IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

ROBERT P. BAUCHWITZ, Plaintiff	))	NO. 01336-DR-17 PACES Case No. 640116732
v.	)	
ANN M. ROGERS, Defendant	))	CIVIL ACTION – LAW IN SUPPORT

VOCATIONAL AND SOCIAL IMPACT OF ONLINE JUDICIAL PUBLICATIONS (FOR INTERVIEW FEBRUARY 22, 2023)

PURPOSE

1. The earning capacity of Plaintiff in the above captioned case is once again being reviewed (February 2023). Earning capacity was previously evaluated in 2018 and 2021.

2. In the earlier assessments, Plaintiff had noted the substantial negative effect he attributed to retaliation against him for working on a federal False Claims Act case (loss of academic title in 2004), and from a memorandum opinion published online by a federal court on the case in 2009.

3. Importantly, Plaintiff believes that since those previous assessments, an even more significant development has occurred in 2022 which has further greatly impacted his earning capacity.

4. Specifically, on February 4, 2022, a memorandum opinion about a divorce case involving Plaintiff was published online by the Superior Court of Pennsylvania.

5. In the following sections, Plaintiff reviews the text published about him in the two judicial opinions of December 2009 and February 2022.

6. By providing specific quotes from the aforementioned documents, which appear very high in the search results for Plaintiff's name ("Robert Bauchwitz") in search engines (such as Google), Plaintiff will illustrate the potential for great harm to his employability.[1]

7. Plaintiff will address what he believes is a need for significant, urgent vocational intervention to overcome the harms which he believes are attributable to the online publications at issue.

[1] As well as, with the more recent 2022 divorce-related judicial publication, his ability to socialize.

THE FIRST JUDICIAL PUBLICATION GREATLY EXACERBATED VOCATIONAL INJURY TO THE PLAINTIFF

1. The following is an introduction to Plaintiff's involvement in a United States False Claims Act ("FCA") action, initiated in 2004, to recover federal grant funds believed to have been obtained through fraud.

a. From 2000 through 2002, Dr. Robert Bauchwitz, M.D., Ph.D., then of Columbia University in New York City, assisted science journalist Gary Taubes with an article on various phases of concern in the scientific community over the work of William K. Holloman, Ph.D. of Cornell University Medical College and Graduate School of Medical Sciences and his former graduate student, Eric B. Kmiec, Ph.D.

b. Taubes recommended to the federal Office of Research Integrity (ORI) that they contact Bauchwitz regarding additional potential research misconduct associated with Holloman and Kmiec. ORI told Bauchwitz that they had already been investigating Kmiec's "chimeraplasty" claims, which had received international scrutiny from other scientists.

c. ORI subsequently agreed to proceed with an attempt to recover government funds through a federal False Claims Act suit against the defendants in which Dr. Bauchwitz was to act as relator for the government.[2]

d. The case *United States ex rel Bauchwitz v. Holloman et. al.,* No. 04-2892 (E.D. Pa.) was filed under seal on June 30, 2004, in federal district court in the Eastern District of Pennsylvania (the location recommended by the ORI). The judge for the case was Timothy J. Savage. The Assistant U.S. Attorney who was to work with Dr. Bauchwitz was David Hoffman.

e. Two ORI scientists, Allan Price and John Dahlberg, were to produce a report for the Department of Justice on the science involved. In its summary, the ORI scientists stated:

> "Dr. Bauchwitz' complaint identifies three false claims, as identified above. ***ORI notes that these false claims deal with only a very small portion of the much larger scope of possible misconduct issues that have been linked to Drs. Kmiec and Holloman*** (see footnote 8). The reason for this is that Dr. Bauchwitz

[2] "The **False Claims Act** (**FCA**),[1] also called the "**Lincoln Law**", is an American federal law that imposes liability on persons and companies (typically federal contractors) who defraud governmental programs. It is the federal government's primary litigation tool in combating fraud against the government.[2] The law includes a *qui tam* provision that allows people who are not affiliated with the government, called "relators" under the law, to file actions on behalf of the government. This is informally called "whistleblowing", especially when the relator is employed by the organization accused in the suit." https://en.wikipedia.org/wiki/False_Claims_Act

has limited his claims to issues that he has direct knowledge of." [Emphasis added.]

f. The case ultimately did not proceed to trial in significant part because, in 2010, the judge reduced the time for discovery to less than the parties had agreed, and then rejected a motion to extend it.

g. Nevertheless, in the limited discovery that was performed, the relator/plaintiff, Bauchwitz, was able to obtain by subpoena, definitive evidence of fraud by the defendants.

h. Among the most clear-cut pieces of evidence were written statements made by representatives of the Harvard University Microchemistry Laboratory. The statements described results from the Harvard laboratory regarding amino acid sequencing *that the defendants had claimed was performed by that laboratory*, and which was foundational to the claims that the defendants had made in scientific publications and grants.

i. The Harvard representatives had written:

"**These sequences** [published by the Defendants, William K. Holloman and Eric B. Kmiec] **are not consistent with the data we provided.**"

"... **none of the sequence data we obtained agrees with the data they claimed was from our lab.**"

"**I am confident that there is no other data".**

j. Further assessment of the evidentiary merit of the claims brought by Bauchwitz was assessed after discovery had been curtailed by Judge Savage:

2. After the False Claims Act case for which Robert Bauchwitz acted as a relator, two experts, who had earlier presented comments to the court, reviewed the evidence for two of the three claims, including the one involving the statements by Harvard's Microchemistry Laboratory. They were asked:

a. Based on the evidence and the standards of intent provided in this document, do the allegations in your judgment have merit? In other words, **does the preponderance of the evidence suggest that the defendants have fabricated or falsified scientific claims**?

Expert 1: Yes.

