

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON**

NICHOLAS SANDMANN, by and	:	CASE NO. 2:19-cv-00019-WOB-CJS
through his parents and natural	:	
guardians, TED SANDMANN	:	JUDGE BERTELSMAN
and JULIE SANDMANN,	:	
	:	MAGISTRATE JUDGE SMITH
Plaintiffs,	:	
	:	
v.	:	PLAINTIFF'S
	:	FIRST AMENDED COMPLAINT
WP COMPANY LLC d/b/a THE	:	WITH JURY DEMAND
WASHINGTON POST,	:	
	:	
Defendant.	:	

NOW COMES Nicholas Sandmann, by and through his parents and natural guardians, Ted Sandmann and Julie Sandmann, and by and through his counsel, states his First Amended Complaint against Defendant, WP Company LLC d/b/a *The Washington Post* ("the *Post*") as follows:

INTRODUCTION

1. The *Post* is a major American daily newspaper published in Washington, D.C., which is credited with inventing the term "McCarthyism" in an editorial cartoon published in 1950. Depicting buckets of tar, the cartoon made fun of then United States Senator Joseph McCarthy's "tarring" tactics of engaging in smear campaigns and character assassination against citizens whose political views made them targets of his accusations.

2. In a span of three (3) days in January of this year commencing on January 19, the *Post* engaged in a modern-day form of McCarthyism by competing with CNN and NBC, among others, to claim leadership of a mainstream and social media mob of bullies

which attacked, vilified, and threatened Nicholas Sandmann (“Nicholas”), an innocent secondary school child.

3. The *Post* wrongfully targeted and bullied Nicholas because he was a white, Catholic student wearing a red “Make America Great Again” souvenir cap (the “MAGA cap”) on a school field trip to the January 18 March for Life in Washington, D.C. when he was unexpectedly and suddenly confronted by Nathan Phillips (“Phillips”), a known Native American activist, who beat a drum and sang loudly within inches of Nicholas’ face (“the January 18 incident”).

4. The *Post* knew, or should have known by exercising the slightest diligence, that Phillips was not a trustworthy witness and that it would be negligent to republish Phillips’ narrative of the January 18 incident without a proper investigation.

5. Nicholas stood quietly and respectfully for several minutes after being targeted and bullied by Phillips, and Nicholas’ body language remained non-aggressive and passive throughout the incident.

6. Nicholas was 16 years old at the time of the January 18 incident, is 5’9” in height and weighs 115 pounds.

7. The school field trip to the Nation’s capital was the first out-of-state trip Nicholas had ever taken without being with his family.

8. In targeting and bullying Nicholas by falsely accusing him of instigating the January 18 incident, the *Post* conveyed that Nicholas engaged in acts of racism by “swarming” Phillips, “blocking” his exit away from the students, “physically intimidating” Phillips, and otherwise engaging in racist misconduct and “racial hostility.”

9. The *Post* ignored basic journalistic standards because it wanted to advance its well-known and easily documented, biased agenda against President Donald J. Trump (“the President”) by impugning individuals perceived to be supporters of the President.

10. As a 16-year-old secondary school student, Nicholas’ political beliefs are anything but established and entrenched in his young mind.

11. Nicholas has zero history of political activism or aggressiveness and did not exhibit any such conduct even when confronted with unbridled racist attacks by activist bullies at the National Mall.

12. The *Post’s* campaign to target Nicholas in furtherance of its political agenda was carried out by using its vast financial resources to enter the bully pulpit by publishing a series of false and defamatory print and online articles which effectively provided a worldwide megaphone to Phillips and other anti-Trump individuals and entities to smear a young boy who was in its view an acceptable casualty in their war against the President.

13. Unlike the *Post’s* abuse of the profession of journalism, Plaintiffs do not bring this lawsuit to use the judicial system to further a political agenda. This lawsuit is brought against the *Post* to seek legal redress for its negligent, reckless, and malicious attacks on Nicholas which caused permanent damage to his life and reputation.

14. The *Post* bullied an innocent child with an absolute disregard for the pain and destruction its attacks would cause to his life.

15. The *Post* proved itself to be a loud and aggressive bully with a bully pulpit.

16. In this country, our society is dedicated to the protection of children regardless of the color of their skin, their religious beliefs, or the cap they wear.

17. But the *Post* did not care about protecting Nicholas. To the contrary, the *Post* raced with a reckless disregard of the facts and truth because in this day and time there is a premium for being the first and loudest media bully.

18. The *Post* wanted to lead the charge against this child because he was a pawn in its political war against its political adversary – a war so disconnected and beyond the comprehension of Nicholas that it might as well have been science fiction.

19. When the *Post* published its stories with the false narrative about Nicholas, it prominently included a close-up still image of Nicholas' face so that there can be no mistake about who was being targeted.

20. The *Post* had previously published articles about Phillips, who is a professional activist, who has spent months camping out and protesting on the National Mall, who has stared down police in riot gear, who sings the AIM song as a rally cry and not a peace song, who has a criminal history including assault, and who previously told inconsistent stories about alleged harassment by college students at a time when Native American issues were at the forefront.

21. The *Post* published its stories relying on the false narrative of Phillips despite the fact that Phillips was on the record with his opposition to “the wall” one week prior to the January 18 incident, and he had previously protested outside of one of President Trump's hotels.

22. Although the *Post* was on notice from publicly available videos that Nicholas took no actions whatsoever toward Phillips, the *Post* republished the obviously false statements of Phillips' narrative that attributed various actions to Nicholas.

23. As purported support for the false accusations against Nicholas, the *Post* published to its readers a short, misleading and edited video despite the fact that longer

videos that disproved those accusations were publicly available from the time of the very first article published about Nicholas by the *Post*.

24. The misleading video accompanying the *Post*'s accusations singled Nicholas out from the balance of all others involved, focusing almost exclusively on Nicholas' interaction with Phillips.

25. The *Post* did not report "new developments" as they occurred regarding the January 18 incident – instead, the *Post* ignored available evidence that contradicted its reporting from the very beginning.

26. The *Post* published its accusations against Nicholas at a particularly sensitive time given the widespread negative press coverage regarding a tweet from the President about Native Americans earlier that week, and the *Post* even directly tied together the two incidents.

27. Thus, the context within which the *Post* published its false accusations against Nicholas was particularly volatile, and the *Post* had a legal – not to mention moral and social – obligation to conduct some minimum level of diligence to investigate the accusations of an unreliable and biased witness against a 16-year-old student who had done nothing to create the incident and who was not a public figure.

28. The *Post* must be dealt with the same way every bully is dealt with and that is hold the bully fully accountable for its wrongdoing in a manner which effectively deters the bully from again bullying other children. In a civil lawsuit, punishment and deterrence is found in awarding money damages to the victim and target of the bully.

29. In order to fully compensate Nicholas for his damages and to punish, deter, and teach the *Post* a lesson it will never forget, this action seeks money damages in excess of Two Hundred and Fifty Million Dollars (\$250,000,000.00) – the amount Jeff Bezos,

the world's richest person, paid in cash for the *Post* when his company, Nash Holdings, purchased the newspaper in 2013.

DETAILED FACTUAL BACKGROUND

THE JANUARY 18 INCIDENT

30. On January 18, 2019, Nicholas attended the March for Life on a school trip chaperoned by sixteen adults, nine of whom were faculty members at Nicholas' school, Covington Catholic High School ("CovCath").

31. Nicholas and his classmates were instructed to meet at the steps of the Lincoln Memorial at the National Mall by 5:00 p.m. to catch their buses for the return trip to Kentucky.

32. Nicholas was wearing a red cap Make America Great Again cap ("MAGA cap") that he had purchased that day as a souvenir.

33. While at the National Mall, a small group of adult men who describe themselves as Black Hebrew Israelites – a recognized hate group – began verbally assaulting and taunting Nicholas and his CovCath classmates with threats of physical violence and vitriolic statements, shouting, among other things, "you only got one n***er in the crowd," "oh, you got two n***ers in the crowd," "get out, n***er, get out," "this is a faggot child molester," "Christ is coming back to kick yo cracker ass," "there will be no peace until there is bloodshed," "incest babies," "dirty ass crackers," and "future school shooters."

34. One of Nicholas' classmates requested and received permission from a school chaperone to engage in CovCath school sports cheers in an effort to ignore and drown out the hate speech being hurled at them by the Black Hebrew Israelites.

35. During a school cheer, Phillips and his activist companions – all of whom had been participating in the Indigenous Peoples March at the National Mall earlier that day – instigated a confrontation with Nicholas and his CovCath classmates.

36. Phillips began singing the AIM song, which he has used previously in protests and as a type of rally cry when confronting non-Indigenous Peoples.

37. Rather than focusing their attention on the Black Hebrew Israelites, who had been relentlessly hurling insults at both the teenagers for almost an hour and the Native Americans attending the Indigenous Peoples March prior to that, Phillips and his activist companions deliberately targeted the CovCath students from a distance while beating drums, singing, dancing, and carrying cameras to hopefully capture a viral video moment of the confrontation.

38. When Phillips first approached them, many of the CovCath students “felt like he was coming into their group to join in with the students’ cheers” and some joined in dancing to Phillips’ drumbeat and song.

39. Phillips intentionally walked up to the crowd of CovCath students.

40. Immediately behind and around Phillips were several of his own companions, and Nicholas and the CovCath students did not move toward Phillips or otherwise actively approach or surround him or his companions.

41. Nicholas and the students acquiesced in Phillips’ election to confront their group and beat his drum within inches of Nicholas’ face.

42. Once within their group, Phillips freely moved about, briefly walking up to certain students within the group of students, which included many children who were not CovCath students.

43. Phillips then walked directly to where Nicholas was standing on the steps so that he could confront Nicholas and get within inches of his face.

44. Phillips was attired in Native American garb and was a complete stranger to Nicholas.

45. While staring and glaring at Nicholas, Phillips continued to beat his drum and sing loudly within inches of Nicholas' face for several minutes.

46. Contrary to Phillips' initial lie that he was "suddenly swarmed" by the students as he was preparing to leave or his subsequent lie that he was trying to move to the top of the steps of the Lincoln Memorial where friends were waiting, both of which were republished by the *Post*, Phillips approached the students from a distance and walked past clear pathways leading to the Lincoln Memorial.

47. When Phillips made his incursion into the crowd of students and directly confronted Nicholas, Phillips never made any attempt to move past, around, or away from Nicholas even though he could have done so at any time.

48. Phillips had walked a distance over to Nicholas and stopped directly in front of him, which was exactly where Phillips wanted to be.

49. Prior to being directly confronted by Phillips, Nicholas had not noticed Phillips at the National Mall.

50. Nicholas was startled and confused by the actions of Phillips in singling him out and confronting him.

51. During the confrontation instigated by Phillips, Nicholas stood still as he was concerned that turning away from Phillips might be misconstrued as a sign of disrespect.

52. While he stood there with Phillips beating a drum near his face and singing loudly, Nicholas remained silent and did not utter a single word to Phillips.

53. Nicholas did not make any gestures by hand or otherwise toward Phillips.

54. At all times, Nicholas acted respectfully, responsibly, appropriately, and in a manner consistent with the values instilled upon him by his family and his religious faith.

55. While Phillips fully engaged Nicholas' attention, at least one of the other members of Phillips' group taunted and insulted Nicholas' classmates.

56. One of Phillips' accomplices walked up the steps around Nicholas and was berating one of the other students: "So if you want to make America a great cause for you white people, go back to Europe where you came from. This is not your land." After the student responded, the adult Native American then said to the teen-ager: "Get the fuck out of my face with that shit."

57. At that point, Nicholas' attention wavered from Phillips – for the only time during the encounter – when he gestured to his fellow student not to engage with Phillips' cohort and instead to pay attention to Phillips.

58. The confrontation ended when Nicholas and his fellow CovCath students were instructed to board the buses.

59. After Nicholas moved away from him, Phillips made no attempt to climb the steps toward the Lincoln Memorial.

60. Instead, Phillips stepped up to the spot vacated by Nicholas, and he and his supporters celebrated their "victory" over the CovCath students.

61. The Phillips supporter who had told one of the other students to “go back to Europe” shouted “I got him man. I got him, man, I got him. . . . We won grandpa, we fucking won grandpa.”

62. Phillips then held his drum above his head and beat it loudly and rapidly as the rest of his group cheered and yelled and jumped around in celebration.

63. During the January 18 incident, Nicholas:

- (a) did not swarm or otherwise actively surround Phillips;
- (b) did not target or confront Phillips;
- (c) did not assault or physically intimidate Phillips in any manner;
- (d) did not move from where he was standing when Phillips approached him;
- (e) did not block Phillips’ path or egress;
- (f) did not taunt or mock Phillips or anyone else present;
- (g) did not utter a single word toward Phillips;
- (h) did not engage in chanting, jeering, or clapping with or at Phillips;
- (i) did not taunt or hurl any political chant or racial slur at anyone, including Phillips, any other Native American, or the Black Hebrew Israelites; and
- (j) did not engage in any conduct whatsoever that could be accurately described or characterized as racist.

64. On January 19, 20 and 21, the *Post* ignored the truth and falsely accused Nicholas of, among other things, “accost[ing]” Phillips by “suddenly swarm[ing]” him in a “threaten[ing]” and “physically intimidat[ing]” manner as Phillips “and other activists were wrapping up the march and preparing to leave,” “block[ing]” Phillips’ path, refusing

to allow Phillips “to retreat,” “taunting the dispersing indigenous crowd,” chanting “build that wall,” “Trump2020,” or “go back to Africa,” and otherwise engaging in racist and improper conduct which ended only “when Phillips and other activists walked away.”

ONLINE VIDEOS OF THE JANUARY 18 INCIDENT

65. On the evening of January 18, 2019, at 7:33 p.m., Kaya Taitano, a participant in the Indigenous Peoples March, posted online a selectively edited 59 second video depicting only a small portion of the interaction between Nicholas and Phillips, *see* <https://www.instagram.com/p/Bsy80cfFVAR/> (last visited Aug. 7, 2019), and later that night, she posted a 3 minute 44 second video of the interaction that included the time period in the initial video, *see* <https://www.youtube.com/watch?v=sIG5ZB0fw1k> (last visited Aug. 7, 2019) (collectively, the “Taitano Videos”).

66. The Taitano Videos did not show, among other things:

- (a) the Black Hebrew Israelites’ misconduct and homophobic, racist slurs directed to the CovCath students;
- (b) that Phillips had approached the students and inserted himself into their area before confronting Nicholas;
- (c) that the students were already engaged in school cheers at the time Phillips approached;
- (d) Nicholas engaging in any misconduct, including harassing, mocking, or taunting anyone;
- (e) Nicholas making any gesture of any kind except to, at times, awkwardly smile;
- (f) Nicholas uttering any words to Phillips or his companions;
- (g) Nicholas moving into Phillips’ path;

- (h) Nicholas blocking Phillips' escape; or
- (i) Nicholas physically or verbally threatening Phillips in any manner.

67. At 11:13 p.m. on January 18, 2019, @2020fight, a fake Twitter account with a following of approximately 41,000, tweeted a 1 minute 1 second clip from the Taitano Videos with the comment "This MAGA loser gleefully bothering a Native American protestor at the Indigenous Peoples March." (the "2020fight Video").

68. The 2020fight Video is reported as having been viewed at least 2,500,000 million times, retweeted 14,000 times, and liked 27,000 times before the account was suspended by Twitter no later than January 21.

69. Snapshots of the 2020fight video show it to have been viewed at least 10.6 million times.

70. The 2020fight Video is not only incomplete, but also very misleading because it shows only one angle of the January 18 incident that makes it impossible to tell how the incident started.

71. Any reasonable, objective, and unbiased journalist would have readily known that the 2020fight Video was little more than a snapshot of a limited portion of the January 18 incident and that accurate and fair reporting on it required investigation into the events which occurred before and after those depicted in the short video clip posted on Twitter.

72. According to media reports, the @2020fight account was created in December 2016, tweeted an average of 130 times a day, and immediately aroused suspicion for its high follower count, unusually high rate of tweets, highly polarized and yet inconsistent political messaging, and the use of someone else's image in the profile photo.

73. In fact, as acknowledged by the *Post* on January 23, the @2020fight account was likely a fraudulent account available for sale on Shoutcart.com.

74. By January 23, the *Post* conceded that the @2020fight account that was largely responsible for the edited video going viral *on social media* may have been purchased from Shoutcart.com for that specific purpose.

