical Research Letters*. *Id.* at RFA Nos. 7, 9.

182. In 2011, Dr. Mann brought a defamation suit against scientist and former University of Winnipeg Professor Tim Ball. Ex. O (Ball Order). The lawsuit was dismissed for

Dr. Mann's failure to prosecute, and Dr. Mann was ordered to pay Ball's costs. *Id.* By the conclusion of the lawsuit, Ball's health was in poor condition. *Id.*

183. Mann has published two books, both of whose titles include the phrase "Climate Wars":

- a. Michael E. Mann, *The Hockey Stick and the Climate Wars* (2012).
- b. Michael E. Mann, *The New Climate War: The Fight to Take Back Our Planet* (2021).

184. Mann's 2021 book, *The New Climate War*, includes numerous bellicose phrases. He talks about, for example, "the scientist as warrior," "battlefield," "forces being mobilized," "attack," "opening skirmish in a new climate war," "combat," "the various fronts on which this war is being waged," the "battle," "the final battle" and Mann's "battle plan," a "powerful arsenal," those who disagree with him as the "enemy," his becoming a "combatant in the climate wars," "he's seen the enemy up close, in battle" and "the various fronts on which this war is being waged." Mann admits, "I have colleagues who have expressed discomfort in framing our predicament as a war." Michael Mann, *The New Climate War: The Fight to Take Back Our Planet*, PublicAffairs, at 3, 7, 17, 28, 32-33, 41-42, 255-256 (2021). At the same time, he is upset that those who disagree with him use "newspaper op-eds, public debates, fake scientific articles, and any other means available" to advocate their point of view. *Id.* at 25.

185. In the *New Climate War*, Mann thanks Spanier, one of the convicted criminals in the Sandusky case. *Id.* at 270.



## ***Mann's Response to Steyn's July 15, 2012 Blog Post***

### Mann's Statements Regarding Steyn and This Litigation

186. On July 16, 2012, Dr. Mann received an email from Philip Plate that contained a link to the Steyn Article. Ex. CC at 162; Ex. JJJ (July 17, 2012 Email from Michael Mann to Philip Plait). Dr. Mann responded, "Thanks Phil. There is a possibility that I can ruin National Review over this. Going to talk with some big-time libel lawyers to see if there is potential for a major lawsuit here that will bring this filthy organization down for good." *Id.* On July 21, 2012, Mann sent an email to the listserv [climate-round-table@googlegroups.com](mailto:climate-round-table@googlegroups.com) stating: "[W]e are going after National Review," a "far more established outfit" with "much more to lose" than "bottom feeders like CEI." Ex. TTT (July 21, 2012 from Michael Mann to [climate-round-table@googlegroups.com](mailto:climate-round-table@googlegroups.com)). Still, after he commenced litigation, he added that "taking down CEI would be helpful." Ex. UUU (July 23, 2013 Email from Michael Mann to John Mashey).

187. On October 23, 2012, Dr. Mann initiated this litigation. Dkt. 1.

188. On October 23, 2012, Dr. Mann sent an email with the subject line "Lawsuit against National Review" to the listserv [climatebloggers@googlegroups.com](mailto:climatebloggers@googlegroups.com). Ex. CC at 188-89; Ex. KKK, (Oct. 23, 2012 Email from Michael Mann to [climatebloggers@googlegroups.com](mailto:climatebloggers@googlegroups.com)). The email contained links to posts by Dr. Mann on Twitter and Facebook announcing the initiation of this litigation. Ex. CC at 189; Ex. KKK. Dr. Mann instructed the recipients of this email to "[p]lease feel free to spread far and wide." Ex. CC at 190; Ex. KKK.

189. On October 23, 2012, Dr. Mann sent an email with the subject line "Lawsuit against National Review" to [climate-round-table@googlegroups.com](mailto:climate-round-table@googlegroups.com). Ex. CC at 193-94; Ex. LLL (Oct. 23, 2012 Email from Michael Mann to [climate-round-table@googlegroups.com](mailto:climate-round-table@googlegroups.com)). The email contained links to posts by Dr. Mann on Twitter and Facebook announcing the initiation of

this litigation. *Id.* Dr. Mann instructed the recipients of this email to “[p]lease feel free to spread far and wide.” *Id.*

190. On October 23, 2012, Mann emailed a writer at the Huffington Post: “you might also drop the point (although don’t quote me on it!) that ‘discovery’ . . . is a two-way street. Wouldn’t it be interesting to get access to all of National Review and Competitive Enterprise Institute’s email exchanges with other industry groups and advocates, Koch Brothers, etc. Just saying. But you didn’t hear that from me.” Ex. MMM (Oct. 23, 2012 Email from Michael Mann to Kate Sheppard).

