

April 30, 2014

There are extra hazards on Arizona golf courses.

A rattlesnake greeted us on #14 tee box.



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Perhaps most ominously for Obama's second-term agenda -- whatever that is -- a majority of Americans now prefer a Congress completely controlled by Republicans.

As poll director Gary Langer puts it:

"Registered voters by 53-39 percent in the national survey say they'd rather see the Republicans in control of Congress as a counterbalance to Obama's policies than a Democratic-led Congress to help support him. It was similar in fall 2010, when the Republicans took control of the House of Representatives and gained six Senate seats."

Another six-seat gain on Nov. 4 gives the GOP control of the Senate. And Obama can finally focus on his presidential library.

Writing in the National Journal, [Ronald Brownstein](#) says polling shows peril for Dems in November.

President Obama's approval rating remains ominously weak among the constituencies that could tip the battle for control of the Senate in November, the latest Allstate/National Journal Heartland Monitor Poll has found.

Obama's overall approval, standing at just 41 percent, remains near the lowest level ever recorded in the 20 Heartland Monitor Polls since April 2009. And only one in four adults say his actions are increasing economic opportunity for people like them, also among his worst showings in the polls. His numbers are especially meager among the non-college and older whites that dominate the electorate in the seven red-leaning states where Democrats must defend Senate seats in November.

These findings are taken from the 20th quarterly Allstate/National Journal Heartland Monitor Poll conducted by the Strategic Communications Practice of FTI Consulting. The full results, exploring Americans' views on how to drive social and political change, will be published next month in National Journal's magazine.

The one solace for Democrats in the new poll is that Congress is even more unpopular than the president. Just 11 percent of those surveyed said they approved of Congress's performance, while 80 percent disapproved. In the five times the Heartland Monitor has tested Congress' rating since November 2012, only last November did it score more poorly, with just 9 percent approving and 84 percent disapproving.

Generally, though, attitudes toward the incumbent president have played a bigger role than views about Congress in shaping the results of mid-term elections. And attitudes toward Obama, and the nation's direction, remain distinctly chilly.

Just 27 percent of those polled said they believed the country is moving in the right direction; 62 percent say they consider it off on the wrong track. That's slightly better than the results last fall, but much gloomier than the assessment around Obama's reelection in fall 2012. The racial gap on this question is huge: 41 percent of minorities say the country is moving in the right direction, but only about half as many whites (22 percent) agree. (Among whites without a college degree, just one in six see the country moving on the right track, only about half the level among whites with at least a four-year degree.)

In the new survey, 41 percent of adults said they approved of Obama's job performance while 52 percent disapproved. Since 2009, the quarterly Heartland Monitor Polls have recorded lower approval ratings for him only last November (at 38 percent) and last September (at 40 percent). The difference between those showings and the latest result falls within the survey's 3.1 percentage point margin of error.

In the latest poll, Obama also faces a formidable intensity gap that could foreshadow turnout challenges for Democrats: The share of adults who strongly disapprove of his performance (39 percent) is nearly double that of those who strongly approve (21 percent). ...

Joel Kotkin, under the influence of HBO's new Mike Judge comedy, *Silicon Valley*, says Tech moguls are focused first on profit. Saving the world is down the priority list. *The \$300 million payout from tech giants like Google and Apple to settle a lawsuit brought by employees makes it clear that Silicon Valley is out for profit, not to change the world.*

Silicon Valley's biggest names—Google, Apple, Intel and Adobe—reached a settlement today in a contentious \$3 billion anti-trust suit brought by workers who accused the tech giants of secretly colluding to not recruit each other's employees. The workers won, but not much, receiving only a rumored \$300 million, a small fraction of the billions the companies might have been forced to pay had they been found guilty in a trial verdict.

The criminality that the case exposed in the boardrooms the tech giants, including from revered figures like Steve Jobs who comes off as especially ruthless, should not be jarring to anyone familiar with Silicon Valley. It may shock much of the media, who have generally genuflected towards these companies, and much of the public, that has been hoodwinked into thinking the Valley oligarchs represent a better kind of plutocrat—but the truth is they are a lot like the old robber barons.

Starting in the 1980s, a mythology grew that the new tech entrepreneurs represented a new, progressive model that was not animated by conventional business thinking. In contrast to staid old east coast corporations, the new California firms were what futurist Alvin Toffler described as “third wave.” Often dressed in jeans, and not suits, they were seen as inherently less hierarchical and power-hungry as their industrial age predecessors.

Silicon Valley executives were not just about making money, but were trying, as they famously claimed, to “change the world.” One popularizing enthusiast, MIT's Nicholas Negroponte, even suggested that “digital technology” could turn into “a natural force drawing people into greater world harmony.”

This image has insulated the tech elite from the kind of opprobrium meted out to their rival capitalist icons in other, more traditional industries. In 2011, ...

Explaining the lawsuit against Mark Steyn and National Review is a rather long piece by Charles C. W. Cooke. Long, but worth the read.

Everyone is in favor of free speech,” Winston Churchill once wrote. “Hardly a day passes without its being extolled.” And yet, he added dryly, “some people’s idea of it is that they are free to say what they like, but if anyone else says anything back, that is an outrage.”

This aphorism, generally applicable as it is, could easily have been issued to describe the attitude of one Michael E. Mann, a climate scientist and opponent of free inquiry who is currently suing National Review for libel.

Mann, a professor of meteorology at Pennsylvania State University, rose to prominence for his “hockey stick,” a graph that purports to depict global temperature trends between the years a.d. 1000 and 2000. The graph takes its name from its shape, which shows a mostly flat line of temperature data from the year 1000 until about 1900 (the handle of the hockey stick), followed by a sharp uptick over the 20th century (the blade). Based on this graph and related research, Mann has built a noisy public career sounding the alarm over global warming — a plague, he argues, that has been visited upon the Earth as a result of mankind’s sinful penchant for fossil fuels.

In the course of his evangelizing, Mann has shown little tolerance for heretics. A recent op-ed he penned for the New York Times is illustrative. “If You See Something, Say Something,” the headline blares, mimicking New York subway warnings and suggesting a not-so-subtle parallel between the dangers of global-warming “denial” and the murderous terrorism that brought down the Twin Towers. In the opening paragraph of the piece, Mann castigates his critics as “a fringe minority of our populace” who “cling[] to an irrational rejection of well-established science.” These aristarchs, Mann contends, represent a “virulent strain of anti-science [that] infects the halls of Congress, the pages of leading newspapers and what we see on TV, leading to the appearance of a debate where none should exist.” Alas, such comparisons are commonplace. In the rough and tumble of debate, climate-change skeptics are routinely recast as climate-change deniers, an insidious echo of the phrase “Holocaust deniers” and one that has been contrived with no purpose other than to exclude the speaker from polite society.