Expert 2: Clearly the data presented includes a demonstration of **data fabrication and falsification** of scientific claims. I would suggest that there is a dangerous mix going on here: Out and out fraud together with ignorance of the truth and selective use of facts for the expressed purpose of substantiating a story(ies) that

allowed the perpetrators to secure tangible assets (e.g., grant funding) as well intangible assets (e.g., standing in the scientific community).

b. A third scientific reviewer noted:

"In every instance the evidence is strong and in many instances it is air tight. The fact that there has been no serious investigation to date shows major problems in the system."

3. Much of the case was dismissed by Savage in December of 2009 based on his interpretations of the law regarding statute of limitations ("SOL").

4. Of note, the U.S. Department of Justice had filed an amicus brief supporting the relator, Bauchwitz, with respect to the statute of limitations issues.

5. Although the U.S. Department of Justice recommended that the judge's rulings be appealed, the lead attorney representing the relator/Plaintiff, Thomas J. McNamara of Philadelphia, did not want to appeal, given his view that the case would be returned to Savage.

Biased release of orders online

6. With respect to the online image of the relator, Robert Bauchwitz, since at least 2011, to the present (February 2023), the opinion written by the federal judge about his dismissing parts of the case due to statute of limitations issues has appeared almost always on the very first page of online search results for the relator's name (Robert Bauchwitz), using several search engines, including the widely used Google.

7. The first notable problem with Bauchwitz' online image after the Savage opinion of December 2009 was that, after a short time, only one of two orders the judge had issued with his opinion remained online.

8. The order that remained published online, through the federal government Government Printing Office (GPO) as well as other sites such as LexisNexis, was the one Savage had made against Bauchwitz, i.e. which had dismissed part of the case based on what Savage claimed were SOL issues.

9. However, a second order which had ruled in favor of Bauchwitz, retaining a grant fraud case against Holloman and Cornell University Medical College, disappeared from appearance online and at GPO after 2012.

10. Selective release of companion orders creating a biased perception of the results of the case on the Internet. Orders as they first appeared in the case docket:

"12/01/2009 Document 117

ORDER THAT THE MOTION FOR SUMMARY JUDGMENT IS GRANTED. IT IS FURTHER ORDERED THAT JUDGMENT IS ENTERED **IN FAVOR OF DEFENDANTS**, THOMAS JEFFERSON UNIVERSITY AND ERIC B. KMIEC AND AGAINST PLAINTIFF.. SIGNED BY HONORABLE TIMOTHY J. SAVAGE ON 12/1/2009. 12/2/2009 ENTERED AND COPIES E−MAILED.(ap,) (Entered: 12/02/2009)

12/01/2009 Document 118

ORDER THAT THE MOTION OF DEFENDANTS CORNELL UNIVERSITY MEDICAL COLLEGE AND DR. WILLIAM K. HOLLOMAN FOR SUMMARY JUDGMENT IS DENIED. SIGNED BY HONORABLE TIMOTHY J. SAVAGE ON 12/1/2009. 12/2/2009 ENTERED AND COPIES E−MAILED.(ap,) (Entered: 12/02/2009)".

11. Note that the caption against the defendants does NOT state "IN FAVOR OF PLAINTIFF".

12. To this day (February 2023), only the order in favor of the defendants and against the relator is visible within the first five to ten pages of search engine results for Robert Bauchwitz (about one hundred links); nothing is seen of the order in his favor.

13. This seemingly highly biased online presentation was brought to the attention of the federal government in 2012, not long after the order appeared online (to the knowledge of the relator).

14. It seemed from discussion with GPO and others (e.g. LexisNexis) that it was the federal judge himself who had the authority to decide what he did and did not publish.

The Savage opinion published online repeats deliberately falsified and defamatory claims against Bauchwitz

15. Even more important than the biased, one-sided presentation of the final orders online, the claims made within that opinion are **falsified and highly defamatory** to Plaintiff Bauchwitz.

16. Specifically, the following are excerpts of statements found in Judge Timothy J. Savage's opinion:

a. "At the request of the United States Attorney's Office, ORI conducted a scientific review of the allegations set forth in Bauchwitz's complaint. Because the research at issue had taken place so many years earlier and ***because it did not view the statements at issue as intentionally false***, ORI concluded that it did "**not believe that evidence is available**" to prove that any of the three claims alleged by Bauchwitz are false."

17. Savage repeated the same claim at the very end of his opinion, in footnote 84:

> "84 ***Because the ORI did not consider the statements at issue intentionally false*** and that it could not prove otherwise, the government did not intervene."

18. However, **what the ORI had <u>actually</u> written** in its report to the DOJ was:

> x. "***Each [of the Relator's claims] has some merit***, but <u>all lack definitive proof of being deliberate falsifications</u>, and ***ORI does not believe that evidence is available*** to provide such proof."
>
> x. "Even if it could be shown that some of the grant applications unequivocally contain the false statements described in the complaint, **<u>ORI believes that the evidence is inadequate and *generally* unobtainable to prove that the questioned statements are intentionally false</u>**".

19. Therefore, the **<u>key, false and defamatory statement</u>** repeated by Judge Savage in his published opinion was that ORI ***<u>"did not view the statements at issue as intentionally false</u>***", when, in reality, the ORI had written, in variations (see preceding), that it believed that the "**<u>evidence is *inadequate* and *generally* unobtainable to prove that the questioned statements are intentionally false</u>**".

20. Thus, ORI did **<u>NOT</u>** conclude that, or "view", the grant statements by the Defendants as ***not intentionally false***.