191. On October 24, 2012, one day after initiating this litigation, Dr. Mann sent an email to the writer and talk show host D.R. Tucker stating “My hope is that we can ruin this pathetic excuse of a human being through this lawsuit who has been libeling and lying his whole life. We will put an end to it.” Ex. CC at 199-200; Ex. NNN (Oct. 24, 2012 Email from D.R. Tucker to Michael Mann). Dr. Mann was referring to Steyn. Ex. CC at 200.

192. On November 3, 2012, Dr. Mann sent an email to Mr. Tucker with the subject line “more mush from Mark Steyn,” stating, “With each such action he is adding to the damages, so we are actually quite happy he is doing this when fringe benefits of the lawsuit will be to ruin this odious excuse for a human being.” Ex. CC at 200-01; Ex. OOO, (Nov. 3, 2012 Email from Michael Mann to D.R. Tucker).

193. In the 2013 Postscript to *The Hockey Stick and the Climate Wars*, Dr. Mann includes Steyn as one of “the individuals at the center of an ever well-oiled climate change denial machine.” Michael Mann, *The Hockey Stick and the Climate Wars* (2013).

194. On January 31, 2013, Dr. Mann sent an email to environmental activist and YouTube video producer Peter Sinclair stating, “Pete: have you thought about doing something

about Steyn? viewers would benefit from learning just what an ugly human being he is. . .” Ex. QQQ (Jan. 31, 2013 Email from Michael Mann to Pete Sinclair); Ex. CC at 255-56.

195. On April 23, 2014, Dr. Mann sent an email to climate media watchdog Shauna Theel stating, “HI Shauna, just following up to see if you folks were going to do anything on Steyn. He could certainly use some attention (of the unflattering kind), thanks, mike.” Ex. CC at 256; Ex. RRR (April 23, 2014 Email from Michael Mann to Shauna Theel).

196. On March 14, 2017, Dr. Mann sent an email to [climatebloggers@gmail.com](mailto:climatebloggers@gmail.com) with the subject line “Re: ClimateBloggers Inside the whacky world of Mark Steyn,” stating, “Everybody on Earth please tweet this...” Ex. CC 254; Ex. FFF. Dr. Mann’s email was sent in response to a March 14, 2017 email from Rob Honeycutt stating, “Here’s an interesting article on Steyn’s latest venture going belly up.” Lachlan Markay, *Inside the Collapse of the Mark Steyn Show*, Daily Beast, Mar. 14, 2017, <http://www.thedailybeast.com/articles/2017/03/14/inside-the-collapse-of-the-mark-steyn-show.html>.

197. On October 21, 2010, Mann wrote to Susan Joy Hassol of [climatecommunication.org](http://climatecommunication.org) that “National Review . . . caters to a fringe element that is beyond reason anyway, and probably made up their mind long ago.” Ex. W, (Oct. 21, 2010 Email from Michael Mann to Susan J. Hassol).

#### Mann’s Public Dissemination of the Steyn Post

198. In a postscript to the 2014 edition of his book *The Hockey Stick and the Climate Wars: Dispatches from the Front Lines*, Dr. Mann wrote:

On the same day that Wood published his blog piece, Rand Simberg, an affiliate of the industry- funded Competitive Enterprise Institute (CEI), posted “The Other Scandal in Unhappy Valley” on the organization’s [OpenMarket.org](http://OpenMarket.org) website. Purporting to comment upon Penn State’s handling of the Sandusky scandal, Simberg referred to “another cover-up and whitewash” that occurred at Penn State, accusing me of “engaging in data manipulation” and asserting that “Mann

could be said to be the Jerry Sandusky of climate science, except for instead of molesting children, he has molested and tortured data in the service of politicized science.” Just days later Mark Steyn of the ultra-conservative National Review wrote a similar piece, invoking the Sandusky comparison along with the defamatory accusation that “Mad Michael Mann was the man behind the fraudulent climate-change ‘hockey-stick’ graph.”

Ex. CC at 204-05; Ex. D (Michael Mann, *Hockey Stick and the Climate Wars* (2012)).

199. Thousands of copies of the 2014 edition of Dr. Mann’s book *The Hockey Stick and the Climate Wars: Dispatches from the Front Lines* have been sold. Ex. CC at 205.

