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SLAPPED With the Hockey Stick

Conservative journalist Mark Steyn must pay \$1 million in punitive damages in a defamation lawsuit that strikes at the root of First Amendment free-speech protections. Attorneys for the prosecution applauded the judgment as a clear message to those they dub “climate deniers.”

Twelve years ago, controversial scientist Michael Mann sued Steyn and some associates for drawing parallels between Mann’s claims of catastrophic global warming and the case of a convicted child molester. This past February, the jury decided that Mann had not suffered damages, but it still penalized Steyn. Why?

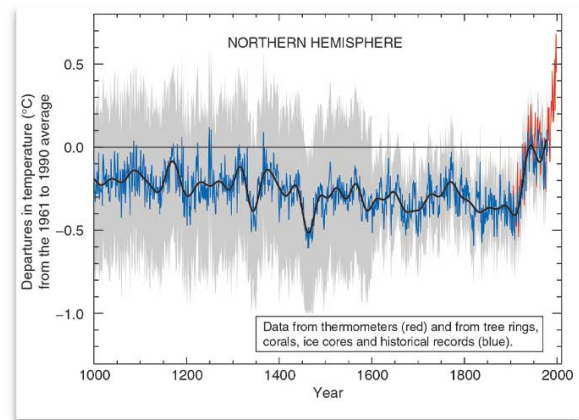
When the case began, Mann was professor of atmospheric science at Pennsylvania State University (Penn State). He had gained international recognition in 1998, when he published his now-infamous “hockey stick” graph in the journal *Nature*, depicting global temperatures since 1000 A.D. According to Mann, from that time until the mid-20th century, little variation occurred. But then, temperatures suddenly skyrocketed upward. Mann included several years of future forecasting with no expected end to rising temperatures. The result was a curved line that looked a lot like a hockey stick.

The UN quickly snatched that stick, featuring it prominently in two Intergovernmental Panel on Climate Change (IPCC) assessment reports (AR). As is the case with all IPCC publications, AR3 in 2001 and AR4 in 2007 preached man-made global warming as gospel truth and exercised enormous influence on governments worldwide in cementing the Kyoto Protocols — aimed at reducing so-called greenhouse gas emissions — into their environmental laws and policies.

The hockey stick was also central to Al Gore’s oft-debunked 2006 film *An Inconvenient Truth*. In fact, IPCC and Gore share the 2007 Nobel Peace Prize “for their efforts to build up and disseminate greater knowledge about man-made climate change, and to lay the foundations for the measures that are needed to counteract such change,” according to NobelPrize.org. (Later, Mann would erroneously claim to have also been a recipient, by virtue of the role his hockey stick played in the 2007 award decision. However, the Nobel Foundation denies that Mann ever received one of its prizes.)

Meanwhile, many of Mann’s scientific contemporaries had been crying foul on his bureaucratically acclaimed graph. For example, in 2003, a team of researchers including aerospace engineer Willie Soon and astronomer Sallie Baliunas blasted the hockey stick in a review printed in the journal *Energy and Environment*. They concluded that the 20th century was not the warmest, nor had it witnessed the “most extreme” temperatures, in history.

The same year, statistical analyst Stephen McIntyre and environmental economist Ross McKittrick brought Mann’s data behind the hockey stick into question in a white paper published by the George C.



IPCC

Hockey check: Mann has consistently refused to share the raw data he used to construct the hockey stick, even ignoring a 2019 request by British Columbia’s Supreme Court.



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Marshall Institute. Entitled *The IPCC, the "Hockey Stick" Curve, and the Illusion of Experience*, the paper also harshly criticized the statistical techniques they said Mann used to produce skyrocketing temperatures in the late 20th century. "The hockey stick, the poster-child of the global warming community, turns out to be an artifact of poor mathematics," physicist Richard Muller wrote in 2004 in *MIT Technology Review*.

These findings would be further validated in the 2006 Wegman Report, prepared by three highly credentialed statisticians led by Dr. Edward Wegman at the request of Texas Republican Congressman Joe Barton for the U.S. House Committee on Energy and Commerce. The same year, Mann claimed that the National Academy of Sciences (NAS) had affirmed the hockey stick with an exhaustive review, when in fact the report confirmed the findings of McIntyre, McKittrick, and the authors of the Wegman Report. NAS found fault with both Mann's data and his analysis. In later committee hearings, Barton questioned Gerald North, chairman of the NAS review panel: "Dr. North, do you dispute the conclusions or the methodology of Dr. Wegman's report?"

"No, we don't," North answered. "In fact, pretty much the same thing is said in our report."

