IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTICT OF VIRGINIA

Charlottesville Division

Sines, et al, Plaintiffs vs.

Kessler, et al, Defendants

Civil Action 3:17-cv-00072

DEFENDANT CANTWELL'S POST TRIAL MOTION FOR JUDGMENT AS A MATTER OF LAW, OR A NEW TRIAL, OR REMITTITUR, AND TO DENY OR REDUCE PLAINTIFFS' MOTION FOR ATTORNEY FEES

PRELIMINARY STATEMENT

This motion, assuming it is accepted, aims to replace Cantwell's prior post trial motions entirely.

Cantwell's ability to litigate was diminished to the point of causing prejudice to his defense by the conditions of his confinement in and transportation between the United States Penitentiary in Marion, IL, and the Central Virginia Regional Jail.

Cantwell repeatedly moved the court to compel his captors to make available to him the necessary documents and resources to meaningfully participate in this litigation, and those motions were denied or ignored. Alternatively, Cantwell moved for more time to file this motion. The motion for sufficient time was denied by Magistrate Judge Hoppe, and Cantwell appealed this decision to Judge Moon. As of December 24th 2022, the time of this writing, Judge Moon has not responded.

Cantwell made the motions for more time on the assumption he would be treated like any other federally convicted felon, and serve the final 10% of his sentence or more in a halfway house or home confinement. Owing to apparently political reasons, he was held in the USP Marion CMU until his final month, and denied home confinement altogether. Cantwell did not obtain full access to trial materials and computer resources until late December 2022, hence the late, and frankly, still rushed, composition of this filing.

ARGUMENTS

1. **The Jury Did Not Find A Racially Motivated Violent Conspiracy**

The primary thrust of Cantwell's argument is that Plaintiffs ought not be able to collect a consolation prize of hate speech reparations after suing for a racially motivated violent conspiracy. While the jury instructions may have been given an accurate description of Va. Code Ann. § 8.01-42.1 in their instructions, that

Plaintiffs only needed to prove one and not all possible theories of liability on Counts 3 and 4 (racially motivated violence, vandalism, or harassment), the Defendants, and Cantwell in particular, were sued for violence, not harassment. There is no conceivable possibility that they were held liable for vandalism.

If the Jury had found a conspiracy to commit racially motivated violence, there would have been a verdict on Counts 1 and 2. Similarly, if, as Plaintiffs contend, Defendant Fields's car crash was the overt act of the conspiracy of Count 3, the Jury would have had no trouble reaching a verdict on Counts 1 and 2. Since Fields (under threat of execution) pleaded guilty to intentionally striking Plaintiffs with his car out of racial animus, anyone who conspired with him to do such a thing would clearly have run afoul of Counts 1 and 2, and, like Fields, this lawsuit would be the least of their problems.

Instead, after asking the Court if "words are a form of violence", the jury deadlocked on Counts 1 and 2, returning verdicts of liability on the remaining Counts.

The implications here are very obvious. The Jury was happy to find the Defendants liable for the racially motivated harassment component of Counts 3 and 4 because they found the Defendants' political demonstration distasteful, and wanted them punished for their words. During deliberations, one or more jurors said "Words are

a form of violence" with the implication that words alone were cause to find on Counts 1 and 2 as well as Counts 3 and 4, and the less unreasonable people in the room drew a line they would not cross.

It would also be nonsensical to award $1 in compensatory damages from co-conspirators in a racially motivated homicide and assault, especially since Ms. Sines was awarded damages from Mr. Fields. Yet, her and Mr. Wispelwey were awarded $0 from the Defendants of Count 3. The Plaintiffs were only awarded a token sum of compensatory damages in a (legally inadequate) attempt to justify the punitive awards, because there were no actual damages to compensate on Count 3. The Jury only sought to punish the Defendants for their demonstration. Not to compensate the Plaintiffs for harm done, because the words did no actual harm.

While Cantwell appreciates their restraint, he was not sued for harassment. He was sued for violence. Without a finding of a racially motivated violent conspiracy, Cantwell cannot be held liable for expressing views others find distasteful, much less for being in the company of others who express those views.

No evidence presented at trial offered the hint of the suggestion that Cantwell told anyone to say anything to anybody, and nobody ever told Cantwell anything about harassing anyone. On the contrary, Cantwell urged his followers not to call attention to themselves in a blog post in evidence as Defense Exhibit 024A.

