



# Lakota People's LAW PROJECT

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## For Immediate Release—Defamation Lawsuit Against *WaPo* a Dangerous Attack on the First Amendment

The [lawsuit](#) filed on February 19, 2019 against the *Washington Post* for defamation in relation to the incident that occurred on January 18th, 2019 at the Lincoln Memorial involving Nathan Phillips and Nicholas Sandmann presents an entirely one-sided interpretation of the facts surrounding this affair.

The attorney who filed the complaint, who has a long track record of suing major national news media, is on record declaring that [“the pendulum has swung too far in favor of the First Amendment.”](#)

Nathan Phillips, a Native American who, during a legitimate, permitted exercise of political speech at the Lincoln Memorial, found himself in the midst of a racially-charged, hostile exchange between approximately 100 white, male students from Covington Catholic High School and a group of African American “Black Hebrew Israelites,” had every right, when asked by news media, to provide his interpretation of what occurred that day. And news media had every right to cover, in real time, his interpretation of those events.

The *Washington Post* endeavored to accurately tell the events that occurred at the Lincoln Memorial, and, over time, made every effort to provide needed corrections to stories as new facts surfaced about the incident. This served the public interest in laudable fashion. Our nation must recognize that the process of reporting on complicated issues such as race relations is an inherently difficult business. The evidence shows that reasonable efforts were made to report accurately in real time — and that additional efforts were made to correct or expand reporting so as to tell the entirety of the incident.

The Lakota People’s Law Project maintains that, in an era in which: 1) Donald Trump regularly uses racial slurs to publicly attack opposing political candidates and vulnerable populations, including [slurs that make light of genocidal acts against Native Americans](#); 2) liberal demonstrators and neutral media personnel are publicly derided and [sometimes assaulted](#) at Trump rallies; 3) [marchers opposing white supremacy are intentionally, sometimes fatally, run over by cars](#)... only to have Donald Trump argue afterwards that [“there are some very fine people on both sides”](#) of such an affair — in such an era, an incident like the one that occurred at the Lincoln Memorial takes on unusual significance. There can be no equivalence drawn between Trump MAGA hats and Obama HOPE hats, when race is the topic under discussion, and yet that is what the complaint does.

Context matters, as does interpretation. The Lakota People’s Law Project harbors no illusion that our team will ever agree with many Trump supporters about how to interpret the meaning of the facts that occurred on January 18th. Just as we view in a special way the moral implications of [the reduction of the American Indian population by as much as 90%](#) between 1492 and the present (the particularity of our opinion here is shown by that Covington youth’s comment, at the Lincoln Memorial,

that [“Land gets stolen, it’s how it works”](#)), we expect to forever view what happened in the shadow of a statue of Abraham Lincoln last month in a certain way. The important questions for the moment, given the democratic nature of our country, are: how would a majority of Americans view the incident after full exposure to the relevant facts, and, more pointedly, to what extent should our courts be enlisted to try to impose—in a most brutal fashion—one interpretation over another on members of the media?

Nathan Phillips has never threatened a lawsuit against anyone. This is so despite the fact that [he was forcibly removed from his Native mother’s custody early in his life and abused in a white foster home](#) until he was old enough to join the military. This is also so despite the fact that, given the way our president treats First Nations people, it is entirely understandable that Mr. Phillips perceived the behavior of the MAGA hat-wearing Covington youth in D.C. as a contributing factor in a volatile situation that made Phillips extremely uncomfortable, and, hence, he decided to take nonviolent action to try to defuse a tense situation. As we have begun now to wade into the details of what occurred on January 18th, let us turn to a detailed analysis of many of the assertions that have been made in the complaint filed against the *Washington Post* by a well-known critic of the First Amendment. But, first, [here is a video](#) that our Lakota People’s Law Project has assembled, which amounts to a retort to the video so ostentatiously trumpeted by Mr. Sandmann’s attorneys in their complaint as an unimpeachable presentation of the “facts”—and [here is a letter of support for Nathan Phillips](#) that we have been circulating, which includes a description of the incident at the Lincoln Memorial that we believe a majority of America’s citizens would side with, after considering all the available evidence.

For easier reference, we have created [a version of the complaint with numbered paragraphs](#).