Secure as he appears to be in his convictions, Mann has nonetheless taken it upon himself to try to suppress debate and to silence some of the “irrational” and “virulent” critics, who he claims have nothing of substance to say. To this end, Mann has filed a lawsuit against National Review. Our offense? Daring to publish commentary critical of his hockey-stick graph and disapproving of his hectoring mien. ...

... The law of defamation is useful for awarding civil damages against those who peddle outright lies — that is, against those who do real damage to a person’s reputation by abusing plain facts that can be easily verified and adjudicated in court. In such cases as it is claimed that Jones beats his wife or Smith is a drug addict, the relevant facts fall easily within the competence of a civil

tribunal, and litigation does not threaten to impose a chill on the public discourse. But when a plaintiff files a libel suit involving a matter of political or scientific controversy, the calculus is quite different indeed. When the merits of a libel claim implicate contested questions of science and statistical methodology, judges and juries are so ill suited to pronounce a verdict that allowing the public authority to have the final say is inconsistent with the very concept of free inquiry. The whole point of the scientific enterprise is to resolve controversies through open debate, not through the final decree of government officials.

Even where no verdict of guilt is ultimately pronounced, allowing litigation over criticisms of the validity of scientific research has a deleterious effect on the public discourse. It prompts critics to trim their sails in order to avoid the cost and headache of a lawsuit, thus establishing a climate of fear and quiet rather than of boisterous agitation and open discussion. Hanging the prospect of punishment above the heads of participants in scientific disputes serves not to yield greater accuracy but to invite censorship, the toning down of rhetoric, and the avoidance of hyperbole — of anything, indeed, that could invite a libel complaint. Which is to say that it shuts up the dissenters.

Linguistically, Mann exhibits an approach that is best described as “hyperbole for me but not for thee.” Apparently, the two terms that prompted his present litigiousness were “fraudulent” and “intellectually bogus” — a pair of judgments that his legal team contend to be beyond the pale of lawful discourse regarding his work on climate change. But Mann himself has used these terms liberally when it has suited him. In a Mother Jones interview from 2005, he assured his readers that, “as it plays out in the peer-reviewed literature, it will soon be evident that many of the claims made by the contrarians [i.e., skeptics of the global-warming hypothesis] were fraudulent.” ...

Investor's Business Daily

[Welcome back, Mr. President; Here's your worst job approval ever](#)

by Andrew Malcolm

For consuming a week of presidential time and Lord knows how many millions of borrowed dollars, Barack Obama's admirable Asian adventure was not terribly productive.

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Some people say we praise Obama too much. Well, there's more today. Remember Trayvon Martin and before that, the beer summit? Both times where the president waded into unrelated racial news because he was asked. (The second communications lecture for public figures is: "Answer the questions you want, not the ones you're asked.")

Well, finally the Harvard grad seems to have learned his lesson, 1,924 days into Oval Office life.

Chances are you never heard of Donald Sterling before last weekend. He's the rich real estate owner of the NBA's sad-sack Clippers. His GF or someone unhappy with him apparently taped some racist remarks of his, posted them on the Internet, causing another of those PR convulsions that consume America every few weeks.

Today the NBA will announce some disciplinary action for Sterling, probably suspension. And down the road soon look for him to decide to cash in on his team's worth. For those of us who can remember "Colored" restrooms and drinking fountains as far north as Tennessee in our youth, America has made remarkable racial progress over the years. More to do, obviously.

But the striking thing about Sterling's comments and Paula Deen's and Cliven Bundy's really is that they all came from, shall we say, seniors. Sterling, for Don's sakes, is 80, older even than Joe Biden or Hillary Clinton.

Anyway, at a news conference in Malaysia Sunday (the one that produced the latest POTUS selfie), Obama predictably was asked about Sterling's offensive remarks. Not much news on this junket, so trouble-making media must poke around for something, anything to send home to justify those expense accounts in four different currencies.

Obama could have taken the bait, waded in again, made the day's news about him once more.

He could have pulled a classic Al Sharpton or Jesse Jackson and seen in one old man's stupid tirade at his bimbo a condemnation of America's stubbornly ugly racist culture. Proof that we need such divisive leaders to prolong the 'national conversation' that keeps their organizations financially-fueled.

But Obama didn't. The chief executive, who resorted to "stinkburger" just the other day, spoke plainly and clearly this time. No one could doubt his feelings. But he poured no jet fuel on the passing drama. He dismissed it as the ignoble incident it is. Here's what Obama said:

"When ignorant folks want to advertise their ignorance, you don't really have to do anything, you just let them talk. That's what happened here."

Obama also observed, rightly, that Sterling's alleged comments show how "the United States continues to wrestle with the legacy of race and slavery and segregation." True enough. Good job, sir. Next question.

The next topic concerns a new [ABC News/Washington Post Poll](#). It shows that after a minor tick up during the recent long winter of global warming, Obama's job approval has sunk a full five points since March to its lowest point ever, 41%.

Obama's lost ground among his core support groups, possibly growing impatient with his promised economic recovery that's been just around the corner now for four years. Fifty-two percent of adult Americans now disapprove of his job performance, and strong disapproval exceeds strong approval by a bruising 17 points.

The Democrat can claim the economy is improving all he wants. Only 28% buy that line now, down nine points since Mitt Romney was not elected president.

The unaffordable Affordable Care Act has lost support too, down five points in one month to 44%.

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As poll director Gary Langer puts it:

"Registered voters by 53-39 percent in the national survey say they'd rather see the Republicans in control of Congress as a counterbalance to Obama's policies than a Democratic-led Congress to help support him. It was similar in fall 2010, when the Republicans took control of the House of Representatives and gained six Senate seats."

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National Journal

[Poll Shows Problems for Obama, Peril for Senate Democrats](#)

by Ronald Brownstein

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More troubling for Democrats still may be his especially precarious position with constituencies that loom large for the seven Democratic candidates trying to hold Senate seats in states that voted for Mitt Romney in 2012.

