

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

**NICHOLAS SANDMANN, by and
through his parents and natural
guardians, TED SANDMANN
and JULIE SANDMANN,**

Plaintiffs,

v.

**WP COMPANY LLC d/b/a THE
WASHINGTON POST,**

Defendant.

: CASE NO. 2:19-cv-00019-WOB-CJS
:
: JUDGE BERTELSMAN
:
: MAGISTRATE JUDGE SMITH
:
:
: PLAINTIFF'S
: FIRST AMENDED COMPLAINT
: WITH JURY DEMAND
:
:
:

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.

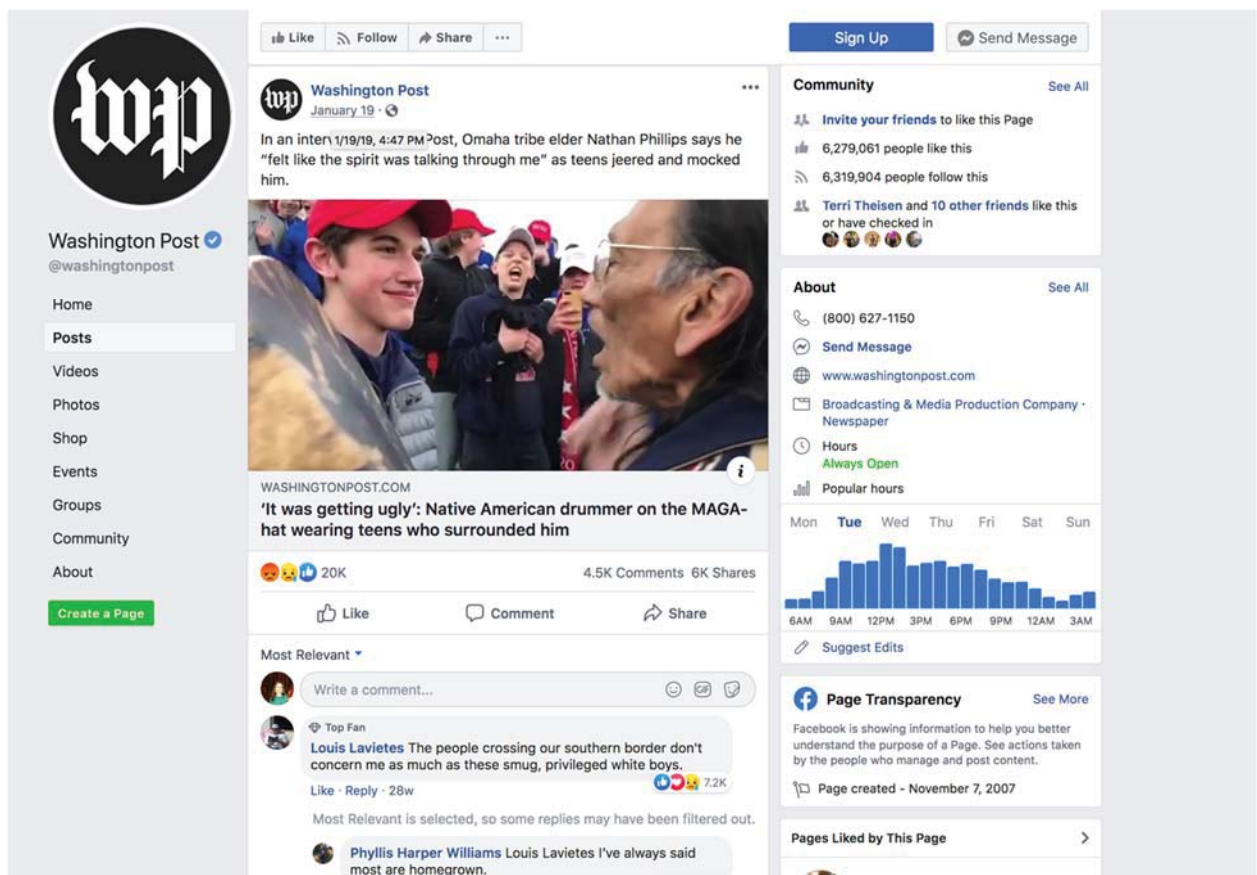
75. With no investigation into the @2020fight account, the *Post* actively, negligently, and recklessly participated in making the 2020fight Video go viral on social and mainstream media when on January 19 at 9:21 a.m. Eastern, Twitter-verified *Post* reporter Joe Heim re-posted the 2020fight Video:¹



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").

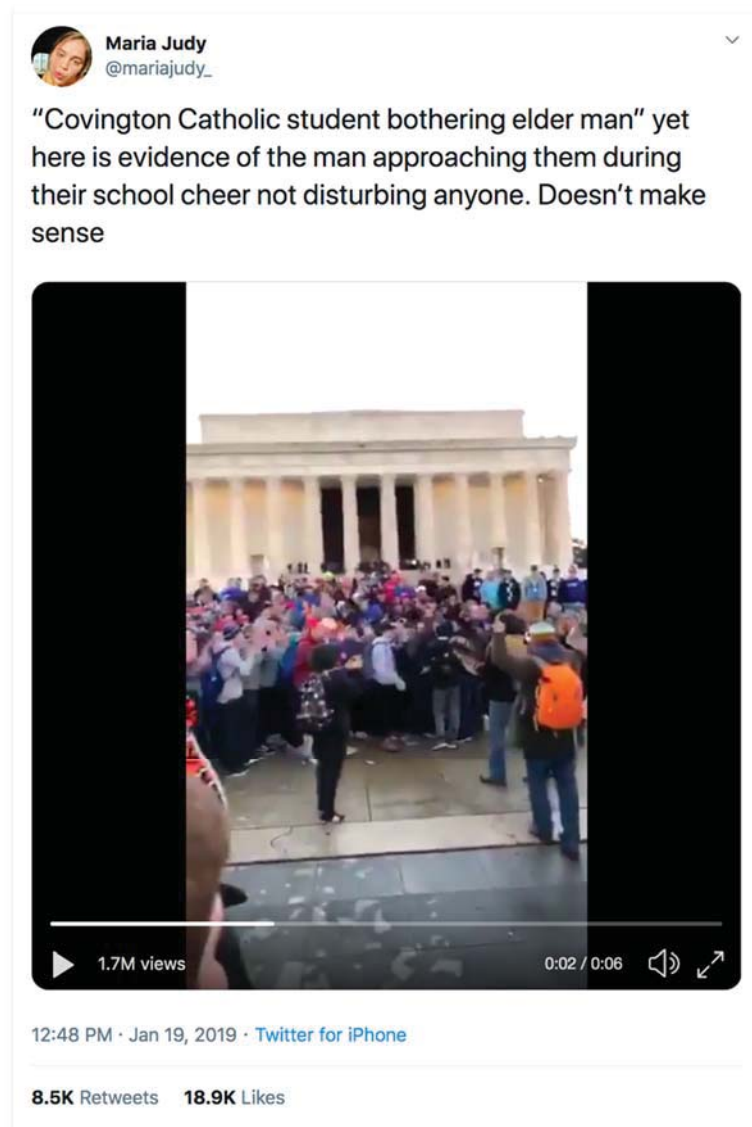
81. Following the conclusion of the Facebook Live video stream on January 18, the 1 hour and 46-minute video was available for public viewing on Banyamyan's Facebook page.

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.

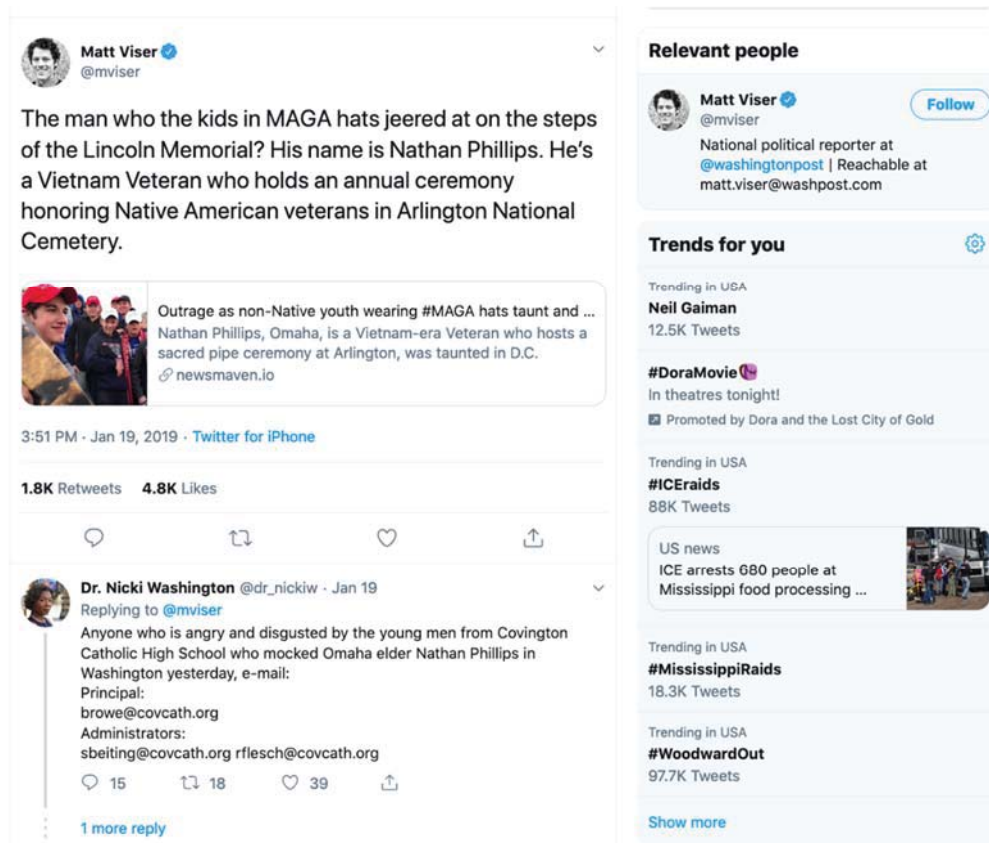
129. During the protest at the Basilica, Phillips read a statement saying that "[w]e demand that the students of Covington Catholic High School be reprimanded not just by the school officials but, as seniors, by their upcoming universities."

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.

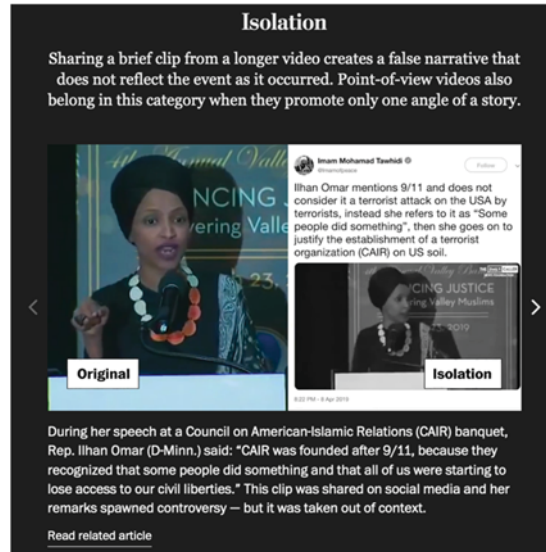
209. *Post* reporter Joe Heim was one of the first individuals in the mainstream media who picked up and tweeted the Viral Video, claiming that it showed “[u]nbelievably disturbing scenes/videos of high school kids mocking Native American elders on the steps of the Lincoln Memorial yesterday.” *See supra*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

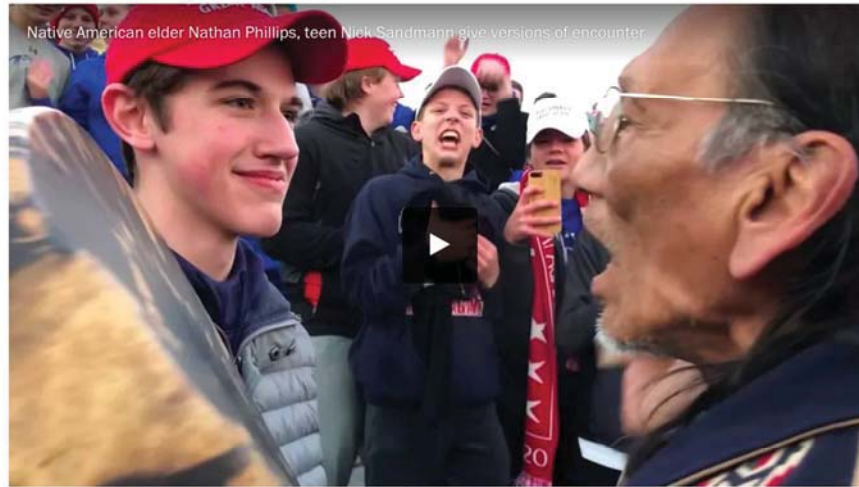
A Jan. 22 correction to the original story reads: Earlier versions of this story incorrectly said that Native American activist Nathan Phillips fought in the Vietnam War. Phillips said he served in the U.S. Marines but was never deployed to Vietnam.

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.

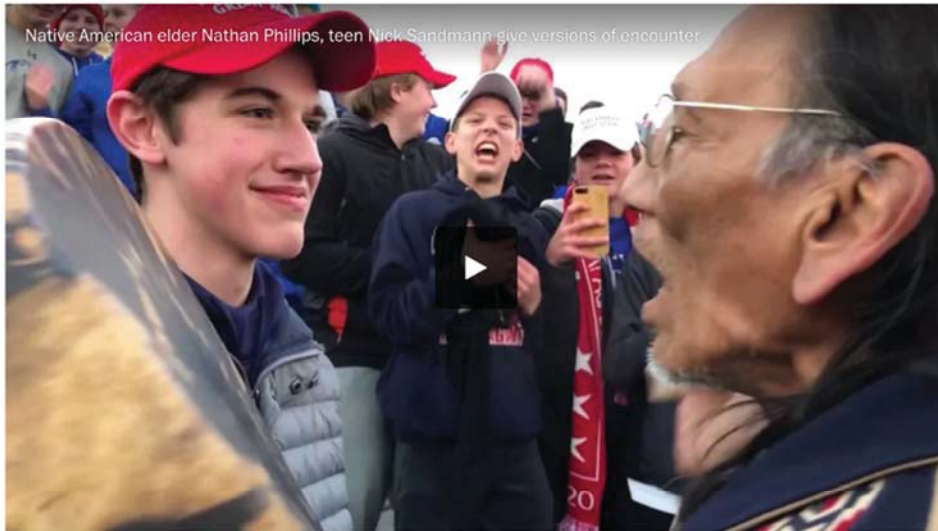
⁷ See *infra*, at ¶¶ 272-286.

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)*

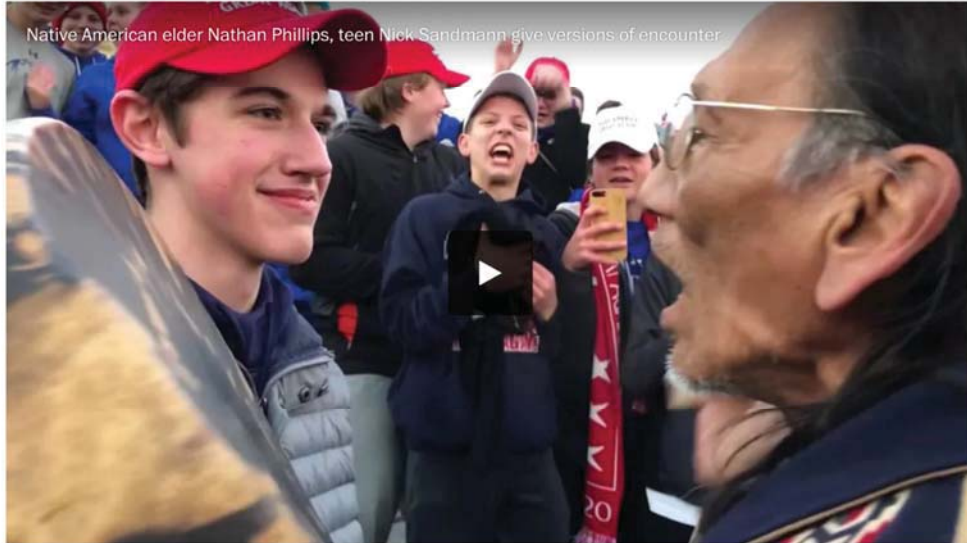
See <https://www.washingtonpost.com/politics/2019/01/20/most-young-white-men-are-much-more-open-diversity-than-older-generations/> (last visited Aug. 9, 2019).

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



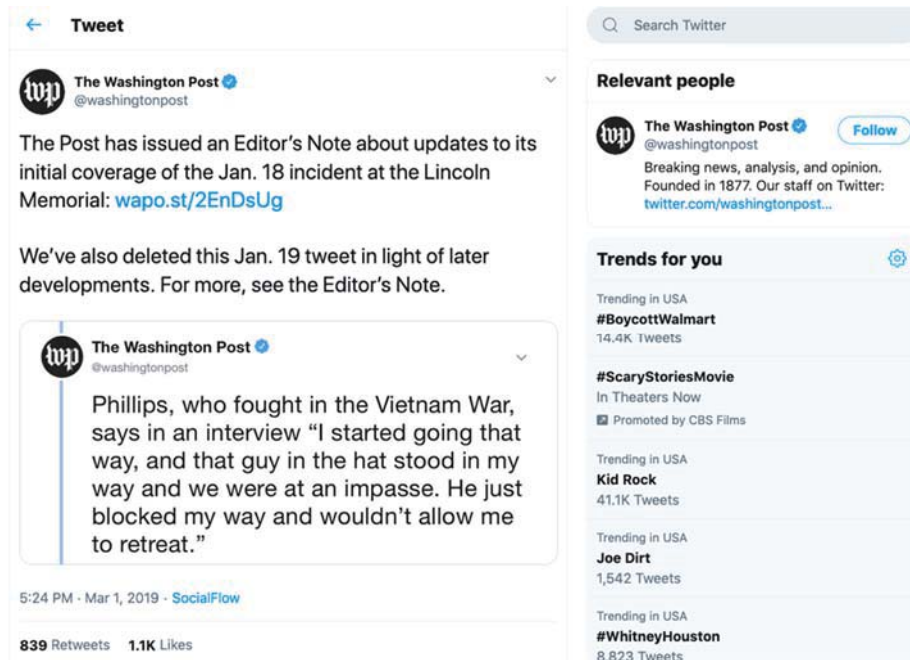
Omaha elder Nathan Phillips and high school student Nick Sandmann give their versions of viral moment on the steps of the Lincoln Memorial. (Erin Patrick O'Connor, Joyce Koh/The Washington Post)

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.

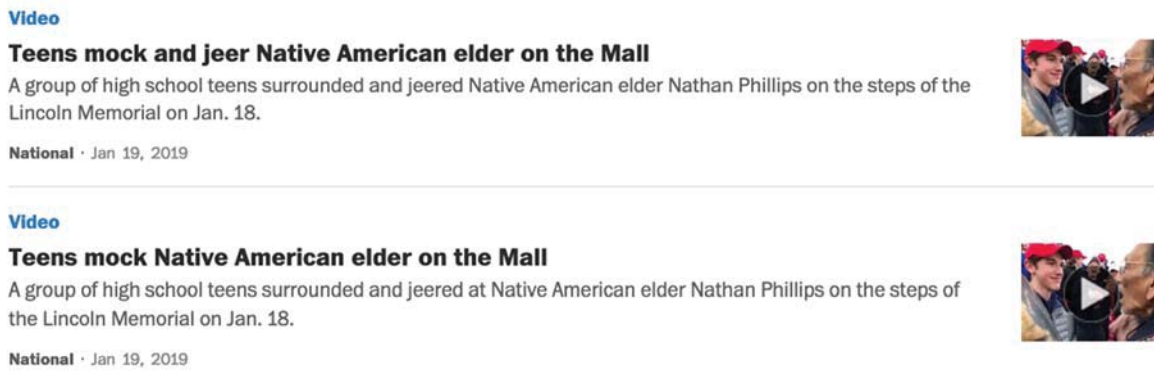


A few people in the March for Life crowd began to chant "Build that wall, build that wall," he said.