1. In paragraph #2, Nick Sandmann’s attorneys offer the first of many attempts to frame the behavior of the *Washington Post* as “bullying,” characterizing the news media who covered the events as a “mainstream and social media mob of bullies.” The Lakota People’s Law Project believes that Mr. Sandmann’s attorneys, in their widely publicized campaign against the American news media and the First Amendment, have chosen the most “bullying” possible tactic of all: use of multi-million-dollar civil lawsuits to attempt to intimidate those whom they perceive as their ideological opponents. And in prosecuting their quest against the news media, they have decided to indirectly target perhaps the most downtrodden, least outspoken racial minority group in our nation: Native Americans, who are consistently [provided the smallest possible voice](#) within our public discourse, despite their being this continent’s first inhabitants.
2. In paragraph #4, Nick Sandmann’s attorneys contend that “Nicholas stood quietly and respectfully for several minutes after being targeted and bullied by Phillips”; and in paragraph #13 Nick Sandmann is referred to as an “innocent child”; and in #39 they assert “Nicholas did not confront Phillips”; and in #43 “Nicholas stood still as he was concerned that turning away from Phillips might be considered a sign of disrespect”; and in #47 “At all times, Nicholas acted respectfully, responsibly, appropriately, and in a manner consistent with the values instilled upon him by his family and religious faith.” We point out that, between Sandmann and Phillips, it is clearly Nick Sandmann who stared unwaveringly at Nathan Phillips and chose to smile confidently throughout the exchange. While it is not perfectly clear who began to look at whom first, it is evident that Nick’s behavior quite obviously amounted eventually—if not immediately—to a “stare-down,” whereas Mr. Phillips’ eyes can be seen in the video footage looking elsewhere during the exchange, and at no point did he smile or exhibit anything resembling the “smirk” that everyone saw on Nick Sandmann’s face.
3. In paragraph #49, Nick’s attorneys write “when Nicholas walked away quietly to board the bus, Phillips turned away from the Lincoln Memorial and outwardly celebrated some perceived ‘win’ over Nicholas and his CovCath classmates.” This description intentionally ignores the [additional footage](#) captured moments after the event ended, where Mr. Phillips, pleadingly and with obvious emotion, held up his arms and called out to the entire gathering “Relatives, relatives, relatives...let’s make America great...let’s do that.” This invocation by Mr. Phillips clearly exhibits 1)

a sincere concern for the youth, whom he addressed as his “relatives”; and 2) an intent to offer a conciliatory translation of Trump’s racially-tarnished slogan. All of this is consistent with Mr. Phillips’ description of his goal that day as reconciling two racially distinct, apparently hostile groups.