Saying; "*For this event, I encourage those with the legal authority, to carry a concealed rearm.* ***Open carry will draw more unnecessary attention to us****, so if you do not have a license to carry, please secure your rearms elsewhere and let us worry about defense*."

It would be a terribly repetitive exercise to go through the complaint and the Court's decisions in this case seeking every example of the Plaintiffs alleging and the Court deciding that this case was entirely about violence and not speech, but the following may suffice.

In Judge Moon's July 9th decision denying Cantwell's motion to dismiss, he said the following about Cantwell;

While Defendant Cantwell may have been lower in the pecking order than either Kessler or Spencer, he is more closely tied to acts of overt violence in furtherance of the conspiracy than either of them.

And;

He was later charged "with two felony counts of illegal use of tear gas and one felony count of malicious body injury by means of a caustic substance. He was indicted on December 4 on a felony charge of illegal use of tear gas." (Id. at ¶22). ***This conduct, of course, is not protected by the First Amendment****.*

And;

In light of the specific statements made by Cantwell, the picture of him assaulting counter-protesters with pepper spray, and his joint leadership of various portions of the events with other Defendants (e.g., the Friday night march, the Daily Stormer's encouragement for its followers to get "behind" him), Plaintiffs have plausibly alleged that Defendant Cantwell joined the conspiracy to engage in the racially motivated violence at the "Unite the Right" events.

There is nothing in that decision about Cantwell conspiring to harass anyone, and notably where harassment is mentioned, the Court rejected Plaintiff Pearce's 1982 claim that Defendants violated her civil rights by walking past Congregation Beth Israel. The Court also dismissed claims pertaining to Defendant Invictus walking past Wispelwey's gathering for the same reason. Plaintiffs never alleged, plausibly or otherwise, that Cantwell harassed or conspired to harass anybody, and had that been the argument they were making, it would have been tossed on First Amendment and other grounds.

Similarly, when Cantwell moved for Judgment as a Matter of Law at the conclusion of Plaintiffs' case, Judge Moon denied the motion by stating, in relevant part;

The Court considered the Rule 50 motions raised by Defendants Cantwell and Spencer raised in argument on November 16, 2021, and in Defendant Spencer's subsequently-filed Rule 50 motion (Dkt. 1451). For the reasons set forth on the record, the Court concluded that neither Defendant Cantwell's nor Spencer's motion had established that a reasonable jury would not have a legally sufficient evidentiary basis to find for the Plaintiffs on the issues raised. ***Rather, Plaintiffs' evidence had raised a jury issue whether Defendants Cantwell and Spencer had conspired to engage in racially motivated violence****.*

The jury issue raised was a question of racially motivated violence. It was never a question of harassment. The Court has always understood this. Cantwell cannot be found liable for something he was not sued for, and which would violate his First Amendment rights.

2. **<u>One Cannot Harass, or Conspire To Harass, One He Seeks To Avoid A Confrontation With</u>**

Moreover, It is not harassment to hold a demonstration in secret, or to attend a permitted demonstration, just because Plaintiffs and their co-conspirators went out of their way (by way of deception) to discover that secret, and seek a confrontation with those demonstrators. Even if Plaintiffs were offended, or even they were treated poorly, even if they were so traumatized as to require an "emotional

support animal" by the words they heard, after obtaining what they sought, that is not the fault of anyone but the Plaintiffs themselves. The Plaintiffs knew what the Defendants were gathered to say, and because of this knowledge Plaintiffs sought a confrontation, against the wishes of Defendants.

Defendants tried to keep the August 11th march on University of Virginia a secret. This secret was only discovered because the Plaintiffs' associates spied on Defendants' communications channels against Defendants' wishes. Neither Willis nor Romero were willing to tell the jury who told them about the demonstration.

One cannot harass his stalker. That's not how harassment works.

If anything, the Plaintiffs set out to harass Defendants over their political views, and however unpleasant that experience turned out to be for them, the Court ought not reward *their* search for conflict.

3. **Cantwell Did Not Racially Harass Or Assault Any Plaintiff on August 11th, and Count 4 Contains No Conspiracy Element to Hold Him Liable for the Actions of Others.**

While Cantwell did plead guilty to two misdemeanors for his conduct on August 11th, no portion of that plea had anything to do with any Plaintiff in this case, nor was there any element of racial animus to his plea.