"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":



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:

Philip Bump @pbump

Those kids that harassed the Native American man on the Mall were representing views more in line with their great-grandfathers than their white male peers.



Analysis | Most young white men are much more open to diversity than older ...
Seemingly contrary to the scene shown in that viral video from Friday.
washingtonpost.com


8:22 AM · Jan 20, 2019 from Brooklyn, NY · pbump.net

23 Retweets 76 Likes

Philip Bump @pbump · Jan 20
Replying to @pbump

The man at the center of the issue spoke to The Post about his concern in the moment. washingtonpost.com/local/social-l...

The school condemned the students' actions.



Students in Trump hats mock Native American; school apologizes
A Catholic school in Kentucky condemned a group of its students, many of whom wore "Make America Great Again" hats, after they wer...
reuters.com

Relevant people

Philip Bump @pbump
National correspondent for The Washington Post.
philip.bump@washpost.com
pbump@protonmail.com

Trends for you

Trending in USA
Kid Rock
Trending with: Taylor Swift

Celebrity
Kid Rock makes a crude remark about Taylor Swift's acting ...

#ScaryStoriesMovie
In Theaters Now
Promoted by CBS Films

Trending in USA
#BoycottWalmart
49.3K Tweets

US news
Walmart facing a proposed boycott over decision to ban ...

Ben Shapiro is Tweeting about this

Trending in USA
#defcon2019

Trending in USA
#WhitneyHouston
11.4K Tweets

Show more

Terms Privacy policy Cookies Ads info

More © 2019 Twitter, Inc.

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

L. Lin Wood (*pro hac vice*)

lwood@linwoodlaw.com

Nicole Jennings Wade (*pro hac vice*)

nwade@linwoodlaw.com

G. Taylor Wilson (*pro hac vice*)

twilson@linwoodlaw.com

Jonathan D. Grunberg (*pro hac vice*)

jgrunberg@linwoodlaw.com

1180 W. Peachtree Street, Ste. 2040

Atlanta, GA 30309

Tel: 404-891-1402

Fax: 404-506-9111

Trial attorneys for Plaintiff

**HEMMER DEFRANK WESSELS
PLLC**

/s/ Todd V. McMurtry

Todd V. McMurtry

Kentucky Bar No. 82101

tmcmurtry@hemmerlaw.com

Kyle M. Winslow

Kentucky Bar No. 95343

kwinslow@hemmerlaw.com

250 Grandview Drive, Ste. 500

Ft. Mitchell, KY 41017

Tel: 859-344-1188

Fax: 859-578-3869

EXHIBIT A

EXHIBIT A

Jake Tapper on Twitter: "Just in: Statement of Nick Sandmann, Covington Catholic High School junior, about the event at the Lincoln Mem...



Statement of Nick Sandmann, Covington Catholic High School Junior, Regarding Incident at the Lincoln Memorial

I am providing this factual account of what happened on Friday afternoon at the Lincoln Memorial to correct misinformation and outright lies being spread about my family and me.

I am the student in the video who was confronted by the Native American protestor. I arrived at the Lincoln Memorial at 4:30 p.m. I was told to be there by 5:30 p.m., when our busses were due to leave Washington for the trip back to Kentucky. We had been attending the March for Life rally, and then had split up into small groups to do sightseeing.

When we arrived, we noticed four African American protestors who were also on the steps of the Lincoln Memorial. I am not sure what they were protesting, and I did not interact with them. I did hear them direct derogatory insults at our school group.

The protestors said hateful things. They called us "racists," "bigots," "white crackers," "faggots," and "incest kids." They also taunted an African American student from my school by telling him that we would "harvest his organs." I have no idea what that insult means, but it was startling to hear.

Because we were being loudly attacked and taunted in public, a student in our group asked one of our teacher chaperones for permission to begin our school spirit chants to counter the hateful things that were being shouted at our group. The chants are commonly used at sporting events. They are all positive in nature and sound like what you would hear at any high school. Our chaperone gave us permission to use our school chants. We would not have done that without obtaining permission from the adults in charge of our group.

At no time did I hear any student chant anything other than the school spirit chants. I did not witness or hear any students chant "build that wall" or anything hateful or racist at any time. Assertions to the contrary are simply false. Our chants were loud because we wanted to drown out the hateful comments that were being shouted at us by the protestors.

After a few minutes of chanting, the Native American protestors, who I hadn't previously noticed, approached our group. The Native American protestors had drums and were accompanied by at least one person with a camera.

The protestor everyone has seen in the video began playing his drum as he waded into the crowd, which parted for him. I did not see anyone try to block his path. He looked eyes with me and approached me, coming within inches of my face. He played his drum the entire time he was in my face.

I never interacted with this protestor. I did not speak to him. I did not make any hand gestures or other aggressive moves. To be honest, I was startled and confused as to why he had approached me. We had already been yelled at by another group of protestors, and when the second group approached I was worried that a situation was getting out of control where adults were attempting to provoke teenagers.

I believed that by remaining motionless and calm, I was helping to diffuse the situation. I realized everyone had cameras and that perhaps a group of adults was trying to provoke a group of teenagers into a larger conflict. I said a silent prayer that the situation would not get out of hand.

Jake Tapper @jaketapper · Jan 20

Just in: Statement of Nick Sandmann, Covington Catholic High School junior, about the event at the Lincoln Memorial:

9.7K

9.4K

22K



Jake Tapper on Twitter: "Just in: Statement of Nick Sandmann, Covington Catholic High School junior, about the event at the Lincoln Mem..."



During the period of the drumming, a member of the protestor's entourage began yelling at a fellow student that we "stole our land" and that we should "go back to Europe." I heard one of my fellow students begin to respond. I motioned to my classmate and tried to get him to stop engaging with the protestor, as I was still in the mindset that we needed to calm down tensions.

I never felt like I was blocking the Native American protestor. He did not make any attempt to go around me. It was clear to me that he had singled me out for a confrontation, although I am not sure why.

The engagement ended when one of our teachers told me the busses had arrived and it was time to go. I obeyed my teacher and simply walked to the busses. At that moment, I thought I had diffused the situation by remaining calm, and I was thankful nothing physical had occurred.

I never understood why either of the two groups of protestors were engaging with us, or exactly what they were protesting at the Lincoln Memorial. We were simply there to meet a bus, not become central players in a media spectacle. This is the first time in my life I've ever encountered any sort of public protest, let alone this kind of confrontation or demonstration.

I was not intentionally making faces at the protestor. I did smile at one point because I wanted him to know that I was not going to become angry, intimidated or be provoked into a larger confrontation. I am a faithful Christian and practicing Catholic, and I always try to live up to the ideals my faith teaches me—to remain respectful of others, and to take no action that would lead to conflict or violence.

I harbor no ill will for this person. I respect this person's right to protest and engage in free speech activities, and I support his chanting on the steps of the Lincoln Memorial any day of the week. I believe he should re-think his tactics of invading the personal space of others, but that is his choice to make.

I am being called every name in the book, including a racist, and I will not stand for this mob-like character assassination of my family's name. My parents were not on the trip, and I strive to represent my family in a respectful way in all public settings.

I have received physical and death threats via social media, as well as hateful insults. One person threatened to harm me at school, and one person claims to live in my neighborhood. My parents are receiving death and professional threats because of the social media mob that has formed over this issue.

I love my school, my teachers and my classmates. I work hard to achieve good grades and to participate in several extracurricular activities. I am mortified that so many people have come to believe something that did not happen—that students from my school were chanting or acting in a racist fashion toward African Americans or Native Americans. I did not do that, do not have hateful feelings in my heart, and did not witness any of my classmates doing that.

I cannot speak for everyone, only for myself. But I can tell you my experience with Covington Catholic is that students are respectful of all races and cultures. We also support everyone's right to free speech. I am not going to comment on the words or account of Mr. Phillips, as I don't know him and would not presume to know what is in his heart or mind. Nor am I going to comment further on the other protestors, as I don't know their hearts or minds, either.

Jake Tapper 🌱 @jaketapper · Jan 20

Just in: Statement of Nick Sandmann, Covington Catholic High School junior, about the event at the Lincoln Memorial:

💬 9.7K

↺↻ 9.4K

22K



Jake Tapper on Twitter: "Just in: Statement of Nick Sandmann, Covington Catholic High School junior, about the event at the Lincoln Mem...



I have read that Mr. Phillips is a veteran of the United States Marines. I thank him for his service and am grateful to anyone who puts on the uniform to defend our nation. If anyone has earned the right to speak freely, it is a U.S. Marine veteran.

I can only speak for myself and what I observed and felt at the time. But I would caution everyone passing judgement based on a few seconds of video to watch the longer video clips that are on the internet, as they show a much different story than is being portrayed by people with agendas.

I provided this account of events to the Diocese of Covington so they may know exactly what happened, and I stand ready and willing to cooperate with any investigation they are conducting.

###

This is the only statement that has been made by the Sandmann family. Any comments attributed to any member of the family that is not contained in this document are fabricated. The family will not be answering individual media inquiries.

Jake Tapper 🌐 @jaketapper · Jan 20

Just in: Statement of Nick Sandmann, Covington Catholic High School junior, about the event at the Lincoln Memorial:

💬 9.7K

↻ 9.4K

22K



EXHIBIT B

EXHIBIT B



DIOCESE OF COVINGTON

Office of the Bishop

1125 Madison Avenue, Covington KY 41011-3115
Phone: (859) 392-1512 • Fax: (859) 392-1508

25 January 2019

My dear Covington Catholic Parents,

Since Saturday, 19 January 2019 the events at the Lincoln Memorial following the annual March for Life have gained international attention. Within hours we were being pressured from all sides to make a statement regarding a video clip which purportedly showed students from Covington Catholic High School being disrespectful to Native American Elder Nathan Phillips. Based on what the video clip showed we condemned the actions of students who engaged in the alleged disrespect and promised to investigate the matter.

Since that time other video clips – some of much longer duration – have surfaced. Once these went viral some of the very same people who had put tremendous pressure on us to condemn the actions of the students now wanted a retraction from anyone who had previously issued a statement critical of them. All of this was based again on a video.

Subsequently, there have been death threats to some of the students and their families. The vitriol and hateful comments on some online stories, some of them appearing on websites that purport to be Catholic and pro-life, have been beyond belief and anything but pro-life. We even had a bomb scare at the Curia offices and had to close the Curia and Covington Latin School (across from the Curia) in light of safety issues. People who are not at all familiar with Covington Catholic High School, its students, faculty, staff, administration and/or the Diocese of Covington have felt free to criticize in the harshest terms.

Having issued a second statement that said that we have engaged a third-party investigative team to do a thorough and in-depth investigation into the events that transpired on Friday, 18 January, it was our hope that this would ameliorate some of the hate being spewed on the internet and other news media. Unfortunately, this did not happen and people are still lined up on either side.

We are sorry that this situation has caused such disruption in the lives of so many. We apologize to anyone who has been offended in any way by either of our statements which were made with good will based on the information we had. We should not have allowed ourselves to be bullied and pressured into making a statement prematurely, and we take full responsibility for it. I especially apologize to Nicholas Sandmann and his family as well as to all CovCath families who have felt abandoned during this ordeal. Nicholas unfortunately has become the face of these allegations based on video clips. This is not fair. It is not just.

We now await the results of the investigation and it is my hope and expectation that the results will exonerate our students so that they can move forward with their lives. In any event, we will make the final report public once it has been received. In the meantime, we call on all those who continue to spew venom and hate to desist and instead pray for a peaceful resolution to this tragic spectacle.

Mr. Robert Rowe, the Principal of Covington Catholic High School, has also been the target of this venom. He is a fine leader and role model for every student at CovCath and I support him unequivocally. Those calling for his resignation simply do not know him.

This has been a trying time for all of us. I pray that with the grace of God and the goodwill of all involved peace will once again reign in the hearts and minds of our faithful. As for CovCath, we have a spirit that will not die!

Yours devotedly in the Lord,

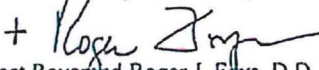
+ 
Most Reverend Roger J. Fays, D.D.
Bishop of Covington

EXHIBIT C

EXHIBIT C

Greater Cincinnati Investigation, Inc.
718 Valley Square Drive
Taylor Mill, KY 41015

Final Investigative Report

February 11, 2019

On Tuesday, January 22, 2019, Greater Cincinnati Investigation (GCI) was retained by Dressman, Benzinger, Lavelle (DBL LAW) on behalf of the Covington Diocese and Covington Catholic High School to investigate the incident on Friday, January 18, 2019, at the Lincoln Memorial involving students at Covington Catholic High School, The Black Hebrew Israelites and the Native Americans who were part of an Indigenous People March.

Scope of Investigation

The scope of the investigation was to interview and take statements from Covington Catholic students and their chaperones who were in attendance, to identify, locate and interview 3rd party witnesses who were present, to review and monitor social media posts and news articles, and to attempt to locate and review any additional video that might be available.

Since January 22, we have devoted approximately 240 man hours in the investigation to date, involving four (4) licensed investigators.

Students attending the trip were asked to voluntarily give their statements regarding the events of January 18. We separately interviewed 43 students. Parents were invited to attend the interviews with their sons, and parents did so in approximately one-third of the interviews.

There were sixteen (16) adult chaperones on the trip. We spoke with all nine (9) faculty chaperones and four (4) parent chaperones.

We reviewed approximately fifty (50) hours of internet activity, including but not limited to all major news networks, YouTube, Vimeo, social media accounts on Facebook, Instagram, Twitter.

We attempted to obtain surveillance video from the Lincoln Memorial. We have reached out to the National Park Service by phone and e-mail. To date our efforts have been unsuccessful.

We were able to locate a social media account that goes by @trevonallworthy aka King Trevon. King Trevon has posted several videos from the Lincoln Memorial. We have reached out to King Trevon on two (2) different social media sites and to date he has not responded back. His videos are confirmatory to our findings.

Attempts were made through legal counsel to take Nick Sandmann's in-person statement. We were asked to consider his written statement of January 20, 2019.

We have attempted to reach out to Mr. Phillips by phone and by e-mail, informing him that we desired to interview him in person and that we were prepared to meet him in Michigan or any location he might prefer. We also sent Mr. Phillips' daughter an e-mail as they both appear to be involved in the Native Youth Alliance and have shared their e-mail addresses after the event to

thank everyone for reaching out and supporting them. We never received a response to our inquiries. In addition, our investigators travelled to Ypsilanti, Michigan to seek a personal interview. We are confident that we visited Mr. Phillips' residence. He was not present over a six-hour period and we left a note asking him to contact us. We have not received a response.

Key Findings

Students

- The students traveled from Park Hills, KY to Washington DC to attend the March for Life. Some of the students stressed that they attended because of their faith, some stated it was to get service hours, and some stated it was to get out of school and spend time with their friends.
- The students arrived at the Lincoln Memorial at different times. The students who arrived earlier encountered the Black Hebrew Israelites, who clearly addressed offensive statements to the students. We see no evidence that students responded with any offensive or racist statements of their own.
- Some of the students asked the chaperones if they could do their school cheers to help drown out the Black Hebrew Israelites. In years past students have performed school cheers at the Lincoln Memorial. Video evidence supports a finding that the Black Hebrew Israelites were laughing along with the students during the "sumo" cheer. The cheers performed at the Lincoln Memorial are commonly performed at football or basketball games.
- We found no evidence that the students performed a "Build the Wall" chant.
- After the interaction with the Black Hebrew Israelites, Mr. Phillips approached the students. Most of the students state that they felt like he was coming into their group to join in with the students' cheers. None of the students felt threatened by Mr. Phillips and many stated they were "confused."
- We found no evidence of offensive or racist statements by students to Mr. Phillips or members of his group. Some students performed a "tomahawk chop" to the beat of Mr. Phillips' drumming and some joined in Mr. Phillips' chant.
- As the interaction between Nick Sandmann and Mr. Phillips ended, most of the students reported that they again turned their attention back to the Black Hebrew Israelites. Chaperones moved students to the buses shortly thereafter.
- Some students stated that one of the chaperones reminded the students that, if they engaged in a verbal exchange with the Black Hebrew Israelites, they would receive detention when returning to school. Video evidence shows that this happened approximately five minutes before the students can be seen heading to the buses.

- As the students began leaving the area, one student was stopped by a uniformed police officer for running. It was reported that the officer advised this student he should not be running at the Lincoln Memorial. We saw no uniformed police presence at the Lincoln Memorial while students were there.

Chaperones

- Several of the chaperones arrived with their groups of students after the fact, as they attended the last viewing of the changing of the guard at Arlington Cemetery at 5:00 p.m. Nine (9) chaperones report being present at the Lincoln Memorial when the main interactions took place. Video confirms at least five (5) chaperones were present.
- Video confirms that toward the end of the interactions between Nick Sandmann and Mr. Phillips, at least two (2) chaperones can be seen telling the students that the buses are arriving. At this time, most of the students' attention was directed to the Black Hebrew Israelites. Also at this time a chaperone can be observed telling the students to "back it up," moving them back from the Black Hebrew Israelites. This happened approximately 4-5 minutes before the students headed to the buses.
- The chaperones who were at the Lincoln Memorial and who witnessed the interaction between the students and Black Hebrew Israelites stated that the Black Hebrew Israelites were saying offensive things to anyone that walked by and not just the students. During this time the chaperones never felt like the students were in any danger.
- The chaperones present during the interaction with Mr. Phillips state that they did not feel the students were threatened by Mr. Phillips or his group.
- After Mr. Phillips exited the area, the students' attention turned back to the Black Hebrew Israelites. Shortly thereafter, the chaperones decided to tell the students the buses were present even though at that point they had not arrived. Students were not instructed to "move to the buses" until after the interactions with the Black Hebrew Israelites and Mr. Phillips.

Make America Great Again Hats (MAGA Hats)

- Students and chaperones stated that few, if any, students were wearing MAGA hats when they left Covington Catholic to head to Washington DC. Most students purchased the hats before, during or after the March for Life.
- In years past, some chaperones reported that some students had purchased "Hope" hats in support of President Obama.
- We found no evidence of a school policy prohibiting political apparel on school-sponsored trips.

Investigation into the Comment "It's Not Rape If You Enjoy It"

- An individual can be heard making a comment that "it's not rape if you enjoy it" while the students were at the Lincoln Memorial.
- Our investigation concludes that the individual who made the comment was not a student at Covington Catholic. In addition, viewing longer videos of this comment reveals that a person in the crowd states, "He does not go to CovCath" almost immediately after the comment was made.

7 Second Video

- There was a 7 second video posted on Twitter by @roflinds that shows a group of boys making comments to two females as they walk by.
- We cannot confirm that the students in the video are students at Covington Catholic. It is also not totally clear what was said in the video.

Nick Sandmann

- Mr. Sandmann's January 20, 2019, statement appears to accurately reflect the facts surrounding the interaction between the students and the Black Hebrew Israelites.
- Regarding the interaction with Mr. Phillips, Mr. Sandmann reports that he was concerned a situation was getting out of control. He states that he was attempting to defuse the situation.

Mr. Phillips

- Mr. Phillips' public interviews contain some inconsistencies, and we have not been able to resolve them or verify his comments due to our inability to contact him.

Conclusion

- The statements we obtained from students and chaperones are remarkably consistent. And, the statements are consistent with the videos we reviewed. As with any investigation, new evidence could come to light in the future. We are professionally satisfied that, at this time, it is proper to close the investigation and issue this final report.

Greater Cincinnati Investigation, Inc.