21. Bauchwitz persevered, after the December 2009 opinion dismissed part of the case, to issue one round of subpoenas. In so doing, Bauchwitz demonstrated conclusively that the "government" (ORI) had been completely INCORRECT about the availability of evidence.[3]

22. Nevertheless, such repeated, published statements by Judge Savage <u>seemed to imply that Bauchwitz was making potentially false or frivolous allegations of fraud</u> against **<u>those the government saw as not having acted with any intent to defraud</u>**.

23. Savage would then make such an inference even harder to miss in the very last statement he made in his opinion (end of footnote 84):

> **"At this point, we do not decide whether the relator can ultimately prevail on the only remaining claim**. See United States ex rel. Milam v. Regents of the University of California, ... (holding that ORI's ***findings*** that the **<u>defendants did not engage in scientific misconduct</u>** and that there was **insufficient evidence** to warrant further investigation was **admissible as an admission by a party-opponent** under F.R.E. 801(d)(2)A))."

[3] Bauchwitz' actions demonstrate, again, why investigators must actually make an effort to obtain evidence, rather than simply issue claims based on assumptions.

24. Thus, with his false analogy to another scientific fraud False Claims Act case, Savage was implying that Bauchwitz had made false allegations against a party the "government" (ORI) had purportedly "***found***" not engaged in scientific misconduct.

25. This last footnote was not only extreme after it was written and published, but it had ***already been used as a threat*** in a settlement conference by Judge Savage:

> "According to what I wrote at the December 16, 2009 pretrial conference that [Relator attorney] McNamara said Savage told him and [Relator attorney] Ferroni:
>
> > "You guys have a long road to hoe – ***have you considered all the hurdles to continue?***"
>
> This led me to wonder, is that really a fair and impartial statement to make to a party's counsel? Were comparable statements made to the Defense counsel?
>
> Judge Savage emphasized one of those hurdles to my attorneys repeatedly. Again, from my notes:
>
> > McNamara said that ***Savage made multiple references to his ORI footnote*** at the end of the summary judgment opinion, i.e. that it could be used in the trial. ... Ferroni then stated that Savage had told them, "I'm just telling you it is devastating".
> >
> > (TJSavage_Judicial_Miscon_Affidavit_for_AttnyRohn_011812)

26. Therefore, Bauchwitz concluded that **Timothy J. Savage** had engaged in KNOWING, PREMIDIATED acts of **serious misconduct**, by **deliberately publishing falsified statements intended to threaten and then gravely injure a litigant** (who would subsequently have been shown to have acted **meritoriously**).

II. THE SAVAGE OPINION FINDS ITS WAY INTO ANOTHER LEGAL MATTER INVOLVING BAUCHWITZ

27. The highly negative impact of the above defamatory claims published online against any individual would be severely damaging to that person's employment prospects. This was well appreciated by the spouse of the target, Bauchwitz, and in a subsequent legal case initiated more than seven years later, a divorce master wrote:

> "Wife admitted that because Husband brought a whistleblower lawsuit against his former employer, he most likely would not be able to obtain employment in the research area" (R.0429a)."[4] (PAA)

[4] To be clear, it was not because Bauchwitz had acted as a False Claims Act relator/"whistleblower", but rather because of the official misconduct by the judge handling the case.

28. Bauchwitz argued in the divorce case that such impact would not be limited to his research area. It is difficult to believe that ANY entity would want to hire what a federal judge repeatedly and publicly implied was a false accuser, who had acted in spite of some prior purported government finding in favor of the defendants. (Even justified "whistleblowers" are generally not subsequently hired.)

29. The harmful impact of the aforementioned statements were cited by the divorce master, Cindy S. Conley, of Dauphin Family Court in Harrisburg PA, as some basis by which to conclude that Bauchwitz (and not, for example, Timothy J. Savage, the judge), had impaired credibility. Conley first quoted Savage's online opinion in her master's report of March 2020 as follows:

> "Because the research at issue had taken place so many years earlier and ***because it did not view the statements at issue as intentionally false***, ORI concluded that it did "not believe that evidence is available" to prove that any of the three claims alleged by Bauchwitz are false. On August 31, 2005, after its fourth motion for an extension was denied, **the government elected not to intervene.** (emphasis added) 671 F. Supp. 2d 674."

30. As noted above, the ORI statements actually do NOT take a "view" or make a conclusion that the defendants' statements were "not intentionally false".

31. It was therefore impossible for the "government" (Department of Justice) to have elected to not intervene on such circumstances as fabricated by Judge Savage.

32. Nevertheless, having not actually investigated the case, or provided due process opportunity for Husband to respond to what she was going to produce in her report, Conley then went on to, in effect, herself fabricate a claim she attributed to Bauchwitz, namely by writing:

> "the ***fact*** that Husband felt it ***necessary*** to **embellish** the importance of the lawsuit by ***implying*** that the Federal government was ***one-hundred percent*** behind it when, in actuality, the Federal government declined to intervene in the suit ***does impact somewhat negatively on Husband's credibility***." (MRep pp.18- 19)."

33. As Bauchwitz noted in appealing Conley's claim to the Supreme Court of Pennsylvania:

> "there is nothing in the actual record that would remotely show any "fact" that Husband "implied" that the U.S. Department of Justice, or any other portion of the federal government, was "100%", or any other percent, behind entering the *qui tam* suit. Again, use of specific quotations, and presentation of search terms used to assess the complete case record, might go a long way towards reducing the discretionary disasters that can be repeatedly imposed by such court officials."[5] (AFR)

[5] Savage, too, could have simply quoted what the ORI had written, as Bauchwitz repeatedly has done, in order to produce an accurate record.

34. Regardless of motive, fraudulent statements by one judge (Savage), appeared to have opened the door for subsequent antagonists (ex-Wife) to achieve seeming impeachment of Bauchwitz, simply by quoting Savage's published false claims, and as necessary making additional "inferences".