In all of those states – Alaska, Arkansas, Louisiana, Montana, North Carolina, South Dakota and West Virginia – older whites and whites without a four-year college degree represent a substantial share of the electorate. Whites overall represent a larger share of the vote than they do nationally in all of these states except for North Carolina and Louisiana.

Obama's standing with the key groups in those states remains tenuous in the new Heartland Monitor Poll. Among whites overall, just 35 percent said they approve of his performance, while 59 percent disapprove. That's a slight improvement from the previous two Heartland Monitor Polls last fall, but still at the lower end of his range among whites since taking office. Obama faces an even larger 62 percent disapproval from both non-college whites and whites older than 50; only about one-third of each group approve of his performance.

His numbers look no better on a Heartland Monitor trend question that asks Americans how Obama's actions will affect their economic prospects. Just 25 percent of all respondents said they believed his agenda would increase opportunities for people like them. That's the smallest positive response the poll has recorded except for the two surveys last fall. In the new poll, a full 46 percent said they believed his actions would diminish their opportunities—essentially tying the 47 percent in each of last fall's polls as his worst showing on that measure. The remaining 23 percent said they did not think his actions would affect their opportunities.

Even these slim results are boosted by enduring confidence among minorities: 40 percent of non-white respondents said Obama's agenda would increase their opportunities, compared to 24 percent who believe it will reduce them. But among whites, just 19 percent say he is increasing their chances, while a resounding 55 percent say he is diminishing them.

Those numbers don't differ much among whites older and younger than 50 but they are especially bad among the blue-collar whites who matter so much in the red-leaning states where Democrats must defend Senate seats this year. Whites without a college degree were nearly four times as likely to say Obama's action are decreasing, rather than increasing, their opportunities to get ahead.

The Democratic red-state Senate incumbents facing voters this year in Alaska, Arkansas, Louisiana and North Carolina are demonstrating surprising resilience in polls. But the pervasive skepticism about Obama's performance and agenda among older and blue-collar whites remains a powerful headwind threatening their hold on those seats – and their party's hold over the Senate.

Daily Beast

[Silicon Valley's Giants Are Just Gilded Age Tycoons in Techno-Utopian Clothes](#)

by Joel Kotkin

The \$300 million payout from tech giants like Google and Apple to settle a lawsuit brought by employees makes it clear that Silicon Valley is out for profit, not to change the world.

Silicon Valley's biggest names—Google, Apple, Intel and Adobe—reached a settlement today in a contentious [\\$3 billion anti-trust suit](#) brought by workers who accused the tech giants of secretly colluding to not recruit each other's employees. The workers won, but not much, receiving only a [rumored \\$300 million](#), a small fraction of the billions the companies might have been forced to pay had they been found guilty in a trial verdict.

The criminality that the case exposed in the boardrooms the tech giants, including from revered figures like Steve Jobs who comes off as especially ruthless, should not be jarring to anyone familiar with Silicon Valley. It may shock much of the media, who have generally genuflected towards these companies, and much of the public, that has been hoodwinked into thinking the Valley oligarchs represent a better kind of plutocrat—but the truth is they are a lot like the old robber barons.

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east coast corporations, the new California firms were what futurist Alvin Toffler described as “third wave.” Often dressed in jeans, and not suits, they were seen as inherently less hierarchical and power-hungry as their industrial age predecessors.

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This image has insulated the tech elite from the kind of opprobrium meted out to their rival capitalist icons in other, more traditional industries. In 2011, over [72 percent of Americans](#) had positive feelings about the computer industry as opposed to a mere 30 percent for banking and 20 percent for oil and gas. Even during the occupy protests in 2012, few criticisms were hurled by the “screwed generation” at tech titans. Indeed, Steve Jobs, a .000001 per center worth \$7 billion, the ferocious competitor who [threatened “war”](#) against Google if they did not cooperate in his wage fixing scheme, was openly mourned by protestors when news spread that he had passed away.

But the collusion case amply proves what has been clear to those watching the industry: greed and the desire to control drives tech entrepreneurs as much as any other business group. The Valley is great at talking progressive but not so much in practice. In the very place where private opposition to gay marriage is enough to get a tech executive fired, the big firms have shown a very weak [record of hiring](#) minorities and women. And not surprisingly, firms also are notoriously skittish about revealing their diversity data. A [San Jose Mercury report](#) found that the numbers of Hispanics and African Americans employees in Silicon Valley tech companies, already far below their percentage in the population, has actually been declining in recent years. Hispanics, roughly one quarter of the local labor force, account for barely five percent of those working at the Valley’s ten largest companies. The share of women working at the big tech companies - despite the rise of high profile figures in management—has also showed declines.

In terms of dealing with “talent,” collusion is not the only way the Valley oligarchs work to keep wages down. Another technique is the outsourcing of labor to lower paid foreign workers, the so called “[techno-coolies](#).” The tech giants claim that they hire cheap workers overseas because of a critical shortage of skilled computer workers but that doesn't hold up to serious scrutiny. A 2013 report from the labor-aligned [Economic Policy Institute](#) found that the country is producing 50% more IT professionals per year than are being employed. Tech firms, notes EPI, would rather hire “guest workers” who now account for one-third to one half of all new IT job holders, largely to maintain both a lower cost and a more pliant workforce.

Some of this also reflects a preference for hiring younger employees at the expense of older software and engineering workers, many of whom own homes and have families in the area.

“I want to stress the importance of being young and technical,” Facebook’s CEO [Mark Zuckerberg](#) [said](#) at an event at Stanford University in 2007. “Young people are just smarter. Why are most chess masters under 30? I don’t know. Young people just have simpler lives. We may not own a car. We may not have family. Simplicity in life allows you to focus on what’s important.”

Of course what’s really “important” to Zuckerberg, like moguls in any time and place, is maximizing profits and raking in money, both for themselves and their investors. The good news for the bosses has been that employees are rarely in the way. Unlike the aerospace, autos or oil industries, the

Valley has faced little pressure from organized labor, which has freed them to hire and fire at their preference. Tech workers wages, on the other hand, have been restrained both by under the table agreements and the importation of “technocoolies.”

Rather than being a beacon of a new progressive America, the Valley increasingly epitomizes the gaping class divisions that increasingly characterize contemporary America. Employees at firms like Facebook and Google enjoy gourmet meals, childcare services, even complimentary house-cleaning to create, as one [Google executive put it](#), “the happiest most productive workplace in the world.” Yet, the largely black and Hispanic lower-end service workers who clean their offices, or provide security, [rarely receive health care](#) or even the most basic retirement benefits. Not to mention the often miserable conditions in overseas factories, notably those of Apple.