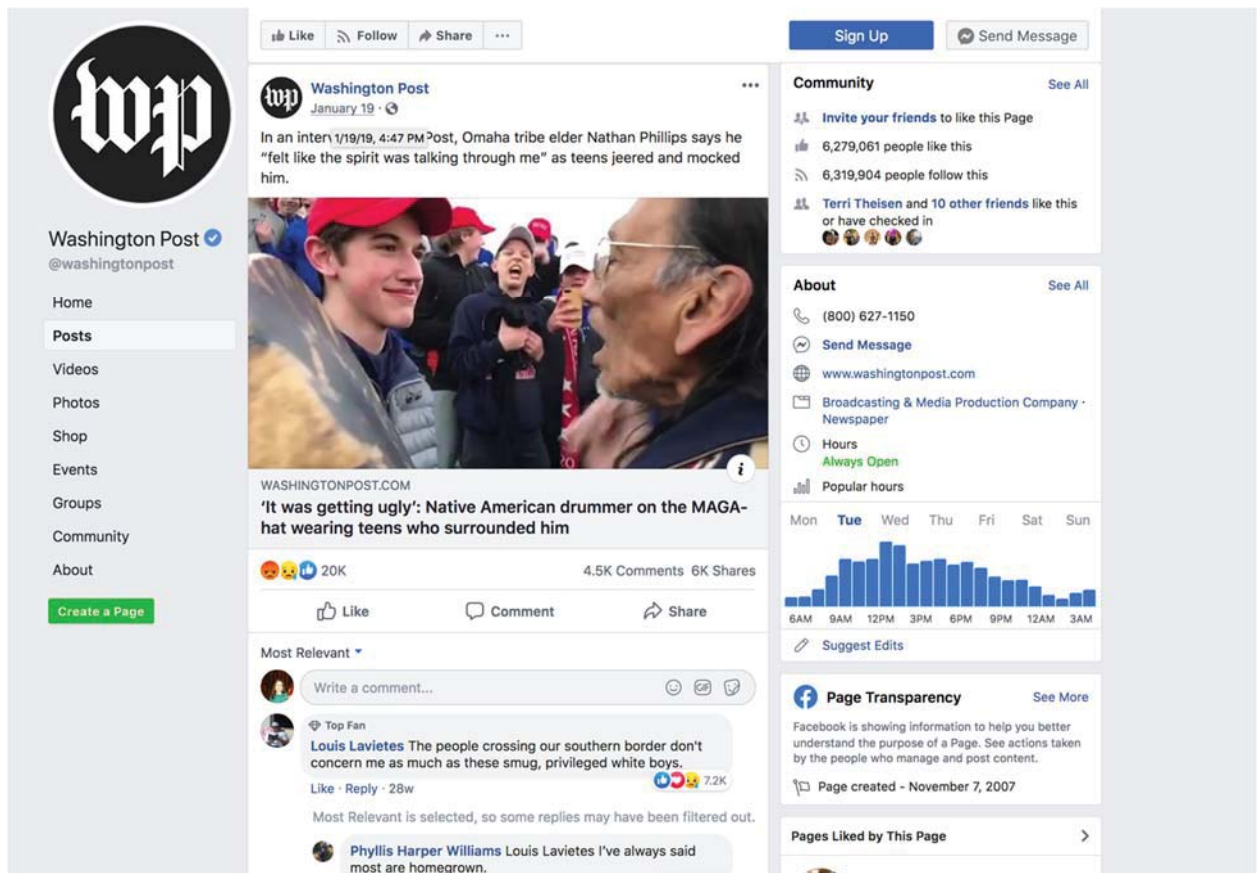
75. With no investigation into the @2020fight account, the *Post* actively, negligently, and recklessly participated in making the 2020fight Video go viral on social and mainstream media when on January 19 at 9:21 a.m. Eastern, Twitter-verified *Post* reporter Joe Heim re-posted the 2020fight Video:¹



¹ The video link embedded in this tweet is no longer available, because the 2020fight account was terminated.

76. The video cover image for the 2020fight Video, *i.e.*, the static image that is displayed before the video plays,² prominently features Nicholas' face.

77. On the afternoon of January 19, the *Post* posted on Twitter and Facebook a link to its first online story about the January 18 incident, which embedded the 2020fight Video, but the video cover image was changed slightly to a still from several seconds into the video, resulting in a video cover image that more clearly showed Nicholas' face (the version of the video with this new video cover image is referred to hereinafter as the "Viral Video"):³



² This still frame is also referred to in some instances as the "thumbnail."

³ The video that is currently available online has been changed by the *Post* since January 19, but the video cover image is the same.

78. The *Post* was the one of the first, if not the first, mainstream media outlet to expand coverage of the January 18 incident from social media to mainstream media and to publish the Viral Video.

79. *Post* reporter Heim was given credit for contributing to the *Post's* first online article following his retweet of the 2020fight Video and was listed on the by-line in the *Post's* first print article, along with Antonio Olivo and Cleve R. Wootson, Jr.

80. An accurate contemporaneous video as to what occurred on January 18, 2019, was available online on the afternoon of January 18, 2019, when Shar Yaqataz Banyamyan, one of the Black Hebrew Israelites who was present for the encounter between Phillips and Nicholas, was streaming a Facebook Live video while the January 18 incident was occurring (the "Banyamyan Video").

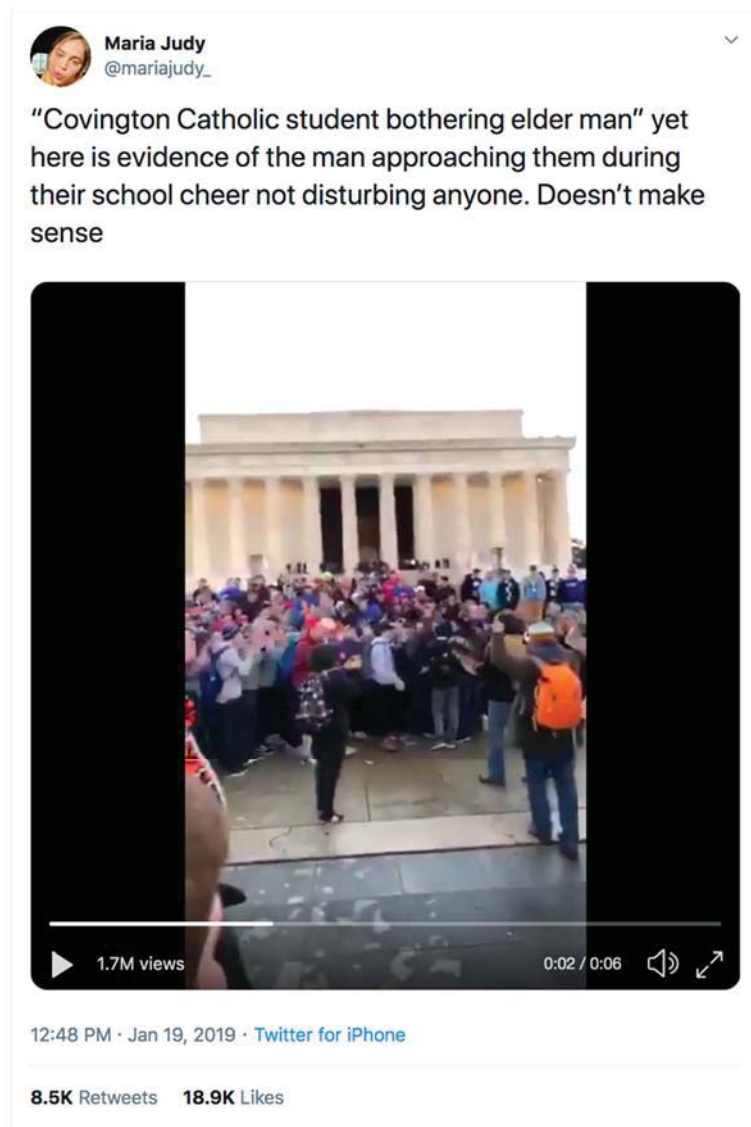
81. Following the conclusion of the Facebook Live video stream on January 18, the 1 hour and 46-minute video was available for public viewing on Banyamyan's Facebook page.

82. The Banyamyan Video was deleted from Facebook no later than January 20 at 2:00 am EST, but prior to being deleted, it was downloaded, copied, and mirrored onto YouTube by different individuals, and therefore preserved and made widely available on the internet no later than 1:00 am EST on January 20. See, e.g., https://www.youtube.com/watch?v=t3EC1_gcr34&feature=youtu.be&t=523 (last visited Aug. 7, 2019); see also <https://twitter.com/Timcast/status/1086866650446655488> (last visited Aug. 9, 2019).

83. A plethora of additional relevant video of the January 18 incident also was available online but ignored by the *Post* and the mainstream and social media mob of bullies which the *Post* sought to lead to further its biased agenda.

84. In fact, before the *Post* even published its first online article just after 4:20 pm Eastern on January 19, longer videos were available online that demonstrated the falsehoods in Phillips' account of the January 18 incident.

85. For instance, and as an example only, video of Phillips instigating and approaching Nicholas and his classmates – rather than the other way around – was available on Twitter no later than 12:48 p.m. on January 19, 2019, and additional videos continued to appear on social media and in the media throughout January 19 and 20:



See <https://twitter.com/mariajudy/status/1086681831804674048> (last visited April 26, 2019); *see also*, e.g., <https://twitter.com/AmeerWashington/status/1086729474912276480> (tweeting longer video on January 19, at 3:57 pm) (last visited Aug. 9, 2019).

86. A statement from a CovCath student, along with links to additional videos, was available on Twitter at 10:00 pm on January 19, 2019, just five hours after the *Post's* initial online story and before either of its print stories. *See*, e.g., https://twitter.com/AClementsWKRC/status/1086822521012473858?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1086822521012473858&ref_url=http%3A%2F%2Fwww.dailywire.com%2Fnews%2F42416%2Fheres-what-you-need-know-about-confrontation-emily-zanotti (last visited Aug. 9, 2019).

87. From online video and fair use of media broadcasts, Nicholas' counsel produced an approximately fourteen-minute video distilling what occurred on January 18, entitled "Nicholas Sandmann: The Truth in 15 Minutes" (the "Sandmann Video"), available at <https://www.youtube.com/watch?v=lSkpPaiUF8s>.

88. The Banyamyan and Sandmann Videos accurately set forth the truth of the January 18 incident.

89. The Banyamyan and Sandmann Videos demonstrate that this incident was intentionally instigated by Phillips and that Nicholas was targeted by a professional activist whose false accusations neatly fit the mainstream and social media's anti-Trump agenda, particularly following the furor over the President's tweet about Elizabeth Warren earlier that week.

90. The Banyamyan and Sandmann Videos demonstrate that not only did Nicholas not engage in any of the misconduct described by the *Post*, but Nicholas did not engage in any conduct whatsoever.

NICHOLAS' STATEMENT AND NBC INTERVIEW

91. On the afternoon of January 20, in an attempt to stem the threats of physical violence being made against him, his family, and his CovCath classmates, Nicholas made public a statement in which he provided a detailed and accurate factual description of the January 18 incident. A copy of Nicholas' January 20 statement is attached hereto as *Exhibit A*.

92. On January 23, in a further attempt to stem the threats of physical violence being made against him, his family, and his CovCath classmates, Nicholas gave an interview to Savannah Guthrie on the *Today* show on NBC, in which he reiterated his detailed and accurate factual description of his encounter with Phillips in the face of accusatory questioning by Guthrie.

AN INVESTIGATION CONFIRMS THE TRUTH

93. The *Post* did not conduct a proper investigation before publishing its false and defamatory statements of and concerning Nicholas.

94. Pressured by the agendas of certain individuals, false and defamatory statement of and concerning Nicholas was also published by the Diocese of Covington on January 19 before a proper investigation had been conducted by the Diocese.

95. Subsequently, the Diocese of Covington retained through its counsel a third-party investigative firm, Greater Cincinnati Investigation, Inc. ("GCI"), to formally determine what occurred during the January 18 incident at the National Mall.

96. On January 22, the Diocese of Covington issued a statement indicating that “the independent, third-party investigation is planned to begin this week” and stating that “[i]t is important for us to gather the facts that will allow us to determine what corrective actions, if any, are appropriate” and that “[w]e pray that we may come to the truth. . . .” See <https://www.archlou.org/statement-regarding-covington-catholic-incident/> (last visited Aug. 21, 2019).

97. Pending the results of the third-party investigation, the Diocese apologized to Nicholas specifically because he had “become the face of these allegations based on video clips” and because “[w]e should not have allowed ourselves to be bullied and pressured into making a statement prematurely.” A true and correct copy of the January 25, 2019, correspondence is attached hereto as *Exhibit B*.

98. On February 11, 2019, GCI issued its Final Investigative Report (the “GCI Report”), a true and correct copy of which is attached hereto as *Exhibit C*.

99. On February 11, 2019, Diocese Bishop Foys released the GCI Report and said in a letter to the CovCath parents that the GCI Report exonerated the students and demonstrated that the students did not instigate the incident at the Lincoln Memorial. A true and correct copy of said letter is attached hereto as *Exhibit D*.

100. The GCI Report is entirely consistent with all video evidence as well as statements issued by Nicholas and other CovCath students and chaperones.

101. According to the GCI Report, four (4) licensed investigators spent approximately 240 man hours investigating the incident, interviewed 43 students and 13 chaperones, reviewed approximately 50 hours of Internet activity, and attempted to interview Phillips, who failed to respond to phone calls, emails, or investigators who waited outside his home for 6 hours and left a note asking him to contact them.

102. The GCI Report made the following key findings:

(a) Nicholas' January 20 statement accurately reflects the January 18 incident.

(b) There was "no evidence that students responded [to the Black Hebrew Israelites] with any offensive or racist statements of their own."

(c) The students asked their chaperones if they could perform school cheers to drown out the Black Hebrew Israelites' invective, and upon receiving approval, they performed the same cheers that are commonly performed at football or basketball games.

(d) There was "no evidence that the students performed a 'Build the Wall' chant."

(e) Phillips approached the Covington Catholic students.

(f) There was "no evidence of offensive or racist statements by students to Mr. Phillips or members of his group."

(g) The majority, if not all, of the MAGA hats being worn by students were purchased before, during, or after the March for Life.

(h) In previous years, some students had purchased 'Hope' hats in support of President Obama.

(i) "Mr. Phillips' public interviews contain some inconsistencies. . . ."

PHILLIPS WAS A BIASED AND UNRELIABLE WITNESS

103. The *Post* did not publish the false narrative of Phillips as opinion but rather published it in news articles conveying that Phillips' observations and/or purported feelings were factual.

104. Phillips' statements, which were republished by the *Post* without verification, were uttered by Phillips as a factual narrative of the January 18 incident, not as an expression of opinion.

105. Phillips, however, was not making truthful statements about the January 18 incident or his state of mind during that incident but instead was spreading lies about the events and about Nicholas in an attempt to stir up animosity toward pro-life, Catholic, Trump-supporters, and to create publicity for Phillips' activism in favor of Indigenous Peoples.

106. Publicly available information demonstrates that Phillips is – and was at all times during the *Post's* reporting on the January 18 events – a biased and unreliable witness, and it was negligent for the *Post* to publish without any investigation Phillips' narrative as if it were a truthful, factual account of the January 18 incident.

107. The *Post* did not publish the false narrative of Phillips as opinion but rather published it in a news article conveying that Phillips' observations and/or purported feelings were factual.

Previous *Post* Articles About Phillips

108. The *Post* previously published two separate articles concerning Phillips and his activism.

109. The first article was published in November 1999 and related to Phillips' connection with Leonard Peltier, who was convicted of murdering two FBI agents in June 1975. See "Cause Celebre," The Washington Post, Nov. 5, 1999, *avail. at* <https://www.washingtonpost.com/archive/lifestyle/1999/11/05/cause-celebre/0e06c18c-d71a-4c58-bbf1-89bfc61991fb/> (last visited Aug. 9, 2019).

110. Phillips maintained a month-long vigil at the Washington Monument grounds at Peltier's insistence so that Phillips could "bring attention to all issues facing Native Americans" as well as Peltier's own case. Phillips obtained over 500,000 signatures on a petition demanding the release of Peltier.

111. The second article was published by the *Post* in November 2000. See "A Mourning Wake-Up Call," The Washington Post, Nov. 21, 2000, *avail. at* <https://www.washingtonpost.com/archive/lifestyle/2000/11/21/a-mourning-wake-up-call/c9fd1ab8-dfdc-42fd-a5b7-c9e8d3b3512e/> (last visited Aug. 9, 2019).

112. The second article described the fact that Phillips and his family had put up tepees on the National Mall and were living in one of them for a month over the Thanksgiving holiday – which they decreed a "day of mourning" – to "remind people that a lot of American Indians don't have too much to be thankful for." *Id.*

Activism and Publicity-Seeking

113. Phillips has a well-documented history of leftist activism that should have caused the *Post* to question his accusations against a white, MAGA hat-wearing Catholic teenager.

114. Phillips has a known bias against President Trump that was readily discoverable with a Google search.

115. Indeed, there are dozens of photographs and articles involving Phillips available online, as he regularly seeks out the media and publicity.

116. In 2012, Phillips was featured in a Skrillex video for a song called "Make it Bun Dem," which depicts activism and violence against a police officer. See <https://www.youtube.com/watch?v=BGpzGu9Yp6Y&fbclid=IwAR03qui2DycCtozD4ywL0yAMf6kUqp2ZkxEDWDAl1ezWfKlt59Q8QgOYgTA> (last visited Aug. 9, 2019).

117. Also in 2012, Phillips was the subject of a documentary titled “Between Earth and Sky.” *See, e.g.*, <https://www.imdb.com/title/tt2508074/> (“The story of a Native American family’s struggle against cancer and cultural extinction takes an unexpected turn as money becomes more and more important.”)

118. From November 2016 to February 2017, Phillips lived at a camp in North Dakota near Standing Rock Indian Reservation to protest the Dakota Access Pipeline project that was revived by the President shortly after he was elected.⁴

119. That protest was ended when the governor of North Dakota ordered the evacuation of the camps, and 200 law enforcement officers in full riot gear forcibly removed those protestors who refused to leave willingly. Phillips left just ahead of the deadline – after his group started fires that resulted in injuries to protestors.

120. Phillips’ daughter initially left the camp ahead of the deadline, but then she returned to the camp to be one of the last protestors to be forcibly removed. As she went back into the camp, Phillips sang the AIM song as a rally cry in her support against the authorities – the same song that he sang during the January 18 incident.

121. On April 27, 2017, Phillips protested regarding various environmental issues, including the Dakota Access Pipeline, on the steps of the Trump International Hotel in Washington, D.C.:

⁴ Left-wing Democratic Representative Alexandra Ocasio-Cortez also spent several weeks at this same camp near Standing Rock Indian Reservation. *See, e.g.*, <https://www.eenews.net/stories/1060108771> (last visited Aug. 8, 2019).



: Native Youth Alliance Executive Director Nathan Phillips of Omaha Tribe in Nebraska beats a drum on the steps in front of the Trump International Hotel during a protest April 27, 2017 in Washington, DC. Organized by The Indigenous Environmental Network, the protesters gathered in front of the hotel that bears the name of U.S. President Donald Trump to rally against the Dakota Access Pipeline, the XL Pipeline and other projects and programs that they say damages the environment. (Photo by Chip Somodevilla/Getty Images)

122. Phillips, along with his group Native Youth Alliance, participated in numerous marches and protests in Washington, D.C. and New York City throughout 2017 and 2018, including the Native Nations Rise March on Washington; divestment actions in New York City where they camped outside a Wells Fargo bank branch and then marched to City Hall; the Peoples' Climate March in Seattle; and the United Nations Permanent Forum on Indigenous Issues. See, e.g.,

<https://www.vogue.com/projects/13542941/return-to-standing-rock/> (last visited Aug. 8, 2019).

