

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOHN R. LOTT, JR.,)	
)	DRAFT 2/26/2008 2:27 PM
Plaintiff,)	
)	Case No. 06 CV 2007
STEVEN D. LEVITT and)	Judge Castillo
HARPERCOLLINS PUBLISHERS, INC.)	
)	
Defendants.)	

FIRST AMENDED COMPLAINT

Plaintiff John R. Lott, Jr., by his attorneys for his First Amended Complaint against Defendants Steven D. Levitt (“Levitt”) and Harper/Collins Publishers L.L.C. (“HarperCollins”) states as follows:

COUNT I: Defamation *Per Se*

For his first cause of action against Levitt and Harper/Collins, Plaintiff states:

The Parties

1. Plaintiff is a citizen and resident of Burke, Virginia. He received his doctorate in economics from UCLA and has held positions at several prestigious universities, including Stanford University, Rice University, UCLA, University of Pennsylvania, University of Chicago and Yale University. He was a resident scholar at the American Enterprise Institute in Washington, D.C. and currently holds a position at the University of Maryland.
2. Plaintiff believes, and on that basis alleges, that Levitt is a citizen of Illinois, residing in or near Chicago. He is employed by the University of Chicago as a Professor of Economics. He is one of the two co-authors of the book *Freakonomics*.

3. Plaintiff believes, and on that basis alleges, that, HarperCollins is a Delaware corporation with its principal place of business in New York City. Harper Collins is a book publisher and is the publisher of *Freakonomics*.

Jurisdiction and Venue

4. Federal court subject-matter jurisdiction is based on diversity of citizenship, 28 U.S.C. §1332(a). Since Plaintiff is a citizen and resident of Virginia, and (Plaintiff believes, and on that basis alleges, that) Levitt is a citizen and resident of Illinois and Harper/Collins is a citizen of Delaware and New York, there is complete diversity of citizenship. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
5. Venue is proper in this District because a substantial part of the events and omissions giving rise to Plaintiff's claim arose here. 28 U.S.C. §1391(a)(2).

Plaintiff's Publications In The Field Of Economics

6. Plaintiff has published extensively in the fields of law and economics, and economics generally. For over 20 years, he has established a reputation for exacting, credible, and reliable economic analysis. He has gone to great lengths to consistently share his data and his empirical methods many times, even before research has been published, precisely to allow others to replicate his research. He has written numerous books and articles on the subject of gun control, including *More Guns, Less Crime; Analyzing Crime and Gun Control Laws* (University of Chicago Press 1998, second edition 2000) and "Crime, Deterrence, and Right-to-Carry Concealed Handguns," co-authored with David Mustard, 26 Journal of Legal Studies 1 (January 1997).

7. Plaintiff has conducted extensive research and analysis on the statistical relationship between laws regulating the right to use, carry or own guns, and serious crime in the United States. Plaintiff has reached the conclusion that laws permitting individuals to carry concealed weapons result in a statistically significant and provable reduction in serious crime rates, including murder, rape, assault and robbery.

Freakonomics

8. In about April 2005, *Freakonomics* by Levitt and Dubner was published by HarperCollins. The book has had extraordinary success. It has been published in a revised and expanded edition, and Plaintiff believes, and on that basis alleges, that the book has sold more than three million copies in the aggregate. Plaintiff believes further, and on that basis alleges, that, copies of the book have been sold in every one of the 50 States of the Union and in many foreign countries. Plaintiff also believes, and on that basis alleges, that, the book also has been translated into several foreign languages. Plaintiff believes, and on that basis alleges, that Levitt has received royalties from *Freakonomics* in an aggregate amount exceeding \$1 million and that Harper/Collins has made millions of dollars from sales of the book.
9. *Freakonomics* has been purchased and read by two very different audiences. One of those audiences consists primarily of academics trained in economics, statistics, econometrics and/or the law, and their students (“Academics”). The other audience is composed primarily of lay readers who are not so trained and are not so studying. Plaintiff believes, and on that basis alleges, that, Levitt and

HarperCollins of *Freakonomics* intended for the book to have those two audiences.