200. Dr. Mann has spoken freely in media interviews and social media about this lawsuit. Ex. BB at 24-25; Ex. CC at 186. His discussion of the lawsuit has potentially reached an audience of “millions of people.” Ex. BB at 24-25.

201. No one of Dr. Mann’s acquaintance stated to Dr. Mann that they agreed with or believed the statements in the Steyn Article. Ex. CC at 168-69.

202. Hockey Stick coauthor Raymond Bradley stated that after reading the Steyn and Simberg posts, he does not “believe that Dr. Mann molested and tortured data.” Ex. EE at 112.

203. Plaintiff’s expert John Abraham testified that Steyn’s post “did not negatively affect [his] view of Dr. Mann’s personal or professional reputation.” Ex. JJ at 212.

#### ***Sources on Which Steyn Relied in Drafting the Steyn Post***

204. In drafting the Steyn Post, Steyn “relied on his own research and determination about the hockey stick graph that he had reached shortly after the graph was made public.” Ex. F, Def. Steyn Resp. to Pl. Interrogatory (“Resp”) No. 14.

205. In drafting the Steyn Post, Steyn “relied on his memory of scientific criticisms, media reports, and public discussion of the hockey-stick graph that he had reviewed over the previous twelve years.” *Id.*

206. Steyn first published his determination about the hockey stick graph in an article titled “Where Rising Hot Air Hits Cold Hard Facts” the Sunday Telegraph of London on April 1, 2001. Ex. AA at 37-40; Mark Steyn, *Where Rising Air Hits Cold Hard Facts*, THE TELEGRAPH, Apr. 1, 2001, <https://www.telegraph.co.uk/comment/4260858/Where-rising-hot-air-hits-cold-hard-facts.html>.

207. Steyn has publicly maintained his position that the hockey stick graph is fraudulent since publishing “Where Rising Hot Air Hits Cold Hard Facts.” Ex. AA at 39. He has since published the same position in London’s *Sunday Telegraph*, *The Australian*, *The National Post* of Canada, *Maclean’s* (the Canadian equivalent of *Time*) and other publications around the British Commonwealth and in the United States. Ex F Resp. No. 4(e).

208. Prior to drafting the Steyn Post, Steyn reviewed MBH98 and MBH99, Ex. AA at 103; the Climategate emails, *id.* at 19-38; and reports of investigations into Climategate, including:

- a. “The Independent Climate Change E-mails Review,” (July 2010), by the University of East Anglia, Russell Panel (“Sir Muir Russell Report”);
- b. “The disclosure of climate data from the Climatic Research Unit at the University of East Anglia,” (March 24, 2010), by the UK House of Commons, Science and Technology Committee (“House of Commons Report”); and
- c. “Report of the International Panel set up by the University of East Anglia to examine the research of the Climatic Research Unit,” (April 12, 2010), by the University of East Anglia, Oxburgh Panel (“Oxburgh Report”).

*Id.* at 25.

209. Prior to drafting the Steyn Post, Steyn also reviewed documents related to Pennsylvania State University's investigation of Gerald Sandusky and Dr. Mann, including:

- a. Pennsylvania State University RA-10 Inquiry Report Regarding Dr. Michael E. Mann;
- b. Pennsylvania State University RA-10 Final Investigation Report Regarding Dr. Michael E. Mann, June 4, 2010;
- c. the criminal indictment of Gerald Sandusky; and
- d. the Freeh Report.

*Id.* at 26, 158-59, 172.

210. Other than Penn State's investigations of Sandusky and Mann, Steyn did not review Climategate investigations published in America before publishing "Football and Hockey." *Id.* at 25.

211. Steyn was "aware of published scientific criticism of the hockey stick graph" at the time that he drafted the Steyn Post, Ex F Resp. No. 4(e), including:

- a. "peer reviewed papers . . . cited in 'A Disgrace to the Profession, The World Scientists on Michael E. Mann, His Hockey Stick and their Damage to Science'";
- b. McIntyre, Stephen and Ross McKittrick, "Corrections to the Mann et al. (1998) Proxy Data Base and Northern Hemispheric Average Temperature Series," *Energy & Environment*, November 1, 2003;
- c. McIntyre, Stephen and Ross McKittrick (2005a) "The M&M Critique of the MBH98 Northern Hemisphere Climate Index: Update and Implications." *Energy and Environment* 16(1), 69-100;

- d. McIntyre, Stephen and Ross McKittrick (2005b) “Hockey Sticks, Principal Components and Spurious Significance” *Geophysical Research Letters* Vol. 32, No. 3, L03710 10.1029/2004GL021750 12 February 2005;
- e. Briffa, Keith and Tim Osborn, *Seeing the Wood From the Trees*, *Science*, May 7, 1999; and
- f. Richard Muller, *Global Warming Bombshell*, *MIT Technology Review*, Oct. 15, 2004, *available at* <https://www.technologyreview.com/2004/10/15/274740/global-warming-bombshell/>.

