

ACLU of Virginia

530 East Main Street, Suite 310 Richmond,
Virginia 23219 (804) 644-8022

AAUP

AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS

May 6, 2010

The Rector and Visitors of the University of Virginia
John O. Wynne, Rector
University of Virginia
One Commercial Place, Suite 1420
Norfolk, VA 23510

Dear Mr. Wynne:

As organizations dedicated to the principles of academic freedom and free and robust scientific debate, we were dismayed to learn of Attorney General Ken Cuccinelli's civil investigative demand (CID) to the University for materials related to Dr. Michael Mann. We urge you to use every legal avenue at your disposal to resist providing the information demanded in the CID.

It is our understanding that the CID must be based on suspicions of fraud in Dr. Mann's applications for certain state-funded grants. The Attorney General's use of the Virginia Fraud Against Taxpayers Act in this context has the potential to severely chill academic debate. The breadth of the request from the Attorney General suggests strongly that documents and e-mail communications that were part of an ongoing scientific discussion might be taken out of that context, and used to create an impression of wrongdoing.

The nature of scientific research is to generate debate both within and without the scientific community. Scientists within a field frequently disagree about methodological questions such as how data should be collected, which data are relevant, and how data should be analyzed and interpreted. If scientists refrain from novel methodological approaches because they may be characterized as "fraudulent," then scientific research, and, by extension, society as a whole, will be the loser.

Independent investigations by the National Research Council at the National Academies of Science and the British House of Commons' Science and Technology Committee have found no evidence of wrongdoing by Dr. Mann. Most recently, an investigation by Penn State University found that "there exists no credible evidence that Dr. Mann had or has ever engaged in, or participated in, directly or indirectly, any actions with an intent to suppress or to falsify data."

These findings strongly suggest that the allegations of fraud actually reflect disagreement with the analysis and interpretation of data, rather than evidence of

deliberate falsehood. Such disagreements are the legitimate subject of scientific discussion, not a basis for criminal or civil penalty. Given the results of these investigations, it is hard to conceive of the Attorney General's request for communication records that are between five and eleven years old (or older, if they "relate" to those documents) as anything but a "fishing expedition" aimed at discrediting Dr. Mann's conclusions, rather than pursuing any reasonable suspicions of malfeasance.

We know that the University is strongly committed to academic freedom. It is the University's obligation to protect academic freedom by seeing that legal tools such as this CID are not used to intimidate scientists whose methods or conclusions are controversial. We therefore urge you to take advantage of Virginia Code § 8.01-216.18 (B), under which the University may petition the circuit court to modify or set aside the CID. We stand ready to assist if we may be of use to the University in this process.

Thank you for your attention to this matter.

Sincerely,

Handwritten signature of Martha S. West in cursive, with the initials "MSW" circled in the middle of the signature.

Martha S. West
General Counsel
American Association of University Professors

Rebecca K. Glenberg
Legal Director
ACLU of Virginia

Cc: Paul Forch, General Counsel, University of Virginia