123. On January 13, 2019, just 5 days before the January 18 incident, Phillips live-streamed on Facebook and said, among other things, that “[w]e need universal healthcare for everybody in America. We could do it, we could feed everybody in America, but yet they want to build a wall, and they want to divide people. . . .” See <https://www.facebook.com/NativeYouthAlliance/videos/2262929833751375/> (last visited Aug. 9, 2019).

124. One month after the January 18 incident, Phillips appeared at a “Fake Trump Emergency” protest at the White House on February 18, during which he announced to the crowd that “[w]e need to build up this country instead of building a wall.” See <https://www.facebook.com/moveon/videos/vb.7292655492/324827541476931/?type=2&theater> (last visited Aug. 8, 2019).

Protest at Washington D.C. Catholic Church

125. The *Post* certainly should have known on January 19, 2019, that Phillips was using the January 18 incident for his own benefit and political motives.

126. Phillips’ activism in Washington, D.C. continued the following day, January 19, 2019, when Phillips led a group of protestors in a rally at the Basilica of the National Shrine of the Immaculate Conception in Washington, D.C. around 5:00 pm – at approximately the same time the *Post* published its first online article. See, e.g., “Nathan Phillips and Other Protestors Storm DC Basilica, Demand Punishment For Covington Boys,” Daily Caller, Jan. 24, 2019, avail. at <https://dailycaller.com/2019/01/23/nathan-phillips-protesters-storm-basilica-covington/> (last visited Aug. 9, 2019).

127. The protestors, who were playing drums and chanting, attempted to enter the Basilica during Mass but were rebuffed by security guards.

128. Security guards were forced to lock the doors of the Basilica with the congregation still inside to prevent Phillips' group from entering the Basilica and disrupting Mass.

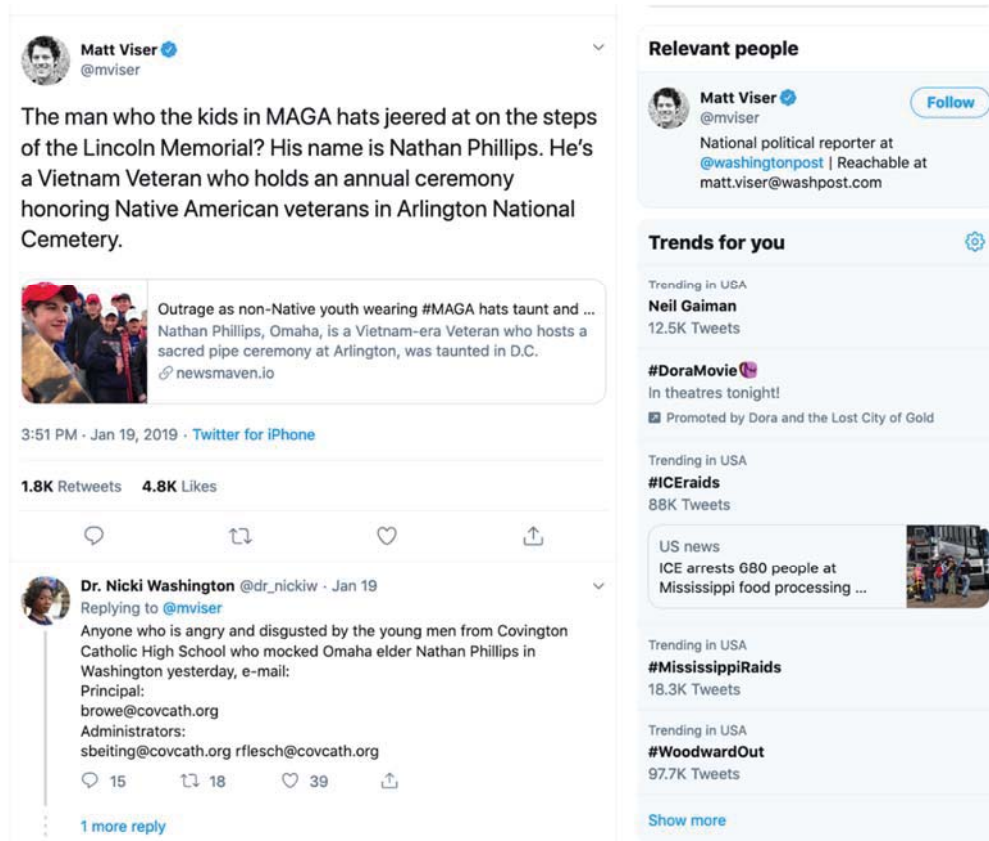
129. During the protest at the Basilica, Phillips read a statement saying that "[w]e demand that the students of Covington Catholic High School be reprimanded not just by the school officials but, as seniors, by their upcoming universities."

130. Phillips also made demands from the Catholic Church, asking that it "hold itself responsible for the . . . hundred-plus years of genocide that indigenous peoples have endured and endure persistently. . . ."

131. As part of their demonstration outside the Basilica, the protestors reportedly performed the AIM song, the same one that Phillips sang during the January 18 incident.

Stolen Valor

132. The *Post* and its reporters falsely reported that Phillips was a Vietnam veteran in an attempt to bolster outrage at his purported mistreatment:



<https://twitter.com/mviser/status/1086727915415453696> (last visited Aug. 8, 2019); *see also, e.g.*, First Article at Ex. G-1 (describing Phillips as “an Omaha tribe elder who also fought in the Vietnam War”).

133. As recognized by the *Post*, Phillips previously stated unequivocally in a video posted to Facebook on January 3, 2018, that “I’m a Vietnam vet . . . I got an honorable discharge, and one of the boxes in there shows whether it is peacetime or what my box says is that I was in theater.” *See* “Nathan Phillips, man at center of standoff with Covington teens, misrepresented his military history,” *The Washington Post*, Jan. 24, 2019, *avail. at* <https://www.washingtonpost.com/national-security/2019/01/23/nathan-phillips-man-standoff-with-covington-teens-faces-scrutiny-his-military-past/> (last visited Aug. 9, 2019). *See also* <https://www.facebook.com/NativeYouthAlliance/videos/1552014181500389/> (Jan. 3,

2018) (Phillips live-streaming: “I got a Section 8 home because I’m a veteran, a wartime veteran like that, honorable, ‘in theater.’”) (last visited Aug. 9, 2019); <https://www.facebook.com/NativeYouthAlliance/videos/1713504705351335> (May 18, 2018) (Phillips live-streaming: “Myself, I’m a Vietnam veteran, uh times like that, you know. My DD-214, my discharge paper, says um, says uh ‘honorable discharge,’ um and it says uh ‘in theater’. . . .”) (last visited Aug. 9, 2019); <https://www.facebook.com/NativeYouthAlliance/videos/1369302426544046/> (Dec. 17, 2018) (Phillips live-streaming: “some of my supporters who come to support me as a veteran, you know, Vietnam times, honorably discharged, ‘in theater,’ that’s what my DD-214 says” and “I was gifted a place to stay because of my Vietnam times”).

134. Several other articles online identify Phillips as a Vietnam veteran. *See, e.g.*, “Pow wow gives life to past and present in Tecumseh,” Toledo Blade, Jul. 2, 2007 (stating that “Phillips served in the Marine Corps in Vietnam from 1972-76”), *avail. at* <https://www.toledoblade.com/frontpage/2007/07/02/Pow-wow-gives-life-to-past-and-present-in-Tecumseh.html> (last visited Aug. 9, 2019).

135. However, it was quickly discovered and exposed that Phillips had lied about his service, that he did not serve in Vietnam, that he was “discharged” instead of “honorable discharged,” that he had been AWOL at least three times, and that he had never even been deployed outside of the United States. *See, e.g.*, <https://www.theblaze.com/news/nathan-phillips-awol-criminal-record> (Jan. 24, 2019) (last visited Aug. 9, 2019).

136. On or about January 22, 2019, the *Post* was forced to issue its first correction to its stories that had falsely identified Phillips as a Vietnam veteran, although the *Post* failed to disclose to its readers that Phillips had actually lied about his service:

Correction: Earlier versions of this story incorrectly said that Native American activist Nathan Phillips fought in the Vietnam War. Phillips served in the U.S. Marines from 1972 to 1976 but was never deployed to Vietnam.

See, e.g., <https://news.yahoo.com/wapo-issues-correction-falsely-labeling-213148657.html> (Jan. 22, 2019) (last visited Aug. 9, 2019).

137. On or about January 24, 2019, the *Post* changed slightly the wording of its correction regarding Phillips' military service but still failed to disclose Phillips' lies:

Correction: Earlier versions of this story incorrectly said that Native American activist Nathan Phillips fought in the Vietnam War. Phillips said he served in the U.S. Marines but was never deployed to Vietnam.

See <https://www.washingtonpost.com/nation/2019/01/20/it-was-getting-ugly-native-american-drummer-speaks-maga-hat-wearing-teens-who-surrounded-him/> at end of article (last visited Aug. 9, 2019); see also "More truth about Nathan Phillips is revealed, and it sure doesn't make him – or the Washington Post – look any better," Jan. 24, 2019, avail. at <https://www.theblaze.com/news/nathan-phillips-truth-vietnam-claims> (last visited Aug. 9, 2019).

138. The *Post*, which had published a story about Phillips and his family camping on the National Mall in November 2000, should have had reason to doubt Phillips' more recent claims that he was a Vietnam veteran.

139. In its 2000 story, the *Post* described a flag near Phillips' tepee that demanded attention for "American soldiers missing in action in Vietnam." The *Post* quoted Phillips as saying: "I'm a veteran . . . a Marine Corps infantryman in the '70s, and I'm a patriot, and those soldiers need remembering. . . ." See <https://www.washingtonpost.com/archive/lifestyle/2000/11/21/a-mourning-wake-up-call/c9fd1ab8-dfdc-42fd-a5b7-c9e8d3b3512e/> (last visited Aug. 8, 2019).

140. The *Post*, however, declared Phillips to be a Vietnam veteran because that better fit the *Post*'s narrative. As pointed out by a *Post* columnist on January 22: "For the record, [Phillips] served in the Marine Corps but was never deployed to Vietnam. But the compounded effrontery of mocking both a Native American and a war veteran makes a much more tantalizing story." See https://www.washingtonpost.com/opinions/the-covington-controversy-shows-a-picture-isnt-always-worth-a-thousand-words/2019/01/22/851faeb6-1e9c-11e9-8b59-0a28f2191131_story.html (last visited Aug. 8, 2019).

Previous Unsubstantiated Claim of Harassment

141. The January 18 incident is not the first time that Phillips claimed to have been taunted and harassed by a group of white students.

142. In April 2015, Phillips claimed that he was harassed by a group of students at Eastern Michigan University. See "Native American claims racial harassment by EMU students dressed as indians [sic]," Fox 2 Detroit, Apr. 22, 2015, *avail. at* <http://www.fox2detroit.com/news/native-american-claims-racial-harassment-by-emu-students-dressed-as-indians> (last visited Aug. 9, 2019).

143. Phillips asserted that he walked over to a yard where a theme party was being held at which 30-40 students were dressed as Hurons, the former EMU mascot, and that when he asked what they were doing, they said that they were honoring him.

144. Much like his statement in response to the January 18 incident, Phillips said in an interview in 2015 that after he walked over to the fence and told the students they were being racist, "it really got ugly." *Id.*

145. Although Phillips called the police to report the EMU students, he said that by the time the police arrived, "it was like there was no party there at all."

146. Phillips said that “there’s a lot of hate behind that” and called on school authorities to investigate and punish the students: “Whoever would sit judgment on them, the university the law, you know, society, that is their job. . . .” *Id.*

147. In a different interview, Phillips said that the students told him that they were “doing a ceremony to impregnate women.” See “College students in ‘red face’ mock native elder, claim racist party is ceremony to ‘impregnate women,’” Raw Story, Apr. 19, 2015, *avail. at* <https://www.rawstory.com/2015/04/college-students-in-red-face-mock-native-elder-claim-racist-party-is-ceremony-to-impregnate-women/> (last visited Aug. 9, 2019).

148. In another interview, Phillips claimed that the party-goers “began charging the fence,” which is reportedly why he called the police. See “University Party in MI Reveals Unsafe Climate For Native American Students,” Indian Country Today, Apr. 25, 2015, *avail. at* <https://newsmaven.io/indiancountrytoday/archive/university-party-in-mi-reveals-unsafe-climate-for-native-american-students-FBGkN1DHYky5iAUol88IUQ/> (last visited Aug. 9, 2019).

149. Much like the political climate surrounding the January 18 incident, the political climate in Ypsilanti at the time of the alleged taunting and harassment in 2015 was already racially charged with debates over a partial reinstatement of the former EMU mascot, the Huron, a Native American logo.

150. Fueled in part by Phillips’ claim of harassment, protestors held press conferences and demonstrations at the school, objecting to any use of the mascot. See, e.g., “Native Americans rally against Hurons logo at EMU,” Detroit News, June 16, 2015, *avail.* *at*

<https://www.detroitnews.com/story/news/local/michigan/2015/06/16/eastern-michigan-university-hurons-logo/28797179/> (last visited Aug. 9, 2019).

151. Phillips attended one of the on-campus rallies, giving an interview to MLive, and playing his drum. See “Drum-Banging Indian Nathan Phillips Was in the News 4 Years Ago, Telling an Eerily Similar Story,” The Western Journal, Jan. 21, 2019, *avail. at* <https://www.westernjournal.com/ct/drum-banging-indian-nathan-phillips-news-4-years-ago-telling-eerily-similar-story/> (last visited Aug. 9, 2019).

152. There was never any identification of the students who allegedly taunted Phillips, and there is no available record that any type of disciplinary actions were taken by the university or the police.

Criminal Activities

153. Unlike Nicholas, Phillips actually has a criminal background involving violence and assault, which should have led the *Post* to question the truthfulness and accuracy of Phillips’ claims that he was “blocked” by Nicholas or that he was frightened by the high school student.

154. Phillips has admitted to violence, proudly and laughingly stating that he “beat up” the boyfriend of a “little blonde-hair, blue-eyed hippie girl” who spit on him. See

<https://www.facebook.com/NativeYouthAlliance/videos/326861671434840/?t=4351> (Oct. 29, 2018) (last visited Aug. 9, 2019).

155. Phillips also has reportedly been charged with, arrested for, and/or convicted of numerous crimes, including escaping from prison, assault, and various alcohol-related crimes. See, e.g., <https://www.washingtonexaminer.com/politics/native->

[american-activist-nathan-phillips-has-violent-criminal-record-and-escaped-from-jail-as-teenager](#) (last visited Aug. 9, 2019).

Inconsistent Statements

156. Phillips is known to have given at least nine interviews to mainstream media following the January 18 incident, including the *Post*, *CNN*, *The Associated Press*, *Detroit Free Press*, *MSNBC*, *ABC*, *CBS*, *NBC*, and *Democracy Now*.

157. The accusations of Phillips and his companions, as published by the *Post* and the others identified above, are remarkable in their inconsistency with each other, and Phillips' story changed over time.

158. According to the first *Post* print article, Phillips stated that the students "suddenly swarmed around him as he and other activists were wrapping up the march."

159. According to *The Associated Press*, Phillips changed his story to say that "he felt compelled to get between two groups with his ceremonial drum to defuse a confrontation."

160. According to the first *Post* online article, Phillips said he was trying to "exit out of this situation and finish my song at the Lincoln Memorial."

161. According to the second *Post* print article, "Phillips said he was trying to reach the top of the memorial, where friends were standing."

162. According to *Democracy Now!*, Phillips stated that "I wasn't focusing on anybody except taking the youth out of there, the Indigenous youth that was with me, out of that situation, and that's when Mr. Sandmann stood in front of me and blocked my path."

163. According to the first *Post* print article, Phillips stated that it “was getting ugly” and he needed to find “an exit out” of there, but Nicholas “blocked [his] way and wouldn’t allow me to retreat.”

164. But according to the second *Post* print article, Phillips queried “why should I go around him?”

165. Despite Phillips’ claim that the students yelled “build that wall,” “go back to Africa,” and “go back to the reservation,” no video evidence exists substantiating this accusation.

166. Despite an attorney for the Lakota People Law Project, Chase Iron Eyes’, claim as reported in the first *Post* print article that the incident “ended when Phillips and other activists walked away” and Phillips’ claim that he was trying to reach the top of the steps, the incident ended only when Nicholas left for his bus and Phillips then turned away from the top of the stairs and celebrated his perceived “win” with his companions.

167. Despite Phillips’ claims that the students left because they were “running from the police,” the video evidence and statements of witnesses demonstrate that the students left to catch their buses.

168. The fact that Phillips changed his story within the first day after the events were reported should have put the *Post* on further notice that Phillips was not a reliable or trustworthy witness.

THE *POST* COVERAGE

169. The *Post* publishes and distributes a printed newspaper in certain regions, and it also has a significant online and social media presence that reaches national and international audiences.

170. As part of its ongoing attempt to appeal to a broader audience, the *Post* aired an ad during the Super Bowl on February 3, 2019, (reportedly spending \$10 million), to highlight “the role of journalists as eyewitnesses and gatherers of fact as well as the profession’s larger importance to society.” See https://www.washingtonpost.com/lifestyle/style/the-washington-post-creates-its-first-super-bowl-spot-narrated-by-tom-hanks/2019/02/01/f1984a3a-263a-11e9-ad53-824486280311_story.html (last visited Aug. 7, 2019).

171. The *Post* makes its printed newspaper available electronically via e-Replica so that viewers can “read today’s issue of The Washington Post anytime, anywhere. . . .” See <http://thewashingtonpost.newspaperdirect.com/epaper/viewer.aspx> (last visited Aug. 7, 2019).

172. The *Post* has approximately 1.5 million digital subscribers. See <https://www.nytimes.com/2019/02/11/business/media/washington-post-jeff-bezos.html> (last visited Aug. 7, 2019).

173. The *Post* actively maintains a presence on Twitter, @washingtonpost, with nearly 14 million followers. See https://twitter.com/washingtonpost?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor (last visited Aug. 7, 2019).