Video showed that Cantwell deployed pepper spray and his hands against able bodied white adult male rioters, *after* they were rioting. At no point did Cantwell say or do anything to Willis or Romero.

Cantwell and Mr. Willis on August 11th.

Under cross examination by Cantwell, Willis stated that he "had reason to believe" he was affected by Cantwell's pepper spray "among others", but upon further examination, this purely speculative claim fell apart. Willis did not allege this in the complaint. He did not say it in his deposition. It was not supported by video. His Counsel did not ask him whose pepper spray he was affected by during direct examination, even though Mr. Willis stated that he told his legal counsel of this possibility subsequent to his 2020 deposition almost three years after the events.

This speculation entered the record of this case for the first time under Willis's cross examination by Cantwell, and Willis stated he only thought of this possibility several years later after the event when he saw a highly publicized photograph of Cantwell pepper spraying someone else.

From Cantwell's cross examination of Willis; (Emphasis Added)

106 D. Willis – Cross

Q To the best of your knowledge -- withdrawn. When you said that my pepper spray was on your side, are you saying that I pepper-sprayed you?

A I'm saying that **I have reason to believe** that the pepperspray that I choked on and that I needed to flush my eyes out because of came from you, **among other people**.

Q Did you talk to Commonwealth's Attorney Robert Tracci about that?

A I don't know who that is.

Q Did you speak to a Commonwealth's Attorney about your injuries?

A I don't think so.

Q Did you speak to the police about your injuries?

A No.

Q Okay. Why not?

A I was really busy that weekend. I didn't think -- I never made the time to go file a police report. It seemed like they were aware of what was going on.

Q Did you hear any news stories about me being prosecuted for what happened that night?

A I don't think I've heard those stories.

Q So it's your testimony today that you have not heard those stories?

A If you were prosecuted for something that happened that night, I only know about it because you might have mentioned it earlier in these court proceedings. That's it.

Q So before today, you've never heard that Christopher Cantwell got prosecuted for anything that happened in Charlottesville?

A I think you mentioned that you had some prosecution over something between you and someone else in the Walmart parking lot or something.

Q Just to be clear, I'm talking about, before we walked into this courtroom, you had no idea that Christopher Cantwell was prosecuted for anything that happened in Charlottesville that weekend?

A That is my understanding, yes.

Q Okay. Before today, did you tell anybody that you choked on Christopher Cantwell's pepper spray?

A Yes.

Q Who?

A My legal counsel.

Q They didn't ask you about that during your direct examination. It seems like a relevant detail. You're suing me, right?

A Oh, no. It's just that, like, I don't think I had seen the photo until after the deposition or something.

Q I'm sorry. After the deposition?

A Yes.

Q So you saw the photo after your deposition?

A Yes. Yeah, I continued to see photos.

Q And then after you saw the photo, you said, wait a second, I think Cantwell pepper-sprayed me?

A Could you let me finish my answers, please?

Q I apologize. Please do.

A Could you repeat your question?

Q The first time you saw me was after your deposition?

A The first time I saw you?

Q Yeah.

A In person?

Q Well, the photograph in question.

A Oh. I don't know if it was the first time, but just the incident that I remember, when you asked me about it.

Q Do you remember what the date of your deposition was?

A Sometime in July of 2020.

Q So in June of 2020, if somebody said, "do you know who Christopher Cantwell is," you would have said no?

A I don't remember when I first became aware of you. I may have had -- I don't know. Like, I may have had the ability to identify you. I had never looked at footage and events from 8-11 too closely, because I tried to avoid them unless it's pertaining to this case.

Q Okay. When were you approached by -- when were you approached about this lawsuit?

A I became a plaintiff in October of 2017, if I'm not mistaken.

Q So pretty early on in the process, right?

A I think so. I really hardly remember the time period. That's, like, peak -- well, yeah.

Q I can't help but notice that you say "I don't remember" a lot. Is everything okay?

A No, everything is not okay.

Q Okay. Is that something -- the memory gaps, did they form after August 11th?

A Yes.

Q So prior to August 11th, mind like a steel trap, and then afterwards you can't remember who you're in a car with or what sex they are?

A My memory -- my ability to remember things and to concentrate and to be present was so much better before August 11th and 12th. I think going through something that traumatic at 18, yeah, it really affected me.