By: 

Chad Moran, Investigator

EXHIBIT D

EXHIBIT D



DIOCESE OF COVINGTON

Office of the Bishop

1125 Madison Avenue, Covington KY 41011-3115

Phone: (859) 392-1512 • Fax: (859) 392-1508

11 February 2019

My dear Covington Catholic High School Parents,

I am pleased to inform you that my hope and expectation expressed in my letter to you of 25 January that the results of our inquiry into the events of 18 January at the Lincoln Memorial in Washington, D.C. would "exonerate our students so that they can move forward with their lives" has been realized. Our inquiry, conducted by a third party firm that has no connection with Covington Catholic High School or the Diocese of Covington, has demonstrated that our students did not instigate the incident that occurred at the Lincoln Memorial.

In these past several weeks since the original video went viral two well-worn and oft-used adages have come to mind: *Seeing is believing* and *Perception is reality*. The immediate world-wide reaction to the initial video led almost everyone to believe that our students had initiated the incident and the perception of those few minutes of video became reality.

In truth, taking everything into account, our students were placed in a situation that was at once bizarre and even threatening. Their reaction to the situation was, given the circumstances, expected and one might even say laudatory. These students had come to Washington, D.C. to support life. They marched peacefully with hundreds of thousands of others – young and old and in-between – to further the cause of life. These young high school students could never have expected what they experienced on the steps of the Lincoln Memorial while waiting for the busses to take them home. Their stance there was surely a pro-life stance. I commend them.

I thank our students and their parents for their patience while the inquiry we ordered was completed. The final investigative report is available at www.covdio.org. Once again I affirm my complete trust and confidence in our Principal of Covington Catholic, Mr. Robert Rowe. Under his guidance these past 11 years great strides have been made at CovCath in every area from curriculum to Catholic identity. He joins me in the sentiments expressed in this letter. I also affirm my confidence in our CovCath students. As for the future, we trust in God and in the spirit of CovCath, a spirit that will not die!

Yours devotedly in the Lord,

Most Reverend Roger J. Foy, D.D.
Bishop of Covington

EXHIBIT E

EXHIBIT E

A Note To Our Viewers About Our Covington Coverage

FOX40 strives to report fairly and accurately on the news that matters to our viewers — local, state, national and world. For news outside northern California, we depend on our national news partners with staffs of reporters, photojournalists and editors who track, report and analyze the latest developments. We believe this serves our viewers well. Occasionally it does not, and mistakes can result. We try to tell our viewers when mistakes happen, and pledge to use our best efforts to keep them from happening again.

On January 19-21, 2019, FOX40 aired reports of an encounter between high school students from Covington, Kentucky and Native American activists in front of the Lincoln Memorial. News coverage resulted not from conventional reporting on the scene, but from a short viral video showing a Native American elder, Nathan Phillips, and a 16-year-old Covington student, Nicholas Sandmann, locking eyes on one another as Phillips beat a drum and chanted, at very close range. The student remained silent, occasionally smiling as he gazed at Phillips. News reports highlighted the fact Sandmann and some of his classmates wore red “Make America Great Again” baseball caps. They were in the nation’s capital for an annual rally against abortion. Phillips, visiting from Michigan, was attending an Indigenous People’s rally. The students were awaiting buses to take them home.

The story drew angry comments in social media, and from politicians and celebrities. 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. The Diocese said the students had violated religious teachings and might be expelled from school. It later apologized to the students and their families, 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, although several were seen doing a “tomahawk chop” while the Native Americans chanted in their presence. The students’ noisy display was a school cheer, which school chaperones gave them permission to do, to drown out epithets from another group of activists at the scene. 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, and the error was ours at FOX40.

We should have considered that the targets of this story were high school students. Though the video showed a tense faceoff between an elder and a teenager, there is no evidence either side did anything wrong, particularly not the students.

We owe an apology to the students, their families, and the face of the Covington student group, Nick Sandmann. In an effort to update our viewers on a story of significant human interest, we reported it despite a shortage of hard facts, particularly the first day. 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.

Past Coverage:

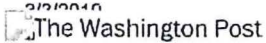
Native American Says He Tried to Ease Tensions at Mall

Teen in Confrontation with Native American: I Didn't Provoke

New Video Shows More of Encounter between Native American Elder and Teens in MAGA Hats

EXHIBIT F

EXHIBIT F



Editor's note related to Lincoln Memorial incident - The Washington Post

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.



Sections

The Washington Post
Democracy Dies in Darkness

National

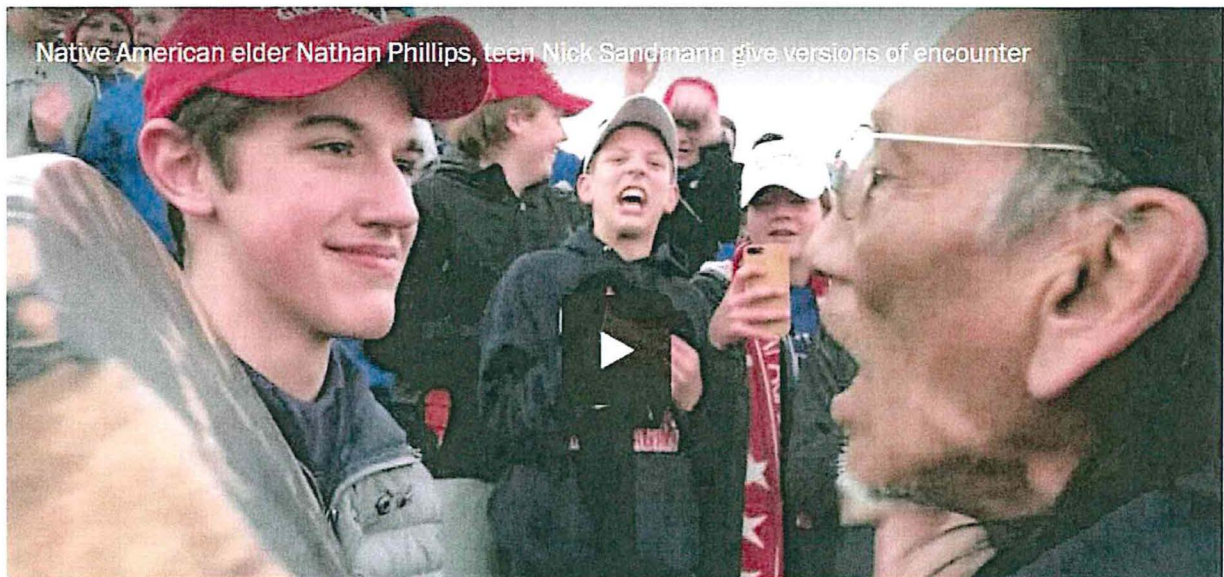
'It was getting ugly': Native American drummer speaks on his encounter with MAGA-hat-wearing teens

Share

8.0k



Aa



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)*

 Share

 8.0k



 Aa



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)

The images in videos that went viral on social media Saturday showed a tense scene near the Lincoln Memorial.

A Native American man steadily beats his drum at the tail end of Friday’s Indigenous Peoples March while singing a song of unity urging participants to “be strong” against the ravages of colonialism that include police brutality, poor access to health care and the ill effects of climate change on reservations.



Share



8.0k



Aa





Sections

The Washington Post
Democracy Dies in Darkness



Upgrade
to Air Wick®



Available at
amazon

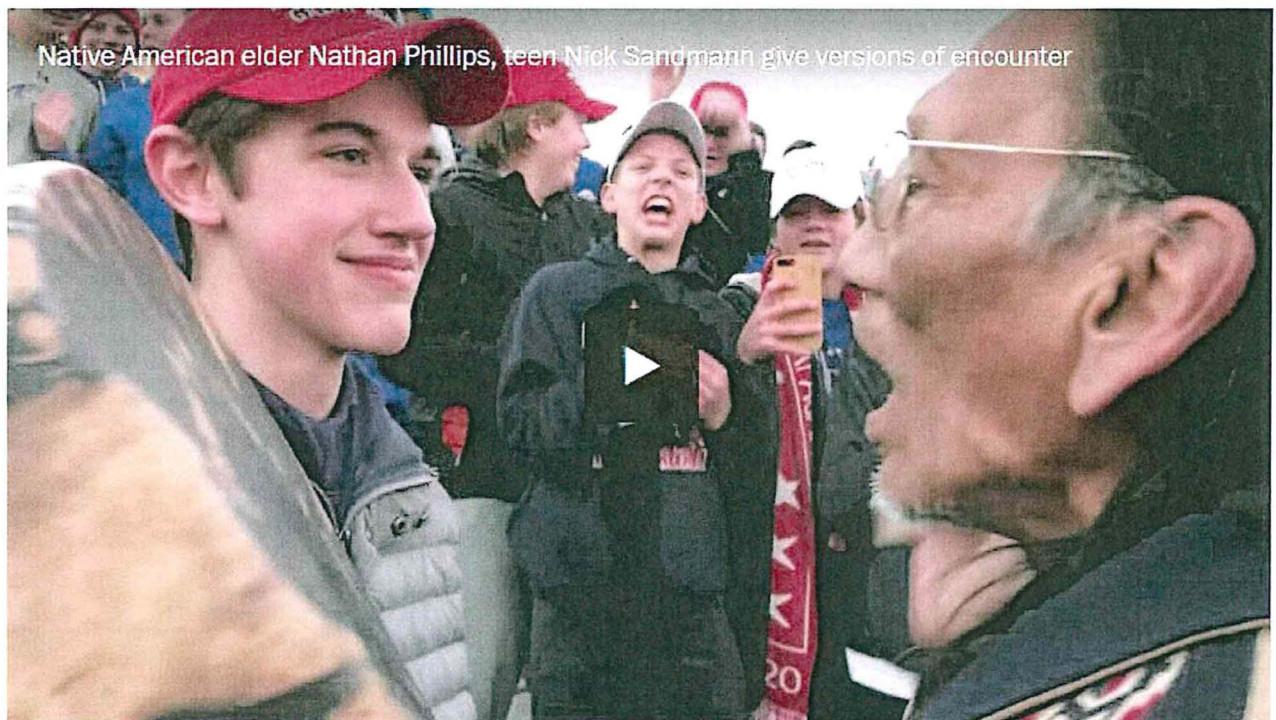
Acts of Faith

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

Share

6.2k





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 [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

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)

A viral video of a group of Kentucky teens in “Make America Great Again” hats taunting a Native American veteran on Friday has heaped fuel on a long-running, intense argument among abortion opponents as to whether the close affiliation of many antiabortion leaders with President Trump since he took office has led to moral decay that harms the movement.

The video, which began to spread Saturday morning, showed a throng of young, mostly white teenage boys, several wearing the caps, closely surrounding a 64-year-old man who was beating a drum as part of the Indigenous Peoples March happening near the Lincoln Memorial on Friday.



Share



6.2k



Sections

The Washington Post
Democracy Dies in Darkness

Here to help _____ go right.

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)

Friday's incident near the Lincoln Memorial in which a group of high school boys confronted an elderly Native American man sent a ripple of fear and anger across the country. The image of a

Share

283



Aa



Friday's incident near the Lincoln Memorial in which a group of high school boys 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 resurfaced tensions that have been simmering since President Trump's campaign began. At one point, some reportedly chanted, "Build the wall!" though such chants are not audible on widely circulated video.

While the general assumption is that younger Americans are more liberal, and therefore less likely to support Trump, we noted earlier this year that young white men are the only members of the millennial generation — generally but informally defined as those born between 1980 and 2000 — who lean [more Republican](#) than Democrat. Millennial men and millennial women tend to identify as Democrats more heavily, as do millennial whites and nonwhites.



Share



283



Aa



Sections

The Washington Post
Democracy Dies in Darkness



Share



19.0k

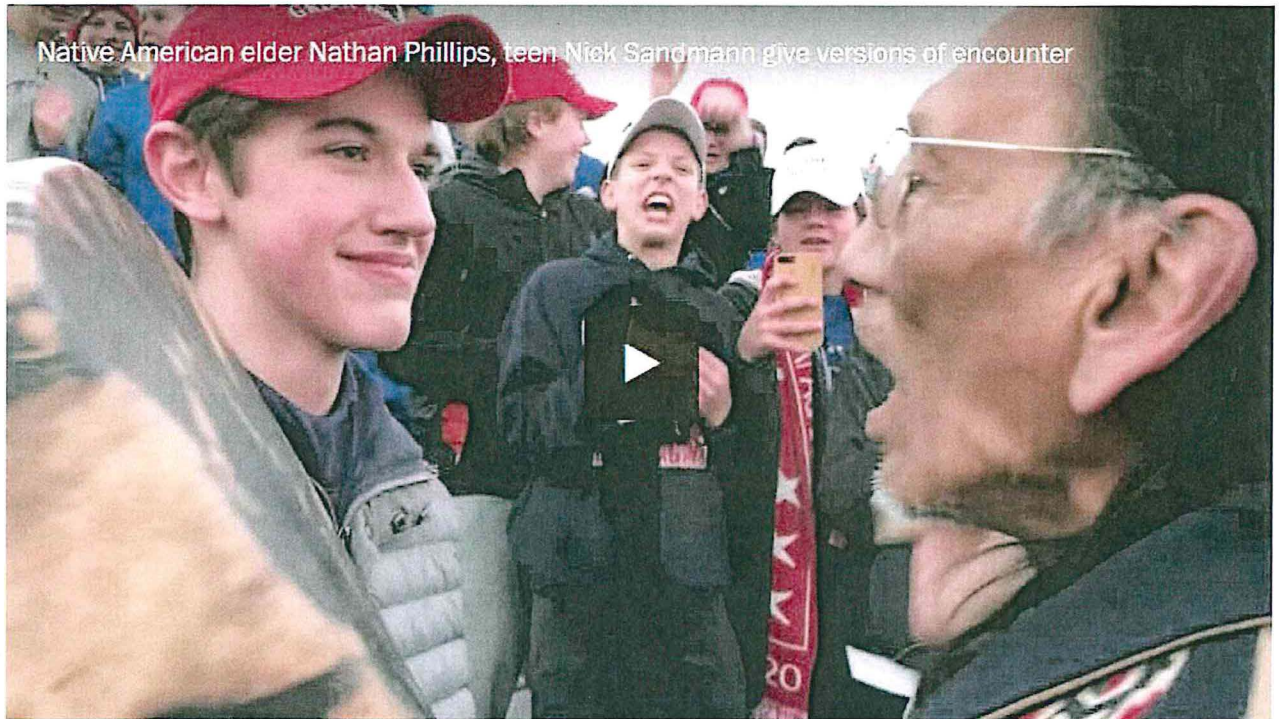


AA



Social Issues

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)

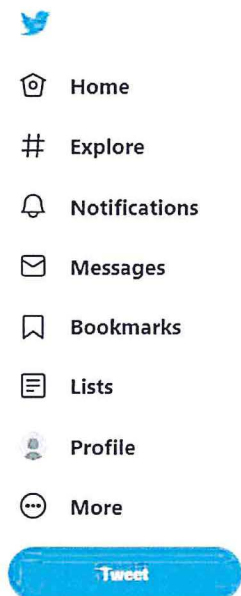
The three groups that met Friday in the cold shadow of the Lincoln Memorial could hardly have been more different. They were indigenous rights activists from Michigan, Catholic schoolboys from Kentucky — some wearing Make America Great Again hats — and Hebrew Israelites from the nation’s capital.


Share


19.0k



Aa



← Tweet



The Washington Post
@washingtonpost

The Post has issued an Editor's Note about updates to its initial coverage of the Jan. 18 incident at the Lincoln Memorial: wapo.st/2EnDsUg

We've also deleted this Jan. 19 tweet in light of later developments. For more, see the Editor's Note.



The Washington Post
@washingtonpost

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."

🔍 Search Twitter



Welcome!

Twitter just got lots of new features. You can personalize your color and the size of your text, as well as control your dark mode selection, right now.

Get started

Relevant people



The Washington Post
@washingtonpost

Follow

Breaking news, analysis, and opinion.
Founded in 1877. Our staff on Twitter:
[twitter.com/washingtonpost...](https://twitter.com/washingtonpost)

EXHIBIT G - 1

EXHIBIT G - 1

Social Issues

‘It was getting ugly’: Native American drummer speaks on the MAGA-hat wearing teens who surrounded him

By [Antonio Olivo](#) and
[Cleve R. Wootson Jr.](#)

January 19 at 4:22 PM

The images in a series of videos that went viral on social media Saturday showed a tense scene near the Lincoln Memorial.

In them, a Native American man steadily beats his drum at the tail end of Friday’s Indigenous Peoples March while singing a song of unity for indigenous people to “be strong” in the face of the ravages of colonialism that now include police brutality, poor access to health care and the ill effects of climate change on reservations.

Surrounding him are a throng of young, mostly white teenage boys, several wearing Make America Great Again caps, with one standing about a foot from the drummer’s face wearing a relentless smirk.

Nathan Phillips, a veteran in the indigenous rights movement, was that man in the middle.

In an interview Saturday, Phillips, 64, said he felt threatened by the teens and that they suddenly swarmed around him as and other activists were wrapping up the march and preparing to leave.

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.

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.”

So, he kept drumming and singing, thinking about his wife, Soshana, who died from bone marrow cancer nearly four years ago, and the various threats that face indigenous communities around the world, he said.

“I felt like the spirit was talking through me,” Phillips said.

The 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 Trump derisively calls “Pocahontas.”

[Trump invokes one of the worst Native American massacres to mock Elizabeth Warren]

In a statement, the Indigenous Peoples Movement, which organized Friday’s march, called the incident “emblematic of our discourse in Trump’s America.”

“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 group, said in the statement.

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.

“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.”

[A march takes on new meaning in the age of Trump]

Some of the teens in the video wore sweatshirts from Covington Catholic High School in Park Hills, Ky., which sent students to Washington to participate in Friday’s antiabortion March for Life event, according to an archived page of the school’s website that was taken down on Saturday.

On Saturday, school officials did not respond to messages for comment.

Laura Keener, spokeswoman for the diocese of Covington, said officials there are investigating.

“We are just now learning about this incident and regret it took place,” Keener said in a statement. “We are looking into it.”

Phillips, an Omaha tribe elder who also fought in the Vietnam War, has encountered anti-Native American sentiments before: In 2015, Phillips was verbally attacked by a group of Eastern Michigan University students who were dressed as Native Americans during a theme party near the town of Ypsilanti, according to news reports.

Phillips had approached the group, informing them that their celebration was racially offensive, a local Fox News station reported. One of the students threw a beer can at him, Phillips told the news outlet.

But the incident on Friday, combined with the ensuing attention from media outlets scrambling to get his story, left him shaken.

"I'm still trying to process what happened," Phillips said. "I'm feeling a little bit overwhelmed."

Joe Heim contributed to this report.

Comments

EXHIBIT G - 2

EXHIBIT G - 2

Thanks for reading. Try one month of unlimited access for \$1. [View offer](#)

2



'It was getting ugly': Native American drummer speaks on the MAGA-hat-wearing teens who surrounded him



By **Antonio Olivo**, January
Cleve R. Wootson Jr. and
Joe Heim19 at 6:32 PM

The images in videos that went viral on social media Saturday showed a tense scene near the Lincoln Memorial.

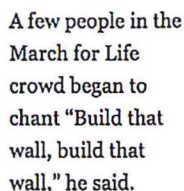
In them, a Native American man steadily beats his drum at the tail end of Friday's Indigenous Peoples March while singing a song of unity urging them to "be strong" in the face of the ravages of colonialism that now include police brutality, poor access to health care and the ill effects of climate change on reservations.

Surrounding him are a throng of young, mostly white teenage boys, several wearing “Make America Great Again” caps, with one standing about a foot from the drummer’s face also wearing a relentless smirk.

Nathan Phillips, a veteran in the indigenous rights movement, was that man in the middle.


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.

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.