It’s critical to understand that the hiring restrictions exposed by Friday’s settlement, reflect only one part of the Valley’s faux progressiveness and real mendacity. These same companies have also been adept at [circumventing user privacy](#) and [avoiding their tax](#) obligations.

One might excuse the hagiographies prepared by the Valley’s ever expanding legion of public relations professionals, and their media allies, but the ugly reality remains. The Silicon Valley tech firms tend to be every bit as cutthroat and greedy as any capitalist enterprise before it. We need to finally see the tech moguls not as a superior form of oligarch, but as just the latest in long line whose overweening ambition sometimes needs to be restrained, not just celebrated.

National Review

The Climate Inquisitor

by Charles C. W. Cooke

Everyone is in favor of free speech,” Winston Churchill once wrote. “Hardly a day passes without its being extolled.” And yet, he added dryly, “some people’s idea of it is that they are free to say what they like, but if anyone else says anything back, that is an outrage.”

This aphorism, generally applicable as it is, could easily have been issued to describe the attitude of one Michael E. Mann, a climate scientist and opponent of free inquiry who is currently suing National Review for libel.

Mann, a professor of meteorology at Pennsylvania State University, rose to prominence for his “hockey stick,” a graph that purports to depict global temperature trends between the years a.d. 1000 and 2000. The graph takes its name from its shape, which shows a mostly flat line of temperature data from the year 1000 until about 1900 (the handle of the hockey stick), followed by a sharp uptick over the 20th century (the blade). Based on this graph and related research, Mann has built a noisy public career sounding the alarm over global warming — a plague, he argues, that has been visited upon the Earth as a result of mankind’s sinful penchant for fossil fuels.

In the course of his evangelizing, Mann has shown little tolerance for heretics. A recent op-ed he penned for the *New York Times* is illustrative. “If You See Something, Say Something,” the headline blares, mimicking New York subway warnings and suggesting a not-so-subtle parallel between the dangers of global-warming “denial” and the murderous terrorism that brought down

the Twin Towers. In the opening paragraph of the piece, Mann castigates his critics as “a fringe minority of our populace” who “cling[] to an irrational rejection of well-established science.” These aristarchs, Mann contends, represent a “virulent strain of anti-science [that] infects the halls of Congress, the pages of leading newspapers and what we see on TV, leading to the appearance of a debate where none should exist.” Alas, such comparisons are commonplace. In the rough and tumble of debate, climate-change skeptics are routinely recast as climate-change *deniers*, an insidious echo of the phrase “Holocaust deniers” and one that has been contrived with no purpose other than to exclude the speaker from polite society.

Secure as he appears to be in his convictions, Mann has nonetheless taken it upon himself to try to suppress debate and to silence some of the “irrational” and “virulent” critics, who he claims have nothing of substance to say. To this end, Mann has filed a lawsuit against National Review. Our offense? Daring to publish commentary critical of his hockey-stick graph and disapproving of his hectoring mien.

Ostensibly, Mann’s litigation against National Review is the product of a blog post written by Mark Steyn back in 2012, in which Steyn provided commentary on a separate article (written by Rand Simberg and published on the Competitive Enterprise Institute’s blog) that had drawn a crude analogy between Mann and Jerry Sandusky, the convicted child molester and former assistant football coach at Mann’s employer, Penn State. Steyn quoted a passage in which Simberg had stated, “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.” Distancing himself from the Sandusky analogy, Steyn averred that he was “not sure I’d have extended that metaphor all the way into the locker-room showers with quite the zeal Mr. Simberg does.” “But,” Steyn continued, “he has a point.” After all, “Michael Mann was the man behind the fraudulent climate-change ‘hockey-stick’ graph, the very ringmaster of the tree-ring circus.” (This “tree-ring” remark refers to Mann’s reliance on controversial “proxy” data to gauge historical temperatures — about which more below.)

Shortly after the publication of Steyn’s post, Mann’s lawyer sent National Review a letter, demanding a public apology and a retraction. National Review responded to the missive with the reminder that the blog post was “fully protected under the First Amendment” and, later, National Review’s editor, Richard Lowry, invited Mann to “get lost” and to “go away and bother someone else.” In Lowry’s view, Mann’s threat to submit Steyn’s commentary to judicial resolution under the libel laws was nothing short of preposterous. Steyn’s disagreement, Lowry argued, was with the validity of Mann’s scientific work — his words serving as a contribution to the question of whether Mann’s statistical methods and his reliance on “proxy” data give a valid picture of historical temperature trends, or instead his work is flawed, false, and misleading. As Lowry put it, “In common polemical usage, ‘fraudulent’ doesn’t mean honest-to-goodness criminal fraud. It means intellectually bogus and wrong.” In a free and open society, the correct way to respond to the accusation that one’s work is “intellectually bogus and wrong” is to attempt a rebuttal, not to file a lawsuit. National Review stands on the side of free and open society.

Evidently, Mann does not. True to his threats, he filed suit in D.C. Superior Court against Steyn and National Review (along with both the Competitive Enterprise Institute and Rand Simberg), alleging libel and intentional infliction of emotional distress. Per the complaint, both Steyn and Lowry’s writings, which were published on National Review Online, are unlawfully defamatory because they “tend[] to injure Dr. Mann in his profession because [they] falsely impute[] to Dr. Mann academic corruption, fraud and deceit as well as the commission of a criminal offense, in a

manner injurious to the reputation and esteem of Dr. Mann professionally, locally, nationally, and globally.”

More specifically, it charges that, “in making the defamatory statement, [National Review] and Steyn acted intentionally, maliciously, willfully, and with the intent to injure Dr. Mann, or to benefit [National Review] and Steyn.” In other words, it charges that all of the critics Mann is suing are guilty of the narrow form of libel that American law prohibits. It has made no difference that National Review has made abundantly clear that, “in common polemical usage, ‘fraudulent’ doesn’t mean honest-to-goodness criminal fraud,” but instead means “intellectually bogus and wrong.” Incredibly, Mann’s complaint contends that the phrase “intellectually bogus” *itself* is legally actionable. Mann’s feelings have been hurt, the theory appears to go, so his critics’ words must have been illegal.