Defamatory Statements In *Freakonomics* Pertaining To Plaintiff

10. Part of the success of *Freakonomics* is attributable to inclusion in the book of cleverly written vignettes and stories – truthful or otherwise, defamatory or otherwise. One of those vignettes and stories relates to Plaintiff. It appears at pages 133-34 of the original edition and is repeated verbatim in the revised and expanded edition at pages 121-22. It reads as follows:

Then there is an opposite argument – that we need *more* guns on the street, but in the hands of the right people (like the high-school girl above, instead of her mugger). The economist John R. Lott, Jr. is the main champion of this idea. His calling card is the book *More Guns, Less Crime*, in which he argues that violent crime has decreased in areas where law-abiding citizens are allowed to carry concealed weapons. His theory might be surprising, but it is sensible. If a criminal thinks his potential victim may be armed, he may be deterred from committing the crime. Handgun opponents call Lott a pro-gun ideologue, and Lott let himself become a lightning rod for gun controversy. He exacerbated his trouble by creating a pseudonym, “Mary Rosh,” to defend his theory in online debate. Rosh, identifying herself as a former student of Lott’s, praised her teacher’s intellect, his evenhandedness, his charisma. “I have to say that he was the best professor that I ever had, s/he wrote. “You wouldn’t know that he was a ‘right-wing’ ideologue from the class. . . . There were a group of us students who would try to take any class that he taught. Lott finally had to tell us that it was best for us to try and take classes from other professors more to be exposed to other ways of teaching graduate material. Then there was the troubling allegation that Lott actually invented some of the survey data that supports his more-guns/less-crime theory. Regardless of whether the data were faked, Lott’s admittedly intriguing hypothesis doesn’t seem to be true. When other scholars have tried to replicate his results, they found that right-to-carry laws simply don’t bring down crime.

11. The vignette and story relating to Plaintiff and quoted above contains statements about him, including but not limited to the following, which are untrue and are defamatory:
 - a. There exists a “troubling allegation that Lott actually invented some of the survey data that supports his more-guns/less-crime theory.”
 - b. Plaintiff’s survey “data were faked.”
 - c. “When other scholars have tried to replicate [Plaintiff’s] results, they found that right-to-carry laws simply don’t bring down crime.”
12. Levitt and HarperCollins knew, or should have known, when the statements quoted above were written and published that they were untrue and defamatory or, in the alternative, Levitt and Harper were recklessly indifferent, when the foregoing statements were written and published, as to whether the statements were true or false and as to whether they were defamatory.
13. Particularly (but not exclusively) to the readers of *Freakonomics* who are Academics, the adjective “invented” in the context of analysis of statistical data means or implies that the data was fabricated and is fictitious, and the adjective “faked” in this context means or implies that the data and results were concocted and counterfeit, and were designed to deceive and cheat. Further, the verb “to replicate” with respect to statistical studies means or implies duplicating exactly. Thus, particularly (but not exclusively) to Academics reading *Freakonomics*, the statements in that book pertaining to Plaintiff mean or imply that he fabricated his data and that it was fictitious, that he used counterfeit data which he concocted with the intent to deceive and cheat, and that the statistical results he reported

could not be duplicated by anyone else analyzing in exactly the same way as he did the identical data he used.

14. The assertions that Plaintiff “invented” data supporting his books and papers, that he “faked” such data, and that his results could not be “replicated” (a) constitute an attack on his integrity and honesty in his profession as economist, scholar and researcher, and (b) impute to him a lack of ability that prejudices him in his profession. Particularly (but not exclusively) an Academic reading or hearing assertions that an economist, scholar and researcher “invented” data supporting his books and papers, that he “faked” data, and that his results could not be “replicated,” would immediately conclude, to the prejudice of the economist, scholar and researcher, that he lacks integrity, honesty and ability in his profession. Few, if any, other assertions would be as damaging to the reputation of an economist, scholar and researcher.

WHEREFORE, Plaintiff prays for the following relief:

- A. Entry of an order directing Levitt and HarperCollins to retract publicly the false and defamatory statements concerning Plaintiff that are contained in *Freakonomics*;
- B. Entry of an order requiring that all future printings of existing editions of *Freakonomics*, and all future editions, delete the false and defamatory statements concerning Plaintiff;
- C. Award in favor of Plaintiff, and against Levitt and HarperCollins, compensatory damages in an amount deemed appropriate by the trier of fact;

- D. Award in favor of Plaintiff, and against Levitt and HarperCollins punitive damages in an amount deemed appropriate by the trier of fact;
- E. Award in favor of Plaintiff and against Levitt and HarperCollins court costs, pre-judgment interest, and reasonable attorneys' fees; and
- F. Award in favor of Plaintiff, and against Levitt and HarperCollins such other and/or additional relief as may be just and equitable.