Most Read Local

- 1** 'It was getting ugly': Native American drummer speaks on the MAGA-hat-wearing teens who surrounded him


- 2** Tony Mendez, 'Argo' spy who smuggled U.S. hostages out of Iran during crisis, dies at 78


- 3** 'I march for all women': Thousands gather for third Women's March after year of controversy


- 4** Republicans in Virginia kill 'red flag' bill endorsed by Trump administration


- 5** D.C.-area forecast: Brief wintry mix possible late today ahead of heavier rain tonight, then Arctic air pours in Sunday





Latest episode

Who owns the Women's March?

► Listen 25:16

Unparalleled reporting. Expert insight. Clear analysis. Everything you've come to expect from the newsroom of The Post – for your ears.



The Washington Post

Be the first to
know.

Our award-winning journalists are there when the news breaks.

"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."

So, he kept drumming and singing, thinking about his wife, Shoshana, who died of bone marrow cancer nearly four years ago, and the various threats that face indigenous communities around the world, he said.

"I felt like the spirit was talking through me," Phillips said.

The 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-Mass.), who Trump derisively calls "Pocahontas."

[Trump invokes one of the worst Native American massacres to mock Elizabeth Warren]

In a statement, the Indigenous Peoples Movement, which organized Friday's march, called the incident "emblematic of our discourse in Trump's America."

"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 group, said in the statement.

Rep. Deb Haaland (D-N.M.), who with Rep. Sharice Davids (D-Kan.) became the first Native American women elected to Congress last fall, said the video was difficult to watch.

"To see a group of students from a Catholic school who are practicing such intolerance is a sad sight for me," said Haaland, who is Catholic.

Some of the teens in the video wore sweatshirts from Covington Catholic High School in Park Hills, Ky., which sent students to Washington to participate in Friday's antiabortion March for Life event, according to an archived page of the school's website that was taken down Saturday.

[A march takes on new meaning in the age of Trump]

School officials and the Roman Catholic Diocese of Covington released a joint statement Saturday.

"We 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."

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.

"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."

Phillips, an Omaha tribe elder who fought in the Vietnam War and now lives in Michigan, has long been active in the indigenous rights movement.

Try 1 month for \$49 \$1

Send me this offer

Already a subscriber? Sign in

Local Headlines newsletter

Important local stories in D.C., Va. and Md., around 8 a.m. on weekdays.

E-mail address

Add

ADVERTISEMENT

washingtonpost.com

© 1996-2019 The Washington Post

Help and Contact Us

Policies and Standards

Terms of Service

Privacy Policy

Print Products Terms of Sale

Digital Products Terms of Sale

Submissions and Discussion Policy

RSS Terms of Service

Ad Choices

ADVERTISEMENT

A co-founder of the Native Youth Alliance, cultural and education group, he shows up to Arlington National Cemetery every Veterans Day with a peace pipe to pay tribute to Native Americans who served in the U.S. military.

"My job has always been taking care of the fire, to keep the prayers going," Phillips said.

In that role, he has encountered anti-Native American sentiment before: In 2015, Phillips was verbally attacked by a group of Eastern Michigan University students who were dressed as Native Americans during a theme party near the town of Ypsilanti, according to news reports.

Phillips had approached the group, informing them that their celebration was racially offensive, a local Fox News station reported. One of the students threw a beer can at him, Phillips told the news outlet.

But the Friday incident, combined with the ensuing attention from media outlets scrambling to get his story, left him shaken.

"I'm still trying to process what happened," Phillips said. "I'm feeling a little bit overwhelmed."

Still, he said, he hopes the teens will find a lesson in all of the negative attention generated by the videos.

"That energy could be turned into feeding the people, cleaning up our communities and figuring out what else we can do," Phillips said. "We need the young people to be doing that instead of saying: 'These guys are our enemies.'"

 2.2k Comments



Local Headlines newsletter


Important local stories in D.C., Va. and Md., around 8 a.m. on weekdays.


E-mail address

Sign up

By signing up you agree to our [Terms of Use](#) and [Privacy Policy](#)

Antonio Olivo Antonio Olivo covers government, politics and other issues in Northern Virginia. He has also reported from Afghanistan and Mexico after joining The Washington Post in 2013. [Follow](#) 

Cleve R. Wootson Jr. Cleve Wootson is a general assignment reporter for The Washington Post. He was previously a reporter for the Charlotte Observer. [Follow](#) 

Joe Heim Joe Heim joined The Washington Post in 1999. He is a staff writer for the Metro section. He also writes Just Asking, a weekly Q&A column in the Sunday magazine. [Follow](#) 

Be the first to
know.



EXHIBIT H

EXHIBIT H

‘It was getting ugly’: Native American drummer speaks on the MAGA-hat- wearing teens who surrounded him

By [Cleve R. Wootson Jr.](#),
[Antonio Olivo](#) and
[Joe Heim](#)

January 20 at 2:43 PM

The images in videos that went viral on social media Saturday showed a tense scene near the Lincoln Memorial.

A Native American man steadily beats his drum at the tail end of Friday’s Indigenous Peoples March while singing a song of unity urging participants to “be strong” against the ravages of colonialism that include police brutality, poor access to health care and the ill effects of climate change on reservations.

Surrounding him are a throng of young, mostly white teenage boys, several wearing “Make America Great Again” caps. One stood about a foot from the drummer’s face wearing a relentless smirk.

Nathan Phillips, a veteran in the indigenous rights movement, was that man in the middle.

In an interview Saturday, Phillips, 64, said he felt threatened by the teens and that they swarmed around him as he and other activists were wrapping up the march and preparing to leave.

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.

Phillips said a few people in the March for Life crowd began to chant, “Build that wall, build that wall,” though such chants are not audible on video.

“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."

Phillips kept drumming and singing, thinking about his wife, Shoshana, who died of bone marrow cancer nearly four years ago, and the various threats that face indigenous communities around the world, he said.

"I felt like the spirit was talking through me," Phillips said.

The 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 intended to mock Sen. Elizabeth Warren (D-Mass.), whom Trump derisively calls Pocahontas.

"If Elizabeth Warren, often referred to by me as Pocahontas, did this commercial from Bighorn or Wounded Knee instead of her kitchen, with her husband dressed in full Indian garb, it would have been a smash!" Trump tweeted in a reference to an Instagram post of Warren drinking a beer in her kitchen.

In a statement, the Indigenous Peoples Movement, which organized Friday's march, called the incident "emblematic of our discourse in Trump's America."

"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 group, said in the statement.

Rep. Deb Haaland (D-N.M.), who with Rep. Sharice Davids (D-Kan.) became one of the first Native American women elected to Congress last fall, said the video was difficult to watch.

"To see a group of students from a Catholic school who are practicing such intolerance is a sad sight for me," said Haaland, who is Catholic.

[Opposed to the dignity of the human person': Kentucky Catholic diocese condemns teens who taunted vet]

Some of the teens in the video wore sweatshirts from Covington Catholic High School in Park Hills, Ky., which sent students to Washington to participate in Friday's antiabortion March for Life event, according to an archived page of the school's website that was taken down Saturday.

School officials and the Catholic Diocese of Covington released a joint statement Saturday.

"We 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."

As The Washington Post's Michelle Boorstein reported, the incident magnified worries that the March for Life has "become too partisan and too aligned with politically conservative figures, Trump in particular."

The diocese's statement expressed regret that jeering, disrespectful students from a Catholic school had become the enduring image of the march.

"We know this incident also has tainted the entire witness of the March for Life and express our most sincere apologies to all those who attended the March and all those who support the pro-life movement," the diocese said.

[The abortion issue is more polarized than ever, leading some to view March for Life as a Republican rally]

The mayor of Covington, Joe Meyer, tried to distance his city from the harsh spotlight.

"The point is that because of the actions of people who live in Northern Kentucky, our region is being challenged again to examine our core identities, values, and beliefs," he said in an op-ed that pointed out that Covington Catholic High School is, technically, in neighboring Park Hills.

"Regardless of what exact town we live in, we need to ask ourselves whether behavior like this DOES represent who we are and strive to be. Is this what our schools teach? Are these the beliefs that we as parents model and condone? Is this the way we want the rest of the nation and the world to see us?

"Let me — as Covington's mayor — be absolutely clear," he went on. "No. The videos being shared across the nation do NOT represent the core beliefs and values of this City."

Thousands of people have [signed a change.org petition](#) calling for changes at Covenant Catholic High School, including the firing of Principal Robert Rowe.

"CovCath has become less diverse, more elite, and more expensive — even as the surrounding community has become more economically and ethnically diverse," organizer Matthew Lehman wrote in the petition. "... You would need to be willfully ignorant to maintain that CovCath administration has not allowed certain elitist and exclusive tendencies to take root in the school. It is abundantly clear that CovCath has lost its way."

As a Catholic who attended Catholic School, I was taught love, acceptance, and compassion. The behavior on display here is the complete opposite of that - it's intolerant and hateful. This is the kind of behavior modeled by our President. Unacceptable. <https://t.co/oEJUno1QO7>

— Congressman Tim Ryan (@RepTimRyan) January 20, 2019

Chase Iron Eyes, an attorney with the Lakota People's Law Project, said the Friday incident lasted about 10 minutes and ended when Phillips and other activists walked away.

Phillips and the people involved in the Indigenous Peoples March had been using what he described as a "permitted space" near the Lincoln Memorial for hours. But as they were wrapping up, other people with opposing viewpoints — including some from the March for Life — had entered that permitted space and were making demonstrations of their own.

He told The Post that he hoped to get closer to the Lincoln Memorial to conclude the ceremony. That's when he encountered the large group of boys.

"It was an aggressive display of physicality. They were rambunctious and trying to instigate a conflict," Iron Eyes said. "We were wondering where their chaperones were. [I] was really trying to defuse the situation."

Phillips, an Omaha tribe elder and Marine veteran who lives in Michigan, has long been active in the indigenous rights movement.

A co-founder of the Native Youth Alliance cultural and education group, he goes to Arlington National Cemetery every Veterans Day with a peace pipe to pay tribute to Native Americans who served in the U.S. military.

"My job has always been taking care of the fire, to keep the prayers going," Phillips said.

In that role, he has encountered anti-Native American sentiment before: In 2015, he was verbally attacked by a group of Eastern Michigan University students who were dressed as Native Americans during a themed party near the town of Ypsilanti, according to news reports.

Phillips had approached the group, informing them that their celebration was racially offensive, a local Fox News station reported. One of the students threw a beer can at him, Phillips told the news outlet.

But the Friday incident, combined with the ensuing attention from media outlets scrambling to get his story, left him shaken.

"I'm still trying to process what happened," Phillips said. "I'm feeling a little bit overwhelmed."

He said he hopes the teens will find a lesson in all of the negative attention generated by the videos.

"That energy could be turned into feeding the people, cleaning up our communities and figuring out what else we can do," Phillips said. "We need the young people to be doing that instead of saying, 'These guys are our enemies.'"

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’](#)

Comments

[Cleve R. Wootson Jr.](#) Cleve Wootson is a general assignment reporter for The Washington Post. He was previously a reporter for the Charlotte Observer. [Follow](#)

[Antonio Olivo](#) Antonio Olivo covers government, politics and other issues in Northern Virginia. He has also reported from Afghanistan and Mexico after joining The Washington Post in 2013. [Follow](#)

[Joe Heim](#) Joe Heim joined The Washington Post in 1999. He is a staff writer for the Metro section. He also writes Just Asking, a weekly Q&A: column in the Sunday magazine. [Follow](#)

Most Read [National](#)

EXHIBIT I

EXHIBIT I

SUNDAY, JANUARY 20, 2019 • THE WASHINGTON POST

THE REGION

Federal workers turning to charity as bank accounts dwindle in shutdown

Food bank steps up with pop-up pickup sites, and the response is huge

BY FENIT NIRAPPELL

Thirty people lined up in the parking lot of a Giant grocery store in Northern Virginia before the food bank for federal workers opened at 9 a.m. Some waited more than an hour. More than a tenth of the food was gone in the first five minutes.

"Hi, there. Potatoes, carrots and onions," a volunteer for the Capital Area Food Bank repeated as she handed out bags of produce to federal employees at the store in Fairfax County's Alexandria area. As the longest government shutdown in U.S. history enters its second month, many of the roughly 800,000 workers affected nationwide are scrambling to make ends meet as they brace for a second missed paycheck. Some find themselves turning to charity for the first time.

Across the Washington region, hundreds visited Capital Area Food Bank pop-up markets Saturday morning for canned goods and fresh vegetables.

"For many, many years, I sent in donations to the Capital Area Food Bank," one older woman told a volunteer as she picked up food. "This is the first time I've had to ask for help."

Many were similarly in disbelief that they needed help to put food on the table despite having good jobs.

Benita Dillard-Brown, 55, a Justice Department employee, said she was hopeful for an end to the shutdown.

"In September, I started putting money away, because that's

when you first start hearing about the budget and the possibility of a shutdown," said Dillard-Brown, who planned to share supplies from the food bank with co-workers. "It's a little sad, but I've been through shutdowns. But it never came to this before."

The Capital Area Food Bank — an organization that has long served the Washington region's needy — has set up pop-up markets for federal workers hit by the shutdown. The initial demand was overwhelming.

"Last week, we prepared for 250 people at each site, and we were just deluged. Food ran out in the first hour," said Radha Muthiah, president and chief executive of the Capital Area Food Bank. "It's still an experiment, because we don't typically do these pop-ups."

On Saturday, her organization gave food to 1,140 federal workers across eight sites, and no site ran out of food, falling well below the pop-up sites' overall capacity. Officials said the workers are drawing on other nonprofit groups and charities that are also donating food.

But Muthiah said the food bank will be challenged to keep up if the shutdown continues through mid-February. More federal workers will run through their savings, and regular beneficiaries of the Supplemental Nutrition Assistance Program, or SNAP, also will start running out of their federal benefits to buy food.

The shutdown is a result of a stalemate between House Democrats and President Trump, who is insisting that the federal spending plan include \$5.7 billion toward a wall on the U.S.-Mexico border. The proposal is opposed by Democrats, who control the House.

The president on Saturday afternoon proposed, in exchange



TOP: Alexis Ing, a State Department worker who is off the job during the shutdown, and her son Robert receive food from the Capital Area Food Bank outside a Giant supermarket in Fairfax County on Saturday. BOTTOM: A package of food changes hands.



for wall funding, to end the shutdown and extend protection for some undocumented immigrants who were brought into the country as children. Hours earlier, several food

bank visitors had said they were anxiously awaiting Trump's speech in hopes of a path out of the shutdown.

"You are talking to two senior management employees here," said one Commerce Department worker who was at the pop-up food bank with her husband, who works for the National Park Service. "This is pretty humiliating."

The couple, who have worked for the federal government for nearly 30 years and have been recalled to work without pay, said the timing of the shutdown was especially bad, coming after the holidays and with many government workers already having drawn down their savings for gifts and charitable donations at the end of the year.

Mike Hoover, a Treasury Department employee, was at the food bank as a volunteer to help package produce and distribute supplies.

Hoover said he and his wife, who also works for the federal government, have not yet felt a financial pinch, but he understands that many others are in a precarious position. "I remember how it was when I was first starting out, working paycheck to paycheck and getting your checking account down to \$4 and wondering if you'll make it," said Hoover, a federal worker since 1990.

Some workers said they were conflicted about seeking charitable assistance.

"I was thinking about the people with kids, and the older workers. I wanted to let people in a worse situation go first. Now I'm like, 'You one of those,'" said Suzie Lane, a paralegal with the Justice Department who has applied for unemployment benefits. "My checking account is at zero. Without food, I don't know what I'll do."

Lane has worked for the federal government for a decade, having been drawn to the promise of steady work. But the havoc of shutdowns and the downtime of furloughs has prompted her to start applying for other jobs.

"At the time, it was the stability, the benefits and the downtime of furloughs has prompted her to start applying for other jobs."

"At the time, it was the stability, the benefits and the downtime of furloughs has prompted her to start applying for other jobs."

"Hopefully, we won't see you again," Harris said, chuckling. "Hopefully not," the federal worker said with a grin.

"But we're here," Harris said. "If you still need it."

fenitnirap@washpost.com

Ky. school officials condemn students' treatment of Native American in D.C.

DRUMMER FROM DC

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."

So, he kept drumming and singing, thinking about his wife, Shoshana, who died of bone marrow cancer nearly four years ago, and the various threats that face indigenous communities around the world, he said.

"I felt like the spirit was talking through me," Phillips said.

The encounter generated a wave of outrage on social media and 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-Mass.), who Trump derisively calls "Pocahontas."

In a statement, the Indigenous Peoples Movement, which organized Friday's march, called the incident "an epitome of our discourse in Trump's America."

"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 group, said in the statement.

Rep. Deb Haaland (D-N.M.), who with Rep. Shontae Davis (D-Ill.) became the first Native American women elected to Congress last fall, said the video was difficult to watch.

"To see a group of students from a Catholic school who are practicing such intolerance is a sad sight for me," said Haaland, who is Catholic.

Some of the teens in the video were wearing shirts from Covington Catholic High School in Park Hills, Ky., which sent students to Washington to participate in Friday's anti-abortion March for Life event, according to an archived page of the school's website that was taken down Saturday.

School officials and the Roman Catholic Diocese of Covington released a joint statement Saturday.

"We 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."

Chase Iron Eyes, an attorney with the Lakota People's Law Project, said the incident lasted about 10 minutes and ended when Phillips and other activists walked away.

"It was an aggressive display of physicality. They were ramming and trying to instigate a conflict," he said. "We were wondering where their chaplains were. [Phillips] was really trying to defuse the situation."

Phillips, an Omaha tribe elder who fought in the Vietnam War and now lives in Michigan, has

long been active in the indigenous rights movement.

A co-founder of the Native Youth Alliance cultural and education group, he shows up to Arlington National Cemetery every Veterans Day with a peace pipe to pay tribute to Native Americans who served in the U.S. military.

"My job has always been taking care of the fire, to keep the prayers going," Phillips said.

In that role, he has encountered anti-Native American sentiment before: In 2015, Phillips was verbally attacked by a group of Eastern Michigan University students who were dressed as Native Americans during a theme party near the town of Ypsilanti, according to news reports.

Phillips had approached the group, informing them that their celebration was racially offensive,

a local Fox News station reported. One of the students threw a beer can at him, Phillips told the news outlet.

But the Friday incident, combined with the ensuing attention from media outlets scrambling to get his story, left him shaken.

"I'm still trying to process what happened," Phillips said. "I'm feeling a little bit overwhelmed."

Still, he said, he hopes the teens will find a lesson in all of the negative attention generated by the video.

"That energy could be turned into feeding the people, cleaning up what else we can do," Phillips said. "We need the young people to be doing that instead of saying 'These guys are our enemies.'"

anthony.eltor@washpost.com
dave.snow@washingtonpost.com
joc.helm@washpost.com

THERESA VARGAS

'We will not be silenced': Museum may be closed, but march can't be ignored

VARGAS FROM DC

Native Americans than when they walked in.

That's the number of people, or as close to any estimate that is available, who won't get that same opportunity this month if the government shutdown lasts much longer.

This matters because 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.

Indigenous people from the Washington area and beyond had gathered for the march, hoping to be seen and heard.

People waved signs that read, "We will not be silenced."

They marched in their traditional dress, demanding that part of their heritage be noticed.

Two women held a white sheet stained with red handprints, bearing the message, "Justice for Missing and Murdered Indigenous Women."

"It's an important time in our country's history, in our world's history," Deb Haaland (D-N.M.), one of two Native American women elected to Congress for the first time, told the crowd. "It's time for us to stand up for the

environment. It's time for us to stand up for our people."

She called on those gathered to make sure people vote, so that the country gets elected officials "who care about us, who care about our issues."

Elected officials who know better than to joke about a shameful slaying.