In a case such as this one, there is no room for the neutral to hedge his bets: One is either in favor of a broad regime of free expression or one is on the side of the censors. While it must be tempting for the more insecure and sensitive among our public figures to attempt to silence anybody who has the temerity to joke, criticize, or “question [their] intellect and reasoning” (in the words of the D.C. Superior Court that refused to dismiss the case at the outset), this is not what the legal system is for — nor is such an attitude consistent with the values of a free nation.

As a seminal Supreme Court case, *New York Times v. Sullivan*, outlined in 1964, using the law of libel to drag journalists into court for expressing their sincere views on matters of major public importance is entirely inconsistent with our “national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open.” Inevitably, a culture that prizes free expression will find its discourse marked by “vehement, caustic, and sometimes unpleasantly sharp attacks.” But, as Justice Brandeis wrote nearly 90 years ago in *Whitney v. California*, “the remedy to be applied” for speech that some may deem offensive “is more speech, not enforced silence.” This is no less true in the realm of scientific inquiry, in which no authority can claim a monopoly on the truth. The very purpose of the scientific enterprise is the pursuit of knowledge, and uninhibited debate is the means by which that knowledge is pursued. Here, as much as anywhere else, Justice Kennedy’s recent admonition in *United States v. Alvarez* applies: “Our constitutional tradition,” Kennedy wrote, “stands against the idea that we need Oceania’s Ministry of Truth.”

The law of defamation is useful for awarding civil damages against those who peddle outright lies — that is, against those who do real damage to a person’s reputation by abusing plain facts that can be easily verified and adjudicated in court. In such cases as it is claimed that Jones beats his wife or Smith is a drug addict, the relevant facts fall easily within the competence of a civil tribunal, and litigation does not threaten to impose a chill on the public discourse. But when a plaintiff files a libel suit involving a matter of political or scientific controversy, the calculus is quite different indeed. When the merits of a libel claim implicate contested questions of science and statistical methodology, judges and juries are so ill suited to pronounce a verdict that allowing the public authority to have the final say is inconsistent with the very concept of free inquiry. The whole point of the scientific enterprise is to resolve controversies through open debate, not through the final decree of government officials.

Even where no verdict of guilt is ultimately pronounced, allowing litigation over criticisms of the validity of scientific research has a deleterious effect on the public discourse. It prompts critics to trim their sails in order to avoid the cost and headache of a lawsuit, thus establishing a climate of fear and quiet rather than of boisterous agitation and open discussion. Hanging the prospect of

punishment above the heads of participants in scientific disputes serves not to yield greater accuracy but to invite censorship, the toning down of rhetoric, and the avoidance of hyperbole — of anything, indeed, that could invite a libel complaint. Which is to say that it shuts up the dissenters.

Linguistically, Mann exhibits an approach that is best described as “hyperbole for me but not for thee.” Apparently, the two terms that prompted his present litigiousness were “fraudulent” and “intellectually bogus” — a pair of judgments that his legal team contend to be beyond the pale of lawful discourse regarding his work on climate change. But Mann himself has used these terms liberally when it has suited him. In a *Mother Jones* interview from 2005, he assured his readers that, “as it plays out in the peer-reviewed literature, it will soon be evident that many of the claims made by the contrarians [i.e., skeptics of the global-warming hypothesis] were fraudulent.” Likewise, in his book, *The Hockey Stick and the Climate Wars*, Mann hoped that “those who have funded or otherwise participated in the fraudulent denial of climate change” will be held “accountable.” “Bogus” got a good airing, too. Journalists who do not meet Mann’s approval were charged collectively with being “willing to act as little more than stenographers for the constant stream of bogus allegations being fed them”; Glenn Beck was accused of forwarding “a litany of bogus allegations”; and it was suggested that Congress would not care were it to learn that its conclusions were “based on a bogus analysis.”

As illustrated by Mann’s own vocabulary, there is plenty of room in the cut and thrust of public debate for people to use terms such as “fraudulent” and “bogus” — and in a manner that cannot give rise to any legal cause of action. When used in a polemical sense, such words do not carry any narrow, specific meaning. Instead they denote a broad intellectual condemnation: to pronounce that creationism or evolutionary theory is “fraudulent” is to assert that it is specious, deluded, dubious, wrong-headed, fallacious, or misleading. In the realm of climate science, where historical temperatures are reconstructed based on controversial proxy data and statistical modeling, the assertion that one’s work is “intellectually bogus,” “fraudulent,” or based on “molested and tortured data” is a harsh critique, to be sure. But it is not one that can be subjected to legal punishment. The old saying has it that if you torture the data long enough, they will confess to anything. Nevertheless, what *counts* as “torturing” data, as opposed to sound statistical analysis, is a matter of opinion and legitimate dispute. The truth or falsity of such assertions should no more be resolved in court under the libel laws than should the truth or falsity of such statements as that “evolutionary theory is a fraud” or “intelligent design is fraudulent.” Fighting over the validity of such claims is what public debate is for.

Some of Mann’s colleagues in the academy appear instinctively to understand this. Judith Curry, the chairwoman of Georgia Institute of Technology’s School of Earth and Atmospheric Sciences, an outspoken climate-change skeptic and one of the many scientists whom Mann has berated in public, has been accused of being a “serial climate-disinformer” and “anti-science” — quite the charge to throw at an academic. Nevertheless, Curry has made it clear that she believes the best way to ensure that tit-for-tat exchanges do not embroil us all in endless legal battles is to recognize that questions of public import are best debated outside the courtroom. “I would like to stand up for Michael Mann’s right to make insulting and defamatory tweets, statements in op-eds, etc.,” Curry has written on her blog. “As an American, I am pretty attached to the right to free speech.”

So, too, is Yale law professor Stephen L. Carter, who considers himself to be an ally of Mann’s on practically all questions except for his understanding of free speech. “As a believer in the First Amendment,” Carter wrote recently in *Bloomberg View*, “I am troubled” by Mann’s conduct. “I would rather that name-calling weren’t a regular part of our public debate, but it is.”

“Indeed,” he continued,

I should note for the uninitiated that “molested and tortured data” is the sort of molested and tortured prose that academics commonly inflict on each other (and the great unwashed beyond the campus) in this unenlightened era of discourse. . . . Of course we need defamation law. But our constitutional tradition correctly makes it difficult for public figures to prevail. Close cases should go to the critic, no matter how nasty or uninformed. The preservation of robust dissent allows no other result, and robust dissent is at the heart of what it means to be America.