*Id.*

212. Steyn believes Penn State’s Science Department concealed “what was going on with Mr. Mann [and] the Hockey Stick coverup” in preparing its investigatory report on Mann. Ex. AA at 136.

213. Steyn recalled reviewing an article in the *Chronicle of Higher Education* that “saw parallels between Penn State, Penn State’s coverup of Sandusky and Penn State’s coverup of Mann. . . . In both cases the priorities for Graham Spanier and Penn State were brand protection.” *Id.* at 182.

214. Steyn further testified: “When you read . . . the Freeh document . . . [t]hey were fully in the tank to protect the Penn State Football Department as Spanier was fully in the tank to protect the Penn State Science Department.” *Id.* at 183-84.

215. Steyn testified that this concealment, coupled with Penn State’s failure to conduct an adequate investigation of the Sandusky affair, evidences an endemic corruption at the university. *Id.* at 136.

216. In November 2011, Steyn published an article in the Orange County Register that criticized the “Penn State protection racket” shielding University officials from consequences in the Sandusky affair. Mark Steyn, *Penn State’s Institutional Wickedness*, Orange Cty. Register, Nov. 20, 2011, <https://www.ocregister.com/2011/11/20/mark-steyn-penn-states-institutional-wickedness/>.

217. Steyn was “an avid reader of the media on climate change” at the time that he drafted the Steyn Post, Ex. AA at 15-16, including:

- a. Public comments by Richard Muller, Professor of Physics at University of Berkeley (2011), available at <https://www.youtube.com/watch?v=VbR0EPWgkEI>, Ex F Resp. No. 4(e);
- b. Public comments by Professor Judith Curry, Chair and Professor of Earth and Atmospheric Science, Georgia Institute of Technology (2011), <https://judithcurry.com/2011/02/22/hiding-the-decline/>, *id.*;
- c. A 2012 Letter to the Editor of Nature Geoscience by multiple paleoclimatologists, including some of Plaintiff’s former collaborators, criticizing Plaintiff’s research, <https://www.st-andrews.ac.uk/~rjsw/all%20pdfs/Anchukaitisetal 2012.pdf>, *id.*;
- d. Testimony by Dr. John Christy of the University of Alabama in Huntsville before the United States House of Representatives on March 31, 2011, *id.*;
- e. Clive Cook, *Climategate and the Big Green Lie*, The Atlantic, July 14, 2010, <https://www.theatlantic.com/politics/archive/2010/07/climategate-and-the-big-green-lie/59709/>, *id.*;



- f. Ed Barnes, *Penn State's Probe Into Mann's Wrongdoing a 'Total Whitewash'*, FOX News, Feb. 5, 2010, <https://www.foxnews.com/science/penn-state-probe-into-manns-wrongdoing-a-total-whitewash>, *id.*;
- g. Steven Milloy, *Tree Ring Circus*, FOX News, July 31, 2005, <https://web.archive.org/web/20110208112922/http://www.foxnews.com/story/0,2933,163999,00.html>, *id.*;
- h. Stephen McIntyre, *The Mann Inquiry Report*, Climate Audit (Feb. 10, 2010, <https://climateaudit.org/2010/02/10/the-mann-inquiry-report/>), *id.*;
- i. “Watts Up With That,” a website published by Anthony Watt, Ex. AA at 17;
- j. “Bishop Hill” a website published by A.W. Montford, *id.*;
- k. writings by James Delingpole, *id.*;
- l. writings by Jo Nova, *id.*;
- m. the website of Donna LaFramboise, *id.*;
- n. writings by Dr. Judith Curry, *id.* at 18;
- o. the website of Greg Binladen, *id.*;
- p. writings by David Appell, *id.*; and
- q. writings by Barry Bickmore, *id.*

218. Steyn testified at his deposition that he relied on these sources to determine the Hockey Stick graph is fraudulent. Ex. AA at 48. (Steyn Dep.)

219. At the height of the Climategate scandal, Steyn “was checking in on new developments [related to the scandal] every day.” *Id.* at 16.