Five days before the march, Trump referenced Wounded Knee in a tweet that was meant as a jab against Sen. Elizabeth Warren (D-Mass.). Warren, who in a much-ridiculed move released a DNA test to prove her Native American roots, discussed her plans to enter the 2020 presidential race in a video last month.

"If Elizabeth Warren, often referred to by me as Pocahontas, did this commercial from Biehorn or Wounded Knee instead of her kitchen, with her husband dressed in full Indian garb, it would have been a stunner," Trump tweeted.

The Indigenous Peoples March was a peaceful demonstration. Phillips, who was with her husband dressed in full Indian garb, it would have been a stunner," Trump tweeted.

Queen Muhammad Ali, a film director and one of the speakers at the march, said she was surprised by Trump's tweet and saw a positive in it. Even if it wasn't his intention, she said, "He's bringing light to issues

people didn't know about."

"He's bringing an uprising," she said. "He's making us say, 'We're here, and we're not going away.'"

She was there to speak about American Samoa, to tell the crowd how half of the almost 56,000-person population in the U.S. territory in the South Pacific Ocean has diabetes or is on dialysis. But she also hoped

people would look at those gathered as a unified front because many issues Indigenous people face run across tribal and geographic lines.

Through a social media campaign, in which people described why they wanted to march, individuals spoke about personal struggles and broader ones. They spoke about the past and the present.

"There are approximately 1.6 million people living in the US without running water or basic plumbing in their homes," wrote Emma Robbins, director of the Navajo Water Project. "Many of these folks are Indigenous, living on Native Nations, which is something we need to change. We deserve to have the basic human right to clean, safe running water."

"I am a survivor of sexual

assault and violence," wrote Curtine Oestrich, a journalist who is Lakota and Mohawk. "Indigenous women are at a greater risk than any for Human Trafficking and violence, and I don't want to see any more of my sisters represented by a Red Dress."

"Today, I'm making the little girl in me feel visible," wrote Sarah Rose Harper, who described herself as Eastern Band Cherokee. "I remember being 11 in the nineties and seeing the FIRST person who looked like me in a magazine. It was an advertisement in Teen Magazine for the American Indian College Fund. I tore the ad out and kept it in my dresser for years. Looking at it made me feel something deep inside of me. I felt less invisible."

"I march for the Lakota language that is dying," wrote Terrance Hollow Horn, a hip-hop artist who is Ojibwa Lakota from Wounded Knee, S.D. "I march for any and all Indigenous languages. For the youth that feel like they're forgotten. Rejected. Pushed aside. Told they can't. I march for those youth that feel their battle to depression."

If you want to learn more about the issues Native Americans face, you can visit the National Museum of the American Indian at Fourth Street and Independence Avenue SW. Just not tomorrow, and probably not the day after that. Unfortunately, not until the shutdown ends.

theresa.vargas@washpost.com



People listen to speakers — who included Deb Haaland, one of two Native American women elected to Congress for the first time — during the Indigenous Peoples March at the Lincoln Memorial on Friday.

people didn't know about."

"He's bringing an uprising," she said. "He's making us say, 'We're here, and we're not going away.'"

She was there to speak about American Samoa, to tell the crowd how half of the almost 56,000-person population in the U.S. territory in the South Pacific Ocean has diabetes or is on dialysis. But she also hoped

people would look at those gathered as a unified front because many issues Indigenous people face run across tribal and geographic lines.

Through a social media campaign, in which people described why they wanted to march, individuals spoke about personal struggles and broader ones. They spoke about the past and the present.

"There are approximately 1.6 million people living in the US without running water or basic plumbing in their homes," wrote Emma Robbins, director of the Navajo Water Project. "Many of these folks are Indigenous, living on Native Nations, which is something we need to change. We deserve to have the basic human right to clean, safe running water."

"I am a survivor of sexual

EXHIBIT J - 1

EXHIBIT J - 1



Video of MAGA teens heaped fuel on Catholic debate about Trump and the abortion issue - The Washington Post

Acts of Faith

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

By [Michelle Boorstein](#)

January 20

A viral video of a group of Kentucky teens in “Make America Great Again” hats taunting a Native American veteran on Friday has heaped fuel on a long-running, intense argument among abortion opponents as to whether the close affiliation of many antiabortion leaders with President Trump since he took office has led to moral decay that harms the movement.

The video, which began to spread Saturday morning, showed a throng of young, mostly white teenage boys, several wearing the caps, closely surrounding a 64-year-old man who was beating a drum as part of the Indigenous Peoples March happening near the Lincoln Memorial on Friday.

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.

An unverified, [longer video](#) of the event shows that the altercation between teens and the man was part of a broader tense scene on the memorial plaza over politics and identity. Another Native American man tells one of the youth: “Go back to Europe. This is not your land.”

The students in the video had just come from the March for Life, the country’s largest antiabortion rally and march, which happens annually on the Mall, a few blocks east of the Lincoln Memorial.

In a [statement](#) Saturday, the Catholic high school and diocese that some of the teens belong to issued a statement of apology to the man, Nathan Phillips.

“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. We know this incident also has tainted the entire witness of the March for Life and express our sincere apologies to all those who attended the March and those who support the pro-life movement.”

The teens in the video had not been publicly identified as of Saturday evening.

The event happened as abortion opponents in recent days debated the March for Life’s decision to feature a greeting from President Trump — this year and last year — as well as one by conservative commentator Ben

<https://www.washingtonpost.com/archive/local/2019/01/20/2019-01-20-opposed-dignity-human-person-kentucky-catholic-diocese-condemns-teens-march-for-life/>

1/24/2019 Video of MAGA teens keeps fueling Catholic debate about Trump and the abortion issue. The Washington Post
Shapiro. Some abortion opponents say the march has become too partisan and too aligned with politically conservative figures, Trump in particular. Twenty-two percent of Democrats say abortion should be illegal in all or most cases, and 38 percent of independents say the same, according to Pew Research Center.

Antiabortion leaders' embrace of Trump has alarmed a wide range of Christian abortion opponents. They see Trump's comments on race and immigration, his lying and crudeness as damaging to the "pro-life" label. Younger religious conservatives continue to place an extremely high priority on decreasing abortions but more and more talk of a "consistent life ethic" that sees issues such as health care, global warming and support for poor pregnant women as among those that should be under the "pro-life" umbrella.



Daniel P. Horan, OFM @DanHoranOFM · Jan 19, 2019

I'm so deeply appalled and disgusted by the racist, shameful, disrespectful behavior of the Catholic high school students wearing MAGA hats and harassing a Native American elder and Vietnam Vet. I'm so angry and yet not at all surprised at pervasive white supremacy exhibited 1/2



Daniel P. Horan, OFM
@DanHoranOFM

Just one of many reasons I find the so-called "march for life" often repulsive and futile: It's basically a gathering for many right-wing anti-abortion hardliners (not consistent ethic of life, i.e. true pro-lifers) and teens to get a free trip to goof off (at best) in DC. 2/2

449 1:43 PM - Jan 19, 2019

[473 people are talking about this](#)



Marcus Mescher @marcusmescher · Jan 19, 2019

I'm an alum of an all-boys Catholic high school like Covington Catholic. The video of students mocking Native Americans illustrates the very problem the #GilletteAd addresses: "boys will be boys" excuses boorish behavior, normalizes disrespect, & leads to sense of entitlement.



Marcus Mescher
@marcusmescher

When Christian leaders like Fr. Frank Pavone enthusiastically endorse Trump/#MAGA they jeopardize the credibility of #ProLife movement (all lives, no exceptions). Why be surprised at the disrespectful behavior of Covington Catholic students?! They're behaving just like Trump. pic.twitter.com/ZMLUQHpk1v

173 3:26 PM - Jan 19, 2019

1/24/2019

Video of MAGA teens being fired on Catholic debate about Trump and the abortion issue - The Washington Post



Fr. Frank Pavone 
@frfrankpavone

Onward to Victory! (The hats are on their way!) @realdonaldtrump #MAGA #prolife



116 people are talking about this

Catholic ethicist and writer Charles Camosy wrote in [The Washington Post](#) last month that the antiabortion movement — including the March for Life — is rolling back years of progress by becoming increasingly seen not as a broad-based human rights movement but as a “Republican or conservative constituency,” he wrote.

“Especially after the movement hitched its wagon to the Trump campaign, it lost a huge portion of the Trump-loathing young people who, despite agreeing with us on morality and policy, refuse to identify as pro-life. Indeed, the term has become so toxic that the group Students for Life refuses to say ‘pro-life’ when doing its activist work,” Camosy wrote.

For its part, the March for Life says the movement has been forced to align more closely with the GOP because the Democratic Party has grown less tolerant of abortion opponents. March President Jeanne Mancini, in a [Post piece Friday](#), noted that then-Democratic National Committee Chairman Tom Perez in 2017 said support for abortion rights was “nonnegotiable” for Democratic candidates.

Mancini on Saturday night put out a statement condemning the students' behavior. Some abortion opponents welcomed the statement, and others said it unfairly blamed the students without curiosity or willingness to look at the connection between their actions and those of the president whose slogan they wore.

The 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.” Last month, Warren, who plans to run for president in

10/24/2019

Video of MAGA teens helps fuel as Catholic debate about Trump and the abortion issue - The Washington Post

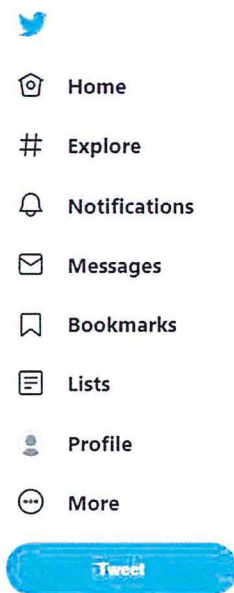
Correction: An earlier version of this article inaccurately described the statement of Catholic officials from Covington, Ky. Their statement condemned the teens' actions toward "Native Americans in general" but did not apologize for those actions. The article has been updated.

Michelle Boorstein

Michelle Boorstein is a religion reporter, covering the busy marketplace of American faith. Her career has included a decade of globe-trotting with the Associated Press, covering topics including terrorism in the Arizona desert, debates on male circumcision, Ugandan royalty, and how strapped doctors in Afghanistan decide who lives and who dies. [Follow](#) 

EXHIBIT J - 2

EXHIBIT J - 2



← Tweet



The Washington Post
@washingtonpost

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



"Opposed to the dignity of the human person": Kentucky Catholic diocese conde...
The video comes as Catholics debate the March for Life and partisan politics.
[washingtonpost.com](https://www.washingtonpost.com)

3:06 PM · Jan 20, 2019 · SocialFlow

🔍 Search Twitter



Welcome!

Twitter just got lots of new features. You can
personalize your color and the size of your text,
as well as control your dark mode selection, right
now.

Get started

Relevant people



The Washington Post
@washingtonpost

Follow

Breaking news, analysis, and opinion.
Founded in 1877. Our staff on Twitter:
twitter.com/washingtonpost

Trends for you



EXHIBIT K - 1

EXHIBIT K - 1

Politics • Analysis

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

The Washington Post

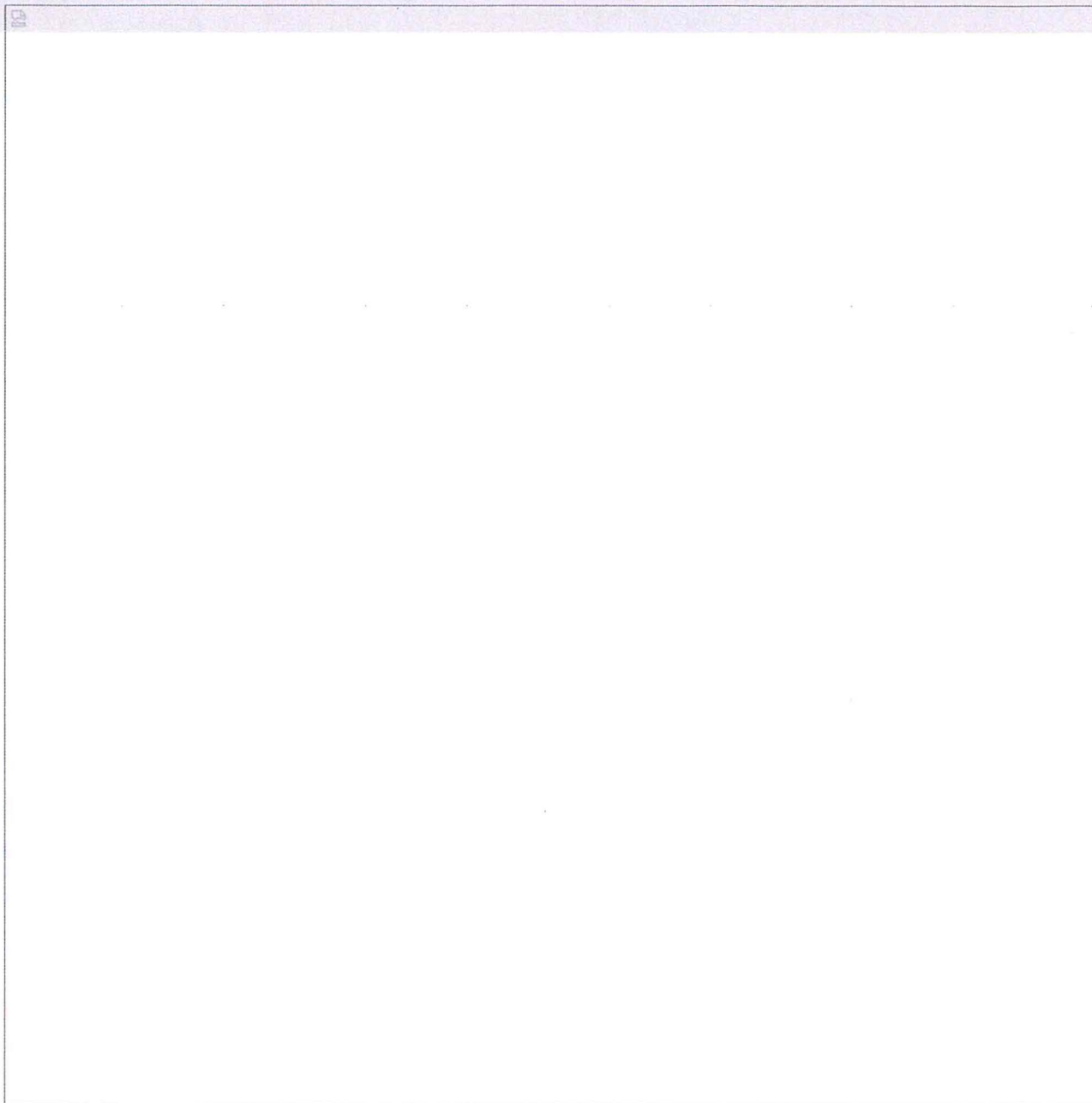


By **Philip Bump**
January 20 at 8:00 AM

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. At one point, some reportedly chanted, "Build the wall!"

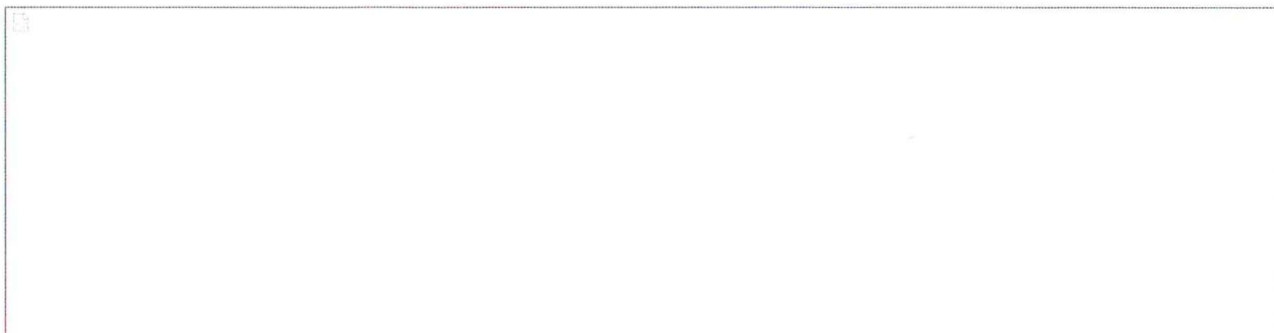
While the general assumption is that younger Americans are more liberal, and therefore less likely to support Trump, we noted earlier this year that young white men are the only members of the millennial generation — generally but informally defined as those born between 1980 and 2000 — who lean [more Republican](#) than Democrat. Millennial men and millennial women tend to identify as Democrats more heavily, as do millennial whites and nonwhites.

2018 2019 2020



(Philip Bump/The Washington Post)

But among white millennial men, the picture is different.



(Philip Bump/The Washington Post)

These kids on the Mall, though, aren't millennials. They're members of a younger generation that doesn't have a broadly accepted name. The previous administration [dubbed them](#) the "Homeland Generation," but a recent survey from Pew Research Center labeled them Generation Z — presumably following Generation X and Generation Y, an early name for millennials. (The groups are [defined here](#).)

More importantly, Pew also dug into [the political views](#) of that group, born in 1996 or later by Pew's definition. The group mostly mirrors the generally liberal social politics of the millennials. In data provided to The Washington Post, though, we see this holds true even among the white men in the generation.

Consider the question of whether respondents think racial and ethnic diversity is good, bad or makes no difference. Nearly 6 in 10 white males who are in "Generation Z" hold the view that racial and ethnic diversity is a good thing, vs. fewer than 4 in 10 white males born before 1946 (the "Silent Generation," per Pew's labels). The drop-off is similar across Gen Z groups, but only among white men are the oldest members more likely to say diversity makes little difference than that it's a good thing.

11

(Philip Bump/The Washington Post)

(There aren't enough nonwhites in the Silent Generation to be statistically significant, which is itself telling.)

Or another question related to race: Which group is treated less fairly, blacks or whites? Gen Z white males are far more likely to say black Americans are treated less fairly, even compared to Generation X, those born from 1965 to 1980 under Pew's definition.



(Philip Bump/The Washington Post)

White males in Gen Z and who are millennials are more likely to say government should do more to solve problems. The change over time here is stark, with responses among white men inverting neatly as the respondent gets older.




(Philip Bump/The Washington Post)

Pew's research on the generation established a lot of comfort among members of the generation on LGBTQ issues. The oldest whites who spoke to Pew saw same-sex marriage as a bad thing; the youngest, including young white males, disagreed.