It is also at the heart of what it means to be a scientist, as the conduct of those in the profession reveals. In 2010, a Berkeley physics professor and somewhat capricious climate-change skeptic named Richard Muller gave a much-publicized lecture that eventually went viral on YouTube. In his address, Muller accused Mann and his cohorts of flubbing their data and publishing misleading results. “As a scientist,” Muller told his audience after referencing Mann by name, “I now have a list of people whose papers I won’t read anymore. You’re not allowed to do [what Mann did] in science. This is not up to our standards.” Muller has subsequently changed his mind on the broader question of anthropogenic climate change, but his criticism of Mann remains.

Ed Cook, a scientist at Columbia University, presented a brutal judgment of Mann’s seminal 1998 paper, co-authored with Raymond Bradley and Malcolm Hughes and colloquially known as “MBH”: “I am afraid that Mike [Mann] is defending something that increasingly can not be defended,” Cook wrote in an e-mail that was published after a FOIA request and formed part of the “Climategate” affair. “He is investing too much personal stuff in this and not letting the science move ahead.” Tom Wigley, a fellow of the American Association for the Advancement of Science, contended that “at the very least MBH is a very sloppy piece of work — an opinion I have held for some time.” Raymond Bradley had equally harsh words for his former colleague’s subsequent work. “I’m sure you agree,” Bradley wrote, that “the Mann/Jones GRL [*Geophysical Research Letters*] paper” — in which Bradley was not involved — “was truly pathetic and should never have been published. I don’t want to be associated with that 2000 year ‘reconstruction’ [of temperature data].” (Note the scare quotes.)

Reading these remarks and the reams of others like them that are to be found in the e-mails, one might draw two conclusions. First, that Carter’s characterization of academics as sharp-elbowed is based in fact; and, second, that there is plenty in Mann’s work to inspire skepticism and to invite critique — from his colleagues, from the media, and from the public at large. “This is a case,” National Review’s defense brief holds, that has been “brought by a disgruntled scientist who wishes to litigate a contentious scientific battle not suitable for judicial resolution, but properly belonging in the arena of public debate.” Indeed so. That public debate continues to rage. There is no justification for attempting to stifle it.

As for Michael Mann’s “hockey stick” in particular, there is a great deal left to discuss. Despite the premature conflation in which its advocates rather embarrassingly indulged, the hockey stick and anthropogenic climate change are by no means one and the same thing, or presumed to be so. Where once the hockey stick was used as a dramatic promotional tool, now it is buried in the noise — damaged by years of scrutiny and made brittle by its creators’ dubious methods. Wisely, climate-change evangelists have begun to remind their critics that Mann’s hockey stick could be entirely wrong without damaging their wider claim about global warming. Or, as *Scientific American* put it:

The case for anthropogenic global warming originally came from studies of climate mechanics, not from reconstructions of past temperatures seeking a cause. Warnings about current warming trends came out years before Mann's hockey stick graph. Even if the world were incontrovertibly warmer 1,000 years ago [than the hockey stick says it was], it would not change the fact that the recent rapid rise in CO₂ explains the current episode of warming more credibly than any natural factor does — and that no natural factor seems poised to offset further warming in the years ahead.

As this rather defensive qualification implies, there is a world of difference between those who examine the thermometer data from the last 150 or so years and establish that the Earth is warming, and those who attempt to infer the temperature hundreds and even thousands of years ago from the various "proxies" on which, absent any thermometer data, we must unfortunately rely. Ultimately, what scientists like Mann are attempting to do is to draw meaningful data about past temperatures from a handful of variously dependable and sparsely available tree rings, bristlecone pine cones, pollen levels in sediment, and oxygen isotopes entrenched in polar caps, only a few of which go back even 600 years. They then graft these findings onto the record of actual temperatures as recorded by modern instruments — some of which, alarmingly, contradict the proxy data: In some data sets, tree rings from recent times indicate a different temperature than do thermometers and other surface measurements — in order to attempt to show us how the climate has changed over the past millennium or so.

Mankind is constantly updating its impressions of the past, and there is nothing about either our current age or Michael Mann that requires us to believe that this era's estimations represent the immutable truth. A healthy skepticism as to the value of endeavors to reconstruct climate history is thus necessary — even before we dive into the detail. Tree rings can certainly be a useful indicator of temperature. Still, one has to be careful about how much faith one puts in the method. Liebig's law teaches us that tree growth is not solely the product of temperature, but also of available space, water, sunlight, soil nutrients, and so forth, and that growth is limited by whatever resource is least available. Because a variety of environmental factors affect growth, separating out the effect of temperature from that of the other variables is difficult, and conclusions that rely on the process ought to be taken with a grain of salt.

Questions still abound. Just ask skeptical Canadians Stephen McIntyre and Ross McKittrick, a pair of apostates who have spent the last eleven years critiquing the hockey stick, and who have drawn a considerable amount of blood in the process. McIntyre, a mathematician and former minerals prospector, says he first became interested in the question when he saw a leaflet featuring the hockey stick and was reminded of the unrealistic sales projections that hucksters in the mining industry were known to use to scam naïve investors. McIntyre convinced Mann to share his data (reluctantly, according to McIntyre) and, with McKittrick, an economics professor at the University of Guelph, set about analyzing them. Their research led them to issue a host of criticisms, including skepticism about the validity of Mann's process, the discovery of alleged flaws in the way that tree rings have been used by Mann and others to "reconstruct" past temperatures, and a rejection of the statistical means by which the hockey-stick shape was generated. McIntyre and McKittrick's ongoing investigation has garnered a great deal of attention and a good deal of praise, and even inspired a book, *The Hockey Stick Illusion: Climategate and the Corruption of Science*.

For their part, neither Mann nor his colleagues have done much to inspire public confidence. In 2009, a hacker obtained thousands of e-mails that had been sent between scientists at the University of East Anglia's Climatic Research Unit (CRU) and other climate scientists around the world. Inter alia, the missives appeared in the eyes of some to show their authors manipulating

data through questionable statistical methods, spinning results, suppressing inconvenient findings, and thwarting their critics by refusing to cooperate with routine requests. (Stephen McIntyre was clearly on the scientists' minds: He is referenced in the e-mails repeatedly.)

Phil Jones, the director of the CRU, was caught apparently advising Michael Mann to delete correspondence with colleagues Keith Briffa and Gene Wahl and to find ways of avoiding his data's being picked up and processed by critics: "Don't leave stuff lying around on ftp [file-transfer protocol] sites," Jones counseled;

you never know who is trawling them. The two MMs have been after the CRU station data for years. If they ever hear there is a Freedom of Information Act now in the UK, I think I'll delete the file rather than send to anyone. Does your similar act in the US force you to respond to enquiries within 20 days? — our[s] does! The UK works on precedents, so the first request will test it. We also have a data protection act, which I will hide behind.