35. There was frequently no due process provided for Bauchwitz to respond to or correct the claims made against him by citing to the Savage opinion (such as by Conley's purportedly taking "judicial notice" of his published opinion).

36. Even when Bauchwitz' responses were made in the court record, they do not appear online, and thereby have little to no impact on protecting the litigant from defamations by a judge or any other jurist who might follow.

III. APPEAL OF THE MASTER'S CLAIMS LED TO THE PUBLICATION OF EVEN MORE DAMAGING, DEFAMATORY COMMENTS

37. A Superior Court Memorandum Opinion authored by Justice **Daniel D. McCaffery**, published on the Internet on or about February 4, 2021, makes assertions about Robert Bauchwitz, which Bauchwitz considers to represent pervasive and extremely defamatory falsifications of the record.[6]

38. For the purposes of this writing, Bauchwitz ("Husband") asserts that the appearance of these claims about him high in internet searches for his name render him **essentially completely unemployable**:[7]

> a. "At the time of the 2019 divorce master's hearings, Husband was working part-time "as a substitute teacher earning $52 gross [income] per day. In 2018, [he] had gross annual wages of $1,687." *Id.* at 8 (record citations omitted). *The master's report stated, "Husband* ***made it clear*** *at the hearing* ***that he does not feel he has any obligation to find full- time lucrative employment****[.]*" *Id.* at 47." SuperCt. p.5.
>
> b. "Since separation, the only employment Husband has engaged in is substitute teaching, earning less than $100 a day and working very few days a week. . . . *Husband* ***made it clear*** *at the hearing* ***that he does not feel he has any obligation to find full-time lucrative employment[.]*** SuperCt. p.10.

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[6] Bauchwitz ("Husband" in the following) has already refuted the claims made in the Superior Court's publication in his submissions to the Pennsylvania Supreme Court. ("PAA" and "AFR")

[7] Bauchwitz also asserts that such comments, in particular the highly falsified claims about images of wife's injuries as "evidence", have gravely crippled his ability to have an acceptable social life.

39. The preceding highly fraudulent statements about what it is that Bauchwitz purportedly made "clear" should have been presented with full quotation to his testimony in the record.[8]

40. For example, in his appeal to the Supreme Court of Pennsylvania, Husband Bauchwitz noted that he had made significant efforts to find employment:

> **"The transcript of the hearing and other evidence of record is in no way consistent with the claims of the master**, as repeated by the Superior Court. For example, from the master's hearing:
>
> "[Husband's attorney on direct]: Q. After the entity [Husband's business] crash landed [after Wife left the marriage], […] **did you undertake any efforts to obtain replacement employment**?
>
> [Husband] A. […] I started looking around and came up with this company, JFC [a temporary agency in Harrisburg, PA], and a number of others. So **I ended up going to seven different recruiting firms** and I did --
>
> Q. You went to recruiting firms, seven recruiting firms?
>
> A. Seven recruiting firms, but […] **I really had ten different recruiters working with me at seven firms**." R.0962a-0963a [Font emphasis added.]
>
> Referring to Husband's applications for **full-time** employment with the federal **Food and Drug Administration** (**FDA**), a position that falls within a category potentially relevant to certified fraud examiners (C.F.E.s) for purposes of this case:
>
> "A. … there were some opportunities in the Harrisburg area, what they called the Harrisburg resident [p]ost, I believe is the term. And I made some applications. […] But **I did get rejected from all of the applications**."
>
> "Q. Were there other jobs that you sought out that you never heard back from?
>
> A. [] Many."(R.0964a-R0965a)
>
> Already at the 2017 Support Conference Husband was recorded as saying he was looking for full-time employment. As the Conference Officer recorded in her official report:
>
> "**He [Husband] is seeking a full time job** & has experience as a Fraud Examiner in which he states the staring salary is $44,000/year gross." (ABr.p.20).

41. Even though the intent of Bauchwitz in appealing to the Superior Court was to get a review of whether the claims made by the divorce court were accurate, the Superior Court in its

[8] Judges in the United States have complete immunity from suit for any wrongdoing. This represents a grave flaw in the ability to trust the claims made by any U.S. jurist. However, it is the practice of some search engines to give strong emphasis to publications from U.S. courts.

memorandum opinion extensively quoted the divorce master's report, but not the actual evidence in the record.

42. More than merely assessing the clarity of Bauchwitz' feelings about his obligations, the master and her judicial colleagues, without any citation to actual evidence of record, claimed that it was Husband's *lack of motivation* to find high-income employment that was an issue, and that their treatment for such a problem was to deny him alimony:

> "By recommending that Husband **not** be awarded alimony and, instead, receive 60% of the marital assets in equitable distribution, the Divorce Master noted that ***Husband will be motivated*** **to find employment** close to his earning capacity". SuperCt. p.10
>
> "Husband challenges the master's and trial court's "theory that [he] lacked" motivation to obtain full-time employment. *Id.* at 38. He concludes the trial court's findings lack support in the record. We disagree." SuperCt. p.19.

43. The Superior Court based its support for an implied lack of motivation by Bauchwitz to obtain income (of at least $72,000/year) as follows:

> "While Husband extensively discusses employment in or pertaining to the medical field, he ***wholly ignores*** that he pursued and obtained a paralegal certificate in 2010 and a certified fraud examiner certificate in 2016. *See* Master's Report at 7. At the time of the hearings, Husband had possessed these credentials for, respectively, approximately nine and three years. The trial court found "there was ***no medical evidence*** offered to suggest Husband was prohibited from obtaining employment as a Certified Fraud Examiner, a paralegal, or employment that utilizes his medical education." Trial Ct. Op., 10/9/20, at 11. Husband does not refute this rationale. For all the foregoing reasons, we conclude no relief is due on Husband's claims". SuperCt. p.19.