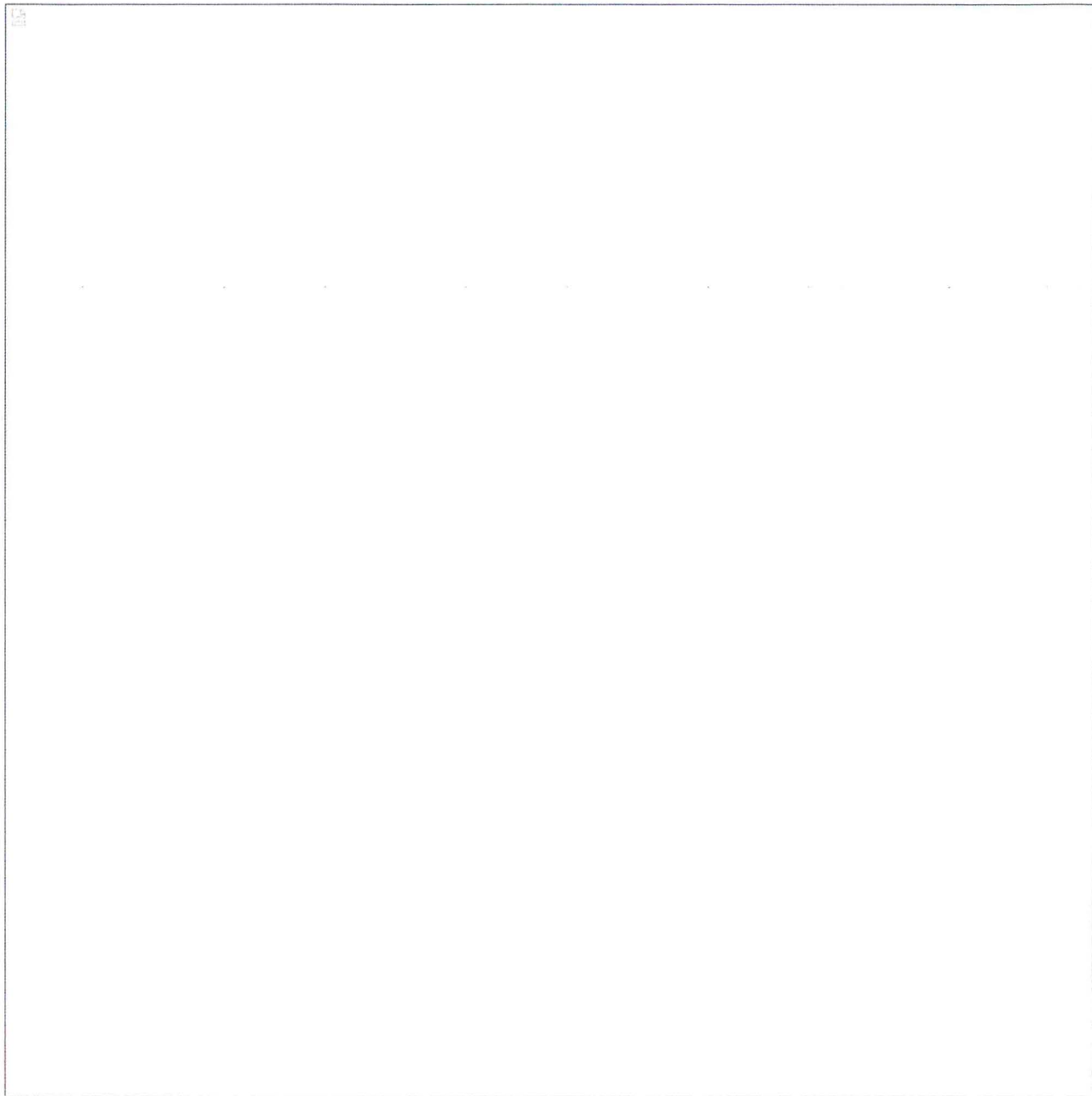


(Philip Bump/The Washington Post)

Mind you, on these four subjects, white males generally offered more conservative views than their peers. But compared particularly to older white men, their views on diversity and racial bias were starkly different.



different.



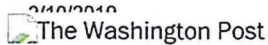
(Philip Bump/The Washington Post)

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. It's hard to read from that one scenario how they look at issues of race more broadly. 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.

There's some irony to that.

EXHIBIT K - 2

EXHIBIT K - 2



Most young white men are much more open to diversity than older generations. The Washington Post

Politics Analysis

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

By Philip Bump

Friday's incident near the Lincoln Memorial in which a group of high school boys 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 appeared to physically intimidate [Nathan Phillips](#) resurfaced tensions that have been simmering since President Trump's campaign began. At one point, some reportedly chanted, "Build the wall!"

While the general assumption is that younger Americans are more liberal, and therefore less likely to support Trump, we noted earlier this year that young white men are the only members of the millennial generation — generally but informally defined as those born between 1980 and 2000 — who lean [more Republican](#) than Democrat. Millennial men and millennial women tend to identify as Democrats more heavily, as do millennial whites and nonwhites.

But among white millennial men, the picture is different.

These kids on the Mall, though, aren't millennials. They're members of a younger generation that doesn't have a broadly accepted name. The previous administration [dubbed them](#) the "Homeland Generation," but a recent survey from Pew Research Center labeled them Generation Z — presumably following Generation X and Generation Y, an early name for millennials. (The groups are [defined here](#).)

More importantly, Pew also dug into [the political views](#) of that group, born in 1996 or later by Pew's definition. The group mostly mirrors the generally liberal social politics of the millennials. In data provided to The Washington Post, though, we see this holds true even among the white men in the generation.

Consider the question of whether respondents think racial and ethnic diversity is good, bad or makes no difference. Nearly 6 in 10 white males who are in "Generation Z" hold the view that racial and ethnic diversity is a good thing, vs. fewer than 4 in 10 white males born before 1946 (the "Silent Generation," per Pew's labels). The drop-off is similar across Gen Z groups, but only among white men are the oldest members more likely to say diversity makes little difference than that it's a good thing.

(There aren't enough nonwhites in the Silent Generation to be statistically significant, which is itself telling.)

Or another question related to race: Which group is treated less fairly, blacks or whites? Gen Z white males are far more likely to say black Americans are treated less fairly, even compared to Generation X, those born from 1965 to 1980 under Pew's definition.

3/16/2019 Most young white men are much more open to diversity than older generations. The Washington Post
White males in Gen Z and who are millennials are more likely to say government should do more to solve problems. The change over time here is stark, with responses among white men inverting neatly as the respondent gets older.

Pew's research on the generation established a lot of comfort among members of the generation on LGBTQ issues. The oldest whites who spoke to Pew saw same-sex marriage as a bad thing; the youngest, including young white males, disagreed.

Mind you, on these four subjects, white males generally offered more conservative views than their peers. But compared particularly to older white men, their views on diversity and racial bias were starkly different.

It's clear from Friday's incident on the Mall that the young men who confronted the Native American protester had somehow internalized that their behavior was acceptable. It's hard to read from that one scenario how they look at issues of race more broadly. But if part of the incident on the Mall reflected opposition to diversity, those views would be in the minority.

There's some irony to that.

Clarification: *References to the encounter on the Mall have been changed to reflect revised understanding of what happened.*

Philip Bump


Philip Bump is a correspondent for The Washington Post based in New York. Before joining The Post in 2014, he led politics coverage for the Atlantic Wire. Follow 

EXHIBIT K - 3

EXHIBIT K - 3



Sections

The Washington Post
Democracy Dies in Darkness

Here to help _____ go right.

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)

Friday's incident near the Lincoln Memorial in which a group of high school boys confronted an elderly Native American man sent a ripple of fear and anger across the country. The image of a

Share

283



Friday's incident near the Lincoln Memorial in which a group of high school boys 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 resurfaced tensions that have been simmering since President Trump's campaign began. At one point, some reportedly chanted, "Build the wall!" though such chants are not audible on widely circulated video.

While the general assumption is that younger Americans are more liberal, and therefore less likely to support Trump, we noted earlier this year that young white men are the only members of the millennial generation — generally but informally defined as those born between 1980 and 2000 — who lean [more Republican](#) than Democrat. Millennial men and millennial women tend to identify as Democrats more heavily, as do millennial whites and nonwhites.



Share



283



EXHIBIT L

EXHIBIT L

Los Angeles Rams, New England Patriots advance to the Super Bowl DI

The Washington Post

Printed for you by the Washington Post Company



Sunny 25/17 • Tomorrow: Partly sunny 35/50 86

Democracy Dies in Darkness

MONDAY, JANUARY 21, 2019 • \$2

Fuller view emerges of conflict on Mall

Three disparate groups crossed paths before a tense moment went viral

BY MICHAEL E. MILLER

The three groups that met Friday in the cold shadow of the Lincoln Memorial could hardly have been more different. They were indigenous rights activists from Michigan, Catholic schoolboys from Kentucky — some wearing Make America Great Again hats — and Hebrew Israelis from the nation's capital.

They were Native American, Caucasian and African American; old, young and middle-aged.

And there, beneath the fallen president's promise to work with "all" — they came together in an incident that would echo nationwide for its ugliness.

The Israelis and students exchanged taunts, videos show. The Native Americans and Hebrew Israelis say some students shouted, "Build the wall!" although the chant is not heard on the widely circulated videos, and the Cincinnati Enquirer quoted a student at the center of the confrontation who said he did not hear anyone say it.

When a Native American elder intervened, singing and playing a

MALL CONTESTED ON A13

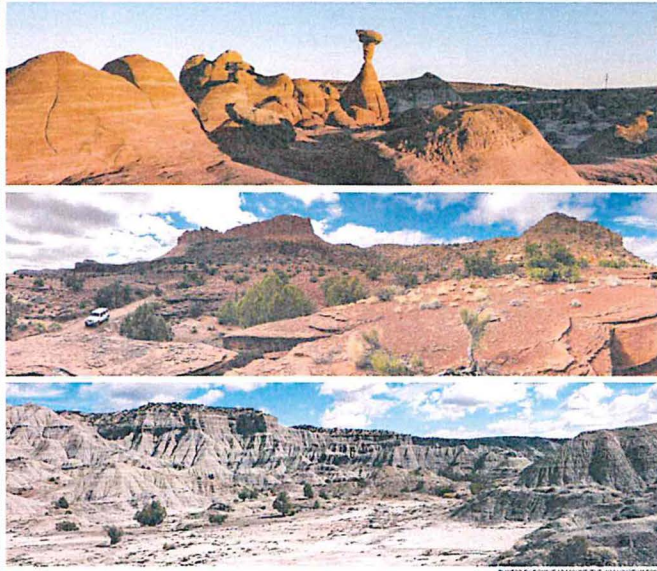


PHOTO BY BONNIE L. MONTGOMERY FOR THE WASHINGTON POST

Grand Staircase's next step?

Trump shrank the monument's footprint to allow mining, but there may be few takers

BY JULIE ELLERIN
IN ESCALANTE, UTAH

On the eastern end of Grand Staircase-Escalante National Monument, narrow slot canyons shoot through the rocks in shades of terra-cotta red and pale peach. To the west stand surreal rock spires, the hoodoos for which the badlands are known. But what's buried beneath under-

lying gray formations here is what caught Washington's attention: coal.

Decades ago, that gray swath signaled big profits for any company prepared to dig it up. But today, even the government officials charged with assessing the roughly 9 billion tons of coal deposits say they are unlikely to attract investors' interest.

Most public-lands battles play out with a predictable script: An industry wants

something, and environmentalists resist. But in the case of President Trump's decision to scale back protections in this patch of southern Utah, the battleground has shifted.

In this fight, ideology has triumphed over economics.

While administration officials trumpet a potential coal boom here, it's unclear how

STAIRCASE, CONTINUED ON A15

Trump defends newest wall bid

PRESIDENT, SPEAKER EXTEND SQUABBLE

States implore Congress to fund welfare program

BY FELICIA SONNITZ

President Trump on Sunday defended his latest bid for border wall funding and blamed House Speaker Nancy Pelosi for a partial government shutdown that is now on its 31st day, as a bipartisan group of governors warned that some states are close to running out of money to help the poorest Americans.

In a flurry of morning tweets, Trump rejected conservative complaints that his offer of temporary deportation protections for young immigrants amounts to amnesty and said that Pelosi (Calif.) and other Democrats "turned down my offer yesterday before I even got up to speak."

"She is so petrified of the 'lefties' in her party that she has lost con-

SHUTDOWN, CONTINUED ON A14

Md. town affected by shutdown
Families and businesses hurt. B1

Tenacity is May's strength in Brexit fight

BY WILLIAM BOOTH
AND KARLA ADAM

LONDON — Over two extraordinary days in the raucous House of Commons last week, there were 1,265 ballots cast on the fate of Brexit and the prime minister who is struggling to deliver it.

And nothing changed.

There was head-spinning, cross-party total defeat of the prime minister's Brexit deal. Then the inglorious rescue of her government. At the center of the chaos, Theresa May still stands.

Scholars of British politics cannot quite believe it. No leader before has ever survived such a parliamentary drubbing, described by many as "the worst in history."

But May has. How?

Europe has long been a toxic issue for the Conservative Party, leading to the downfall of former prime ministers such as David Cameron, John Major and Margaret Thatcher. Brexit was always going to be a rough ride for any prime minister, Tory or Labour.

Though dealt a tough hand, May has not played the cards she

MAY, CONTINUED ON A10

An unlikely bearer for a new Mississippi flag

Segregationist senator's granddaughter finds support for a banner with a new message

BY STEVE HENDRIX

JACKSON, MISS. — Things are slow to change in this Old South bastion. The brass bird cage of an elevator in the Mississippi State Capitol that Laurin Stennis used to ride as a 6-year-old coming to see her daddy was still operated by hand when she stepped into it one day in early January, a 16-year-old coming to shake things up. Or at least nudge things along.

"Ground floor, please, sir," she said to the operator.

But some things have changed. The lawmaker who greeted Stennis in the grand marble lobby below was an African American woman, something unheard of when Stennis's father, John H. Stennis, was a member of the

nearby all-white, all-male state



PHOTO BY JEFFREY M. HARRIS FOR THE WASHINGTON POST

Restaurant co-owner Gretta Brown (left), left, and Laurin Stennis talk about Stennis's proposed state flag, free of Confederate elements.

legislature and her grandfather, John C. Stennis, was a legendary champion of segregation in the U.S. Senate.

"I've already filed your bill," state Rep. Kathy Sykes said after hugs. "I'm just waiting on the number."

It was the start of a new legislative session, and Sykes, a Democrat from Jackson, had once again introduced legislation to replace the Mississippi state flag — the last in the country that still incorporates the Confederate battle flag — with a design widely known as the "Stennis Flag." It features a big blue star on a white field, encircled by 39 smaller stars and flanked by red bands.

It's graphically pleasing and increasingly popular. If the Stennis

FLAG, CONTINUED ON A14

2 years in, president is at a loss as dealmaker

BY PHILIP RUCKER
AND JOSH DAWNEY

Donald Trump was elected president partly by assuring the American people that "I alone can fix it."

But precisely two years into his presidency, the government is not simply broken — it is in crisis, and Trump is grappling with the reality that he cannot fix it alone.

Trump's management of the partial government shutdown — his first foray in divided government — has exposed as never before his shortcomings as a dealmaker. The president has been adamant about securing \$5.7 billion in public money to construct his long-promised border wall, but he has not won over congressional Democrats, who call the wall immoral and have refused to negotiate over border security until the government reopens.

The 31-day shutdown — the impacts of which have begun rippling beyond the federal workforce into the everyday lives of millions of Americans — is

TRUMP, CONTINUED ON A12

IN THE NEWS



Ending a rivalry Even as Greeks protest, a pro-Europe resolution is in sight in a decades-long dispute over Macedonia's name. A6

Political future Slavery, Abrams, the Georgia Democrat who lost her bid for governor, is set to rally supporters for her next move. A2

THE NATION
Democratic Sen. Kirsten Gillibrand of New York, a presidential hopeful, has adopted liberal positions along with and sometimes ahead of her party's voters. A3

THE WORLD
A constitutional court in Congo issued a decision affirming opposi-

tion candidate Felix Tshisekedi's victory in a contentious presidential election. A7

THE REGION
Some prominent Virginia legislators are asking a bill to raise the minimum age for buying cigarettes and e-cigarettes from 18 to 21. B1

The shutdown detailed some days of creative projects that have become popular traditions over the Martin Luther King Jr. holiday weekend, in a scummer who committed health-care fraud to fund "a vision of luxury" for 15 years in jail. B1

THE WEEK AHEAD

MONDAY
Prime Minister Shinzo Abe of Japan travels to Moscow for meetings with Russian President Vladimir Putin.

TUESDAY
The annual meeting of the World Economic Forum takes place in Davos, Switzerland. Academy Award nominees are announced. Major League Baseball announces its Hall of Fame class for 2019.

WEDNESDAY
Pope Francis celebrates World Youth Day in Panama. The winter meeting of the U.S. Conference of

MAJORS TAKES PLACE IN WASHINGTON

Turkish President Recep Tayyip Erdogan will meet with Russian President Vladimir Putin.

THURSDAY
Jobless claims for the week of Jan. 19 are estimated at 217,000. Treasury Secretary Steven Mnuchin discusses the government shutdown before the House Ways and Means Committee.

FRIDAY
Durable goods orders for December are seen rising 1.5 percent. New-home sales for December are expected to total 265,000 on an annual basis.

INSIDE



STYLE
Open tables D.C. restaurants grapple with a drop in business from the government shutdown. C1

The 'I' word
Margaret Sullivan on how "insanity" has jumped into the mainstream of presidential coverage. C1

POSTPOINTS
DAILY CODE, DETAILS, B1
2 3 4 2
0 170628 21100 43

Indian elder says he tried to ease conflict between students, Hebrew Israelites

SMALL PHOTO BY

prayer song, he found himself face to face with that dark-haired teen, whose frozen smile struck some as nervousness and others as arrogance.

Neither budged. Video footage of the tense confrontation quickly went viral, stirring outrage across the political spectrum. The teens' church apologized on Saturday, condemning the students' actions. By Sunday, conservative commentators on social media were saying it was the students who had been wronged. The young man at the center of the video, who identified himself to the *Enquirer* as 11th-grader Nick Sandmann, said he and his classmates had been called "racists," "bigots" and worse, and he was "remaining motionless and calm" in hopes that things would not "get out of hand."

The Native American elder said he was caught in the middle.

"When I took that drum out 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."

The incident, and the finger-pointing that followed, seemed to capture the worst of America at a moment of extreme political polarization. As discourse once again gave way to division, and people drew conclusions on social media before all the facts were known.

'Did I provoke that?'

The students, from Covington Catholic High School in Park Hills, Ky., came to Washington to participate in the March for Life, one of scores of school groups based to the annual event. The Native American activists were there for the Indigenous Peoples March.

So were the Hebrew Israelites, who believe African Americans are God's chosen people and the real descendants of the Hebrews of the Bible. "We were there to teach, to teach the truth of the Bible, to show them our real history," said Shai Yehonatan Baryagan, one of five Hebrew Israelites on the Mall that day.

The group has militant members and a long, strange list of enemies that includes whites, Jews, Asians, members of the LGBTQ+ community, abortion rights advocates and continental Africans, according to the Southern Poverty Law Center. Baryagan said he and those with him Friday believe in using blunt language, not violence. A video he posted to social media shows them insulting other marchers.

"Where's your husband?" one Hebrew Israelite asked a woman who had stopped to argue with the group. "Bring your husband. Let me speak to him." At one point, the Hebrew Israelites



Students from Covington Catholic High School in Park Hills, Ky., stand in the path of Native American elder Nathan Phillips, center, on Friday as he makes his way toward the Lincoln Memorial.

elites began arguing with Native American activists, telling them the word "Indian" means "savage," according to the video.

While the groups argued, some students laughed and mocked them, according to Baryagan and another Hebrew Israelite, Ephraim Israel, who came from New York for the event. As tension grew, the Hebrew Israelites started insulting the students.

"Tell them to come over in the lion's den instead of mocking from over there," Baryagan can be heard saying in the video. "I'll dirty as little crackers, your day is coming."

"They were sitting there, mocking me as I was trying to teach my brothers, so they're the attention turned to them," Israel told The Washington Post. "I explained to them, you want to build the wall for Mexicans and other indigenous people, but you've never seen a black or a Mexican shoot up a school."

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 drunk or thieves,'" the 64-year-old said.

Phillips said he heard students shout, "Go back to Africa!" Sandmann said in his statement that he "did not witness or hear any students chant 'build that wall' or anything hateful or racist at any time. Assertions to the contrary are simply false."

He said he and his classmates were shouting cheers they knew from school, with permission from their chaperones, "to drown out the hateful comments that were being shouted at us by the protesters."

By 5 p.m., the light was fading on the Mall and both marches had



Video footage of the encounter between Phillips, center, and the students went viral, stirring outrage across the political spectrum.

mostly petered out. A group of about 100 Covington students had gathered on the stairs of the Lincoln Memorial, where they had been told to meet before catching their buses home.

The Hebrew Israelites were also still there, and still insulting the students.

"You all are a bunch of Donald Trump incense babies," Israel said to them, according to the video, before asking if there were any black students among them.