PLAINTIFF DEMANDS TRIAL BY JURY OF THIS COUNT I.

COUNT II: Defamation *Per Quod*

For his second cause of action against Levitt and HarperCollins, Plaintiff pleads in the alternative (and not in addition) to Count I and states:

15. Plaintiff repeats and realleges the allegations contained in Paragraphs 1-14 of Count I as the allegations of Paragraph 15 of Count II.

Levitt's Malice

16. Levitt seemingly has hated Plaintiff for many years. Plaintiff does not know the source of this apparent hatred, but it may have been the result of Plaintiff challenging Levitt's ideas in print and at academic meetings.
17. Examples of Levitt's hostility to Plaintiff abound. For example, and not by way of limitation:
- a. Levitt accused Plaintiff publicly of reaching "rigged" statistical results;
 - b. Levitt asserted publicly that Plaintiff may suffer from mental illness;
 - c. Levitt publicly described Plaintiff's scholarly arguments as nonsense and as embarrassing or fraudulent;
 - d. Levitt made slanderous statements about Plaintiff to an individual who was a total stranger to Levitt, and only after being called to account did Levitt admit that those statements were untrue;
 - e. Levitt publicly referred to Plaintiff as an idiot and an anti-Christ;
 - f. Levitt stated publicly that Plaintiff has engaged in stupid and misleading distortions of data; and

- g. Levitt said publicly that an academic presentation Plaintiff was scheduled to make would be filled with outrageous lies, and Levitt offered publicly to pay colleagues if they would humiliate Plaintiff for Levitt.
18. The assertions made in *Freakonomics* about Plaintiff's supposedly having "invented" and "faked" data that support his books and papers, and that his statistical results could not be "replicated," were made maliciously by Levitt with the intent of damaging Plaintiff in his profession. Those malicious assertions, in fact, have caused injury to Plaintiff's reputation and other damages.
19. HarperCollins knew or should have known of Levitt's hostility to Lott when *Freakonomics* was written and published. In the alternative, HarperCollins was recklessly indifferent to Levitt's hostility toward Plaintiff when *Freakonomics* was written and published.
20. As a result of the astonishing success of *Freakonomics*, Levitt has become a public figure. Even statements in the book that are false tend to be treated by the population at large, and particularly by Academics, as likely to have a factual basis.
21. The defamatory statements contained in *Freakonomics* concerning Plaintiff were malicious, were injurious to Plaintiff's reputation and, therefore, constitute defamation *per quod*. He failed to obtain at least one academic position for which he applied partly (or entirely) because of these statements. Further, he has encountered persons at academic meetings in this country and abroad who assumed the statements were true and who asked him about those statements. Although Plaintiff has attempted to restore his reputation by explaining why the

statements are false, he does not know whether he has succeeded. Significantly, there undoubtedly are persons who believe the defamatory statements are true, who have not made inquiry of Plaintiff, and therefore in whose opinion Plaintiff's reputation has been irreparably damaged.

WHEREFORE, Plaintiff prays for the following relief:

- A. Entry of an order directing Levitt and HarperCollins to retract the false and defamatory statements concerning Plaintiff that are contained in *Freakonomics*;
- B. Entry of an order requiring that all future printings of existing editions of *Freakonomics*, and all future editions, delete the false and defamatory statements concerning Plaintiff;
- C. Award in favor of Plaintiff, and against Levitt and HarperCollins, compensatory damages in an amount deemed appropriate by the trier of fact;
- D. Award to Plaintiff, and against Levitt and HarperCollins punitive damages in an amount deemed appropriate by the trier of fact;
- E. Award to Plaintiff, and against Levitt and HarperCollins court costs, pre-judgment interest, and reasonable attorneys' fees; and
- F. Award to Plaintiff, and against Levitt and HarperCollins such other and/or additional relief as may be just and equitable.

PLAINTIFF DEMANDS TRIAL BY JURY OF THIS COUNT II.

JOHN R. LOTT, JR.

By:

One of His Attorneys

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