174. The *Post* actively maintains a presence on Facebook, with over 6.3 million followers. See <https://www.facebook.com/washingtonpost/> (last visited Aug. 7, 2019).

175. The *Post* also maintains a YouTube channel with over 700,000 subscribers. See <https://www.youtube.com/user/WashingtonPost> (last visited Aug. 7, 2019).

176. The *Post* has a website, www.washingtonpost.com, where it publishes its paper and articles.

177. According to the *Post*, its website had 86.6 million unique visitors in January 2019, with 616.7 million views, and 74.5 million mobile visitors. See <https://www.washingtonpost.com/pr/2019/02/15/january-washington-post-had-million-unique-visitors/> (last visited Aug. 7, 2019).

178. The *Post* recognizes that “[t]oday’s readers are engaged readers,” and the *Post* “welcomes reader contributions; their scrutiny often improves our journalism.” To that end, “nearly all of [the *Post*’s] articles offer comment sections for readers to discuss the news of the day or provide comments. . . . Readers can also interact with *Post* reporters during [its] live chats.” See <https://www.washingtonpost.com/policies-and-standards/> (last visited Aug. 7, 2019).

179. In fact, the *Post* has an “audience engagement team” that apparently monitors reader’s comments and corrects articles based on those comments when necessary. See <https://www.washingtonpost.com/policies-and-standards/> at “Other Corrections Policies” (last visited Aug. 10, 2019).

180. The *Post*, using both its print and vast digital platforms, rushed to lead the mainstream media to assassinate Nicholas’ character and bully him, publishing its first article online around 4:30 p.m. on January 19. The article was not “hot” or “breaking news.”

181. Saturday morning, a *Post* editor assigned reporters to cover the January 18 incident. See <https://www.washingtonpost.com/technology/2019/01/22/viral-story-spread-mainstream-media-rushed-keep-up-trump-internet-pounded/> (last visited Aug. 9, 2019).

182. *Post* reporter Antonio Olivo, who ultimately co-authored the First Article, began trying to contact Nathan Phillips Saturday morning:



See <https://twitter.com/aolivo/status/1086663836567027716> (last visited Aug. 9, 2019).

183. A *Post* reporter subsequently interviewed Phillips at about 3:00 pm on Saturday, and the *Post* published the First Article at approximately 4:22 pm on Saturday.

184. *Post* reporter Olivo also linked to a post by Alyssa Milano and re-published a video taken on January 18 and posted by Taitano during which Phillips lied about the January 18 incident:



See <https://twitter.com/aolivo/status/1086768237961011201> (last visited Aug. 9, 2019).

185. To the extent the *Post* performed any investigation at all into what occurred, its unreasonable investigation did not take long, and contrary information did not stop it from publishing its first printed story in its Sunday newspaper the next day. One of the reporters on the story first retweeted the video several hours before receiving credit for the *Post's* first article. In the intervening time, the *Post* apparently managed to track down and interview Phillips, write a story, and fan the flames of the social media mob into a mainstream media frenzy of false attacks and threats against Nicholas.

186. In the *Post's* own words – albeit a far cry from the true scope of the false and defamatory accusations it made against Nicholas – the readers of the *Post's* coverage were “licensed to conclude that the students saw [Phillips] from afar, targeted him and advanced.” Of course, the *Post's* readers were also licensed to falsely conclude that Nicholas physically and verbally assaulted Phillips while blocking his egress from a mob of students who were similarly engaged in racist conduct.

187. The *Post* published its false stories and accusations against Nicholas widely across the internet on January 19, 20, and 21, 2019, including on its website, its Facebook page, Twitter, and YouTube.

188. The *Post* also published its false accusations against Nicholas through Apple News, which in January 2019 reportedly had 85 million subscribers. See <https://www.mediapost.com/publications/article/331318/apple-news-boosts-readership-to-85-million.html> (last visited Aug. 8, 2019).

189. When it published its false accusations, the *Post* embedded the Viral Video, which included the video cover image, or thumbnail, focusing on Nicholas' face.

190. Nicholas' friends and acquaintances, as well as other members of the public, were readily able to identify Nicholas as the subject of the *Post* articles given its repeated publication of the video cover image of Nicholas' face.

191. Even the Twitter platform itself jumped into the bully pulpit and was influenced by early media coverage of the *Post*, as demonstrated when its "moment" feature falsely accused Nicholas and his classmates of "mocking" Phillips. According to reports, a Twitter spokesperson stated "Twitter Curation strives to fairly and accurately contextualize the nature of large conversations on the platform ... The original Covington video appeared on Friday night. However, the Curation team did not compile a Moment until additional news media reporting emerged to provide context to the video – this included a source video interview with Nathan Phillips, which was featured in the Moment."

EXPRESSIONS OF HATRED AND SCORN BY THE PUBLIC

192. Within hours after the articles were published by the *Post* online that falsely accused Nicholas of jeering, mocking and blocking a Native Elder and Vietnam vet – based solely on the one-minute Viral Video and Phillips' statements – Nicholas became the subject of overwhelming public hatred, contempt, disgrace and scorn from the public.

193. The *Post*, whose coverage emphasized that Nicholas was wearing a "MAGA" hat, contributed to the rampant cyber-assault and cyber-bullying suffered by Nicholas in the aftermath of its initial reporting which was also undertaken in mass by the mob of other bullies made up of other members of the mainstream media, individuals tweeting on Twitter, church officials, celebrities, and politicians.

194. The *Post's* own website displays evidence of that public hatred and scorn in the comments posted in response to its accusations. Examples of a handful of some of

the first 8,000 comments to its first article, which embedded the Viral Video with the cover image of Nicholas' face, include:

- (a) "If any of my children behaved that way to ANY person (never mind a [sic] older person, a vet, a native American) they would go through an extended period where they felt prison may have been the easier place to consider their sins."
- (b) "Perfect. can't wait to go to that school. They must have lynching parties and mobil [sic] gas chambers. Maga."
- (c) "Those kids are Exhibit A supporting the case for keeping abortions legal."
- (d) "Their mob intimidation was just one instance of recent racist terrorism. They wanted him to be afraid for his life, and they were successful. . . . Same face, same smirk, same shameless entitlement that we saw from Kavanaugh recently. That may be what the republican party is about, but it's not what America is about."
- (e) "The young man should be severely punished – starting with expulsion but possibly also criminal intimidation charges – and his parents shamed. . . ."
- (f) "I have never wanted to slap anyone's face like I did that kid's. Till he saw stars. . . . What a disgusting individual. In many ways!"
- (g) "Even a still photo of this young white man is annoying. He epitomizes the intolerance and arrogance of American Christians."

See <https://www.washingtonpost.com/nation/2019/01/20/it-was-getting-ugly-native-american-drummer-speaks-maga-hat-wearing-teens-who-surrounded-him/> at comments (last visited Aug. 7, 2019).

195. Similar comments were posted in response to the *Post*'s January 19 tweet, which also embedded the Viral Video, including the cover image, or thumbnail, of Nicholas' face:

- (a) "I wonder what this young man's parents are thinking, knowing that he has become the poster boy for intolerance?"
- (b) "This kid is the poster boy for the preservation of Roe v Wade."
- (c) "I never spanked my kids. I want to slap this one."
- (d) "Young man, this image will haunt you into eternity, as it should, unless you make amends immediately."

196. It is not surprising that readers of the *Post* interpreted its statements about Nicholas as being defamatory.

197. It is well-known, and it was well-known at the time the *Post* published its false and defamatory articles and tweets, that many people consider the phrase "Make America Great Again" – and particularly wearing a MAGA hat – to be the equivalent of a racist statement. *See, e.g.*, "Are Trump's Make America Great Again hats patriotic or racist?" Detroit Free Press, Jan. 24, 2019, *avail. at* <https://www.freep.com/story/news/local/michigan/2019/01/24/maga-hats-racism-donald-trump/2659479002/> (last visited Aug. 6, 2019) ("Many, including actress and activist Alyssa Milano, now are calling the baseball caps the modern-day white hoods of the Ku Klux Klan, representing a white nationalist ideology pushed by the president.").

198. It also is well-known, and was well-known at the time the *Post* published its false and defamatory articles and tweets about Nicholas, that many people consider chanting "Build the wall!" to be racist. *See, e.g.*, "Trump's Wall of Shame," The New York Times, Jan. 24, 2019, *avail. at* <https://www.nytimes.com/2019/01/24/opinion/trump->

[wall-shutdown.html](#) (last visited Aug. 6, 2019) (“Whether praised by its supporters or condemned by its opponents, the wall is a stand-in for the larger promise of broad racial (and religious) exclusion and domination. It’s no surprise, then, that some Americans use ‘Build the wall’ as a racist chant. . . . In fact, you can almost think of the wall as a modern-day Confederate monument. . . .”); “Trump Never Actually Believed in the Wall,” New York Magazine, Jan. 10, 2019, *avail. at* <http://nymag.com/intelligencer/2019/01/trump-never-believed.html> (last visited Aug. 6, 2019) (“‘Build the wall!’ chants whipped [Trump’s] nativist base into a frenzy when he was a candidate . . . as both rallying cry and racist taunt.”)

199. In fact, the understanding that “Build the wall!” is racist is so widespread that chanting that phrase has been used as the basis for termination of employees and disciplining of students. *See, e.g.*, “A School Employee Was Removed From Campus After Shouting ‘Build the Wall’ at Striking Los Angeles Teachers,” Jan. 17, 2019, *avail. at* <https://www.buzzfeednews.com/article/briannasacks/los-angeles-teachers-strike-employee-build-wall> (last visited Aug. 6, 2019).

200. Given the context in which the *Post* published the accusation that Nicholas and his classmates were wearing MAGA hats while chanting “Build the wall!” at Native Americans following an Indigenous Peoples March, a reasonable reader would undoubtedly conclude that those accusations were defamatory.

201. This is particularly true given the furor just days earlier regarding a tweet on January 13, 2019, by the President in which he referred to Elizabeth Warren as “Pocahontas” and referenced the Wounded Knee massacre of Native Americans. *See, e.g.*, “Trump invokes one of the worst Native American massacres to mock Elizabeth Warren,”

The Washington Post, Jan. 14, 2019, *avail. at*

<https://www.washingtonpost.com/nation/2019/01/14/trump-invokes-one-worst-native-american-massacres-mock-elizabeth-warren/> (last visited Aug. 6, 2019); “Native Americans Slam Trump For Racist ‘Wounded Knee’ Dig At Sen. Elizabeth Warren,” HuffPost, Jan. 14, 2019, *avail. at* https://www.huffpost.com/entry/native-americans-trump-wounded-knee-elizabeth-warren_n_5c3d4086e4b0e0baf540636f (last visited Aug. 6, 2019).

202. In fact, the *Post* explicitly linked the January 18 incident with the President’s controversial tweet in many of the articles it published about the January 18 incident. As an example of a few of its statements linking the two incidents:

(a) On January 19, just above the embedded Viral Video with the cover image close-up of Nicholas’ face, a *Post* columnist noted that: “American Indians remain one of the most vulnerable groups in this country, and the cost of ignorance about them is already too high. Just look at this past week. It began with President Trump joking about a Native American massacre and ended with a group of teenagers in ‘Make America Great Again’ gear harassing an elder at the Indigenous Peoples March in the nation’s capital on Friday.” See https://www.washingtonpost.com/local/we-will-not-be-silenced-a-meaningful-march-days-after-trump-joked-about-a-native-american-massacre/2019/01/18/f7d93bdc-1b79-11e9-88fe-f9f77a3bcb6c_story.html (last visited Aug. 9, 2019).

(b) In its First Article published online on January 19, the *Post* reported that: “[t]he encounter generated a wave of outrage on social media less than a week after President Trump made light of the 1890 Wounded Knee massacre of several hundred Lakota Indians by the U.S. Cavalry in a tweet

that was meant to mock Sen. Elizabeth Warren (D), who [sic] Trump derisively calls ‘Pocahontas.’” *See infra* at ¶ 250.

- (c) On January 20, a *Post* story noted that “[t]he Friday incident happened less than a week after Trump made light of the 1890 Wounded Knee massacre of several hundred Lakota Indians by the U.S. cavalry in a tweet that was meant to mock Sen. Elizabeth Warren (D-Mass.), whom Trump derisively calls ‘Pocahontas.’” *See* https://www.washingtonpost.com/religion/2019/01/20/opposed-dignity-human-person-kentucky-catholic-diocese-condemns-teens-who-taunted-vet-march-life/?fbclid=IwAR2_jcpXPqoZttgm_VCIuDJ3_Os4D-ydNXWv9iMeczUm_TN8zJ4sPL0LVn4 (last visited Aug. 8, 2019).

- (d) Another January 20 *Post* article said that “Phillips noted afterward, ‘I heard them saying, ‘Build that wall. Build that wall.’” Nor was that the only way the students were echoing President Trump. Just five days before the Indigenous People’s March, Trump continued his racist attacks against Sen. Elizabeth Warren (D-Mass.), once again referring to her on Twitter as “Pocahontas” and, in an outrageous twist, making light of the 1890 massacre of hundreds of Lakota men, women and children at Wounded Knee by U.S. soldiers.” *See* <https://www.washingtonpost.com/outlook/2019/01/20/catholic-church-shameful-history-native-american-abuses/> (last visited Aug. 9, 2019).

203. As the *Post* itself recognized and reported to its readers: “Videos of a white boy wearing a MAGA hat while smiling in front of a Native American tribal elder and not budging immediately triggered an emotional response.” *See*

<https://www.washingtonpost.com/nation/2019/01/23/catholic-school-teen-viral-video-now-i-wish-i-would-have-walked-away/> (last visited August 8, 2019); *see also* “Pointing Fingers at the Coverage,” The Washington Post, Jan. 23, 2019 (“But the Covington story isn’t just a run-of-the-mill incident of viral outrage. It involved MAGA-hatwearing [sic] teens and American Indian activists.”).

204. Phillips, who apparently told the *Post* that Nicholas and his classmates had chanted “Build the wall!” obviously considered the chant to be offensive.

205. If chanting “Build the wall!” was not considered to be a racist chant, the *Post* would have had no reason to report it.

206. Similarly, if wearing a MAGA hat was not considered to be racist, there would have been no reason for the *Post* to include that detail so prominently in its stories, including in the headlines of at least 3 of its articles.

207. Indeed, the *Post* apparently considers the accusations against Nicholas to be comparable to incidents involving Nazi symbols, because as of the date of filing this Amended Complaint, the *Post* has included online immediately following the current version of the First Article – which still includes the cover image photo of Nicholas’ face – recommended additional, purportedly-related articles that involve Nazi salutes and other racist accusations:

Read more:

[‘Repugnant image’: Indiana school officials investigate soccer team appearing to give Nazi salutes](#)

[Apparent Nazi salute at prom investigated by Wisconsin school district](#)

[A black R&B artist hoped singing for Trump would build ‘a bridge.’ It derailed her career instead.](#)

[A rebuke from Iowa: ‘It’s time for Steve King to go’](#)

See <https://www.washingtonpost.com/nation/2019/01/20/it-was-getting-ugly-native-american-drummer-speaks-maga-hat-wearing-teens-who-surrounded-him/> (last visited Aug. 10, 2019).

RELIANCE ON MISLEADING VIRAL VIDEO

208. The *Post* relied extensively in its reporting on the Viral Video, embedding it or linking to it in every article in which it published false and defamatory accusations about Nicholas.

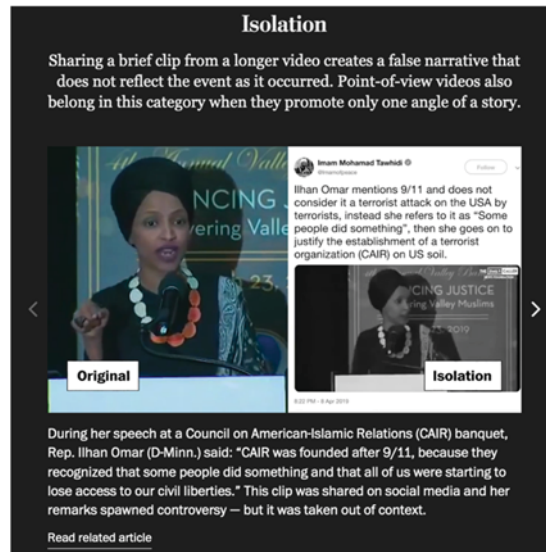
209. *Post* reporter Joe Heim was one of the first individuals in the mainstream media who picked up and tweeted the Viral Video, claiming that it showed “[u]nbelievably disturbing scenes/videos of high school kids mocking Native American elders on the steps of the Lincoln Memorial yesterday.” *See supra* at ¶ 75.

210. The *Post* website includes a guide titled “SEEING ISN’T BELIEVING: The Fact Checker’s guide to manipulated video.” *See* https://www.washingtonpost.com/graphics/2019/politics/fact-checker/manipulated-video-guide/?fbclid=IwAR0WG1LCGnjgJFUo7w_RD7GgJNZIhZbov23YJxj8l1yD878IzMBX87ocUII&noredirect=on (last visited on Aug. 22, 2019).

211. In its Fact Checker’s guide to manipulated video, the *Post* recognizes that “[t]he Internet is increasingly populated with false and misleading videos” and claims that the guide is intended “to develop a universal language to label manipulated video and hold creators and sharers of this misinformation accountable.” *Id.*

212. The *Post*’s Fact Checker’s guide to manipulated video identifies three different ways in which video can be false and misleading: (1) Missing Context, (2) Deceptive Editing, and (3) Malicious Transformation. *Id.*

213. The Viral Video published repeatedly by the *Post* with the accusations against Nicholas is guilty of two of these three descriptions of types of false and misleading videos, because it was presented in an inaccurate manner and was a brief clip shown in isolation that created and furthered a false narrative. The Viral Video is similar to an example provided by the *Post* in its Fact Checker's guide to manipulated video:



Id.

214. Despite the fact that the *Post* should have immediately recognized the Viral Video as a “false and misleading video,” the *Post* nevertheless continued to rely on the Viral Video to support Phillips’ false and defamatory narrative against Nicholas.