44. Such "rationale" had been explicitly refuted by Husband and his counsel. As Bauchwitz wrote to the Supreme Court:

> "It was also noted that these **paralegal positions** would be ***entry level*** (outside Husband's prior field of employment) and that the resulting incomes were not relevant to his presumptive earning capacity. (e.g. R.1999a) Nevertheless, Husband has in fact applied for such positions, including through one recruiting firm, and has not received any interviews. (R.1206a)

45. Husband Bauchwitz had also testified that his fraud examiner certificate was not itself a sufficient basis for employment in a new field, e.g. one requiring training and experience such as in accounting or law enforcement. The certificate was an ancillary designation, which in Bauchwitz' case, would apply to a very small number of positions dealing with scientific fraud.

46. In fact, the record showed that Bauchwitz received no interviews for any investigative or fraud-related positions. (For example, see the hearing testimony quoted above.) This outcome most likely reflected the correctness of the points made in this document that potential employers

would not hire someone about whom a federal judge publicly implied had behaved improperly. (See prior section.)[9]

47. Most obviously and much more importantly with respect to the issue of Bauchwitz' continuing employability, who would hire someone about whom a court has written that he feels he has NO OBLIGATION OR SUFFICIENT MOTIVATION TO FIND FULL-TIME LUCRATIVE EMPLOYMENT?

48. Husband further notes that the Superior Court opinion contained multiple harmful, completely unreferenced claims about Husband which **were either demonstrably false** ("ignores", "does not acknowledge", "no explanation", "wholly fails to address", "offers no argument") or were **inappropriate and unnecessarily derogatory, nonspecific opinion** ("lack clarity", "hard to follow", "veer into irrelevant topics"), which clearly would be very harmful to the employment prospects of anyone were they to be published online[10]:

> a. Preliminarily, we observe that portions of Husband's *pro se* brief, 68 pages in length, **lack clarity and sound legal argument**. We ***emphasize*** that **Husband does not acknowledge** the master's and trial court's extensive discussion of the statutory factors for equitable distribution and alimony. As we discuss *infra*, some of **his rationales are hard to follow**, or **veer into irrelevant topics**. Nevertheless, ***we glean*** from his brief the following chief complaints." p.16
>
> b. "***Husband ignores*** ..." p.21, "**Husband provides no explanation**" p.21, "**as Husband wholly ignores**" pp.21-22, "**Husband wholly fails to address**" pp.21-22, "***Husband offers no argument"***, p.25, "**does not deny**" p.18, **"does not refute"** p.24. (Superior Court memorandum opinion).

49. However, in his appeal to the Supreme Court, Husband made **specific quotation to the actual record** of his statements which **completely refute** the **baseless** claims of the Superior Court. (His Petition for Allowance of Appeal and Application for Reargument are cited as if presented here in full.)

50. Husband does not in this document, intended for vocational assessment, present the many pages of specific rebuttal to the unreferenced claims of the Superior Court, as it would create unnecessary further lengthening of the document, and would not change the point that, with such statements published on the Internet, Husband has become greatly less employable, ***even if the conclusions were true***.

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[9] Other factors also cited in the case made it even less likely that Bauchwitz would get interviews for jobs in fraud investigative fields, e.g. his advanced age without having been previously employed in the area.

[10] Not to mention completely inconsistent with the claim by the master being upheld, namely that merely having had an "impressive" education would make one able to find high-income employment.

51. Husband also now believes that his ability to conduct any business in his name will be gravely injured by the publication by the Superior Court of simplistic claims such as:

> a. "Husband testified to a desire to revive his research lab despite the fact that ***his previous efforts in that regard yielded no income*** and ***only expenses***."
>
> b. "Neither of Husband's businesses ever made a profit." p.4

52. With respect to denigrating Husband's business, the Court also failed to check his actual testimony about his "research" business. First, he never stated that he intended to revive it. (Husband stated that he would try to revive his consulting business.)

53. Second, what Husband did do during the trial court case, with respect to his research business, was to provide evidence of why it had been unprofitable, despite the successful production of valuable genetically modified mice:

> "the record showed that he was not only **self-employed,** but had been **quite productive** [writing articles, performing pro bono whistleblower support, creating transgenic mouse lines, etc]. Not making profit in a business is not reasonably equated with lack of effort. Husband noted that he was subjected to **loss of his academic title** without basis after beginning to work with an agency of the federal government, and then the same former employer strongly appeared to have been involved in **tortiously interfering with his licensing of his genetically modified mice as recently as 2017**."[11] (ABr)

54. Thus, the evidence presented by Husband indicating a concern of tortious interference by a former employer associated with prior retaliation in a whistleblower (False Claims Act) case, goes to the actual issue underlying "profitability".

55. Such whistleblower retaliations severely undermine court claims implying Husband merely needed to be forced to work in order to obtain employment and/or profit.

56. Further damaging published statements in the Superior Court opinion included:

> "Although Husband suffered some health issues that restricted what he could ***lift***, he is not prohibited from working. Master's Report at 45. "***Given [Husband's] education***, there is ***no reason*** why Husband should not be able to obtain employment with benefits," and he "has **not adequately explained his failure to obtain profitable employment** since" the parties moved to Hershey for Wife's career. *Id.* at 45, 46."

57. Husband provided "no reason? How is that a fair reading of the record? From the appellate brief submitted to the Superior Court:

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[11] It is also very hard to understand what business this master has in "promoting" that Husband enter into another relationship. (She might also consider if she and the opposing party make much of a persuasive argument for doing so ...)