When a black Covington student came forward, Israel called him "Kanye West" and the crowd, the footage shows. He tells the teen his friends will one day harvest his organs, an apparent reference to the racially fraught movie "Get Out."

At that point, the students began shouting, jumping and shouting. The scene culminated in one student stripping off his shirt and shouting at others cheer.

The chants are commonly used at sporting events. They are all positive in nature," Sandmann said. "We would not have done that without obtaining permis-

with her mother, the students looked out of control.

"The kids really went into a mob mentality, honestly," she said, adding that she didn't see any chaperones trying to control the situation. She said she heard one student tell the Hebrew Israelites to "drink the Trump water."

Jon Stenger, 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.

"He said, 'I wish I could say something to these people, to the whole crowd,'" Stenger said in an interview Sunday.

Another member of the Indigenous Peoples March suggested Phillips start singing, the photographer said. Phillips played a prayer song on a drum as he walked toward the students.

Some of the students began doing a "flamenco" chop and dancing, the video shows. Phillips said he found it offensive, but kept walking and drumming.

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."

Stenger described Phillips as emotional. "He was dealing with a lot of feelings, as he was being surrounded and not being shown respect," the photographer said. "In Native American culture, respect of elders is everything.... It was a lot of feelings."

Phillips said he blamed both the students and the Hebrew Israelites for what happened. "It wasn't for these Israelites being there in the first place, this wouldn't have happened," he said. "And if it was for the lack of responsibility from school chaperones, this wouldn't have happened either."

Sandmann said Phillips bore

responsibility too.

"He looked eyes with me and approached me, coming within inches of my face," the statement said. "I did not speak to him, I did not make any hand gestures or other aggressive moves. To be honest, I was startled and confused as to why he had approached me. We had already been yelled at by another group of protesters.... I was worried that a situation was getting out of control where adults were attempting to provoke teenagers."

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.

In a column on the town website Saturday, Covington Mayor Joe Meyer said, "The videos being shared across the nation do NOT represent the core beliefs and values of this city."

Nathaniel Dimul, a Florida activist, launched a parody page on Facebook called "Covington Catholic White Male Entitlement High School." He said he created the page, which included photos of the boys at the March for Life as well as Covington teachers and administrators, after the school took down the review section of its Facebook page and privatized its Twitter account. Commenters immediately started trying to identify the students in the photos he posted.

Sandmann said he had received "death threats" via social media, as well as hateful insults. One person threatened to harm him at school, and one person claims to live in his neighborhood. He said he was "mortified" that so many people have come to believe something that did not happen — that students from my school were chanting or acting in a racist fashion toward African Americans or Native Americans.

Travis, who was in town to attend the Women's March before sighting, said the scene on Friday shocked her and her mother. "It was really depressing," she said. "to see we are even more divided than ever."

nickanderson@washpost.com

DoWent, Brown and Marian Balog contributed to this report.

UNC defends admissions in bias suit

BY NICK ANDERSON

The University of North Carolina at Chapel Hill urged a federal judge Friday to reject allegations of illegal racial bias in the public university's admissions process and rule in its favor without allowing the lawsuit to go to trial.

At the same time, the plaintiff in the case — a group opposed to affirmative action called Students for Fair Admissions — also asked the judge to bypass a trial. The group said evidence showed that UNC gives too much weight to race and ethnicity in its admissions process and has not given adequate consideration to race-blind strategies for enrolling a diverse class.

The dueling legal motions in federal court in North Carolina showed that the debate over race-conscious admissions is not limited to how Harvard University selects a class. Students for Fair Admissions filed separate and challenging aspects of the admissions policies at Harvard and UNC in November 2014.

The highly publicized Harvard case went to trial in the fall in federal court in Boston. The judge in that case has not issued a ruling.

The president of Students for Fair Admissions, Edward Blum, was also involved in litigation challenging how the University of Texas considers race in admissions. Blum and his allies lost the Texas case when the Supreme Court upheld UT's methods in 2016.

On Friday, UNC urged U.S. District Judge Loretta C. Bices to reject "attempts to reverse the low and disparate university policy." It said that the university has a "compelling interest in the educational benefits of racial diversity" and that it has "elaborately adhered to Supreme Court directives and constitutional requirements."

The university said it does not use racial targets or quotas and uses race in a "narrowly tailored" fashion. "No reasonable fact-finder could conclude that race plays a dominant role in the University's admissions process," UNC argued in court documents.

UNC contends that race is one of many factors considered when reading an application. The university said it seeks to enroll "critical masses" of certain historically underrepresented minorities, such as African American, American Indian and Hispanic students.

male, with solid everything that adds up to an admit for me."

UNC Chancellor Carol L. Folt and Provost Robert A. Blount wrote in an email to the campus: "Our admissions policies and practices comply with the spirit and letter of the law, and we will continue to vigorously defend our position on this nationally significant case."

UNC is one of the nation's most prestigious public universities. It has nearly 19,000 undergraduates, most of them from North Carolina.

Federal data shows that 62 percent of its undergraduates are white, 11 percent Asian American, 8 percent black and 1 percent Hispanic. Four percent are multiracial, and the rest are of unknown racial background or are international students.

The university received 34,472 applications for the class that entered in fall 2018. It offered admission to 5,510, or 16 percent.

The arguments in the lawsuit come as UNC has weathered scrutiny over the fate of a statue honoring Confederate soldiers, known as Silent Sam, that was recently removed from a prominent location on campus.

Many on campus saw Silent Sam as a monument to white supremacy and cheered when a crowd toppled the statue in August. The statue is in storage, with decisions pending on its future.

Folt announced Monday that she had ordered the removal of the statue's pedestal, citing safety concerns.

Her action angered some on the UNC System Board of Governors. The board accepted Folt's resignation, effective at the end of this month.

Another wrote in a file: "She is an AA [African American] fe-

male, with solid everything that adds up to an admit for me."

UNC Chancellor Carol L. Folt and Provost Robert A. Blount wrote in an email to the campus: "Our admissions policies and practices comply with the spirit and letter of the law, and we will continue to vigorously defend our position on this nationally significant case."

UNC is one of the nation's most prestigious public universities. It has nearly 19,000 undergraduates, most of them from North Carolina.

Federal data shows that 62 percent of its undergraduates are white, 11 percent Asian American, 8 percent black and 1 percent Hispanic. Four percent are multiracial, and the rest are of unknown racial background or are international students.

The university received 34,472 applications for the class that entered in fall 2018. It offered admission to 5,510, or 16 percent.

The arguments in the lawsuit come as UNC has weathered scrutiny over the fate of a statue honoring Confederate soldiers, known as Silent Sam, that was recently removed from a prominent location on campus.

Many on campus saw Silent Sam as a monument to white supremacy and cheered when a crowd toppled the statue in August. The statue is in storage, with decisions pending on its future.

Folt announced Monday that she had ordered the removal of the statue's pedestal, citing safety concerns.

Her action angered some on the UNC System Board of Governors. The board accepted Folt's resignation, effective at the end of this month.

Another wrote in a file: "She is an AA [African American] fe-

RemodelUSA Inc

Complete Kitchen Remodeling

Buy Now and Save \$2000

Financing As Low As \$149 Per Month

Free \$50 Gift Card

FREE Consultation | FREE Design | FREE Estimates

202-897-3095 DC | 703-382-8411 VA | 301-892-6015 MD

MHC #125450 | DC #A7204412 | VA #2705108354 | WVA #036432

Some Rooms Too Cold or Drafty?

HIGH ENERGY BILLS?

comfenergy

Powered By: DrEnergy Saver HOME SERVICES We Fix Uncomfortable Homes

• Insulation

• Air Sealing

• Windows

CONTACT US TODAY FOR A FREE ESTIMATE 800-604-2252 www.comfenergy.com

WE UNCOMFORTABLE FIX HOMES!

1 of 1

8/9/19, 3:18 PM

EXHIBIT M

EXHIBIT M

Social Issues

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

By [Michael E. Miller](#)

January 21 at 2:49 PM

The three groups that met Friday in the cold shadow of the Lincoln Memorial could hardly have been more different. They were indigenous rights activists from Michigan, Catholic schoolboys from Kentucky — some wearing Make America Great Again hats — and Hebrew Israelites from the nation's capital.

They were Native American, Caucasian and African American; old, young and middle-aged.

And there, beneath the fallen president's promise to work "with malice toward none, with charity for all," they came together in an incident that would echo nationwide for its ugliness.

The Israelites and students exchanged taunts, videos show. The Native Americans and Hebrew Israelites say some students shouted, "Build the wall!" But the chant is not heard on the widely circulated videos, and the [Cincinnati Enquirer](#) quotes [Nick Sandmann](#), the student at the center of the confrontation, saying he did not hear anyone utter the phrase. 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](#). At one point, he found himself face to face with Sandman, whose frozen smile struck some as nervousness and others as arrogance.

Neither budged.

Tribal elder Nathan Phillips, 64, stands before Nick Sandmann, a high school student from Covington Catholic High School in Park Hills, Ky., near the steps of the Lincoln Memorial in Washington. (Jon Stegenga/Humanizing Through Story)

Video footage of the tense confrontation quickly went viral, stirring outrage across the political spectrum. The Kentucky teens' church apologized on Saturday, condemning the students' actions. By Sunday, however, conservative commenters on social media were saying it was the students who had been wronged, and the organizers of the March for Life, the event that drew the teens to

Washington, *rescinded their initial criticism* of the youths.

Sandmann, an 11th-grader, said in a statement provided to the Enquirer that he and his classmates had been called "racists," "bigots" and worse. He said he was "remaining motionless and calm" in hopes that things would not "get out of hand."

The Native American elder said he was caught in the middle.

"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."

The incident, and the finger-pointing that followed, seemed to capture the worst of America at a moment of extreme political polarization, as discourse once again gave way to division, and people drew conclusions on social media before all the facts were known.

High school students from Covington Catholic High School chant before a crowd of Native American activists Friday on the Mall. (Jon Stegenga/Humanizing Through Story)

[Meet the segregationist's granddaughter trying to get rid of the Stars and Bars]

'Did I provoke that?'

The students, from Covington Catholic High School in Park Hills, Ky., were one school group among scores bused to the annual March for Life.

The Native American activists were there for the Indigenous Peoples March.

So were the Hebrew Israelites, who believe African Americans are God's chosen people and the real descendants of the Hebrews of the Bible.

"We were there to teach, to teach the truth of the Bible, to show them our real history," said Shar Yaqataz Banyamyan, one of five Hebrew Israelites on the Mall that day.

The group has militant members and "a long, strange list of enemies" that includes whites, Jews, Asians, members of the LGBTQ community, abortion rights advocates and continental Africans, according to the *Southern Poverty Law Center*.

Banyamyan said he and those with him Friday believe in using blunt language, but not violence. A video he posted to social media shows them insulting other marchers.

"Where's your husband?" one Hebrew Israelite asked a woman who had stopped to argue with the group. "Bring your husband. Let me speak to him."

At one point, the Hebrew Israelites began arguing with Native American activists, telling them the word "Indian" means "savage," according to the video.

While the groups argued, some students laughed and mocked them, according to Banyamyan and another Hebrew Israelite, Ephraim Israel, who came from New York for the event. As tension grew, the Hebrew Israelites started insulting the students.

"Tell them to come over in the lion's den instead of mocking from over there," Banyamyan can be heard saying in the video. "Y'all dirty ass little crackers, your day is coming."

"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. "I explained to them, you want to build the wall for Mexicans and other indigenous people, but you've never seen a black or a Mexican shoot up a school."

[Kentucky diocese condemn teens' conduct at March for Life]

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.

Phillips said he heard students shout, "Go back to Africa!"

Sandmann said in his statement that he "did not witness or hear any students chant 'build that wall' or anything hateful or racist at any time. Assertions to the contrary are simply false."

He said he and his classmates were shouting cheers they knew from school, with permission from their chaperones, "to drown out the hateful comments that were being shouted at us by the protesters."

By 5 p.m., the light was fading on the Mall and both marches had mostly petered out. A group of about 100 Covington students had gathered on the stairs of the Lincoln Memorial, where they had been told to meet before catching their buses home.

The Hebrew Israelites were also still there, and still insulting the students.

"You all are a bunch of Donald Trump incest babies," Israel said to them, according to the video, before asking if there were any black students among them.

When a black Covington student came forward, Israel called him "Kanye West" and the n-word, the footage shows. He tells the teen his friends will one day harvest his organs, an apparent reference to the racially fraught movie "Get Out."

At that point, the students began chanting, jumping and shouting. The songs culminated in one student stripping off his shirt and shouting as others cheered.

"The chants are commonly used at sporting events. They are all positive in nature," Sandmann said. "We would not have done that without obtaining permission from the adults in charge of our group."

Banyamyan said the Hebrew Israelites took the performance as a racist impersonation.

"They were mocking my ancestors in a chant, one of them was jumping up and down like a cave man," he said. "Did I provoke that?"

'A mob mentality'

To Jessica Travis, a Florida attorney who was at the memorial with her mother, the students looked out of control.

"The kids really went into a mob mentality, honestly," she said, adding that she didn't see any chaperones trying to control the situation. She said she heard one student tell the Hebrew Israelites to "drink the Trump water."

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.

"He said, 'I wish I could say something to these people, to the whole crowd,' " Stegenga said in an interview Sunday.

Another member of the Indigenous Peoples March suggested Phillips start singing, the photographer said. Phillips played a prayer song on a drum as he walked toward the students.

Some of the students began doing a "Tomahawk chop" and dancing, the video shows. Phillips said he found it offensive but kept walking and drumming.

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."

Stegenga described Phillips as emotional. "He was dealing with a lot of feelings, as he was being surrounded and not being shown respect," the photographer said. "In Native American culture, respect of elders is everything. . . . It was a heartbroken feeling."

[The Indians were right, the English were wrong: A tribe reclaims its past]

Phillips said he blamed both the students and the Hebrew Israelites for what happened.

"If it wasn't for those Israelites being there in the first place, this wouldn't have happened," he said. "And if it wasn't for the lack of responsibility from school chaperones, this wouldn't have happened either."

Sandmann said Phillips bore responsibility, too.

"He locked eyes with me and approached me, coming within inches of my face," the statement said. "I did not speak to him. I did not make any hand gestures or other aggressive moves. To be honest, I was startled and confused as to why he had approached me. We had already been yelled at by

another group of protesters . . . I was worried that a situation was getting out of control where adults were attempting to provoke teenagers.”

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. In a column on the town website, Covington Mayor Joe Meyer declared that “The videos being shared across the nation do NOT represent the core beliefs and values of this City.”

The debate over what happened continued to play out on social media Monday, with one Twitter user posting video that showed Covington students jumping and yelling around Phillips as he played. Sandmann does not appear to be in the clip.

With his statement circulating, and more attention focused on the behavior of the Hebrew Israelites, some public reaction had already shifted. March for Life organizers, who on Saturday had called the teens’ behavior “reprehensible,” deleted that statement from their website Sunday evening and pledged to reserve judgment.

“It is clear from new footage and additional accounts that there is more to this story than the original video captured,” the group said in a new statement. “We will refrain from commenting further until the truth is understood.”

And Rep. Thomas Massie (R-Ky.) tweeted that “in the face of racist and homosexual slurs, the young boys refused to reciprocate or disrespect anyone.”

“In the context of everything that was going on (which the media hasn’t shown) the parents and mentors of these boys should be proud, not ashamed, of their kids’ behavior. It is my honor to represent them,” Massie’s tweet said.

In his statement, Sandmann said he had received “death threats via social media, as well as hateful insults. One person threatened to harm me at school, and one person claims to live in my neighborhood.” He said he was “mortified that so many people have come to believe something that did not happen — that students from my school were chanting or acting in a racist fashion toward African Americans or Native Americans.”

Travis, who was in town to attend the Women’s March before sightseeing, said the scene on Friday shocked her and her mother.

“It was really depressing,” she said, “to see we are even more divided than ever.”

Moriah Balingit, Michelle Boorstein, DeNeen L. Brown, Joe Heim and Julie Tate contributed to this report.

Comments

EXHIBIT N

EXHIBIT N

2/14/2019

The Washington Post on Twitter: "In an interview with The Post, Omaha tribe elder Nathan Phillips says he "felt like the spirit was talking t...



The Washington Post

@washingtonpost

Following



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

'It was getting ugly': Native American drummer on the MAGA-hat we...

The tense encounter in Washington prompted outrage on social media
[washingtonpost.com](https://www.washingtonpost.com)

1:37 PM - 19 Jan 2019

4,797 Retweets 11,750 Likes



2.0K



4.8K

12K



Tweet your reply



The Washington Post @washingtonpost · Jan 19



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.'"

2/14/2019

The Washington Post on Twitter: "He was singing the American Indian Movement song of unity that serves as a ceremony to send the sp...

2.0K 4.8K 12K



The Washington Post ✓

@washingtonpost

Following

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.' "

'It was getting ugly': Native American drummer speaks on the MAGA...

The tense encounter in Washington prompted outrage on social media
washingtonpost.com

1:48 PM - 19 Jan 2019

1,559 Retweets 4,262 Likes



325 1.6K 4.3K



Tweet your reply



The Washington Post ✓ @washingtonpost · Jan 19

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 "

2/14/2019

The Washington Post on Twitter: "Phillips, who fought in the Vietnam War, says in an interview "I started going that way, and that guy in t...

✓ 323 ↻ 1.9K 4.5K



The Washington Post ✓

@washingtonpost

Following



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."

'It was getting ugly': Native American drummer speaks on the MAGA...

The tense encounter in Washington prompted outrage on social media

[washingtonpost.com](https://www.washingtonpost.com)

1:51 PM - 19 Jan 2019

1,571 Retweets 3,493 Likes



1.1K



1.6K

3.5K



Tweet your reply



Tim @PenningtonTim · Jan 20



Replying to @washingtonpost

bothering, and jeering at a Native American veteran. This is not true and taken entirely out of context. I am a student at Covington Catholic and was present at the

EXHIBIT O

EXHIBIT O

L. LIN WOOD, P.C.
— TRIAL LAWYERS —

L. LIN WOOD
Direct Dial: (404) 891-1406
lwood@linwoodlaw.com

February 14, 2019

VIA FEDEX & ELECTRONIC MAIL

The Washington Post
ATTN: Legal Department
1301 K Street NW
Washington, D.C. 20071

Nash Holdings, LLC
ATTN: Legal Department
505 5th Avenue South, # 220
Seattle, Washington 98104

WP Company LLC
c/o C T Corporation System, Registered Agent
1015 15th Street NW, Suite 1000
Washington, D.C. 20005
CT-StateCommunications@wolterskluwer.com

Martin Baron
Executive Editor
The Washington Post
martin.baron@washpost.com

Cameron Barr
Managing Editor, News
The Washington Post
cameron.barr@washpost.com

RE: *Nick Sandmann*

Dear Messrs. Baron and Barr:

I represent Nick Sandmann (“Nick”) and his parents. I have been engaged by the Sandmann Family to investigate and pursue legal redress for the false and defamatory accusations published by *The Washington Post* (“the *Post*”) against Nick in connection with the events at the National Mall in Washington, D.C. on January 18, 2019, which occurred after Nathan Phillips (“Phillips”) confronted Nick and other students of Covington Catholic High School (the “January 18 Events”). In order to afford you an opportunity to mitigate the substantial harm you have caused to Nick, I hereby demand that you immediately retract and correct the defamatory statements identified herein, as well as immediately remove from the Internet each of the online articles referenced herein.

Between January 19, 2019, and January 21, 2019, the *Post* published a series of online and print articles containing false and defamatory statements which conveyed that Nick instigated the incident with Phillips and engaged in racist and unlawful conduct by accusing Nick of the following conduct, among other things:

- (a) swarming and/or encircling Phillips while Phillips was merely engaged in song and prayer;

The Washington Post, et al.
February 14, 2019
Page 2 of 10

- (b) intentionally blocking Phillips' path to the Lincoln Memorial or otherwise restricting his egress from a confrontation instigated by Nick;
- (c) taunting Phillips and others;
- (d) mocking Phillips and others;
- (e) assaulting or otherwise physically threatening Phillips; and
- (f) hurling racial slurs or other inappropriate comments at Phillips and/or the Hebrew Israelites.