EDITOR’S NOTES AND CORRECTIONS

215. As a practical demonstration that the accusations made against Nicholas by the *Post* are conveyed to the reader as factual events capable of being proven true or false, certain media outlets quickly clarified, corrected and/or retracted false factual accusations about Nicholas. For instance, KTXL Fox40 issued “A Note To Our Viewers About Our Covington Coverage,” stating, in part, as follows:

“Early reports also contained unverified statements about the students’ conduct, including statements by Phillips that they had chanted ‘Build That Wall,’ and made remarks offensive to Native Americans. Though several videos have come to light since the incident, none of them contains evidence of hostile remarks by the students.”

“Our reports contained other remarks which, after videos emerged and both sides were heard from, proved unsubstantiated or untrue. Sandmann was accused of blocking Phillips’ path so he could not climb the steps of the Memorial to pray. Students were accused of assembling in the Indigenous People’s space, and taunting and mocking the Native Americans. We reported the Diocese of Covington’s condemnation of the Covington Catholic High School students, a denunciation that was retracted in six days when the church admitted it had rushed to judgment ... saying they had been ‘bullied and pressured into making a statement prematurely.’”

“The facts now available about this story show no evidence of taunting by the students ... Phillips was not denied freedom of movement – he approached the student gathering and said he wanted to promote peace between the students and the other activist group that taunted them with profanity. Sandmann, for his part, professed the same motive: keeping calm, and preventing the situation from getting out of hand. His behavior, and the prompt arrival of the school buses, achieved this goal. Until the story went viral the next day.”

“The lion’s share of the denunciations of this event landed on the students, and the focus of attention was on Sandmann, who reportedly had bought his red cap that afternoon. Such is the result of cell phone video presented as news: it shows a small window of reality for a short burst of time. Context, which is essential in any news report, is lacking. Judgments are reached without the benefit of all or even most of the facts. It is a prescription for error[.]”

“We should have considered that the targets of this story were high school students.”

“We owe an apology to the students, their families, and the face of the Covington student group, Nick Sandmann. . . . Because of the way this story came together – fueled by a viral video with no on-scene reporting by independent voices – we lost sight of our standard of fairness, context, and accuracy. This is especially serious when the groundswell of misinformed anger fell on a group of teenagers who never sought the attention, let alone the abusive treatment, they got. They deserved better, and so did our viewers.”

A true and correct copy of KTXL Fox40’s statement is attached hereto as *Exhibit E*.

216. In fact, the *Post* has recognized and admitted both that its accusations against Nicholas are capable of being proven true or false and that a number of those accusations were actually false as initially published by the *Post*.

217. Over one month after the January 18 incident, and 10 days after Nicholas sued the *Post* on February 19, 2019, and while failing to issue an admission of fault, an apology, an adequate correction, or an unequivocal retraction, on Friday, March 1, 2019, the *Post* published several different “Editor’s notes” and “Corrections” in its print newspaper, as a preface to its online articles, and as a stand-alone page on its website. True and correct copies of The Washington Post’s Editor’s Notes and Corrections are attached hereto as *Exhibit F*.

218. Pursuant to the *Post*’s “Corrections policy,” it generally is not necessary for the *Post* to note changes to online articles, but “*it is necessary* to use a correction, clarification, or editor’s note to inform readers whenever we correct a significant mistake.” See <https://www.washingtonpost.com/policies-and-standards/> at “Corrections policy: Updating a digital report” (emphasis in original) (last visited Aug. 10, 2019).

219. The *Post*’s Corrections policy also provides that “[i]f we are substantively correcting an article, photo caption, headline, graphic, video or other material, we should promptly publish a correction explaining the change.” See <https://www.washingtonpost.com/policies-and-standards/> at “Corrections policy: Corrections” (last visited Aug. 10, 2019).

220. Additionally, an Editor’s Note is reserved for correction of particularly egregious errors and is described by the *Post* as follows: “A correction that calls into question the entire substance of an article, raises a significant ethical matter or addresses

whether an article did not meet our standards, may require an Editor's Note and be followed by an explanation of what is at issue. A senior editor must approve the addition of an Editor's Note to a story." See <https://www.washingtonpost.com/policies-and-standards/> at "Corrections policy: Editor's notes" (last visited Aug. 10, 2019).

221. In its stand-alone online "Editor's note related to Lincoln Memorial incident," the *Post* published the following:

National

Editor's note related to Lincoln Memorial incident

By Washington Post Staff
March 1

A Washington Post article first posted online on Jan. 19 reported on a Jan. 18 incident at the Lincoln Memorial. Subsequent reporting, a student's statement and additional video allow for a more complete assessment of what occurred, either contradicting or failing to confirm accounts provided in that story — including that Native American activist Nathan Phillips was prevented by one student from moving on, that his group had been taunted by the students in the lead-up to the encounter, and that the students were trying to instigate a conflict. The high school student facing Phillips [issued a statement](#) contradicting his account; the bishop in Covington, Ky., [apologized for the statement](#) condemning the students; and [an investigation](#) conducted for the Diocese of Covington and Covington Catholic High School found the students' accounts consistent with videos. Subsequent Post coverage, including video, reported these developments: "[Viral standoff between a tribal elder and a high schooler is more complicated than it first seemed](#)"; "[Kentucky bishop apologizes to Covington Catholic students, says he expects their exoneration](#)"; "[Investigation finds no evidence of 'racist or offensive statements' in Mall incident.](#)"

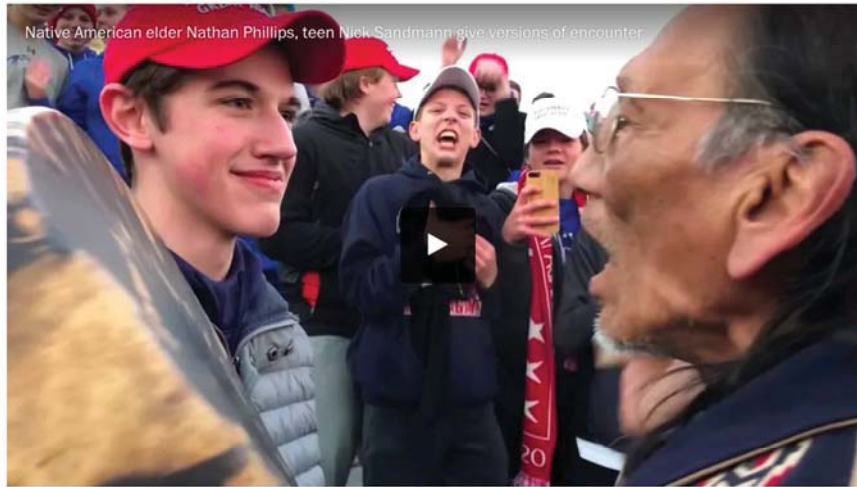
A Jan. 22 correction to the original story reads: Earlier versions of this story incorrectly said that Native American activist Nathan Phillips fought in the Vietnam War. Phillips said he served in the U.S. Marines but was never deployed to Vietnam.

See <https://www.washingtonpost.com/nation/2019/03/01/editors-note-related-lincoln-memorial-incident/> (last visited Aug. 9, 2019).

222. The *Post* published an Editor's Note to its online First Article⁵ and Second Article⁶ as follows:

National

'It was getting ugly': Native American drummer speaks on his encounter with MAGA-hat-wearing teens



Omaha elder Nathan Phillips and high school student Nick Sandmann give their versions of viral moment on the steps of the Lincoln Memorial. (Erin Patrick O'Connor, Joyce Koh/The Washington Post)

By **Cleve R. Wootson Jr.**, **Antonio Olivo** and **Joe Heim**
January 22

Editor's Note: Subsequent reporting, a student's statement and additional video allow for a more complete assessment of what occurred during the Jan. 18 incident at the Lincoln Memorial, either contradicting or failing to confirm accounts provided in this story — including that Native American activist Nathan Phillips was prevented by one student from moving on, that his group had been taunted by the students in the lead-up to the encounter, and that the students were trying to instigate a conflict. The high school student facing Phillips [issued a statement](#) contradicting his account; the bishop in Covington, Ky., [apologized for the statement](#) condemning the students; and [an investigation](#) conducted for the Diocese of Covington and Covington Catholic High School found the students' accounts consistent with videos. Subsequent Post coverage, including video, reported these developments: "[Viral standoff between a tribal elder and a high schooler is more complicated than it first seemed](#)"; "[Kentucky bishop apologizes to Covington Catholic students, says he expects their exoneration](#)"; "[Investigation finds no evidence of 'racist or offensive statements' in Mall incident.](#)" (March 1)

⁵ See *infra*, at ¶¶ 250-263.

⁶ See *infra*, at ¶¶ 264-271.

See <https://www.washingtonpost.com/nation/2019/01/20/it-was-getting-ugly-native-american-drummer-speaks-maga-hat-wearing-teens-who-surrounded-him/> (last visited Aug. 9, 2019).

223. The *Post* published an Editor's Note in the print edition of its Friday, March 1 newspaper, which applied to the Third Article⁷ and the Sixth Article⁸ as follows:

EDITOR'S NOTE

A Jan. 20 Metro article provided an account from Native American activists about an encounter with a group of high school students from Covington, Ky. Subsequent reporting and video evidence contradicted or failed to corroborate that one of the activists was accosted and prevented from moving, that the activists had been taunted by the students in the lead-up to the encounter, that the students were trying to instigate a conflict, or that "March for Life" participants chanted "Build that wall."

A Jan. 21 Page One article reported an account by one of the activists that he had heard students earlier make disparaging comments about Native Americans and had heard students shout "Go back to Africa!" The story reported the denial of one student that he had heard any students say anything hateful or racist at any time. The story should have noted that widely circulated video from that day does not corroborate that such statements were made.

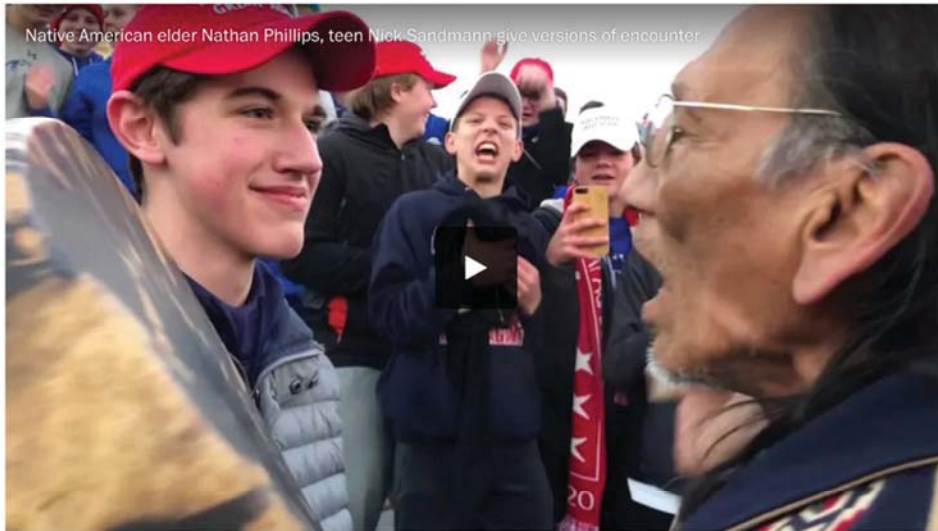
⁷ See *infra*, at ¶¶ 272-286.

⁸ See *infra*, at ¶¶ 313-325.

224. The *Post* published a “Correction” on March 1 to its online Fourth Article⁹:

Acts of Faith

‘Opposed to the dignity of the human person’: Kentucky Catholic diocese condemns teens who taunted vet at March for Life



Omaha elder Nathan Phillips and high school student Nick Sandmann give their versions of viral moment on the steps of the Lincoln Memorial. (Erin Patrick O'Connor, Joyce Koty/The Washington Post)

By **Michelle Boorstein**
January 20

Correction: An earlier version of this article inaccurately described the statement of Catholic officials from Covington, Ky. Their statement condemned the teens’ actions toward “Native Americans in general” but did not apologize for those actions. The article has been updated. This version of the story also has been revised to add that students chanting “build that wall” is not audible on video, and to eliminate Nathan Phillips’s claim that one student blocked him from moving, which is contradicted by available video. (March 1)

See <https://www.washingtonpost.com/religion/2019/01/20/opposed-dignity-human-person-kentucky-catholic-diocese-condemns-teens-who-taunted-vet-march-life/> (last visited Aug. 9, 2019).

⁹ See *infra*, at ¶¶ 287-301.

225. The *Post* published an Editor's Note to its online Fifth Article¹⁰ on March 1 as follows:

Politics • Analysis

Most young white men are much more open to diversity than older generations



By Philip Bump
January 20

Editor's Note: *This story has been revised to delete reference to public perceptions that the student facing Nathan Phillips appeared to physically intimidate him, which were based on the initial widely circulated video. More complete video does not show that the student physically intimidated Phillips. This story also has been revised to add that students chanting "build that wall" is not audible on video. (March 1)*

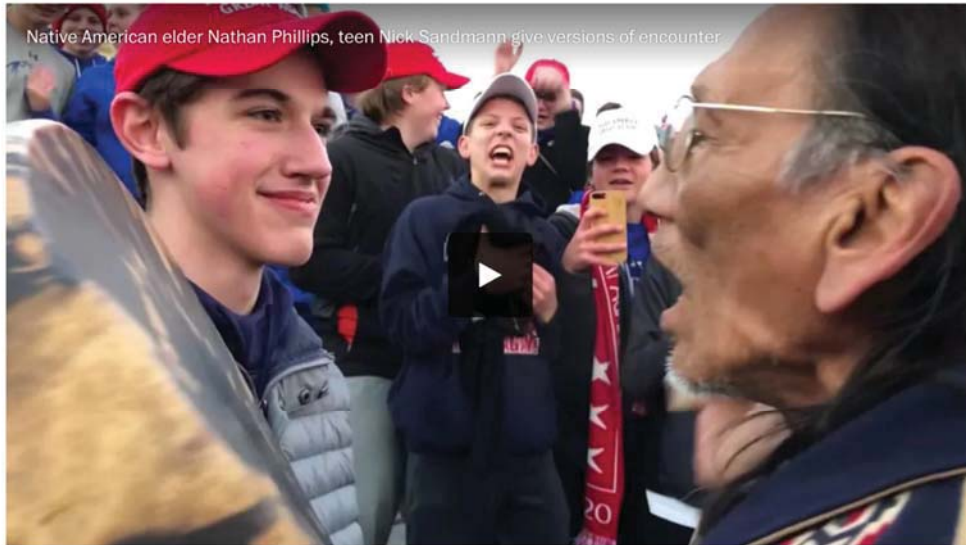
See <https://www.washingtonpost.com/politics/2019/01/20/most-young-white-men-are-much-more-open-diversity-than-older-generations/> (last visited Aug. 9, 2019).

226. The *Post* also published an Editor's Note to its online Seventh Article¹¹:

¹⁰ See *infra* at ¶¶ 302-312.

¹¹ See *infra* at ¶¶ 326-334.

Viral standoff between a tribal elder and a high schooler is more complicated than it first seemed



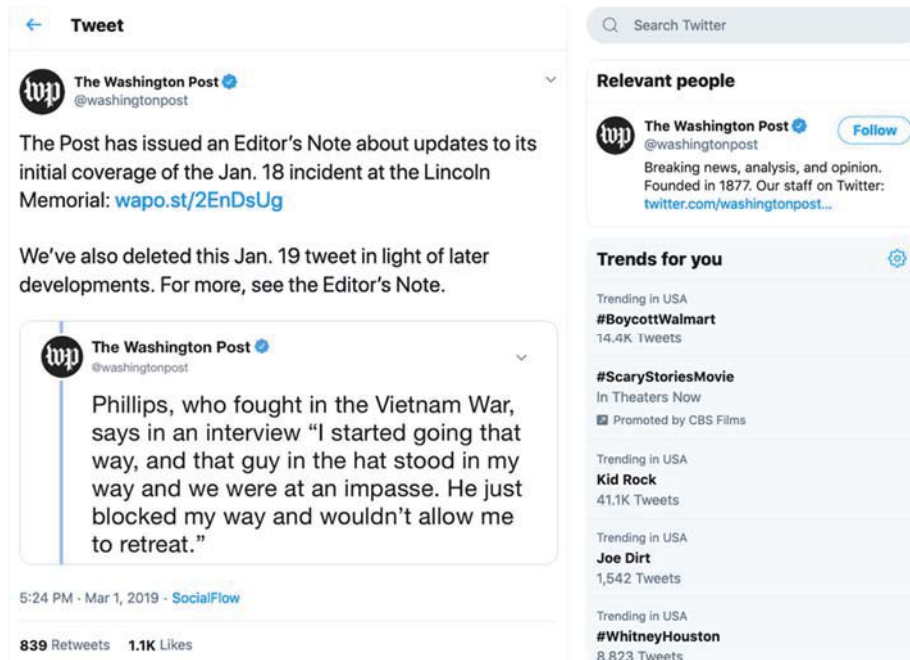
Omaha elder Nathan Phillips and high school student Nick Sandmann give their versions of viral moment on the steps of the Lincoln Memorial. (Erin Patrick O'Connor, Joyce Koh/The Washington Post)

By **Michael E. Miller**
January 22

Editor's Note: After this article was published, the bishop in Covington, Ky., [apologized for the statement](#) condemning the students and [an investigation](#) conducted for the Diocese of Covington and Covington Catholic High School found the students' accounts consistent with videos. This article now links to [a statement issued](#) by the high school student facing Native American activist Nathan Phillips. Subsequent Post coverage, including video, reported these developments: ["Kentucky bishop apologizes to Covington Catholic students, says he expects their exoneration"](#); ["Investigation finds no evidence of 'racist or offensive statements' in Mall incident."](#) Also, this version of the story has been revised to clarify that certain statements reported by Phillips are not corroborated by widely circulated video of the incident. (March 1)

See https://www.washingtonpost.com/local/social-issues/picture-of-the-conflict-on-the-mall-comes-into-clearer-focus/2019/01/20/c078f092-1ceb-11e9-9145-3f74070bbdb9_story.html (last visited Aug. 9, 2019).

