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Overstock.com CEO Patrick Byrne Loses 'Deep Capture' Libel Suit



Defendant Mark Mitchell: "the truth was of no consequence"

No libel suit victory is worth celebrating, not even the famous suits against [the anti-Semite Henry Ford](#) and the [red-baiter Westbrook Pegler](#). The same goes for the C\$1.2 million libel judgment [just awarded against Overstock.com CEO Patrick Byrne](#) and his minions, for unleashing a campaign of lies against a Vancouver businessman.

While occasionally used to advance the cause of truth, as they were against Ford, Pegler and Byrne, more frequently libel suits are used to punish and harass reputable journalists. This is one of those rare cases when a libel suit was used against a corporate astrotufling site dedicating to spreading kooky conspiracy theories and Trumpesque smears.

In a scathing decision released on May 6, a Vancouver court found

About Me



Name:
Gary Weiss

I'm a journalist and author. My latest book is *AYN RAND NATION: The Hidden Struggle for America's Soul* (St. Martin's Press: Feb. 28, 2012). My previous books were *Wall Street Versus America* (Portfolio: 2006) and *Born to Steal* (Warner Books: 2003). I was an investigative reporter and Wall Street writer for BusinessWeek, a contributing editor at Condé Nast Portfolio, and have written for the Daily Beast, Parade magazine, Salon, The Street.com, Fortune.com, Barron's and many other publications. I was an adjunct professor at Columbia University's School of Journalism. Follow me on Twitter [@gary_weiss](#)

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Byrne and his "Deep Capture" faux-journalism venture had fabricated lurid accusations of criminal conduct against a Vancouver businessman named Aly Nazerali. The damage award consists mainly of punitive and aggravated damages, and the judge found that the conduct of Byrne and his minions was so egregious that he slapped a permanent injunction on the defendants.

I've written about Byrne quite a bit in the past because he was the very worst of Corporate America, from his bizarre stock-market conspiracy theories to his [well-documented accounting games](#), which he countered by vicious personal attacks on critics and the media. He is a kind of small-bore Donald Trump, a "born on third base kind of guy. Byrne lies so frequently and with such gusto that it's hard to say if he can distinguish fact from fiction. He is on [indefinite leave from Overstock](#) because of a Hepatitis C infection, a disease ordinarily caused by intravenous drug use—or, if you believe him, a wound sewn up by "barefoot doctor in China."



Judd Bagley after his arrest for forgery

Byrne's main vehicle to attack his critics was his Deep Capture website, which was created for him by his PR man, a [convicted forger and drug addict](#) named Judd Bagley, and the ex-journalist Mark Mitchell, who was fired several years ago from his former job at Columbia Journalism Review. (Bagley went back on the Overstock payroll before the Nazerali articles were published. He was dismissed from the case, as was Overstock itself.)

The decision, which I've embedded at the bottom of this blog item, is worth reading for anyone who has followed the erratic career of this CEO, who lately has reinvented himself as a Bitcoin advocate. Long before this suit was filed, Byrne was noted for his rich fantasy life. Once he recounted how a gangster straight out of a *film noir* once sat down next to him at a cafe and made threats out of the side of his mouth. He fancied himself as "Wall Street's worst enemy," and he expended considerable effort finding journalists dumb enough to believe him (his only success outside Utah was Cade Metz of Wired).

The libel decision is harsh. In justifying the award of punitive damages, the judge pointed to the extreme malice shown by the defendants, "the overt animosity, even hatred of the plaintiff, expressed by Mr. Byrne," their "reckless indifference for the truth," their "reckless disregard for the reputation of non-parties," and Mitchell's creepy attempt to blackmail Nazerali, contained in an email published in the decision.

Among the highlights, so to speak, of the decision:

- "Mitchell did not attempt to contact the plaintiff before posting the

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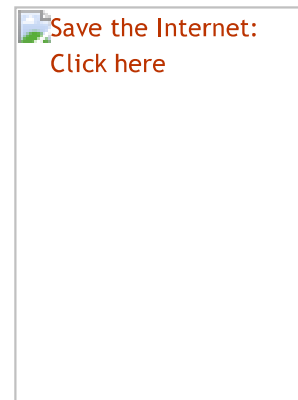
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Articles;" and blew off Nazerali's effort to get him to remove his lies. "No effort of consequence was made after Mr. Nazerali contacted Mr. Mitchell to review the Articles to determine if they were false. On the contrary, Mr. Nazerali's approach to Mr. Mitchell was treated with scorn."

- Byrne said to Nazerali during a deposition, in the presence of the court reporter and parties: "I know your kind, you are not the kind that does the dirty work themselves. You employ others to do your dirty work. I hate your kind of people."
- Mitchell emailed Byrne "this is going to be fun" and said, "I am open to changing the story if he can provide other verifiable information that would be valuable" and "I might even suggest that I will be willing to remove his name from the story altogether if he were to provide me with, say, trading records" on a "global terrorist."
- Mitchell added: "if Nazerali agrees, nothing lost, after he gives me the information I will just put him back in the story. Sleazy, but, well it is what it is";

Sleazy is putting it mildly. The decision concluded:

Mitchell, Byrne and Deep Capture LLC engaged in a calculated and ruthless campaign to inflict as much damage on Mr. Nazerali's reputation as they could achieve. It is clear on the evidence that their intention was to conduct a vendetta in which the truth about Mr. Nazerali himself was of no consequence. Their mission was to expose what they conceive to be corrupt business practices damaging to the global economy. Mr. Nazerali became a convenient means to that end, even when he himself could not be demonstrated to be corrupt.

The judge went on to blast the plaintiffs for abusing the discovery process. Though Nazerali was the subject of an aggressive and protracted pretrial examination by Byrne's lawyers, they didn't produce a shred of evidence at trial. "The reasonable inference to draw is that they knew from the beginning of the trial that they could not justify the Articles' false and extravagant language. Their approach to the defence of the action was an attempt to intimidate the plaintiff and to humiliate him into abandoning his lawsuit."

"The tortious misconduct of Mitchell, Byrne and Deep Capture LLC demonstrates an indecent and pitiless desire to wound," the decision continued.

The decision goes on to impose a permanent injunction on Mitchell, Byrne and Deep Capture, as well as Google, given the likelihood that they will seek to evade payment of the judgment, as well as their "apparent intention to inflict as much damage on the plaintiff." The judgment also provides for imposition of costs, which means that Nazerali can petition the court to award him his legal fees.

The verdict, while not in the megabucks frequently awarded against U.S. defendants, is large, perhaps even a record, by Vancouver

standards. At the current rate of exchange it comes to about \$925,000 (U.S.), which is well within the capacity of Byrne's trust fund. His father was the insurance mogul John J. Byrne.

Like I said, no libel verdict is worth celebrating, not even this one, brought by the victim of faux journalism written by a faux journalist in the pay of a deranged CEO. I hope that this one doesn't become weaponized against real journalists who have written real articles about bad people. If that happens, it will once again be a situation in which Byrne, [described a decade ago](#) as a "menace" by Joe Nocera of the *New York Times*, has stuck it to the press.

[Altaf Nazerali vs Mark Mitchell Et Al - Reasons for Judgment](#) by [Sam E. Antar](#)

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