The gist of the *Post's* reporting and your discrete false factual accusations against Nick are defamatory *per se* and were published negligently and with a reckless disregard for the truth. As the *Post* apparently intended, expected, and may have even contracted with other publications to ensure, these false accusations were republished by outlets all over the country. Accordingly, not only are damages to Nick caused by your own publications presumed, but you are also liable for damages caused by each and every republication of the false and defamatory articles identified herein.

Further, by publishing its articles, the *Post* orchestrated and joined an agenda-driven mainstream and social media mob whose goal was to harass, threaten, disparage, and vilify Nick, a minor who literally and factually did nothing more than stand still when unexpectedly confronted by an adult Native American activist beating a drum and singing loudly within inches of his face while surrounded by cameras. With its online and print circulation in the tens of millions of readers, the *Post* provided a worldwide megaphone to the false and defamatory narrative that Nick instigated a racist confrontation by seeking out and surrounding Phillips in order to taunt, mock, and physically threaten him and his fellow activists while they were either packing up from their participation in the Indigenous Peoples March or were on their way to pray and sing at the Lincoln Memorial.

As you now must acknowledge, the truth is that Nick was the victim of the actions by adults at the Lincoln Memorial and the subsequent mainstream media and social media mob which attacked, vilified, and threatened him. Nick and his Covington Catholic High School classmates were subjected to more than an hour of racist and homophobic slurs, as well as threats of physical violence, by the Black Hebrew Israelites, a recognized hate group. In response and with the permission of their school chaperones, the students engaged in a school spirit cheer to drown out the hateful speech being hurled at them. In the midst of an ongoing school cheer, Phillips and his activist companions intentionally sought out and confronted Nick and his classmates while carrying cameras to hopefully capture a viral moment on film. Phillips inserted himself into the group of students and chose Nick as his target. Phillips never attempted to move past, around, or away from Nick. Indeed, when the students' buses arrived for the students' return trip to Kentucky, Phillips did not proceed to the Lincoln Memorial, rather he turned around and celebrated his perceived "win" with his camera-toting activist companions.

My investigation establishes that the *Post* failed to correct its reporting or publish the incontrovertible truth of this incident despite its pervasive presence in the public domain. Although it is clear that the *Post* published the accusations against Nick with a reckless disregard for the

The Washington Post, et al.
February 14, 2019
Page 3 of 10

truth and otherwise purposefully avoided the truth in its biased effort to advance its anti-Trump agenda, Nick is a private figure and need only prove negligent publication in order to prevail in a defamation action against the *Post*. The negligence of the *Post* is beyond dispute as the *Post* did not undertake any reasonable investigation prior to publishing its false accusations and also relied in part on a biased source whose documented lies should have raised serious issues regarding his credibility. The *Post*'s conduct in rushing to judgment and relying on incomplete information, manufactured evidence, and biased sources is legally and factually inexcusable.

In the event the *Post* questions the accuracy of my statements describing the truth of what occurred during the January 18 Events, I suggest you review the attached report prepared by Greater Cincinnati Investigation, Inc. ("GCI"), an independent investigative firm retained by counsel for the Diocese of Covington. Nick told the truth. The *Post* published lies. A compilation of video clips that were available online for review as part of a reasonable investigation, but ignored by the *Post*, can be found at <https://www.youtube.com/watch?v=lSkpPaiUF8s>, entitled "Nick Sandmann: The Truth in 15 Minutes" (the "Video"). The GCI report, the Video, and the detailed statement of Nick Sandmann (also available online) set forth the true events of January 18 and unequivocally prove the falsity of the *Post*'s reporting and articles described herein.

Below you will find a recitation of the specific articles that must be taken down and the defamatory statements that must be retracted.¹

I. The *Post*'s Newspaper Articles²

A. The First False and Defamatory Newspaper Article, January 20, Sunday Edition: "Marcher's accost by boys in MAGA caps draws ire" (the "First Newspaper Article")

In its First Newspaper Article, the *Post* published the following statements which must be retracted:

1. The headline "Marcher's accost by boys in MAGA caps draws ire"
2. "Surrounding him are a throng of young, mostly white teenage boys, several wearing 'Make America Great Again' caps, with one who stood about a foot from the drummer's face also wearing a relentless smirk."

¹ The specific statements referenced herein do not represent an exhaustive list of all those juxtaposed statements through which the *Post* conveyed a false and defamatory accusation against Nick. Rather, the statements listed herein are those which, themselves, convey a false and defamatory fact. Nick reserves the right to rely upon a combination of these and other statements to demonstrate the defamatory meaning appropriately ascribed to each article.

The Washington Post, et al.
February 14, 2019
Page 4 of 10

3. “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.”

4. “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.”

5. “A few people in the March for Life crowd began to chant ‘Build that wall, build that wall,’ he said.”

6. “‘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.’”

7. “‘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.”

8. “‘To see a group of students from a Catholic school who are practicing such intolerance is a sad sight for me,’ said Haaland, who is Catholic.”

9. “‘We [Bishop Foys 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.’”

10. “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.”

11. “‘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.’”

12. “In that role, he [Phillips] has encountered anti-Native American sentiment before ...”

In its First Newspaper Article, the *Post* falsely accused Nick of instigating the conflict when he “suddenly swarmed” and accosted Mr. Phillips in a threatening manner while Phillips was allegedly packing up from his Indigenous Peoples March, of having blocked Mr. Phillips’

The Washington Post, et al.
February 14, 2019
Page 5 of 10

path and exit from this alleged aggressive mob, of having taunted Mr. Phillips and other indigenous peoples, of chanting “build that wall,” and of having otherwise engaged in racist disrespect and intolerance, all of which was apparently so egregious as to justify Nick’s potential expulsion from his Catholic high school. In fact, Nick took no action and did not utter a single word during this incident. Nick stood silently and his only gesture was to signal a classmate to not respond to profanity-laced insults directed to him by Phillips’ companion. The incident ended only when Nick and his classmates left for their buses – Phillips then turned to leave and celebrate his perceived “win” over the students. Phillips never proceeded to the Lincoln Memorial.

B. The Second False and Defamatory Newspaper Article, January 21: “Fuller view emerges of conflict on Mall” (the “Second Newspaper Article”)

In its Second Newspaper Article, the *Post* published the following statements which must be retracted:

1. “The Israelites and students exchanged taunts, videos show. The Native Americans and Hebrew Israelites say some students shouted, ‘Build the wall!’”

2. “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.’”

3. “While the groups argued, some students laughed and mocked them ...”

4. “‘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.”

5. “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.”

6. “Phillips said he heard students shout, ‘Go back to Africa!’”

7. “‘They were mocking my ancestors in a chant ...’ he said.”

8. “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.”

9. “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

The Washington Post, et al.
February 14, 2019
Page 6 of 10

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.'"

10. "He [Phillips] was dealing with a lot of feelings, as he was being surrounded and not being shown respect,' the photographer said."

II. The *Post*'s Online Articles

Without conceding that Nick is obligated to demand a retraction as to articles or accusations published online and in social media, the following online articles are false and defamatory.

A. The First False and Defamatory Online Article, January 19: "It was getting ugly': Native American drummer speaks on the MAGA-hat wearing teens who surrounded him" (the "First Online Article")

In its First Online Article, the *Post* published the following statements which must be retracted:

1. The headline "It was getting ugly': Native American drummer speaks on the MAGA-hat wearing teens who surrounded him"

2. "Surrounding him are a throng of young, mostly white teenage boys, several wearing Make America Great Again caps, with one standing about a foot from the drummer's face wearing a relentless smirk."

3. "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."

4. "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."

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

6. "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.'"

The Washington Post, et al.
February 14, 2019
Page 7 of 10

7. “‘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.”

8. “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.”

9. “‘It was an aggressive display of physicality. They were rambunctious and trying to instigate a conflict,’ he said. ‘We were wondering where their chaperons were. [Phillips] was really trying to defuse the situation.’”

10. “Phillips, an Omaha tribe elder who also fought in the Vietnam war, has encountered anti-Native American sentiments before ...”

11. In a January 20 updated version of the First Online Article, the *Post* added the following additional false and defamatory statement: “‘To see a group of students from a Catholic school who are practicing such intolerance is a sad sight for me,’ said Haaland, who is Catholic.”

12. In a January 22 updated version of the First Online Article, the *Post* added the following additional false and defamatory statement: “The diocese’s statement expressed regret that jeering, disrespectful students from a Catholic school had become the enduring image of the march.”

B. The Second False and Defamatory Online Article, January 20: “‘Opposed to the dignity of the human person’: Kentucky Catholic diocese condemns teens who taunted vet at March for Life” (the “Second Online Article”)

In its Second Online Article, the *Post* published the following statements that must be retracted:

1. The headline “‘Opposed to the dignity of the human person’: Kentucky Catholic diocese condemns teens who taunted vet at March for Life”

2. “A viral video of a group of Kentucky teens in ‘Make America Great Again’ hats taunting a Native American veteran on Friday ...”

3. “The video, which began to spread Saturday morning, showed a throng of young, mostly white teenage boys, several wearing the caps, closely surrounding a 64-year-old man who was beating a drum as part of the Indigenous Peoples March happening near the Lincoln Memorial on Friday.”

The Washington Post, et al.
February 14, 2019
Page 8 of 10

4. “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.”

5. The republished tweet of Daniel P. Horan: “I’m so deeply appalled and disgusted by the racist, shameful, disrespectful behavior of the Catholic high school students wearing MAGA hats and harassing a Native American elder and Vietnam Vet. ...”

6. The republished tweet of Marcus Mescher: “... The video of students mocking Native Americans illustrates the very problem the #GilletteAd addresses ...”

C. The Third False and Defamatory Online Article, January 20: “Most young white men are much more open to diversity than older generations” (the “Third Online Article”)³

In its Third Online Article, the *Post* published the following statements which should be retracted:

1. “Friday’s incident near the Lincoln Memorial in which a group of high school boys 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 appeared to physically intimidate Nathan Phillips resurfaced tensions that have been simmering since President Trump’s campaign began.”

2. “At one point, some reportedly chanted, ‘Build the wall!’”

D. The Fourth False and Defamatory Online Article, January 21: “Viral standoff between a tribal elder and a high schooler is more complicated than it first seemed” (the “Fourth Online Article”)

In its Fourth Online Article, the *Post* published the following statements which must be retracted:

1. “The Israelites and students exchanged taunts, videos show. The Native Americans and Hebrew Israelites say some students shouted, ‘Build the wall!’”

2. “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.”

³ The Third Online Article notes that “[r]eferences to the encounter at the Mall have been changed to reflect revised understanding of what happened.” At this time, I have not been able to locate the original article. You are advised that the *Post* is liable for its original publication to the extent its unrevised article contains additional or different false statements.

The Washington Post, et al.
February 14, 2019
Page 9 of 10

3. “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.’”

4. “While the groups argued, some students laughed and mocked them ...”

5. ““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.”

6. “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.”

7. “Phillips said he heard students shout, ‘Go back to Africa!’”

8. ““They were mocking my ancestors in a chant ...’ he said.”

9. “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.”

10. “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.’”

11. ““He [Phillips] was dealing with a lot of feelings, as he was being surrounded and not being shown respect,’ the photographer said.”

III. The *Post*’s Social Media Publications

The *Post* also posted certain of the articles identified herein on its Twitter page which has over 13 million followers. On January 19, the *Post* published its articles with three (3) defamatory tweets within a span of 14 minutes. The following tweets published online by the *Post* must be deleted from Twitter and the defamatory accusations included within those tweets must also be retracted and corrected:

1. “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”

The Washington Post, et al.
February 14, 2019
Page 10 of 10

2. “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.’”

3. “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.’”

The *Post*’s retraction of the false statements identified herein must be published in as conspicuous a manner as they were originally published. To fully retract and correct the false statements, I further demand that the *Post* publish the Video on its Internet home page for a period of no less than 72 hours. Please notify me in writing when these actions have been accomplished.

Govern yourselves accordingly.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Lin Wood', is written over a light blue horizontal line.

L. Lin Wood

cc: Todd McMurtry, Esq.
The Sandmann Family

**Greater Cincinnati Investigation, Inc.
718 Valley Square Drive
Taylor Mill, KY 41015**

Final Investigative Report

February 11, 2019

On Tuesday, January 22, 2019, Greater Cincinnati Investigation (GCI) was retained by Dressman, Benzinger, Lavelle (DBL LAW) on behalf of the Covington Diocese and Covington Catholic High School to investigate the incident on Friday, January 18, 2019, at the Lincoln Memorial involving students at Covington Catholic High School, The Black Hebrew Israelites and the Native Americans who were part of an Indigenous People March.

Scope of Investigation

The scope of the investigation was to interview and take statements from Covington Catholic students and their chaperones who were in attendance, to identify, locate and interview 3rd party witnesses who were present, to review and monitor social media posts and news articles, and to attempt to locate and review any additional video that might be available.

Since January 22, we have devoted approximately 240 man hours in the investigation to date, involving four (4) licensed investigators.

Students attending the trip were asked to voluntarily give their statements regarding the events of January 18. We separately interviewed 43 students. Parents were invited to attend the interviews with their sons, and parents did so in approximately one-third of the interviews.

There were sixteen (16) adult chaperones on the trip. We spoke with all nine (9) faculty chaperones and four (4) parent chaperones.

We reviewed approximately fifty (50) hours of internet activity, including but not limited to all major news networks, YouTube, Vimeo, social media accounts on Facebook, Instagram, Twitter.

We attempted to obtain surveillance video from the Lincoln Memorial. We have reached out to the National Park Service by phone and e-mail. To date our efforts have been unsuccessful.

We were able to locate a social media account that goes by @trevonallworthy aka King Trevon. King Trevon has posted several videos from the Lincoln Memorial. We have reached out to King Trevon on two (2) different social media sites and to date he has not responded back. His videos are confirmatory to our findings.

Attempts were made through legal counsel to take Nick Sandmann's in-person statement. We were asked to consider his written statement of January 20, 2019.

We have attempted to reach out to Mr. Phillips by phone and by e-mail, informing him that we desired to interview him in person and that we were prepared to meet him in Michigan or any location he might prefer. We also sent Mr. Phillips' daughter an e-mail as they both appear to be involved in the Native Youth Alliance and have shared their e-mail addresses after the event to

thank everyone for reaching out and supporting them. We never received a response to our inquiries. In addition, our investigators travelled to Ypsilanti, Michigan to seek a personal interview. We are confident that we visited Mr. Phillips' residence. He was not present over a six-hour period and we left a note asking him to contact us. We have not received a response.

Key Findings

Students

- The students traveled from Park Hills, KY to Washington DC to attend the March for Life. Some of the students stressed that they attended because of their faith, some stated it was to get service hours, and some stated it was to get out of school and spend time with their friends.
- The students arrived at the Lincoln Memorial at different times. The students who arrived earlier encountered the Black Hebrew Israelites, who clearly addressed offensive statements to the students. We see no evidence that students responded with any offensive or racist statements of their own.
- Some of the students asked the chaperones if they could do their school cheers to help drown out the Black Hebrew Israelites. In years past students have performed school cheers at the Lincoln Memorial. Video evidence supports a finding that the Black Hebrew Israelites were laughing along with the students during the "sumo" cheer. The cheers performed at the Lincoln Memorial are commonly performed at football or basketball games.
- We found no evidence that the students performed a "Build the Wall" chant.
- After the interaction with the Black Hebrew Israelites, Mr. Phillips approached the students. Most of the students state that they felt like he was coming into their group to join in with the students' cheers. None of the students felt threatened by Mr. Phillips and many stated they were "confused."
- We found no evidence of offensive or racist statements by students to Mr. Phillips or members of his group. Some students performed a "tomahawk chop" to the beat of Mr. Phillips' drumming and some joined in Mr. Phillips' chant.
- As the interaction between Nick Sandmann and Mr. Phillips ended, most of the students reported that they again turned their attention back to the Black Hebrew Israelites. Chaperones moved students to the buses shortly thereafter.
- Some students stated that one of the chaperones reminded the students that, if they engaged in a verbal exchange with the Black Hebrew Israelites, they would receive detention when returning to school. Video evidence shows that this happened approximately five minutes before the students can be seen heading to the buses.

- As the students began leaving the area, one student was stopped by a uniformed police officer for running. It was reported that the officer advised this student he should not be running at the Lincoln Memorial. We saw no uniformed police presence at the Lincoln Memorial while students were there.

Chaperones

- Several of the chaperones arrived with their groups of students after the fact, as they attended the last viewing of the changing of the guard at Arlington Cemetery at 5:00 p.m. Nine (9) chaperones report being present at the Lincoln Memorial when the main interactions took place. Video confirms at least five (5) chaperones were present.
- Video confirms that toward the end of the interactions between Nick Sandmann and Mr. Phillips, at least two (2) chaperones can be seen telling the students that the buses are arriving. At this time, most of the students' attention was directed to the Black Hebrew Israelites. Also at this time a chaperone can be observed telling the students to "back it up," moving them back from the Black Hebrew Israelites. This happened approximately 4-5 minutes before the students headed to the buses.
- The chaperones who were at the Lincoln Memorial and who witnessed the interaction between the students and Black Hebrew Israelites stated that the Black Hebrew Israelites were saying offensive things to anyone that walked by and not just the students. During this time the chaperones never felt like the students were in any danger.
- The chaperones present during the interaction with Mr. Phillips state that they did not feel the students were threatened by Mr. Phillips or his group.
- After Mr. Phillips exited the area, the students' attention turned back to the Black Hebrew Israelites. Shortly thereafter, the chaperones decided to tell the students the buses were present even though at that point they had not arrived. Students were not instructed to "move to the buses" until after the interactions with the Black Hebrew Israelites and Mr. Phillips.

Make America Great Again Hats (MAGA Hats)

- Students and chaperones stated that few, if any, students were wearing MAGA hats when they left Covington Catholic to head to Washington DC. Most students purchased the hats before, during or after the March for Life.
- In years past, some chaperones reported that some students had purchased "Hope" hats in support of President Obama.
- We found no evidence of a school policy prohibiting political apparel on school-sponsored trips.

Investigation into the Comment "It's Not Rape If You Enjoy It"

- An individual can be heard making a comment that "it's not rape if you enjoy it" while the students were at the Lincoln Memorial.
- Our investigation concludes that the individual who made the comment was not a student at Covington Catholic. In addition, viewing longer videos of this comment reveals that a person in the crowd states, "He does not go to CovCath" almost immediately after the comment was made.

7 Second Video

- There was a 7 second video posted on Twitter by @roflinds that shows a group of boys making comments to two females as they walk by.
- We cannot confirm that the students in the video are students at Covington Catholic. It is also not totally clear what was said in the video.

Nick Sandmann

- Mr. Sandmann's January 20, 2019, statement appears to accurately reflect the facts surrounding the interaction between the students and the Black Hebrew Israelites.
- Regarding the interaction with Mr. Phillips, Mr. Sandmann reports that he was concerned a situation was getting out of control. He states that he was attempting to defuse the situation.

Mr. Phillips

- Mr. Phillips' public interviews contain some inconsistencies, and we have not been able to resolve them or verify his comments due to our inability to contact him.

Conclusion

- The statements we obtained from students and chaperones are remarkably consistent. And, the statements are consistent with the videos we reviewed. As with any investigation, new evidence could come to light in the future. We are professionally satisfied that, at this time, it is proper to close the investigation and issue this final report.

Greater Cincinnati Investigation, Inc.

By: 

Chad Moran, Investigator