227. Additionally, on Twitter, the *Post* purported to delete a tweet that it determined was inaccurate (although the offending tweet was not actually deleted) and provided a link to the stand-alone Editor's Note on its website:



See <https://twitter.com/washingtonpost/status/1101609186184646656> (last visited Aug. 9, 2019).

228. According to the *Post's* own Editor's Notes and Corrections, its initial articles reported that "Nathan Phillips was prevented by one student from moving on," that "his group had been taunted by the students," that "one of the activists was accosted and prevented from moving on," and that Nathan Phillips claimed "that one student blocked him from moving" and that "[h]e just blocked my way and wouldn't allow me to retreat."

229. However, according to the *Post* as of March 1, the "facts" conveyed in these initial reports were either "contradicted by available video" or "video evidence contradicted or failed to corroborate" these factual accusations.

230. At least one *Post* article made abundantly clear the false, factual accusations contained in the *Post's* coverage, while another *Post* reporter felt obligated to clear up the record created by the *Post*.

231. In a *Post* article entitled, “Fuller Picture’: How major media outlets handled their accounts of the Covington story,” the *Post* published the following:

Given Phillips’s comment to The Post that he was “swarmed” by the students, readers would have been licensed to conclude that the students saw him from afar, targeted him and advanced. We learned later that Phillips himself had walked straight into the student group, making a swarm all but inevitable.

See https://www.washingtonpost.com/opinions/2019/01/23/fuller-picture-how-major-media-outlets-handled-their-evolving-accounts-covington-story/?utm_term=E2%80%A6 (last visited Aug. 7, 2019).

232. *Post* reporter Megan McCardle listed a number of defamatory meanings found in the *Post*’s coverage in a series of tweets on January 23 and laid to rest the issue of whether they were false statements of fact or protected opinion, stating, among other tweets in the string:

- a) “My paper, the Washington Post, locates the activist. He describes being taunted by March for Life People as another protest, the Indigenous Peoples’ March, is breaking up. Chants of ‘Build the Wall’ and other unpleasantness. He decides to remove himself to the Lincoln Memorial.”
- b) “Nathan Phillips, the activist, is on his way to the memorial when Nick Sandmann, aka The Smirker, blocks his way. The kids have swarmed around him, cutting off retreat. They’re at an impasse. Phillips starts beating his drum and praying, thinking of his wife.
- c) **“Then a longer video surfaces, proving pretty incontrovertibly that almost none of this happened.”** (Emphasis added).
- d) “[H]e did not get cut off by the group while walking up the steps. He marched straight into the group, past a clear and open path up the steps.”
- e) “This is obviously not even close to what Phillips said happened, and also, very hard to confuse with Phillips [sic] account; the discrepancies are not minor, and it’s hard to see how they happened.”
- f) “So first, obvious thing: Any piece of information that comes from Phillips should be utterly discounted. Journalists do not rely on sources who tell

two different versions of major events in quick succession, after video has disproven the first account. For obvious reasons.”

- g) “I’m not going to litigate whether one can wear a MAGA hat without being a horrible racist. It’s pointless; no one changes their mind. So let’s just grant, *arguendo*, that Red Hat Bad.”
- h) “But is it impossible that someone could wear a red hat and also not threaten a Native American activist? We don’t even have to argue about whether they will inevitably do threatening racist things...”
- i) “I think if we’re not lunatics we have to agree that it is possible to put a red hat on your head and not be automatically compelled to commit acts of overt racism while your are [sic] very obviously being filmed by multiple people, most of them members of minority groups.”
- j) “But I don’t think that ‘wearing a MAGA hat’ is in the same class as ‘surrounding an elderly Native American man and implicitly threatening him’. ...
- k) “And when it becomes clear that the former **did not happen**, it is distressing to watching apparently sane adults claim that **nothing** has changed, that **no revision** of their earlier judgment is required ...”
- l) “But again, ‘cultural insensitivity,’ while bad ... is not the same thing as ‘surrounding and jeering at a lone elderly minority in a threatening manner.’”
- m) “Because let’s remember what happened to Sandmann, the abuse that was heaped on him. The guy fantasizing about feeding him headfirst into a woodchipper, and more realistically, the ones fantasizing about how he’d be denied college admissions and functionally unemployable.”
- n) “But while I don’t think we can avoid bad fast takes, I do think we can avoid the absolutely vicious way these kids were treated.”
- o) “Fighting racism is a good cause. It is a GREAT cause. It does not require us to believe things that are not true. And it cannot afford for us to believe things that aren’t true.”

See <https://twitter.com/asymmetricinfo/status/1088173759272574977> (last visited Aug. 7, 2019).

PARTIES, JURISDICTION, AND VENUE

233. Nicholas Sandmann and his parents reside in Kenton County, Kentucky.

234. Nicholas currently is a 17-year old 12th grade student who attends CovCath, an all-male Catholic high school in Park Hills, Kentucky.

235. The *Post* is a foreign corporation existing under the laws of the State of Delaware with its principal place of business being located at 1301 K. Street NW, Washington, D.C. 20071. The *Post* may be served by delivery of a copy of the summons and complaint to its duly-appointed registered agent, C T Corporation System, 1015 15th Street NW, Suite 1000, Washington, D.C. 20005.

236. There exists complete diversity of citizenship between Plaintiffs and the *Post*.

237. The amount in controversy greatly exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interests, costs, and attorneys' fees, as required to sustain subject-matter jurisdiction in this Court.

238. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a).

239. The *Post* has one of the largest print circulations and number of online subscribers in the country.

240. The *Post* transacts business in the State of Kentucky, including through the sale of print newspapers and online subscriptions, and committed the tortious acts identified herein in the State of Kentucky.

241. The *Post* published the print and online articles identified herein in the State of Kentucky.

242. The *Post* has intentionally sought and obtained benefits from their tortious acts in the State of Kentucky.

243. The *Post* directed its unlawful and bullying conduct at Nicholas, a citizen of Kentucky.

244. Nicholas suffered substantial reputational and emotional harm in this District.

245. There is a reasonable and direct nexus between the *Post's* tortious conduct in Kentucky and the harm suffered by Nicholas in Kentucky and beyond.

246. The *Post* is subject to the jurisdiction of this Court pursuant to KRS 454.210.

247. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the *Post* is subject to personal jurisdiction in this District and/or a substantial part of the events giving rise to this claim occurred in this District, including publication and injury.

CAUSE OF ACTION FOR DEFAMATION

248. Nicholas reasserts and incorporates by reference paragraphs 1 through 247 of this Complaint as if fully restated herein.

249. The *Post* published to third parties without privilege no less than six false and defamatory articles of and concerning Nicholas, including two in its print newspaper and four online. This number does not include those articles that the *Post* updated and changed after initial publication.

First Article

250. On January 19, 2019, the *Post* published online its first false and defamatory article entitled “‘It was getting ugly’: Native American drummer speaks on MAGA-hat wearing teens who surrounded him” (the “First Article”). A true and correct copy of the archived First Article as published at 4:22 pm (which does not include the video cover

image from the Viral Video that was embedded in the article or any photographs) is attached hereto as *Exhibit G-1*, and the current version of the article can be viewed online at <https://www.washingtonpost.com/nation/2019/01/20/it-was-getting-ugly-native-american-drummer-speaks-maga-hat-wearing-teens-who-surrounded-him/> (last visited Aug. 9, 2019).

251. The false and defamatory statements in the First Article are about Nicholas, as evidenced by the fact that the First Article features Nicholas prominently by embedding the Viral Video, which has the cover image of Nicholas' face, and by emphasizing his alleged involvement as the "one standing about a foot from the drummer's face wearing a relentless smirk."

252. Additionally, an archived version of the First Article from 6:32 pm on January 19 includes a photograph of Nicholas' face:

Phillips, who was singing the American Indian Movement song that serves as a ceremony to send the spirits home, said he noticed tensions beginning to escalate when the teens and other apparent participants from the nearby March for Life rally began taunting the dispersing indigenous crowd.



A few people in the March for Life crowd began to chant "Build that wall, build that wall," he said.

"It was getting ugly, and I was thinking: 'I've got to find myself an exit out of this situation and finish my song at the Lincoln Memorial,'" Phillips recalled. "I started going that way, and that guy in the hat stood in my way and we were at an impasse. He just blocked my way and wouldn't allow me to retreat."

See <https://archive.is/YMKNO> (last visited Aug. 9, 2019).¹² A true and correct copy of this archived article (which does not include the video cover image for the embedded video) is attached hereto as *Exhibit G-2*.

253. The *Post* described the Viral Video it published on January 19, which included the video cover image close-up of Nicholas' face, with the caption "Teens mock and jeer Native American elder on the Mall" or "Teens mock Native American elder on the Mall":

Video

Teens mock and jeer Native American elder on the Mall

A group of high school teens surrounded and jeered Native American elder Nathan Phillips on the steps of the Lincoln Memorial on Jan. 18.

National · Jan 19, 2019



Video

Teens mock Native American elder on the Mall

A group of high school teens surrounded and jeered at Native American elder Nathan Phillips on the steps of the Lincoln Memorial on Jan. 18.

National · Jan 19, 2019



See

<https://www.washingtonpost.com/newssearch/?query=%22Nathan%20Phillips%22&sort=Relevance&datefilter=All%20Since%202005&spellcheck&startat=40#top> (last visited Aug. 9, 2019).

254. In addition to the individual statements constituting false and defamatory accusations against Nicholas that are detailed below, the First Article, when viewed in

¹² Articles and posts by the *Post* apparently are not routinely cached or archived, and it is therefore difficult to obtain original versions of the articles that were published because the *Post* changes its online articles without always providing any notice that it has done so. In this First Amended Complaint, Nicholas has been able to provide some earlier versions of articles than were available at the time of filing his initial Complaint, and he anticipate that additional versions may be produced by the *Post* during discovery.

context and including all statements, images, graphics, and video contained and linked to therein, conveyed a number of false and defamatory gists about Nicholas.

255. The First Article conveyed the false and defamatory gist that Nicholas instigated a confrontation with Phillips and subsequently engaged in racist conduct.

256. The First Article communicated the false and defamatory gist that Nicholas assaulted and/or physically intimidated Phillips.

257. The First Article communicated the false and defamatory gist that Nicholas engaged in racist taunts.

258. The First Article implied that the *Post* had information not disclosed to its readers, because the very first words of the article described “[t]he images in a series of videos that went viral on social media Saturday,” and the *Post* purported to tell its readers what was “[i]n them,” *i.e.*, “[t]he images in a series of videos.”

259. The *Post*, however, embedded only the Viral Video into the First Article. It is unknown to what “series of videos” the *Post* was referring, and there is no indication in the First Article as to what those videos are or where they can be located – beyond the embedded Viral Video, which is edited in such a way so as to be completely misleading.

260. In fact, at the time of the publication of the First Article, there were videos available online that demonstrated that the narrative of events given by Phillips, and blindly republished by the *Post* in the First Article, was entirely false.

261. There was no way for the *Post*’s readers to determine that the report in the First Article was false, however, because the *Post* did not disclose which videos it was describing and did not provide any video to its readers aside from the misleading Viral Video.

262. The accusations in the First Article are statements of fact capable of being proven true or false, as evidenced in part by the Editor's Note published by the *Post* with respect to the First Article in which it admitted that other evidence disproved certain of its accusations against Nicholas.

263. In its First Article, the *Post* published or republished the following false and defamatory statements:

- (a) The headline "'It was getting ugly': Native American drummer speaks on the MAGA-hat wearing teens who surrounded him."
- (b) "In an interview Saturday, Phillips, 64, said he felt threatened by the teens and that they suddenly swarmed around him as he and other activists were wrapping up the march and preparing to leave."
- (c) "Phillips, who was singing the American Indian Movement song of unity that serves as a ceremony to send the spirits home, said he noticed tensions beginning to escalate when the teens and other apparent participants from the nearby March for Life rally began taunting the dispersing indigenous crowd."
- (d) "A few people in the March for Life crowd began to chant 'Build that wall, build that wall,' he said."
- (e) "'It was getting ugly, and I was thinking: 'I've got to find myself an exit out of this situation and finish my song at the Lincoln Memorial,' Phillips recalled. 'I started going that way, and that guy in the hat stood in my way and we were at an impasse. He just blocked my way and wouldn't allow me to retreat.'"

- (f) “It clearly demonstrates the validity of our concerns about the marginalization and disrespect of Indigenous peoples, and it shows that traditional knowledge is being ignored by those who should listen most closely,’ Darren Thompson, an organizer for the [Indigenous Peoples Movement], said in the statement.”
- (g) “Chase Iron Eyes, an attorney with the Lakota People Law Project, said the incident lasted about 10 minutes and ended when Phillips and other activists walked away.”
- (h) “‘It was an aggressive display of physicality. They were rambunctious and trying to instigate a conflict,’ he said. ‘We were wondering where their chaperones were. [Phillips] was really trying to defuse the situation.’”
- (i) “Phillips, an Omaha tribe elder who also fought in the Vietnam war, has encountered anti-Native American sentiments before”

Second Article

264. On January 20, the *Post* updated its First Article and published online the Second Article (the “Second Article”). A true and correct copy of the archived Second Article (which does not include the video cover image from the Viral Video that was embedded in the article) is attached hereto as *Exhibit H*, and the current version of the article can be viewed online at <https://www.washingtonpost.com/nation/2019/01/20/it-was-getting-ugly-native-american-drummer-speaks-maga-hat-wearing-teens-who-surrounded-him/> (last visited Aug. 9, 2019).

265. The false and defamatory statements in the Second Article are about Nicholas, as evidenced by the fact that the Second Article features Nicholas prominently by embedding the Viral Video, which has the cover image of Nicholas’ face, and by

emphasizing his alleged involvement as the “one standing about a foot from the drummer’s face wearing a relentless smirk.”

266. Additionally, the statement from the Diocese was about Nicholas as evidenced, in part, by the subsequent letter from the Diocese apologizing specifically to Nicholas, who was “the face” of the false accusations, for the statement republished by the *Post*. See *Exhibit B*.

267. In addition to the individual statements constituting false and defamatory accusations against Nicholas that are detailed below, the Second Article, when viewed in context and including all statements, images, graphics, and video contained and linked to therein, conveyed a number of false and defamatory gists about Nicholas.

268. The Second Article, as updated and in addition to the statements and gists identified above in the First Article, communicated the false and defamatory gist that Nicholas’ behavior violated the fundamental standards of his religious community and violated the policies of his school such that he should be expelled.

269. For the same reasons as the First Article, in its Second Article, the *Post* again conveyed to its readers that it had information not available to them by referencing “images in videos that went viral on social media Saturday,” while embedding only the Viral Video and not disclosing or linking to any other videos that the *Post* writers may have reviewed.

270. The accusations in the Second Article are statements of fact capable of being proven true or false, as evidenced in part by the Editor’s Note published by the *Post* with respect to the Second Article in which it admitted that other evidence disproved certain of its accusations against Nicholas.

271. In its false and defamatory Second Article, in addition to those identified in the First Article, the *Post* published or republished the following false and defamatory statements:

- (a) “‘We [Bishop Foy and the Diocese of Covington] condemn the actions of the Covington Catholic High School students towards Nathan Phillips specifically, and Native Americans in general,’ the statement said. ‘The matter is being investigated and we will take appropriate action, up to and including expulsion.’ ... The diocese’s statement expressed regret that jeering, disrespectful students from a Catholic school had become the enduring image of the march.”

Third Article

272. On January 20, 2019, the *Post* published in print its third false and defamatory article entitled “Marcher’s accost by boys in MAGA caps draws ire” (the “Third Article”). A true and correct copy of the Third Article is attached hereto as *Exhibit I*.

273. The Third Article was published in the *Post’s* Sunday edition of its newspaper on page 1 of the Metro section.

274. The Third Article features Nicholas prominently by referring to the Viral Video with its cover image of Nicholas’ face, and emphasizing Nicholas’ alleged involvement as the “one who stood about a foot from the drummer’s face also wearing a relentless smirk” and “that guy in the hat” who, according to Phillips, “stood in my way and we were at an impasse. He just blocked my way and wouldn’t allow me to retreat.” Additionally, the teens were identified in the Third Article as being from CovCath. Finally, the Diocese specifically apologized to Nicholas for its statements about him that were republished by the *Post* in the Third Article. *See Exhibit B*.

275. In addition to the individual statements constituting false and defamatory accusations against Nicholas that are detailed below, the Third Article, when viewed in context and including all statements, images, graphics, and video contained and linked to therein, conveyed a number of false and defamatory gists about Nicholas.

276. The Third Article communicated the false and defamatory gist that Nicholas instigated a confrontation with Phillips and subsequently engaged in racist conduct.

277. The Third Article communicated the false and defamatory gist that Nicholas assaulted and/or physically intimidated Phillips.

278. The Third Article communicated the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

279. The Third Article communicated the false and defamatory gist that Nicholas' behavior violated the policies of his school such that he should be expelled.

280. The Third Article implied that the *Post* had information not disclosed to its readers, because the very first words of the article described “[t]he images in videos that went viral on social media Saturday,” and the *Post* purported to tell its readers what was “[i]n them,” *i.e.*, “[t]he images in videos.”

281. The *Post*, however, provided no indication in the Third Article as to what those videos were or where they could be located.

282. The description of events in the Third Article reflects only what could be seen in the Viral Video – the only video the *Post* had included online – and does not provide a description of the January 18 incident as it could be viewed by the Banyamyan Video or other online videos.

283. In fact, at the time of the publication of the Third Article on January 20, there were videos available online that demonstrated that the version of events given by Phillips, and blindly republished by the *Post* in the Third Article, was entirely false.

284. There was no way for the *Post*'s readers to determine that the report in the Third Article was false, however, because the *Post* did not disclose which videos it was describing and did not provide descriptions of any video to its readers aside from the misleading Viral Video.

285. The accusations in the Third Article are statements of fact capable of being proven true or false, as evidenced in part by the Editor's Note published by the *Post* with respect to the Third Article in which it admitted that other evidence disproved certain of its accusations against Nicholas.