"Husband testified about **the financial harm to his business from the unexpected separation by Wife in 2017**, and to his extensive post-separation efforts to obtain employment, including through the use of recruiting firms (R. 0962a-0966a). Husband has not obtained high-income employment to the present, not only in his career field ("Wife admitted that because Husband brought a whistleblower lawsuit against his former employer, he most likely would not be able to obtain employment in the research area" (R. 0429a), but in several others as well.

More specifically, Husband testified to **various factors** that he had come to believe might have been **affecting his employability** beyond the involvement in a *qui tam* suit against a former employer, including the **decade without earnings history**, his **lack of experience for high-paying jobs outside of his field**, his **advanced age**, and his **need for accommodations** for medical limitations on work. (R. 0968a-0970a). (ABr. pp.8-10)

"Even the trial court acknowledged that the negative factors cited by Husband might have impacted his ability to obtain lucrative employment. (PAA pp.25-26)

> "while certain circumstances might have prevented Husband from obtaining *lucrative* employment during the marriage, he is not precluded from earning ***any*** wages." (R.0820a)

However, Husband noted:

> "it does matter whether [Husband] can get ***lucrative*** employment. Earning capacity is not merely a matter of all or none, job or no job. Husband concedes that the data show he can be employed in temporary, part-time positions in teaching, clerical roles, and even in limited (non-physical) caregiving. Earning capacity determinations require more." (ABr.p.36)

58. Finally, it also should come as no surprise that many studies strongly support the concerns expressed by Husband and his vocational experts about his employability in the face of the problems noted. For example, with respect to the issue of not having been employed by others in one's 50's, as was the case for Husband:

> "Only half of Americans are steadily employed throughout their 50s. Last year, more than a quarter of workers ages 55 to 59 were out of the workforce, which meant that they didn't have jobs to retire from. ... Unfortunately, among the more than 40 million Americans 50 and older in the labor force, according to a 2018 analysis by ProPublica and the Urban Institute, half of them are likely to be laid off or forced into retirement regardless of income, education level or geography. ... The larger crisis is what to do with all the older-than-50 workers searching for gainful employment. This is one of the worst times to be a worker in the twilight of a career. ... **A Brookings Institution report found a strong relationship between holding steady employment in one's 50s and working in their 60s and beyond.** So interventions to support older workers must start earlier on, even in one's 40s." Katrin Park, USA Today Dec 26, 2022.

59. Given the preceding statements published about Bauchwitz[12], which appear very high among Internet search results for his name, he asserts that, even without any assessment of the truth or falsity of the statements made by the Superior Court about him, the publication renders him effectively **unemployable in any relevant full-time position, and thereby gives him a full-time earning capacity near zero**.

60. As Husband noted in his appeal to the Supreme Court of Pennsylvania:

> "the [Superior Court] Panel's **conclusory misrepresentations are published on the Internet.** Unfortunately, what the Superior Court has written could severely injure Husband's reputation and employability, even compared to the effect of the [FCA] *qui tam* case. Indeed, the memorandum so **defames Husband or places him in a false light**[15] that Husband does not believe he could possibly gain the employment these court officials claim must follow from his "impressive" Harvard education.
>
> Consequently, Husband believes that RETRACTION of the Superior Court's memorandum decision is warranted."
>
> [15] By way of another important example, the Panel wrote that Wife had "failed" to go to the police with her decades old "images", but did not mention Husband ***had*** made police reports about assaults by Wife".

Further harms to Bauchwitz from the Superior Court's selective writings

61. The harms to Husband/Bauchwitz from the online publication of the Superior Court have extended well beyond a gravely enhanced crippling of his employability, as well as his capacity to be successful in any self-employed business in his own name.

62. McCaffery, apparently **with the acquiescence of his Superior Court panel colleagues, Justices Bender and Collins**, also grossly falsified the record by omitting vital information regarding marital misconduct, which claims were not only extremely biased against Husband, but have also greatly harmed his ability to socialize with others:

> "The divorce master also stated the following concerning any marital misconduct by either party:
>
> 'Both testified that the parties would, not frequently, but from time to time, engage in physical altercations. ***Wife submitted photographs evidencing some of the injuries she sustained at Husband's hands[.]*** Wife testified credibly that sometimes she instigated the violence and sometimes Husband instigated it. Wife also admitted that ***she never reported the violence to the police***. ***Husband did not deny Wife's allegations***

[12] As well as several others not specified here from the Superior Court opinion.

specifically[,] but testified that "pretty consistently [Wife] instigates and escalates."[13] SuperCt p.7

63. However, with respect to fault for divorce generally and misconduct, in his appeal to the Pennsylvania Supreme Court, Husband noted that:

> "Husband next addresses the [Superior Court] Panel's treatment of one 3701(b) alimony factor upon which he filed an appeal: marital misconduct, (used synonymously here with "**fault**" relevant to the separation and divorce). (See 23 Pa. § 3701(b)(14)). These issues will also go to credibility assessments.
>
> Regarding fault generally, Husband outlined in his appeal brief that:
>
> "1) Of great importance, there is no question from testimony that Wife Ann M. Rogers, M.D., was the initiator and sole employer of physical violence and assault against Husband after 2002, i.e. specifically in 2016 and 2017. (Summarized at R.1783a-1787a). Those dates are obviously of material relevance to a separation occurring in 2017.
>
> 2) Acts of physical violence are relevant for fault considerations under Pennsylvania law with respect to alimony." ...
>
> 3) The fault Husband asserts as directly responsible for the separation had to do with what had happened to his father-in-law upon his passing on August 17, 2017 [the last day that Husband and Wife lived together]." (ABr.pp.50-51). A timeline of the circumstances of the unexpected separation and divorce as influenced by the death of Husband's father-in-law [is as follows]:
>
> Wife and her mother were in conflict with her father two months before his passing; Wife then made what Husband took to be threats to his father-in-law's life and objected; his father-in-law passed away; Wife spontaneously made assurance to Husband that her father would be tested to assure others that his medications had not been withheld; Wife left the marital home to be with her mother; Wife never again returned to live with Husband. (R.1372-1373a) Husband believes that **these facts constitute prima facie evidence of a causal connection** that should be explored by allowing discovery.
>
> 4) Husband has argued throughout the case, including in his appeal, that fate of Husband's father-in-law directly pertained to Husband's interpretation of his safety in remaining with Wife. Regardless, as Husband noted in his appeal: "since the divorce court may have not wished to wade into potential criminal matters, then Husband [suggested] that it could have taken adverse inference from Wife's failures to make

