

A D.C. trial judge recently refused to dismiss climate scientist Michael Mann's libel lawsuits against the *National Review* and the Competitiveness Institute. There are some serious constitutional barriers against such libel suits, which are designed to provide ample breathing room for free speech. Is this one of the rare cases that can jump the hurdles?

The story begins with a blog [post](#) at the Competitive Enterprise Institute. Written after the Sandusky pedophilia scandal became public, the blog post suggests that Penn State's investigation of Mann's conduct was just as shoddy as its handling of the Sandusky matter. Whether an investigation was probing enough is clearly a matter of opinion, and comparing the two investigations is a fair way of raising the issue, if a bit nasty. But at least some of the language in the blog post seemed to go well beyond criticizing the investigation itself. The current [version](#) of the blog accuses Mann of "engaging in data manipulation to keep the blade on his famous hockey-stick graph." It also states that two inappropriate sentences have been removed from the post. One of those sentences read: "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."

A second blog post in the *National Review* picked up on the issue. This blog post suggested that the author "was not sure" he would have gone so far as comparing Mann's conduct with Sandusky's. But the blog post also called Mann "the man behind the fraudulent climate-change hockey stick graph, the very ringmaster of the tree-ring circus." (I'll bet the author felt awfully clever for coming up with that one.)

One key question is whether these statements amounted to factual accusations that Mann had engaged in scientific misconduct. Or were they just a hyperbolic way of saying that he made a mistake or was a bit careless or was unintentionally biased? It's true that the level of vitriol among climate deniers is especially high, even given the generally horrible overall state of public discourse in America. But it seems to me that a reader would be justified in thinking that the language in these blogs was not just hyperbole or humor. The reason is that this language is used in the context of demanding a formal investigation. If I call someone a "murderer," that might not be meant as a factual statement, but if I say "he's a murderer and a grand jury should investigate," that sounds a lot more like a serious allegation of criminal misconduct.

In addition, I notice that neither source has published a disclaimer stating that they do not, in fact, believe that Mann was guilty of professional misconduct. Indeed, the *National Review* carefully stated in a follow-up that they had not used the term "fraudulent" to mean criminal fraud. Given the care with which their lawyers must have phrased this disclaimer,

that suggests that they did mean to indicate serious but non-criminal misconduct. It's like calling someone a killer and then issuing a disclaimer saying, "but I didn't mean first degree murder."

The other constitutional issue is whether either blogger actually believed that Mann had engaged in serious misconduct, despite the fact that he had been cleared by several investigations (not just by Penn State). Under current constitutional doctrine, Mann has to prove that the bloggers either knew he wasn't actually guilty of scientific misconduct or were aware that they didn't know one way or the other. Mann did not have any direct evidence of their state of mind, except for the fact that they made the charges after he had been repeatedly investigated and cleared. The judge said that Mann was entitled to conduct discovery to find evidence that they weren't being honest about their beliefs.

Perhaps I'm naïve, but I assume that they actually *did* believe what they were saying, just as other people at those same institutions believe that President Obama was born in Kenya and is secretly planning to abolish private property, confiscate all guns, and institute Sharia law. If so, Mann's lawsuit will ultimately fail. Under our Constitution, you're entitled to say anything you want about a public figure, if you're dumb enough or crazy enough to believe it yourself.