286. In its Third Article, the *Post* published or republished the following false and defamatory statements:

- (a) The headline "Marcher's accost by boys in MAGA caps draws ire."
- (b) "In an interview Saturday, Phillips, 64, said he felt threatened by the teens and that they suddenly swarmed around him as he and other activists were wrapping up the march and preparing to leave."
- (c) "Phillips, who was singing the American Indian Movement song that serves as a ceremony to send the spirits home, said he noticed tensions beginning to escalate when the teens and other apparent participants from the nearby March for Life rally began taunting the dispersing indigenous crowd."
- (d) "A few people in the March for Life crowd began to chant 'Build that wall, build that wall,' he said."

- (e) “‘It was getting ugly, and I was thinking: ‘I’ve got to find myself an exit out of this situation and finish my song at the Lincoln Memorial,’ Phillips recalled. ‘I started going that way, and that guy in the hat stood in my way and we were at an impasse. He just blocked my way and wouldn’t allow me to retreat.’”
- (f) “‘It clearly demonstrates the validity of our concerns about the marginalization and disrespect of Indigenous peoples, and it shows that traditional knowledge is being ignored by those who should listen most closely,’ Darren Thompson, an organizer for the [Indigenous Peoples Movement], said in the statement.”
- (g) “‘We [Bishop Foy and the Diocese of Covington] condemn the actions of the Covington Catholic High School students towards Nathan Phillips specifically, and Native Americans in general,’ the statement said. ‘The matter is being investigated and we will take appropriate action, up to and including expulsion.’”
- (h) “Chase Iron Eyes, an attorney with the Lakota People Law Project, said the incident lasted about 10 minutes and ended when Phillips and other activists walked away.”
- (i) “‘It was an aggressive display of physicality. They were rambunctious and trying to instigate a conflict,’ he said. ‘We were wondering where their chaperones were. [Phillips] was really trying to defuse the situation.’”
- (j) “In that role, he [Phillips] has encountered anti-Native American sentiment before”

Fourth Article

287. On the afternoon of January 20, 2019, the *Post* published online its fourth false and defamatory article entitled “Opposed to the dignity of the human person’: Kentucky Catholic diocese condemns teens who taunted vet at March for Life” (the “Fourth Article”). A true and correct copy of the archived Fourth Article (which does not include the video cover image from the Viral Video that was embedded in the article) is attached hereto as *Exhibit J-1*. The *Post* also tweeted a link to the Fourth Article, and a true and correct copy of that tweet is attached hereto as *Exhibit J-2*. See also <https://twitter.com/washingtonpost/status/1087078818890817537?lang=en> (last visited Aug. 9, 2019):



288. The false and defamatory statements in the Fourth Article are about Nicholas, as evidenced by the fact that the Fourth Article features Nicholas prominently by embedding the Viral Video, which has the cover image of Nicholas’ face, and emphasizing Nicholas’ alleged involvement as the “teen, shown smirking at [Phillips] in the video, [who] was blocking him from moving.” Additionally, the Diocese specifically

apologized to Nicholas for its statements about him that were republished by the *Post* in the Fourth Article. *See Exhibit B.*

289. In addition to the individual statements constituting false and defamatory accusations against Nicholas that are detailed below, the Fourth Article, when viewed in context and including all statements, images, graphics, and video contained and linked to therein, conveyed a number of false and defamatory gists about Nicholas.

290. The Fourth Article communicated the false and defamatory gist that Nicholas instigated a confrontation with Phillips and engaged in racist conduct.

291. The Fourth Article communicated the false and defamatory gist that Nicholas assaulted Phillips.

292. The Fourth Article communicated the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

293. The Fourth Article communicated the false and defamatory gist that Nicholas' behavior violated the policies of his school such that he should be expelled.

294. The Fourth Article implied that the *Post* had information not disclosed to its readers, because the very first words of the article described “[a] viral video of a group of Kentucky teens in ‘Make America Great Again’ hats taunting a Native American veteran on Friday. . . .” The *Post* purported to tell its readers what “[t]he video . . . showed. . . .”

295. The *Post*, however, embedded only the extremely misleading Viral Video into the Fourth Article.

296. In fact, at the time of the publication of the Fourth Article, there were videos available online that demonstrated that the version of events given by Phillips, and blindly republished by the *Post* in the Fourth Article, was entirely false.

297. There was a link included in the Fourth Article to “[a]n unverified, longer video of the event,” which the article describes as showing “that the altercation between teens and the man was part of a broader tense scene on the memorial plaza over politics and identity.” It is unclear to which “unverified, longer video” the *Post* was referring because the link in the article is no longer active.

298. There was no way for the *Post*’s readers to determine that the report in the Fourth Article was false, however, because the *Post* did not disclose the truth of what longer videos showed – *i.e.*, that Nicholas was not “blocking [Phillips] from moving,” that the students were not chanting ‘Build that wall, build that wall,’ and that the teens were not “taunting” Phillips, as falsely stated in the Fourth Article. To the contrary, the longer videos showed the objectively verifiable facts that Phillips approached Sandmann from across the steps in front of the Lincoln Memorial and that the only individuals shouting racist and offensive remarks were the Black Hebrew Israelites, but this was information that the *Post*’s readers did not have.

299. Moreover, the *Post*’s reference to the “longer video” as being “unverified” necessarily calls into question the veracity of the longer video; in contrast, the *Post* never referred to the Viral Video as “unverified” even though it was clearly edited, misleading, and spread by a fake Twitter account.

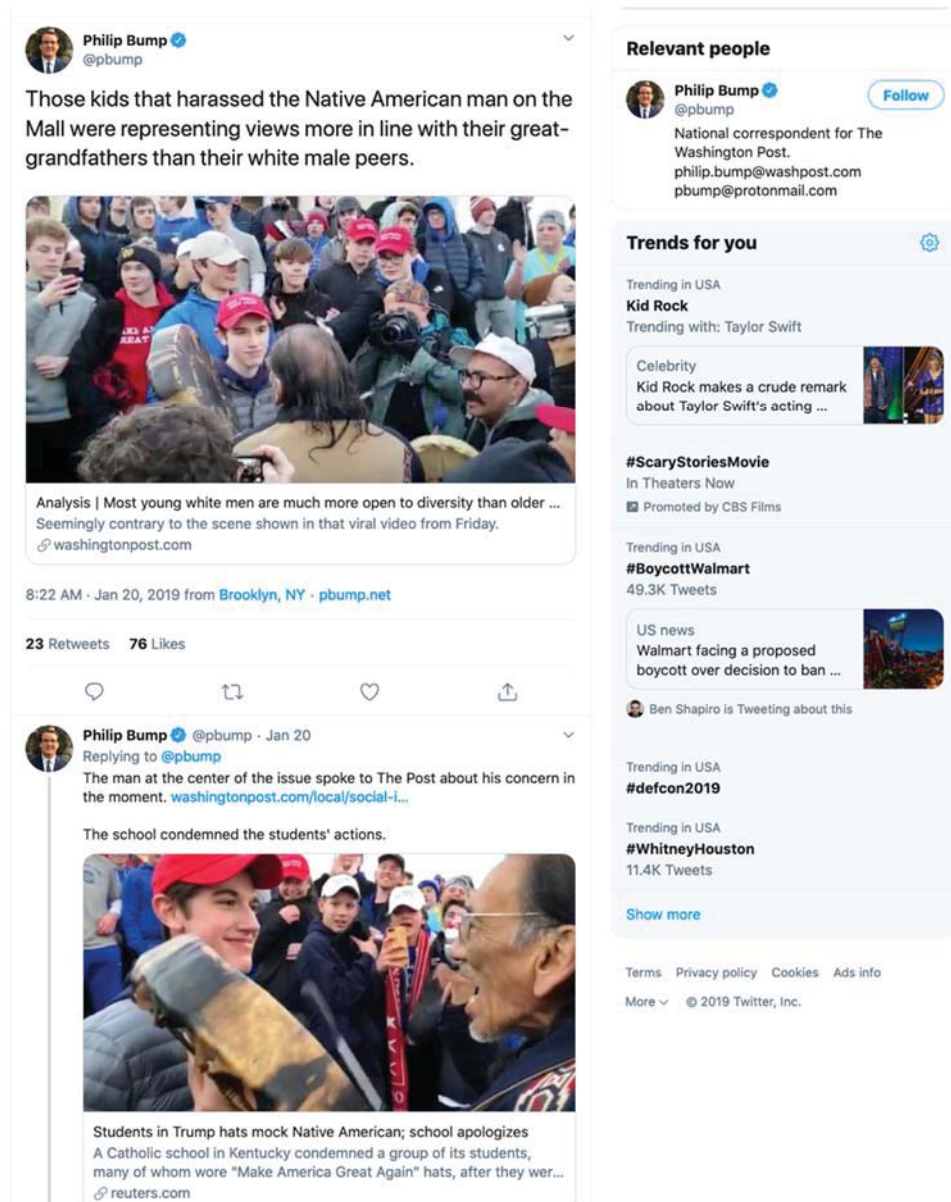
300. The accusations in the Fourth Article convey statements of fact capable of being proven true or false, as evidenced in part by the Editor’s Note published by the *Post* with respect to the Fourth Article in which it admitted that other evidence disproved certain of its accusations against Nicholas.

301. In its Fourth Article, the *Post* published or republished the following false and defamatory statements:

- (a) The headline “Opposed to the dignity of the human person’: Kentucky Catholic diocese condemns teens who taunted vet at March for Life.”
- (b) “A viral video of a group of Kentucky teens in ‘Make America Great Again’ hats taunting a Native American veteran on Friday ...”
- (c) “A few of the young people chanted ‘Build that wall, build that wall,’ the man said, adding that a teen, shown smirking at him in the video, was blocking him from moving.”
- (d) “‘We condemn the actions of the Covington Catholic high school students towards Nathan Phillips specifically, and Native Americans in general,’ a statement by the Roman Catholic Diocese of Covington and Covington Catholic High School read. ‘We extend our deepest apologies to Mr. Phillips. This behavior is opposed to the Church’s teachings on the dignity and respect of the human person. The matter is being investigated and we will take appropriate action, up to and including expulsion.’”

Fifth Article

302. At 8:00 am on January 20, 2019, the *Post* published online its fifth false and defamatory article entitled “Most young white men are much more open to diversity than older generations” (the “Fifth Article”). A true and correct copy of the archived Fifth Article (which does not include the video cover image from the Viral Video that was embedded in the article or the other graphics) is attached hereto as *Exhibit K-1*. The *Post* correspondent who authored the story posted a tweet embedding the Fifth Article:



See <https://twitter.com/pbump/status/1086977266767126530> (last visited Aug. 9, 2019).

303. The Fifth Article was edited at least twice. At some unknown date and time, several significant edits were made to the Article, and a “Clarification” was added indicating that “[r]eferences to the encounter on the Mall have been changed to reflect

revised understanding of what happened.” A true correct copy of the version of the Fifth Article with the “clarification” is attached hereto as *Exhibit K-2*.¹³

304. On March 1, the Fifth Article was amended to add the following “Editor’s Note”:



A true and correct copy of the Fifth Article as of March 1 at the earliest is attached hereto as *Exhibit K-3*.

305. The Fifth Article emphasized Nicholas’ alleged involvement by stating that “one of their [the students’] members physically intimidated Nathan Phillips. . . .”

306. The initial version of the Fifth Article included a photograph or a video cover image with Nicholas’ face, as demonstrated by the tweet with the embedded article and the archived article that shows the placeholder for “Video.” However, the video that was included with the story when it was initially published online was deleted at some point,

¹³ At the time of filing the initial Complaint on February 19, 2019, Plaintiff had not been able to locate an archived copy of the original Fifth Article, and the initial Complaint therefore is based upon the false and defamatory statements made in the first edited version of the article attached hereto as *Exhibit K-2*. This First Amended Complaint accurately bases the claims on the original statements made by the *Post* as evidenced by the archived version of the article attached hereto as *Exhibit K-1*.

and it is no longer visible in the current online story. See <https://www.washingtonpost.com/politics/2019/01/20/most-young-white-men-are-much-more-open-diversity-than-older-generations/> (last visited Aug. 9, 2019).

307. In addition to the individual statements constituting false and defamatory accusations against Nicholas that are detailed below, the Fifth Article, when viewed in context and including all statements, images, graphics, and video contained and linked to therein, conveyed a number of false and defamatory gists about Nicholas.

308. The Fifth Article communicated the false and defamatory gist that Nicholas instigated a confrontation with Phillips and subsequently engaged in racist conduct.

309. The Fifth Article communicated the false and defamatory gist and accusation that Nicholas assaulted and physically intimidated Phillips.

310. At the time of the publication of the Fifth Article, there were videos available online that demonstrated that the version of events given by Phillips, and blindly relied upon by the *Post* in the Fifth Article, was entirely false.

311. The accusations in the Fifth Article are statements of fact capable of being proven true or false, as evidenced in part by the Clarification and the Editor's Note published by the *Post* with respect to the Fifth Article in which it admitted that other evidence disproved certain of its accusations against Nicholas.

312. In its Fifth Article, the *Post* published or republished the following false and defamatory statements:

- (a) "Friday's incident near the Lincoln Memorial in which a group of high school boys taunted and confronted an elderly Native American man sent a ripple of fear and anger across the country. The image of a group of high school boys clad in 'Make America Great Again' hats, smirking and laughing

as one of their members physically intimidated Nathan Phillips resurfaced tensions that have been simmering since President Trump's campaign began."¹⁴

(b) "At one point, some reportedly chanted, 'Build the wall!'"

(c) "It's clear from Friday's incident on the Mall that the young men who taunted the Native American protester had somehow internalized that their behavior was acceptable."¹⁵

(d) "But it seems likely that, even within their own small section of their generation, the racial hostility they displayed would probably place them in the minority."¹⁶

Sixth Article

313. On January 21, 2019, the *Post* published in print its sixth false and defamatory article entitled "Fuller view emerges of conflict on Mall" (the "Sixth Article"). A true and correct copy of the Sixth Article is attached hereto as *Exhibit L*.

314. The Sixth Article was published in the *Post's* Monday edition of its newspaper on the front page.

¹⁴ With the "Clarification," the second version of the Fifth Article deleted the word "taunted" and added that one of the students' members "appeared to" physically intimidate Nathan Phillips. *See Exhibit K-2*. With the "Editor's Note" on March 1, the reference to "appeared to physically intimidate" was deleted entirely.

¹⁵ With the "Clarification," the second version of the Fifth Article changed the word "taunted" to "confronted." *See Exhibit K-2*.

¹⁶ With the "Clarification," the second version of the Fifth Article changed this sentence to read: "But if part of the incident on the Mall reflected opposition to diversity, those views would be in the minority." *See Exhibit K-2*.

315. The false and defamatory statements in the Sixth Article are about Nicholas, as evidenced by the fact that the Sixth Article references Nicholas by name and also includes a photo of Nicholas' face.

316. The Sixth Article implied that the *Post* had information not disclosed to its readers, because the article described “[v]ideo footage of the tense confrontation [that] quickly went viral. . . .” However, the *Post* never identifies that “video footage,” and later in the article describes scenes shown in the Banyamyan video without differentiating it from the video that “quickly went viral.”

317. The Sixth Article also vaguely references that “[t]he Israelites and students exchanged taunts, videos show” – although no videos actually show the students taunting the Black Hebrew Israelites.

318. Additionally, although the headline of the Sixth Article indicates that a “fuller view emerges” of the January 18 incident, the Sixth Article itself does not identify what that “fuller view” includes; the *Post*’s readers therefore do not have the information necessary to determine for themselves what that “fuller view” is or whether it depicts what the *Post* represents.

319. In addition to the individual statements constituting false and defamatory accusations against Nicholas that are detailed below, the Sixth Article, when viewed in context and including all statements, images, graphics, and video contained and linked to therein, conveyed a number of false and defamatory gists about Nicholas.

320. The Sixth Article communicated the false and defamatory gist that Nicholas instigated a confrontation with Phillips and subsequently engaged in racist conduct.

321. The Sixth Article communicated the false and defamatory gist that Nicholas assaulted and/or physically intimidated Phillips.

322. The Sixth Article communicated the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

323. The Sixth Article communicated the false and defamatory gist that Nicholas' behavior violated the policies of his school such that he should be expelled.

324. The accusations in the Sixth Article conveyed statements of fact capable of being proven true or false, as evidenced in part by the Editor's Note published by the *Post* with respect to the Sixth Article in which it admitted that other evidence disproved certain of its accusations against Nicholas.

325. In its Sixth Article, the *Post* published or republished the following false and defamatory statements:

(a) "The Israelites and students exchanged taunts, videos show. The Native Americans and Hebrew Israelites say some students shouted, 'Build the wall!'"

(b) "When I took that drum and hit that first beat ... it was a supplication to God," said Nathan Phillips, a member of the Omaha tribe and a Marine veteran. 'Look at us, God, look at what is going on here; my America is being torn apart by racism, hatred, bigotry.'"

(c) "While the groups argued, some students laughed and mocked them 'They were sitting there, mocking me as I was trying to teach my brothers, so yes the attention turned to them,' Israel told The Washington Post."

(d) "Phillips said he and his fellow Native American activists also had issues with the students throughout the day. 'Before they got centered on the black Israelites, they would walk through and say things to each other, like, 'Oh, the Indians in my state are drunks or thieves,' the 64-year-old said."

- (e) “Phillips said he heard students shout, ‘Go back to Africa!’”
- (f) “‘They were mocking my ancestors in a chant ...’ he said.”
- (g) “Jon Stegenga, a photojournalist who drove to Washington on Friday from South Carolina to cover the Indigenous Peoples March, recalled hearing students say ‘build the wall’ and ‘Trump 2020.’ He said it was about that time that Phillips intervened.”
- (h) “Most of the students moved out of his way, the video shows. But Sandmann stayed still. Asked why he felt the need to walk into the group of students, Phillips said he was trying to reach the top of the memorial, where friends were standing. But Phillips also said he saw more than a teenage boy in front of him. He saw a long history of white oppression of Native Americans. ‘Why should I go around him?’ he asked. ‘I’m just thinking of 500 years of genocide in this country, what your people have done. You don’t even see me as a human being.’”
- (i) “‘He [Phillips] was dealing with a lot of feelings, as he was being surrounded and not being shown respect,’ the photographer said.”
- (j) “School officials and the Catholic Diocese of Covington released a joint statement Saturday condemning and apologizing for the students’ actions. ‘The matter is being investigated and we will take appropriate action, up to and including expulsion,’ the statement said.”

