New American

Written by **R. Cort Kirkwood** on April 13, 2019

Washington Post Claims It Portrayed Sandmann Favorably, Did Not Defame Him

The *Washington Post* has asked the federal district court in Kentucky's eastern district to dismiss Nicholas Sandmann's $250 million defamation lawsuit.

In its motion filed on April 9, the *Post* claims it did not defame Sandmann in its coverage of the confrontation at the Lincoln Memorial between Sandmann, his schoolmates from Covington Catholic High School and the "Native American elder," Nathan Phillips, who falsely claimed to be a Vietnam veteran.

With CNN, the *Post* led media coverage of the event that Sandmann argues smeared him from one end of the country to the other. But far from defaming Sandmann, the *Post* motion to dismiss argues, its coverage exonerated Sandmann and portrayed him favorably.

No Anti-Trump Bias

Sandmann's central claim is that the *Post* coverage, motivated by the newspaper's anti-Trump bias, repeatedly and with reckless disregard of the truth, depicted Sandmann as a racist aggressor who ridiculed and hurled racist taunts at Phillips, a radical left activist and one-time criminal who masqueraded as a Marine Corps war hero.

But the *Post's* motion argues that "when Sandmann, whose identity was unknown on that first day, came forward the next day and issued a statement identifying himself to the public, the *Post* featured his account prominently in an article published on the front page."

The motion claims "there is no fact alleged, however, to suggest that the *Post's* coverage was motivated by an anti-Trump bias and the prominent, front-page coverage given to Plaintiff's version of events and the investigative findings in his favor belie any such motive."

As well, the newspaper reported the Catholic bishop's apology for jumping to the wrong conclusion when he condemned Sandmann and his classmates, and "when an investigation commissioned by the Diocese produced findings generally supportive of Plaintiff's account, the *Post* published those findings — again, on the front page."

Thus, the newspaper's coverage did not defame Sandmann, the motion argues, and because "most of the statements that are the subject of the Complaint referred in general terms to a large group of students; they were not "of and concerning" Plaintiff in particular, as they must be to sustain a libel suit."

"Of and concerning" means the defamatory statements are about the plaintiff.

As well, many of the statements about Sandmann were "the subjective feelings and motivation" of Phillips, who "was entitled to offer his subjective point of view, and the *Post* had a right to report it — as it had a right to report the initial condemnation of the students' behavior by the responsible diocesan

and school officials."

That reporting, the *Post's* motion argues, is not defamatory.

"In short, the articles at issue may not have been flattering of the Covington Catholic students, but they do not give rise to a defamation claim by Sandmann. Indeed, the *Post's* overall coverage — including the articles that the Complaint fails to mention — was not only accurate; it was ultimately favorable to him."

Why Favorable?

That coverage ultimately included stories that showed "people [had drawn] conclusions on social media before all the facts were known" and as a headline put it, "Report finds 'no evidence' of racist talk by students."

Sandmann's lawsuit ignores that the *Post* permitted Sandmann to defend himself and that its coverage ultimately exonerated him of wrongdoing, the motion claims.

And after Sandmann's attorneys demanded that the *Post* retract stories and remove them from the website, the motion says, the "*Post* published a series of Editor's Notes and updated online articles to provide additional information that was not available at the time of the initial publications."

Thus, the motion says, the *Post's* coverage as a whole does not convey the defamatory meaning that Sandmann's lawsuit ascribes to it. Its rendition of the events and Sandmann's own admissions cannot, as a matter of case law, be defamatory.

Of particular note is the *Post's* claim that Sandmann's lawsuit relies mainly on what the articles implied. But a defendant is not, the motion says, "responsible for every defamatory implication a reader might draw from his coverage."

As well, the motion avers, "the only contested statement in the initial report concerning plaintiff was substantially true" — i.e., that Sandmann and Phillips did indeed have a face-to-face confrontation and Sandmann stood his ground.

After he sued the *Post* for $250 million, Sandmann and his attorneys filed a $275 million defamation lawsuit against CNN, which knew, the lawsuit claims, that it was publishing falsehoods.

Photo: AP Images