[13] "Evidencing". These jurists, had they made the slightest attempt to examine the record, would have easily observed that Bauchwitz **strongly contested** that such images were "evidence" of anything except further fraud by wife and her counsel. (For example, Husband believes that the red material seemingly flowing down the nose of wife, in an image, is almost certainly a SHADOW, for which the color balance was altered in the image.) It is impossible to believe that legitimately motivated justices would have made such claims as "evidencing", as if unchallenged evidence had been placed into the record by Conley.

response on this topic when such questions were posed. Wife did not even assert privilege with respect to documents requested in discovery, nor did she attempt to counter any of Husband's claims on the matter."

5) Husband, by contrast, 1) disputed the credibility of Wife's images, asserting that they appeared manipulated - an area with which he has had professional experience, or were not interpretable (the 2002 images); 2) they were also not temporally relevant, the last having been taken fifteen years prior to separation; and 3) the identity of the assailant was not established with respect to the images, which itself has significant implications. Wife's counsel could have cross-examined Husband about the images, but did not do so.[14] Nevertheless, Husband did raise objections to the images as exceptions. (R.0728a)" (PAA)

64. Some of the evidentiary concerns of note as raised in Husband's petition for allowance to appeal made to the Pennsylvania Supreme Court were:

(1) There were issues of **serious marital misconduct alleged against Wife by Husband** at times relevant to separation (in 2016 and 2017). Nevertheless, the **evidence presented was overlooked by each of the courts**, despite such being a factor specific to alimony.

Instead of addressing the evidence and law surrounding fault for the divorce, the Superior Court simply quoted the master's report (SuperCt. p.7), which **attempted to give credence to images from Wife, to which Husband clearly objected on several grounds**, including temporal (decades old), Wife as assailant, and interpretability. (ARBr pp.28-29; PAA pp.28-29). The outcome of the master's reference to **material challenged as untrustworthy and irrelevant**, at best, was to offset a need to consider numerous serious and time-relevant concerns of Wife's misconduct.

Husband further specified in his appeal that the master, as if testifying on behalf of Wife, wrote in her report regarding **Husband's evidence of Wife's assaults of 2016 and 2017**, that Husband had submitted such evidence to the police after Wife left the marriage "to bolster Husband's position in the divorce action". (PAA p.40)

Yet the real question is not the imputation of some improper motive in submitting evidence (made within the statute of limitations), but rather, whether the evidence Husband submitted did in fact bolster his case. **The quality of the evidence of record can be judged by the public, and certainly by this point should have been so by the trial and Superior Courts**. Therefore, the Supreme Court should finally rectify these matters of evidentiary handling of marital misconduct issues in order to preserve the credibility of its oversight process.

[14] Husband suspects because Wife's counsel had heard from Husband's counsel that Husband intended to raise the aforementioned objections.

65. Bauchwitz subsequently has had an expert review done of the images he received from his attorney, which had been provided by ex-Wife's attorney.

66. As Bauchwitz informed ex-Wife's counsel on January 11, 2023:

> "I have now had forensic examination made of the images you gave to my then counsel. The conclusion of my expert's report states:
>
> > "Based on the forensic analysis of the imagery in this case, I find the following to a high degree of forensic certainty: The analyzed photographs are **not consistent with authentic original images** and **should not be relied upon as an accurate record of the subject pictured**. ...". (November 15, 2022.)"

67. Therefore, the injuries that Bauchwitz must now face include his reputation having been so publicly besmirched, that he cannot maintain new social connections once he provides his full name.

JOB APPLICATION DATA

68. From November 2017 through February 2023, at least 123 job applications were made by Husband.[15]

69. Only 4 part-time ("PT") jobs resulted (1 substitute teaching, 1 clerical, 1 health assistant, 1 lecturing).

70. Data concerning job applications were already submitted in this case in 2018 and 2021.

71. Below, an update of data is made from the time since the Superior Court published its February 4, 2022, opinion. 20 applications for positions were made during that time. No employment was obtained.

jobs applications since Superior Ct memo to web; 032021-123122 and 2/4/23 (2 years)		20		
	lecturer	8	12/1/22-12/8/22 (7); 2/4/23 (1)	no response
	content writer	2	12/13/22	1 rejection letter 122322
	research admin/clinical trial admin	2	8/15/21 and 12/16/22	no response

[15] It was actually more than that, since only one application was attributed to each recruiter, when it is known that several did more than one.

	research more generally	5	4/13/21-4/16/21	no response
	tutoring	2		1 interview 4/14/21 from China - govt stopped the high paying program
	chairman (internal candidate)	1	8/30/22	1 rejection letter

72. Of note with respect to online appearance and associated background checks is an interview in 2022 for a full-time position at the university at which Bauchwitz was already employed as an adjunct lecturer in Wilmington, Delaware. Some history of the attempt to obtain this full-time employment follow.

73. In the summer of 2020, Bauchwitz was invited to an interview for an adjunct teaching position in biology at Wilmington University in New Castle County, Delaware.