4. In paragraph #50, Sandmann’s attorneys assert that their client “did not...physically intimidate Phillips in any manner, did not taunt or mock Phillips or anyone else present, did not engage in chanting, jeering, clapping with or at Phillips, did not taunt or hurl any political chant or racial slur at anyone, including Phillips, did not engage in any conduct whatsoever that could be accurately described or characterized as racist.” Perhaps the best way to begin our rebuttal of this surprising claim is to point out that the entire incident under discussion occurred in a city—our nation’s capital city—that has a football team [named after a word that signifies the scalp of a dead American Indian](#). Mr. Sandmann’s attorneys would likely attempt to characterize this fact as non-racist as well. A better tactic on their part would have been to simply acknowledge that the white Covington High School young men—including Nick Sandmann—did, indeed, engage in racist behavior, but that this racist behavior is also engaged in by thousands of other Americans, every time they do the “tomahawk chop” at a sporting event. Indeed, [despite Nick Sandmann’s assertion during his Today Show interview that he didn’t see any of his fellow students doing the tomahawk chop, he himself can be seen in video footage doing it](#)—directly in the midst of numerous other Covington students also doing it. All of this occurred directly in the face of an elderly Native American, which is very clearly a racist act. On the issue of “physical intimidation,” we contend that approximately one hundred white, teenage males, all of whom can be seen yelling and dancing with many conducting racist gestures, in the presence of a 63-year-old Native American man, is entirely construable as a form of “physical intimidation.” Whether these teenaged men had an express intention to “intimidate” Mr. Phillips is not indisputably clear. However, this was very reasonably an intimidating scene for any person of color in a nation where [past images abound](#) of white citizens smiling and generally appearing to enjoy themselves in the shadows cast by hanging, lynched, minority corpses.
5. In paragraph #67, Sandmann’s attorneys assert unequivocally that Phillips “intentionally instigated” the incident and that he is a “professional activist.” The fact, we happen to know, is that Mr. Phillips arrived at the Indigenous People’s March without a dime in his pocket, which belies any assertion that he is, somehow, a “professional” anything. And it is hard to understand how Sandmann’s attorneys could be so confident about what Mr. Phillips intended, considering how open to interpretation many aspects of the situation remain, and that they have never spoken to Mr. Phillips.
6. In paragraph #75, the complaint cites, as though it were some source of moral authority, a biased [“investigative report”](#) ordered by a law firm hired by Nick Sandmann’s family attorney “in the name of” the Covington Catholic High School and the Catholic Diocese. We issue here [a detailed rebuttal](#) of that report. Among the items we point out is that, while the investigative report claims that attempts were made by investigators to contact Mr. Phillips to secure his side of the story before issuing their “findings,” not a single member of the Indigenous Peoples March or the Lakota People’s Law Project was ever contacted for comment or to assist in locating Mr. Phillips, even though press reports made it clear that both groups were able to reach Mr. Phillips.
7. In paragraph #95, Sandmann’s attorneys attack Twitter Inc. for using the word “mocking” to describe how the students treated Mr. Phillips. We consider it incontrovertible that doing a “tomahawk chop” in the face of an elderly Native American qualifies as a type of mockery.
8. Starting in paragraph #115, Nick Sandman’s attorneys develop a fondness for using the word “gist” as a legal concept, as in the *Washington Post* “communicated the false and defamatory gist that Nicholas instigated a confrontation with Phillips and subsequently engaged in racist conduct.” We respond by asserting that the behavior of the Covington High School students, on January 18th, communicated the “gist” of white male racism and chauvinism in a most inappropriate and offensive way. These behaviors included: their conscious decision, with chaperon approval, to

inflare rather than defuse tensions with the Black Hebrew Israelites by engaging in extremely loud and aggressive school chants (including one which appears to be an appropriated Maori Haka Indigenous dance); [the heckling](#) by a group of Covington High School students of two female passersby, yelling “MAGA!” and “Build the wall!” (the purportedly professional investigation cited by the Sandmann attorneys asserted that “we have not been able to prove that the MAGA hat-wearing youths under question attend Covington”, but it’s hard to imagine a different scenario given the proximity in time and place of the incident and the similarity in appearance between the hecklers and the Covington students); the comment, already referenced above, by one Covington student in Nathan Phillips’ presence that “land gets stolen, it’s how it works”; Nicholas Sandmann’s entitled staring at a Native American elder while surrounded by jeering and mocking white, teenage, male friends using racist gestures and, in many cases, wearing MAGA hats that have, to millions of Americans, come to signify racist bullying; Mr. Sandmann’s family’s hiring of a professional public relations firm, RunSwitch, [with direct ties to the GOP and Karl Rove](#), in the immediate aftermath of the incident—a decision that led to Sandmann’s obviously [coached refusal](#) to accept any responsibility whatsoever for the encounter at the Lincoln Memorial, despite his demonstrable participation in a sequence of events that conveys to many just how much work remains to be done to make America racially just.

In sum, the Lakota People’s Law Project recognizes this ongoing public debate for what it is: a disagreement over the significance of facts, rather than a significant disagreement over facts. And it is absurd—worse, it is bullying—to sue a major American newspaper over the perceived failure to always, at every moment, report 100 percent accurately what happened at a given time and place in our nation’s capital. The *Washington Post*, like many other media outlets, grappled professionally and seriously with an iconic occurrence that transpired at the very location where Martin Luther King delivered his heroic “I Have a Dream” speech. Instead of suing one another, at this moment, we should all be straining to hear the echoes of what Martin Luther King was trying to teach us 56 years ago. Doubling down on errors of racial insensitivity—gaslighting our way to a morally grey future that fails to account for our dark past—is the worst of all possible courses of action to be taken...especially in pursuit of \$250 million.