Controversy surrounding the hockey stick reached a peak in November of 2009 with the advent of "Climategate." Hackers pirated and published hundreds of incriminating emails from the U.K.'s University of East Anglia (UEA), which works hand in hand with UN climate alarmists. The emails revealed correspondence between researchers engaged in reporting data to favor their own climate-change agenda.

Particularly damning to Mann was an email sent to him and several colleagues from UEA climatologist Phil Jones, who wrote in November 1999: "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 [sic] from 1961 for Keith's to hide the decline."

Also interesting was the implication in Climategate emails that IPCC chose Mann's hockey stick because it fit the alarmist bill. *The Guardian's* environmental journalist Fred Pearce told that story in 2010. (His reference to the "Met Office" denotes the U.K.'s national weather service):

On 22 September 1999, Met Office scientist Chris Folland, an IPCC lead author, alerted key researchers that a diagram of temperature change over the past thousand years "is a clear favourite for the policy makers' summary." But there were two competing graphs — Mann's hockey stick and another, by Phil Jones, [UEA climatologist] Keith Briffa and others, which sought to ascertain temperatures over the past millennium using, among other things, tree rings, ice cores and coral.

Mann's graph was clearly the more compelling image of man-made climate change. Jones and Briffa's "dilutes the message rather significantly," said Folland. "We want the truth. Mike [Mann] thinks it lies nearer his result."

But Briffa did not. Three hours later, he sent a long and passionate email. "It should not be taken as read that Mike's series is THE CORRECT ONE," he warned. "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



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1,000 years ago.”

Other emails evince researchers plotting to defy Freedom of Information Act requests and purposefully deleting emails to protect them from scrutiny. The scandal forced Penn State to conduct an investigation into Mann. It was completed on February 3, 2010, with an unsurprising result: The school exonerated its professor.

Stickhandling: In his defamation case against Rand Simberg and Mark Steyn, UN climatologist Michael Mann claimed he was materially damaged, but the jury awarded him a telling \$1 from each defendant in compensatory damages. (Wikimedia Commons/Karl Withakay)



Two other “independent” reviews also resulted in not-guilty verdicts, prompting Gerald Warner of *The Telegraph* to label them all as “whitewash” jobs. “There is no more a culture of accountability and job forfeiture for controversial conduct in AGW [anthropogenic global warming] circles than there is in parliamentary ones,” he wrote. “The brand remains toxic.”

Nevertheless, Climategate faded from the media spotlight until 2012, when it reared its head again in a seeming disconnect. In June of that year, a jury found former Penn State assistant football coach Jerry Sandusky guilty of child sex abuse. FBI investigations revealed that Penn State administrators, including school president Graham Spanier and head football coach Joe Paterno, had covered up for Sandusky for more than a decade. The scandal not only sent several of them to prison, but ended all their careers with the school.

In response, aerospace engineer Rand Simberg published a July 13, 2012, column on the Competitive Enterprise Institute’s (CEI) blog, OpenMarket.org, pointing out that some of the same Penn State administrators convicted in the Sandusky scandal had overseen the Mann investigation. Simberg concluded that they had engaged in a similar coverup to protect Mann because of his “level of success in proposing research and obtaining funding,” a line he quoted from the Penn State report. Simberg called for a “fresh, truly independent investigation.”

Impressed with the arguments, Steyn responded to Simberg’s article, referencing it heavily in his own column on the *National Review* website. *Politico* related the allegedly defamatory statement from both sources:



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The National Review Online post quoted from a now-deleted line by CEI's Rand Simberg, who wrote: "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."



Coverup: The FBI said that Penn State covered up crimes of its former assistant football coach Jerry Sandusky (shown in handcuffs). The same administration oversaw an investigation into its environmental professor, Michael Mann, and his role in Climategate. (AP Images)

Mann sued both journalists and their publishers. His complaint accused them of libel, material damage to himself, and the "intentional infliction of emotional distress." It also charged them with what Steyn called "the hitherto unknown crime of 'defamation of a Nobel prize recipient.'" (In fact, Mann published a press release on his Facebook page announcing the lawsuit, and it, too, claimed that he "was awarded the Nobel Peace Prize" for his global-warming research. *National Review* contacted the Nobel Foundation, which, as noted above, denied that Mann had ever won a Nobel prize.)

Regarding Mann's formal complaint, defense attorneys countered that what Simberg wrote was protected under the First Amendment, and they pointed out the unsettled controversy surrounding Mann's hockey-stick data.