74. This was the first interview Bauchwitz had received for a position related to his prior career as a biomedical scientist and lecturer since August 2017, (when Ann M. Rogers had left the marriage unexpectedly in August 2017 after the suspicious death of her father).

75. During that time, Bauchwitz had applied for dozens of jobs which had been in the fields of science or teaching in higher education. He had never before received any interview for any of them, nor any response except for some rejection letters.

76. Bauchwitz did not get the adjunct lecturer job at Wilmington University in 2020 after the two interviews he was given.

77. By the end of the summer of 2020, the COVID-19 pandemic had been underway for about a half year. From what he understood, there was a need for new faculty who had some experience teaching online. Bauchwitz did not have such experience, so someone else was given the position.[16]

78. Nevertheless, during the summer of 2021, representatives of Wilmington University reached out to Bauchwitz about potentially teaching as an adjunct lecturer.

79. The reason given was that they now wanted to reopen their facilities and needed someone to teach laboratory courses "face-to-face" (f2f), which Bauchwitz was willing to do.[17]

[16] Nevertheless, as far as he could tell, the pandemic had prompted some faculty to cease teaching for reasons of their own safety, and thereby he believed that this might produce more job openings. However, no interview requests have come from any other institution.

[17] It seemed that during the pandemic, the demand for online teaching had increased, while the desire of faculty to commute had decreased. Bauchwitz was fortunate enough to live relatively close to and about equally between two of the main campuses of Wilmington University and was quite willing to teach f2f. He believed that biology students would benefit from learning more about how to work safely in the conditions of a viral pandemic.

80. Bauchwitz accepted the job and began to teach as an adjunct lecturer at Wilmington University in August of 2021.[18]

81. While an adjunct lecturer, Bauchwitz continued to apply for full-time lecturer positions at local institutions, since the pay was quite low at Wilmington University. (See table, above.)

82. Nevertheless, it appeared that Bauchwitz would be getting at least two courses a semester to teach, thereby generating $7000/semester. (This was the case throughout 2022, for the Spring and Fall semesters.)

83. In the summer of 2022, Bauchwitz received an offer from the chairman of his department at Wilmington University, to apply for the position of full-time chairman. The chairman had just been promoted, leaving the position open.

84. This outcome was exactly what had been proposed as a route to full-time employment in 2017 by a recruiter with whom Bauchwitz had worked in Harrisburg, PA: get a low-level job, and then try to move up within the organization.

85. The income for the full-time position of chairman was to be $76,000/year.

86. Bauchwitz was interviewed by a hiring committee on August 30, 2022.

88. On the morning of August 30, 2022, Bauchwitz received messages that various online profiles of his, including LinkedIn, were being viewed by others, in particular by a member of the committee which was interviewing him later that day.

89. Bauchwitz had no problems with the interview, to his knowledge. His cv, experience, and recommendations for improvements to the curriculum seemed well received.

90. However, contrary to expectations, Bauchwitz then heard nothing, initiated by the university, about the position and a follow up interview throughout September 2022.

91. On October 7, 2022, Bauchwitz had a telephone conversation with the person who had been responsible for his hiring as an adjunct. The adjunct hiring manager had not been involved with the full-time hiring process, so he did not know Bauchwitz' status, but he did relate the following:

a. He told Bauchwitz that that the school was doing a "**background check**" on him.

b Bauchwitz asked him what he had thought about Bauchwitz' online image when he had recommended Bauchwitz' hiring as a part-time lecturer. He noted that ***he had not***

[18] By early 2022, the pandemic had against flared, so I had to teach online for half a semester. I did this without issue.

actually examined Bauchwitz' online image, since he felt Bauchwitz' cv was particularly strong for their institution.

c. He noted that the very first Google search he had done on Bauchwitz **was while we were speaking on the phone** at that moment.

92. On November 3, 2022, Bauchwitz received the following rejection letter from Wilmington University:

> "On behalf of Wilmington University, thank you for interviewing for the Assistant Professor and Chair, Biology position.
> The candidates selected for the interviews were all excellent, making the final decision a difficult one. At this time, another candidate has been selected for this position.
> Thank you for your interest in employment with Wilmington University and we wish you luck in your future endeavors.
> Sincerely,
> The Human Resources Department Wilmington University"

93. Of note, subsequently, instead of having two full courses to teach in the Spring of 2023, Bauchwitz' course load was reduced to a single course.

94. Furthermore, additional teaching capacity by others of the same course Bauchwitz taught may have been added, such that Bauchwitz only obtained 4 of the 37 students taking his remaining course in the Spring of 2022.

95. This development led to a reduction of Bauchwitz' income from $3500 for the full course, to $2380, as a result of the reduced student enrollment.

96. Consequently, after having been interviewed for a full-time position, and having then undergone some sort of "background check", Bauchwitz' subsequent income has dropped from $7000/semester ($14,000/year) to $2380 for the semester. (An income decline of 66% or $4620/semester.)

97. There has been no discussion or offer for Bauchwitz to teach during the Summer or Fall semesters of 2023.

98. Therefore, Bauchwitz believes that something about the background check and/or online review of him significantly harmed his hiring, since his cv and ability to teach were already known by the university, and presumably had been taken into account when he was offered an interview for a FT position.

99. Consequently, the sole seeming exception to Bauchwitz' getting hired for a seemingly appropriate role, even though only part-time, was the Wilmington University adjunct lecturing position for which, as noted above, the responsible hiring manager stated that he had <u>not</u> reviewed Bauchwitz online.

100. Such failure to review a potential hire's online image would likely be rare, consistent with no other interview requests being obtained for lecturer positions to which Bauchwitz has applied.

101. Consequently, Robert P. Bauchwitz believes that he does not have relevant, full-time employment capacity, in particular so long as the two judicial opinions continue to appear online near the top of search results for his name.