Seventh Article

326. On January 21, 2019, the *Post* published online its seventh false and defamatory article entitled “Viral standoff between a tribal elder and a high schooler is more complicated than it first seemed” (the “Seventh Article”). A true and correct copy

of the archived Seventh Article (which does not include the video cover image from the Viral Video that was embedded in the article or other graphics) is attached hereto as *Exhibit M*, and the current version of the article can be viewed at https://www.washingtonpost.com/local/social-issues/picture-of-the-conflict-on-the-mall-comes-into-clearer-focus/2019/01/20/c078f092-1ceb-11e9-9145-3f74070bbdb9_story.html (last visited Aug. 9, 2019).

327. The false and defamatory statements in the Seventh Article are about Nicholas, as evidenced by the fact that the Seventh Article references Nicholas by name.

328. In addition to the individual statements constituting false and defamatory accusations against Nicholas that are detailed below, the Seventh Article, when viewed in context and including all statements, images, graphics, and video contained and linked to therein, conveyed a number of false and defamatory gists about Nicholas.

329. The Seventh Article communicated the false and defamatory gist that Nicholas instigated a confrontation with Phillips and subsequently engaged in racist conduct.

330. The Seventh Article communicated the false and defamatory gist that Nicholas assaulted and intimidated Phillips.

331. The Seventh Article communicated the false and defamatory gist that Nicholas' behavior violated the fundamental standards of his religious community.

332. The Seventh Article communicated the false and defamatory gist that Nicholas' behavior violated the policies of his school such that he should be expelled.

333. The accusations in the Seventh Article conveyed statements of fact capable of being proven true or false, as evidenced in part by the Editor's Note published by the

Post with respect to the Seventh Article in which it admitted that other evidence disproved certain of its accusations against Nicholas.

334. In its Seventh Article, the *Post* published or republished the following false and defamatory statements:

- (a) “The Israelites and students exchanged taunts, videos show. The Native Americans and Hebrew Israelites say some students shouted, ‘Build the wall!’”
- (b) “When a Native American elder intervened, singing and playing a prayer song, scores of students around him seem to mimic and mock him, a video posted Monday shows.”
- (c) “The Kentucky teens’ church apologized on Saturday, condemning the students’ actions.”
- (d) “‘When I took that drum and hit that first beat ... it was a supplication to God,’ said Nathan Phillips, a member of the Omaha tribe and a Marine veteran. ‘Look at us, God, look at what is going on here; my America is being torn apart by racism, hatred, bigotry.’”
- (e) “While the groups argued, some students laughed and mocked them”
- (f) “‘They were sitting there, mocking me as I was trying to teach my brothers, so, yes, the attention turned to them,’ Israel told The Washington Post.”
- (g) “Phillips said he and his fellow Native American activists also had issues with the students throughout the day. ‘Before they got centered on the black Israelites, they would walk through and say things to each other, like, ‘Oh, the Indians in my state are drunks or thieves,’ the 64-year-old said.”
- (h) “Phillips said he heard students shout, ‘Go back to Africa!’”

- (i) “‘They were mocking my ancestors in a chant’ he said.”
- (j) “Jon Stegenga, a photojournalist who drove to Washington on Friday from South Carolina to cover the Indigenous Peoples March, recalled hearing students say ‘build the wall’ and ‘Trump 2020.’ He said it was about that time that Phillips intervened.”
- (k) “Most of the students moved out of his way, the video shows. But Sandmann stayed still. Asked why he felt the need to walk into the group of students, Phillips said he was trying to reach the top of the memorial, where friends were standing. But Phillips also said he saw more than a teenage boy in front of him. He saw a long history of white oppression of Native Americans. ‘Why should I go around him?’ he asked. ‘I’m just thinking of 500 years of genocide in this country, what your people have done. You don’t even see me as a human being.’”
- (l) “‘He [Phillips] was dealing with a lot of feelings, as he was being surrounded and not being shown respect,’ the photographer said.”
- (m) “School officials and the Catholic Diocese of Covington released a joint statement Saturday condemning and apologizing for the students’ actions. ‘The matter is being investigated and we will take appropriate action, up to and including expulsion,’ the statement said.”

335. The First, Second, Third, Fourth, Fifth, Sixth, and Seventh Articles are collectively referred to herein as the “Articles.”

Tweets

336. On January 19, 2019, the *Post* also posted to its Twitter page and published to approximately 13 million followers its First Article with the following false and defamatory captions, all within a span of 14 minutes, and all within the same thread:

- (a) “In an interview with The Post, Omaha Tribe elder Nathan Phillips says he ‘felt like the spirit was talking through me’ as teens jeered and mocked him.”
- (b) “He was singing the American Indian Movement song of unity that serves as a ceremony to send the spirits home. ‘It was getting ugly, and I was thinking: ‘I’ve got to find myself an exit out of this situation and finish my song at the Lincoln Memorial.’”
- (c) “Phillips, who fought in the Vietnam War, says in an interview ‘I started going that way, and that guy in the hat stood in my way and we were at an impasse. He just blocked my way and wouldn’t allow me to retreat.’”

337. These three tweets are collectively referred to herein as the “Tweets,” and true and correct archived copies (which do not include the video cover image from the Viral Video that was embedded in the tweets) are attached hereto as *Exhibit N*. The current version of the tweets can be viewed at <https://twitter.com/washingtonpost/status/1086739479765938176?lang=en> (last visited Aug. 9, 2019).

338. The false and defamatory statements in the Tweets are about Nicholas, as evidenced by the fact that they feature Nicholas prominently by embedding the Viral Video, which has the cover image of Nicholas’ face.

339. In addition to the false and defamatory accusations and gists of the First Article, the Tweets, when viewed in context and including all statements, images,

graphics, and video contained and linked to therein, also independently communicated the false and defamatory accusations and gists that Nicholas engaged in racist conduct and that Nicholas assaulted Phillips.

340. The accusations in the third tweet are statements of fact capable of being proven true or false, as evidenced in part by the purported deletion of the tweet and the Editor's Note published by the *Post* and linked to the deletion of the tweet in which it admitted that other evidence disproved certain of its accusations against Nicholas.

341. The Tweets, along with any other tweets that included or linked to the false and defamatory Articles identified herein, and the Articles are collectively referred to herein as the "False and Defamatory Accusations."

342. As the natural and foreseeable consequence of its actions, the *Post* knew and intended that its False and Defamatory Accusations would be republished by others, including media outlets and others on social media.

NICHOLAS IS A PRIVATE FIGURE

343. Nicholas is a private figure for the purposes of this defamation action, having lived his entire life outside of the public eye.

344. Prior to the January 18 incident, Nicholas had no notoriety of any kind in the community at large.

345. Nicholas did not by any voluntary act involve himself in any particular and identifiable public controversy.

346. Nicholas did not involve himself publicly to the extent that he either assumed a role of public prominence or was in a position to influence others or the outcome of any identifiable public controversy.

347. Nicholas has never enjoyed regular and continuing access to the media.

348. Nicholas made no public appearances prior to the initial false accusations against him arising from the January 18 incident.

349. Following the January 18 incident and prior to the First, Second, Third, Fourth, and Fifth Articles and the Tweets, Nicholas issued no public statements and made no media appearances.

350. Following the January 18 incident and prior to the Sixth and Seventh Articles, Nicholas issued only one public statement.

351. Nicholas' limited public statement was reasonable, proportionate, and in direct response to the false accusations against him and does not render Nicholas a limited purpose public figure with respect to the Sixth and Seventh Articles.

THE *POST* PUBLISHED NEGLIGENTLY AND WITH ACTUAL MALICE

352. The *Post* published its False and Defamatory Accusations negligently and with actual knowledge of falsity or a reckless disregard for the truth.

353. As one of the world's leading news outlets, the *Post* knew but ignored the importance of verifying damaging, and in this case, incendiary accusations against a minor child prior to publication.

354. The negligence and actual malice of the *Post* is demonstrated by its utter and knowing disregard for the truth available in the complete video of the January 18 incident which was available contemporaneously with the edited clip the *Post* chose because it appeared to support its biased narrative.

355. The *Post* knew, or certainly could have discovered with a simple Google search, that Phillips has a history of activism, opposition to President Trump and his policies, and criminal activity such that it was not reasonable for the *Post* to publish Phillips' statements without corroboration and additional investigation.

356. The *Post* also knew, or should have known, that Phillips – a man who was in the Marines, who faced down law enforcement in riot gear, and who has admitted to committing assault – was not actually scared of a teenage boy who did nothing more than stand completely still. Instead, the *Post* should have investigated the possibility that Phillips was fabricating his description of the entire incident to get publicity and further his activist narrative.

357. Phillips intended to express facts about how the January 18 incident occurred, but he intentionally misrepresented those purported facts in an attempt to stir up controversy.

358. The *Post* knew, or should have known by reviewing contemporaneously available video, that Phillips' account of the January 18 incident could not be truthful because Nicholas did not do anything that could possibly be described as jeering, taunting, blocking, or surrounding Phillips, although the *Post* republished Phillips' description as being factual and true.

359. Indeed, Nicholas did not engage in any conduct whatsoever as he stood perfectly still, and therefore any other characterization of conduct on his part was necessarily a false statement of fact.

360. The *Post* provided its readers only with the Viral Video, which the *Post* knew was selectively edited and highly misleading, and falsely represented to its readers that the Viral Video contained a complete picture of the January 18 incident.

361. Instead of investigating and publishing the true story, the *Post* recklessly rushed to publish its False and Defamatory Accusations in order to advance its own political agenda against President Trump and possibly other agendas to be discovered in the course of this litigation.

362. In doing so, the *Post* lifted the incident from social media and placed it in the mainstream media, giving its False and Defamatory Accusations credibility and permanence.

363. The *Post* negligently published its False and Defamatory Accusations by departing from the reasonable standard of care employed by journalists, including those standards articulated by the Society of Professional Journalists' Code of Ethics.

364. The *Post's* collective conduct demonstrates a purposeful avoidance of the truth and the publication of the False and Defamatory Accusations with actual knowledge of falsity following its review of the complete video evidence and Nicholas' statement no later than January 20.

365. The *Post* negligently and recklessly published its False and Defamatory Accusations by failing to conduct a reasonable investigation prior to publication.

366. The *Post's* failure to investigate is heightened where, as here, the January 18 incident was not breaking news and involved a minor child.

367. The *Post* negligently and recklessly published its False and Defamatory Accusations by failing to conduct a reasonable investigation by not having a credible or reliable source for its publications.

368. The *Post* negligently and recklessly published its False and Defamatory Accusations by relying on unreliable and biased sources with questionable credibility.

369. Indeed, the *Post* negligently and recklessly relied upon only Phillips and other Native Americans with a biased pre-disposition.

370. Phillips, himself, is wholly unreliable and lacks credibility as shown in part by his false claim to have served in Vietnam while a member of the military, as a professional activist with a known bias against President Trump and his supporters, his

documented history of making similar false accusations, his use of the January 18 incident to promote his own political and personal agenda, the contradictions in his story established in his interviews, and that the video evidence that totally refute his story.

371. The *Post* published its False and Defamatory Accusations in continued reliance upon those it knew to have political and personal biases, including Chase Iron Eyes of the Lakota People Law Project who was, in effect, managing and/or representing Phillips, Jon Stegenga who had also attended the Indigenous Peoples March, Deb Haaland who is a politician with a demonstrable bias against President Trump, and the Black Hebrew Israelites whose lack of credibility is widely known.

372. The *Post* had obvious reasons to doubt the veracity of its purported firsthand sources, including because they are manifestly biased and because the short video evidence on which the *Post* relied did not show Nicholas or the students swarming Phillips, uttering the chants or slurs they were accused of making, or blocking Phillips' egress.

373. The *Post* further had reason to doubt the veracity of its social media sources, including Kaya Taitano and @2020fight. Kaya Taitano also had a known bias having been present to support the Indigenous Peoples March, and the @2020fight account bore all the hallmarks of being a fraudulent account with a political agenda, as later proven true.

374. The *Post* consciously elected to ignore this contrary information in favor of its pre-conceived false narrative against President Trump and his supporters.

375. The only category of individuals present at the January 18 incident that the *Post* chose not to rely upon were the CovCath students.

376. The *Post* negligently and recklessly failed to consult publicly available information demonstrating its False and Defamatory Accusations to be false, including,

without limitation, other video evidence available online demonstrating that Phillips specifically approached the students and specifically confronted Nicholas, and that Nicholas did not engage in swarming, surrounding, mocking, taunting, blocking, or otherwise physically intimidating Phillips or anyone else present.

377. Not only was the *Post* aware that the snippets of video it reviewed did not support its False and Defamatory Accusations, but it was also aware that the video it reviewed was woefully incomplete, but the *Post* nonetheless published its accusations against Nicholas without any further investigation.

378. The *Post* continued to publish its False and Defamatory Accusations with actual knowledge of falsity, having reviewed video evidence and statements of Nicholas Sandmann contradicting its False and Defamatory Accusations.

379. The *Post* negligently and recklessly failed to seek information from other obvious sources who would have demonstrated its False and Defamatory Accusations to be false, including Nicholas, his classmates, and/or the chaperones present at the January 18 incident.

380. The *Post* negligently and recklessly published its False and Defamatory Accusations despite internal inconsistencies in Phillips' claims as well as material differences in his statements to other outlets published January 19 and 20.

381. The *Post* negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic ethics, including by failing to use heightened sensitivity when dealing with juveniles.

382. The *Post* negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic ethics, including by failing to verify each before publication.

383. The *Post* negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic ethics, including by failing to take special care not to misrepresent or oversimplify its coverage, and by failing to provide any appropriate context to its False and Defamatory Accusations.

384. The *Post* negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic ethics, including by failing to avoid stereotyping.

385. The *Post* negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic ethics, including by failing to examine the way in which its own biases and agenda shaped its false reporting.

386. The *Post* negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic ethics, including by failing to treat Nicholas as a human being deserving of respect.

387. The *Post* negligently and recklessly published its False and Defamatory Accusations in derogation of accepted principles of journalistic ethics, including by wrongfully placing the anti-Trump, anti-Catholic, and pro-life agenda over the harm its False and Defamatory Accusations caused to Nicholas.

388. At the time of its initial reporting of and concerning Nicholas, the *Post* did not know Nicholas' age and did not make any reasonable attempt to ascertain it despite the general knowledge that Nicholas was a high school student.

389. Nicholas' counsel propounded a demand for retraction upon the *Post* on February 14, a copy of which is attached hereto as *Exhibit O*.

390. The *Post's* actual malice is further evidenced by its failure to retract its False and Defamatory Accusations.

391. The *Post* published its False and Defamatory Accusations with common law malice, including because it intended to harm Nicholas because he was a white, Catholic boy wearing a MAGA hat, and consciously ignored the threats of harm that it knew would inevitably ensue, in favor of its political agenda.

392. The *Post* published its False and Defamatory Accusations with common law malice, demonstrated by its failure to retract its False and Defamatory Accusations despite the harm and danger it knew would be inflicted upon Nicholas.

393. The *Post* published its False and Defamatory Accusations with common law malice, including because it callously ignored the consequences of its actions upon a minor child.

DAMAGES

394. The publication of the False and Defamatory Accusations directly and proximately caused substantial and permanent damage to Nicholas.

395. As a direct and proximate result of the False and Defamatory Accusations, the *Post* created a false reputation for Nicholas, branding him as a racist and instigator of the January 18 incident.

396. By imposing a false reputation on Nicholas, the False and Defamatory Accusations deprive Nicholas, a minor, of his right to create through his own acts and words his unique reputation as an adult and human being.

397. The False and Defamatory Accusations are now forever a part of the historical Internet record and will haunt and taint Nicholas for the remainder of his natural life and impugn his reputation for generations to come – as accurately predicted by one of the *Post*'s readers.

398. The False and Defamatory Accusations were republished by third-parties and members of the mainstream and social media mob of other bullies, which was reasonably foreseeable.

399. The False and Defamatory Accusations against Nicholas are defamatory *per se*, as they are libelous on their face without resort to additional facts, and subjected Nicholas to public hatred, contempt, scorn, obloquy, and shame.

400. As a direct and proximate result of the False and Defamatory Accusations, Nicholas suffered permanent, perpetual harm to his reputation.

401. As a direct and proximate result of the False and Defamatory Accusations, Nicholas suffers and will continue to suffer severe emotional distress.

402. As a direct and proximate result of the False and Defamatory Accusations, Nicholas sought and received medical treatment for emotional and mental distress at Cincinnati Children's Hospital, and to date has incurred \$438 in out-of-pocket medical expenses, with a probability of additional expenses being incurred in the future.

403. As a direct and proximate result of the False and Defamatory Accusations, Nicholas is forced to live his life in a constant state of concern over his safety and the safety of his family.

404. The *Post* published its False and Defamatory Accusations with actual malice and common law malice, thereby entitling Nicholas to an award of punitive damages.

405. The *Post's* conduct was outrageous and willful, demonstrating that entire want of care that raises a conscious indifference to consequences.

406. Nicholas is entitled to an award of punitive damages to punish the *Post* and to deter it from repeating such egregiously unlawful misconduct in the future.

WHEREFORE, Nicholas respectfully prays:

- (a) That judgment be entered against the *Post* for substantial compensatory damages in an amount not less than Fifty Million Dollars (\$50,000,000.00);
- (b) That judgment be entered against the *Post* for punitive damages in an amount not less than Two Hundred Million Dollars (\$200,000,000.00)
- (c) That Nicholas recover his reasonable attorneys' fees and expenses from the *Post*;
- (d) Trial by jury on all issues so triable;
- (e) That all costs of this action be taxed to *Post*; and
- (f) That the Court grant all such other and further relief that the Court deems just and proper, including equitable relief.

Respectfully submitted this 23rd day of August, 2019.

L. LIN WOOD, P.C.

/s/ L. Lin Wood

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