Later, Jones asked Mann, "Can you delete any emails you may have had with Keith re AR4 [the fourth IPCC Assessment Report]? Keith will do likewise. . . . Can you also email Gene and get him to do the same? I don't have his new email address."

Most famous perhaps is this passage, which was part of a message sent by Jones in 1999 to the three co-authors of the hockey-stick paper, a group that included Mann: "I've just completed Mike's . . . trick of adding in the real temps [that is, those recorded by instruments] to each series for the last 20 years (ie from 1981 onwards) and from 1961 for Keith's to hide the decline."

Mann's defenders vehemently deny that these words are in any way problematic. "Real temps" does not refer to suppressed data but to temperatures taken from modern instruments such as thermometers rather than from proxies such as tree rings and pine cones; "trick" is simply a term of art that describes a mathematical process for manipulating and smoothing the data in an honest and legitimate way; and "hide" was but a poorly chosen word — nothing to do with the removal of evidence. What is being discussed here, therefore, is an uncontroversial process: first the complementing of data with more data, then the removal of outlying data that, for whatever reason, are believed to be erroneous.

Critics of Mann's work, by contrast, charge that this e-mail is a smoking gun: that it calls into question the integrity of the methods underlying the hockey stick, that it is directly linked to a controversy over the 2001 IPCC report, and that the removal of proxy data to "hide the decline" seriously misleads readers about the deficiencies of proxy reconstructions.

The University of East Anglia's official report about the leaked e-mails concluded that "opposing interpretations can be obtained from the same statement." But even if we give those involved the benefit of the doubt — presuming that "trick" and "hide the decline" mean precisely what Mann's defenders insist they mean — the episode still suggests something important: that Mann and his colleagues have processed their data in a way that makes global warming appear more severe than the evidence suggests on its own. There is little doubt that some of the information with which the group was working has proven to be inconvenient. Per some of the tree-ring results, temperatures have declined in the second half of the 20th century; per the instrumental record, however, temperatures have gone *up*. Thus have Mann and Co. seen fit to drop certain proxy data that imply such a decline, and to add in certain instrumental data that show an increase. Most egregiously, in the 2001 IPCC report — which unleashed the hockey stick on a shocked world —

Mann and his co-authors simply removed the declining post-1960 proxy data collected by Keith Briffa (thus “hid[ing] the decline”) but left in his colleagues’ more convenient proxy findings, thereby making the proxy reconstructions appear more consistent and accurate than they really were.

All of which raises some serious and troubling questions — the most important of which is, If some of the recent proxy data don’t correlate with the recent instrument data, why exactly should anyone be expected to believe that the older proxy data are accurate? Inexplicably, the attitude here seems to be that even though recorded temperature data show some of the more recent proxies to be wrong, the earlier proxies couldn’t be giving us bad information about the past because . . . well, because they just couldn’t be.

As for those crying foul: They do have a case. The 2001 IPCC report that thrust the hockey stick into prominence made no mention that Briffa’s data showing declining temperatures had been cut off after 1960, nor was the graph that accompanied the report clear enough for observers to notice that the line representing his findings ended abruptly. Instead, Briffa’s incomplete line ended underneath the other lines, which gave the unavoidable impression that there was no meaningful divergence among the different scientists’ proxy data. The decision to excise Briffa’s data didn’t just have an aesthetic impact on the graph: The authors also omitted Briffa’s data from the archive they submitted to the peer-review process, thus making it more difficult for reviewers to object and making it all but impossible for the press to raise questions.

The leaked e-mails suggest that some members of the IPCC were well aware of these inconsistencies — and even may have sought to conceal them. Long before the hockey stick was promulgated, its champions were fighting over its presentation. Following an IPCC authors’ meeting in 1999, Keith Briffa noted that he understood “the pressure to present a nice tidy story as regards ‘apparent unprecedented warming in a thousand years or more in the proxy data’” but acknowledged that “in reality the situation is not quite so simple.” In the e-mails, Briffa seemed well aware that inconsistency among the proxy data might cast doubt on the accuracy of the estimates. “[There are] some unexpected changes in response that do not match the recent warming,” Briffa wrote. “I do not think it wise that this issue be ignored in the chapter.”

At the very least, it appears that Briffa wished to ensure that the IPCC’s presentation contained a caveat conceding that there were some proxy data that contradicted the rest. But, in leaked e-mails, Mann is seen downplaying Briffa’s concerns, arguing that it is important not to give “fodder to the skeptics.” “The problem we all picked up on,” Mann confirms, is that “everyone in the room at IPCC was in agreement that this was a problem and a potential distraction/detraction from the reasonably consensus viewpoint we’d like to show w/ the Jones et al and Mann et al series.” Mann suggested that publishing and featuring in the graph the contradictory proxy data would lead to the “skeptics [having] 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 doubt is scientifically justified,” Mann concluded. The contradictory data were not published.

Quite why any objective observer would presume Mann to be a paragon of virtue has never been adequately explained. In the past few years, he claimed that he was a Nobel Prize laureate until the Nobel Committee explicitly said that he is not; attempted to claim that the National Academy of Sciences and CRU investigations into his conduct and his work have fully vindicated him and his hockey stick when they have in fact done no such thing; and has routinely reserved prerogatives for himself that he is unwilling to extend to anyone else. Mann’s critics are not merely bloggers and contrarians. Professor David Hand, the former president of the Royal Statistical Society who was charged with investigating the “Climategate” scandal, accused Mann of having “exaggerated” the