220. When media coverage was “less dramatic,” Steyn “check[ed] the various climate change websites . . . three or four times a week.” *Id.*

221. Steyn’s media consumption canvassed esteemed journals and periodicals, such as the *MIT Technology Review* and *The Atlantic*. Ex. F at Resp. No. 4(e).

222. Steyn also regularly read popular climate blogs by journalists and climate researchers, including “the most read climate website in the world.” Ex. AA at 16-19.

223. Steyn further purchased and “read in full” articles about climate science from a range of peer-reviewed scientific journals. *Id.* at 21-22.

224. Steyn viewed Mann’s attempt to reconcile two types of data into one graph, as the hockey stick graph purports to do, as incongruous. *Id.* at 48-50.

225. Steyn believes that Mann’s graph is “an attempt to simplify a very sophisticated, complex nuanced subject” that “obscure[s] the fact that the . . . proxy data does not correlate with the observed records.” *Id.* at 48-50, 52.

226. Steyn believes “[t]he hockey stick is fraudulent because it does not prove what it purports to prove.” *Id.* at 52.

227. At his deposition, Steyn testified that he was aware of numerous other criticisms of the graph by climate scientists:

- a. “Harold Lewis, the very distinguished American physicist called it ‘the greatest pseudoscientific fraud of his lifetime.’” *Id.* at 56.
- b. “[Nobel Laureate] Iver Giaver said it was the Emperor’s New Clothes of science.” *Id.* at 57.
- c. “Rob Watson, a Scottish climate scientist described it . . . as a ‘crook of sh\*t.’” *Id.*

d. “Jonathan Jones at Oxford University called it obvious drivel.” *Id.*

228. In the immediate years before publishing his post, Steyn also read academic critiques by “McIntyre and McKittrick and Keith Briffa and Judith Curry,” among others. *Id.* at 82; Ex. F at Resp. No. 15.

229. Steyn further testified: “When you start looking at what some of these other scientists say it becomes very hard not to conclude that these are not honest mistakes [in the Hockey Stick Graph], but are in fact intentional.” *Id.* at 85.

***Mann’s Career After July 15, 2012***

230. Since July 15, 2012, Dr. Mann has received more than thirty-five honors and awards, been awarded numerous research grants, penned two dozen Op-ed commentaries in outlets including the *New York Times*, *Washington Post*, and *Time*, and been invited to speak in dozens of public events. These included:

- a. In December 2012, Mann was elected Fellow of the American Geophysical Union.
- b. In 2013, Mann was elected Fellow of the American Meteorological Society.
- c. In 2013, Bloomberg News named Dr. Mann one of its 50 Most Influential People.
- d. In 2014, Mann appeared on the *Economia Magazine* list of 50 Leading Finance Leaders, Influencers, and Innovators.
- e. In 2015, Mann was the Keynote Speaker at the Pennsylvania State University GEMS Earth and Environmental Systems Institute Showcase Event.
- f. In 2017 and 2019, he provided testimony to the U.S. House of Representatives.
- g. In 2018, Mann was elected Fellow of the Geological Society of America.

h. In 2018, he received the Climate Communication Prize from the American Geophysical Union.

i. In early 2020, Dr. Mann, was elected to the National Academy of Sciences.

Ex. R, Attachment D (Pl. Supp. Answers); Ex. BB at 55.

231. In 2013, the year after the Steyn Post, Mann was appointed Distinguished Professor at Penn State. Ex. S (2013 Mann Annual Faculty Self-Assessment). His salary increased from approximately \$128,000 in 2012 to approximately \$172,000 in 2013. Ex. T (Mann W-2s, 2012-2017). Mann’s salary in every year from 2013-2017—the most recent years for which Defendant has records—exceeded his 2012 salary. *Id.*

232. Mann stated “[t]here is no way for me to determine” how many of his grant proposals “were denied as a direct result of defendants’ statements.” Ex. CC at 79-80. He “ha[s] no information about who read” the Steyn Post and “can’t prove any one specific grant was affected. *Id.* at 93

233. The Joint Fire Sciences Program of the United States Dept. of Interior (“JFSP”), one of the grant funders that Mann claims denied his grant proposal after the publication of the Steyn Post, Ex. R Attachment C (Pl. Supp. Answers), did not review or consider the Steyn Post as part of its review of Mann’s grant proposal. Ex. V at 4-5 (Brunson Dep). It denied the proposal based on the proposal’s “technical merit” relative to the criteria for the grant. *Id.* at 6.

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