"Unsettled" is putting it mildly, for Mann consistently refuses requests by skeptical scientists to review the raw data he used in formulating his contested graph. Though sharing data is expected practice so that others can determine if results are replicable, Mann even ignored a court order for the data from the Supreme Court of British Columbia.

That happened in another defamation case, concurrent with his suit against Steyn. In 2011, Mann sued Canadian climatologist Tim Ball, who cried foul on the hockey stick and wrote that Mann "belongs in the state pen, not Penn State."

In an opinion column published at WattsUpWithThat.com, Ball identified cases such as this as "SLAPP" suits. The acronym stands for "Strategic Lawsuit Against Public Participation," a legal term for cases brought against ideological or political critics to silence or intimidate them. At the time, eight Canadian provinces had enacted anti-SLAPP legislation, but British Columbia was not among them.



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However, when Mann failed to produce the information requested by the Court, it dismissed his suit in 2019 and ordered him to pay Ball's court costs. Despite the victory, Ball received no recompense for eight years of suffering through the litigation. As Steyn has many times opined, "The process is the punishment."

In the case of Steyn and Simberg, their punishing process took 12 years, but it did not end as well. Major media and climate alarmists alike are gloating that the jury fined Simberg \$1,000 in punitive damages. Steyn's fine is a whopping \$1,000,000.

"It feels great," Mann told The Associated Press after the jury delivered its verdict on February 8. "It's a good day for us. It's a good day for science."

But science was not actually on trial here. This was a *defamation* case — a SLAPP case, in fact. The hockey stick was not investigated, nor could it have been. Mann still won't release his data, even though that practice is a staple of scientific inquiry.

Mann, who is now the director of the Center for Science, Sustainability and the Media at the University of Pennsylvania, claimed that the actions of the defendants had affected his career and reputation, both in the United States and internationally. Interestingly, in 2019, Mann was awarded the Tyler Prize for Environmental Achievement, which is known in his circles (ironically) as the "Nobel Prize for the Environment."

It is therefore unclear how Simberg's and Steyn's comments have adversely affected him. In fact, the jury determined that Mann was not harmed. So, why the \$1 million ruling? Attorney John Hinderaker, president of the think tank Center of the American Experiment, explained on his PowerLine blog:

The verdict was disappointing to those of us who followed the case and thought that Michael Mann presented a pathetically inadequate case. The jury actually agreed: it found that the defendants had defamed Mann, but awarded only a token \$1 in damages, since Mann had failed to prove any. But it found that both Simberg and Steyn acted with actual malice — that they didn't actually believe what they said about Mann — and awarded punitive damages in the amount of \$1,000 against Simberg, and \$1 million against Steyn.

In a sane world, this case never would have gone to the jury. The legal standard is actual malice, which means the defendants must have thought, subjectively, that what they said wasn't likely true. In this case, there was no evidence whatever that Steyn and Simberg didn't sincerely believe that what they said was true. Indeed, as [Steyn] pointed out in [his] closing argument, he has been saying the same things about Mann's hockey stick for something like 21 years, and even wrote a book about it.

The book mentioned is *A Disgrace to the Profession: The World's Scientists in Their Own Words on Michael E. Mann, His Hockey Stick, and Their Damage to Science*. It was published nearly a decade ago, in 2015.

Hinderaker points out that in his closing arguments, Mann's attorney, John Williams, actually admitted the political motivation in the case. "He said that the jury should award punitive damages so that in the future, no one will dare engage in 'climate denialism,'" Hinderaker wrote, observing that in "41 years of trying cases to juries, I never heard such an outrageously improper appeal."



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So, the \$1 million is not just about punishing Steyn, who did not injure the plaintiff (as evidenced by the *one dollar* in compensatory damages awarded). Instead, it is a warning to anyone else who might ever again dare challenge the global-warming narrative.

That is not mere speculation; environmentalists admit it. “I hope people think twice before they lie and defame scientists,” Kate Cell of the Union of Concerned Scientists told The Associated Press.

As for CEI and *National Review*, which were both part of Mann’s original lawsuit, the D.C. Superior Court ruled in 2021 that neither is liable for defamation in the case. After the February 8 verdict, Mann intends to appeal that decision. “They’re next,” he warned.

Both Steyn and Simberg have said they will appeal. One thing in their favor is the fact that U.S. Supreme Court precedent holds that punitive damages must be reasonable and proportionate to compensatory damages. In other words, the judge could reduce their fines. That judge is Alfred S. Irving of the Superior Court of the District of Columbia, appointed by George W. Bush in 2008. He was reappointed in December for a second 15-year term. Considering that he just allowed a hockey stick SLAPP shot in his courtroom, however, it’s fair to wonder whether judicial activism is his goal.



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