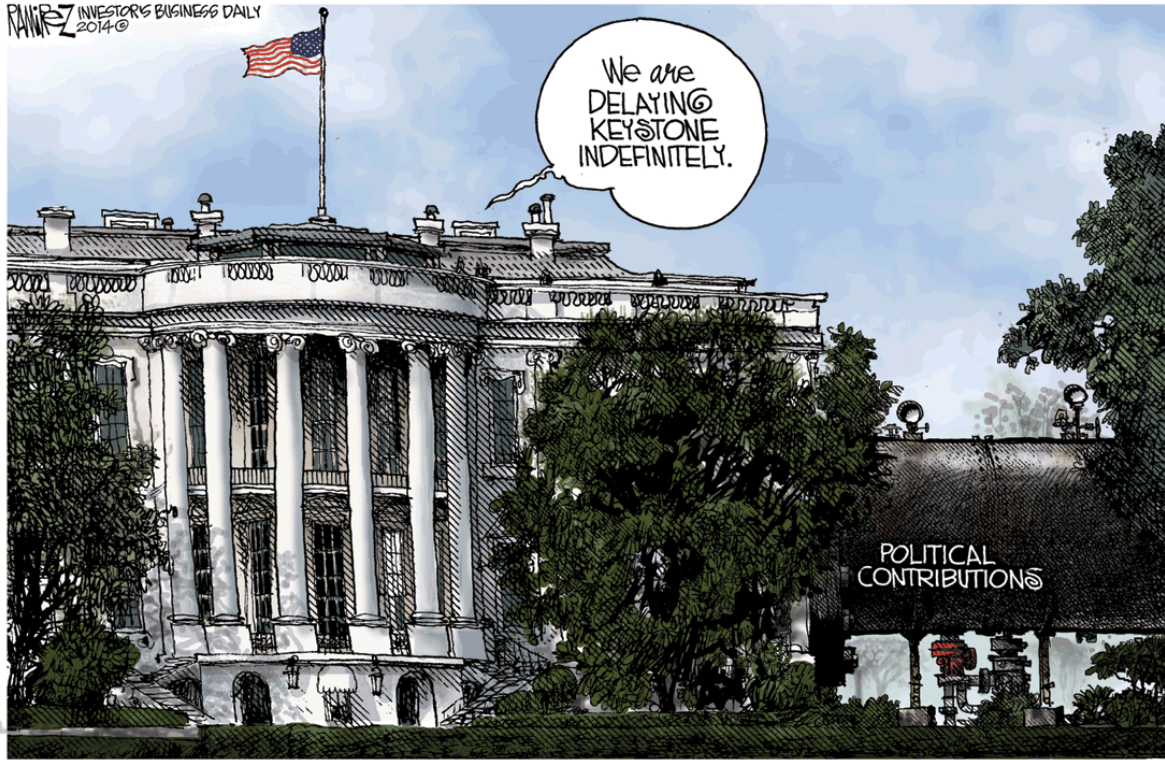
climate-change threat and said Mann had given him an “uneasy feeling” by using “inappropriate statistical methods.” “Had they used an appropriate technique,” Hand said, “the size of the blade of the hockey stick would have been smaller.”

Mann rejected Hand’s assessment, claiming in an interview with the London *Telegraph* that his hockey-stick work had been “reviewed by the US National Academy of Sciences, the highest scientific authority in the United States, and given a clean bill of health.” “The statistician on the panel,” Mann continued, “Peter Bloomfield, a member of the Royal Statistical Society, came to the opposite conclusion of Prof Hand.” Embarrassingly for Mann, Peter Bloomfield refuted this characterization: “A quick rereading of the report,” Bloomfield wrote in an e-mail to Hand, “didn’t reveal any place where I, or any other member of the [NAS] committee[,] reached any conclusion with which you would differ. If you’re aware of any, I’d be glad of a reminder!”

With his frank hostility to free inquiry, Mann has behaved less like a scientist than like a religious figure who feels he has been given the final interpretation of the Bible, knows the Eschaton to be imminent, and has resolved to enforce the blasphemy laws lest anyone risk losing his soul.

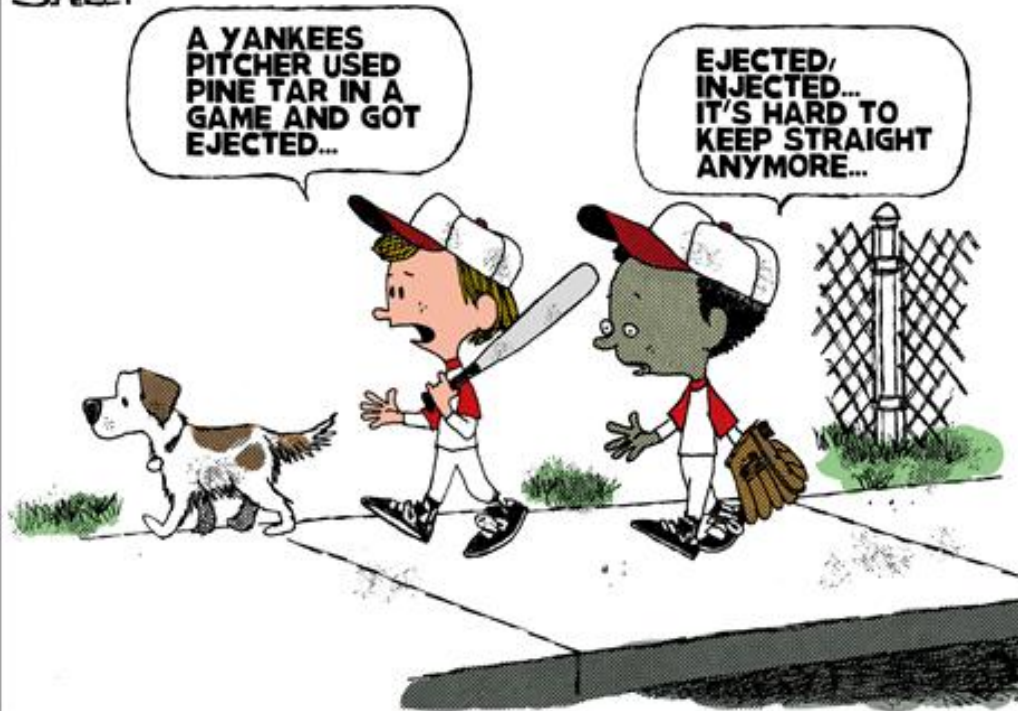
The passions of men are perennially unknowable things, and our age has yet to discredit Elizabeth I’s famous observation about the folly of making windows into men’s souls. But our instincts are as they always were: to accrue power and prestige, and to vanquish our opponents by any means possible. There are few who demonstrate this with as much chutzpah as Michael Mann. In his *Notes on the State of Virginia*, Thomas Jefferson posed a question to the opponents of free expression. “It is error alone which needs the support of government,” Jefferson contended. “Truth can stand by itself.” “Subject opinion to coercion,” he asked, and “whom will you make your inquisitors?”

The answer, Jefferson concluded, was “fallible men” — “men governed by bad passions, by private as well as public reasons.” That’s about the size of it, eh Michael?



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