And I also have tried to -- tried very hard to, like, let go of certain memories from this period in my life. It was horrible. All of 2017 was horrible.

End of Transcript.

Willis's frequent memory problems, and evasive answers, combined with his statement that he came up with this purely speculative idea three years later based on a photo of Cantwell pepper spraying someone else, in which Willis is not seen,

render his speculation about who pepper sprayed him evidentially useless. Willis had other credibility problems which will be addressed in greater detail later, and video does not capture Willis being pepper sprayed by Cantwell.

Cantwell did not assault Willis, Willis never stated as fact that he did, and even if the Court were to make this leap, Cantwell deployed his pepper spray at white men who were being violent. It is not even alleged that Cantwell targeted Willis, or any other member of a protected group. Cantwell's entirely uncontested and video corroborated testimony was that he was motivated by the violent behavior of the white men he engaged. Video shows Cantwell only engaging white male combatants. The idea that Cantwell was so driven by racial hatred that he diligently avoided the black and transgender non-combatants defies reason. Even if Cantwell's pepper spray did affect Willis, of which there is no evidence, Cantwell cannot be held liable for this under Va. Code Ann. § 8.01-42.1 because racial animus was clearly not his motive and he did not target Willis.

Additionally, whatever the legal implications of his time served misdemeanor plea agreement, Cantwell was acting in self defense, and the people who caused him to so act would be the one's responsible for any resulting injuries. Even if the Court finds that Cantwell's plea agreement negates a claim of self defense, even if the Court finds that Cantwell totally exceeded the legal boundaries of self defense, Cantwell's video corroborated and uncontested testimony as to his mindset was

that he was acting under this justification, which keeps him far afield from liability under Va. Code Ann. § 8.01-42.1, which requires him to act with racial animus.

Mr. Willis does not allege that Cantwell or any other Defendant spoke a single word to him on August 11th or at any other time. Mr. Willis testified (implausibly) that he had no idea who Cantwell was until much later. So, a harassment theory of liability with regard to Cantwell and Willis, even if that were the subject of this litigation, cannot apply here.

Absent a conspiracy element, Cantwell cannot be held liable for the words or actions of others, whom Willis sought confrontation with, against the wishes of the Defendants.

Regarding Ms. Romero on August 11th

In an apparent effort to pick up where Mr. Willis left off, Ms. Romero offered the speculation that Cantwell might have hit her during her direct examination by Cantwell. Like with Mr. Willis, this speculation fell apart under further examination, and was unsupported by video evidence. No evidence was offered that Cantwell ever spoke a word to Romero.

Transcript of Cantwell's direct examination of Romero; (Emphasis Added)

59 N. Romero – Direct

A More. You can go back more.

Q Sure. How far back?

(Video playing.)

A Right there. Is that you?

Q That's me hitting this guy.

A Right. But right before then, there's a couple of hits –

Q Hits what?

A We're, like, right next to this person. So we're getting a bunch of those hits.

Q So you're telling me that I punched you; is that your testimony today?

A I'm just telling you that I see you in this video.

Q I'm in the video. Are you telling the jury that I punched you?

A Go back. Play it in slow motion.

Q Are you telling the jury that I punched you? Yes or no?

A I cannot confirm that, but if you go back –

Q Are you telling the jury that I punched you?

A I said I cannot confirm that, but if you play that again in slow motion --

Q Before today, you've never testified that I punched you, right?

A No, but you're showing me this video now.

Q I'll play this video 100 times if you want. I'm asking you if you ever told anyone that I punched you before today?

MR. MILLS: Your Honor, argument between counsel and the witness.

THE COURT: Sustained. But she needs to answer the question. Did he punch you?

THE WITNESS: I didn't say that.

THE COURT: Okay. Well, did he? Say yes or no.

MR. CANTWELL: I'll put the video in slow motion. How about -- can we put --

THE COURT: Well, let's get it straight: Did Mr. Cantwell punch you?

THE WITNESS: I never said that he punched me.

THE COURT: I didn't ask you did you say it.

THE WITNESS: No, Judge.

THE COURT: Did he? Did he punch you.

THE WITNESS: I can't confirm that, but it looks like in that video that he's right next to us, and so that's why I was wondering if he could run it back.

THE COURT: Okay. Well, that's all right.

THE WITNESS: Because I don't know who's hitting on us that day.

BY MR. CANTWELL:

Q Without saying who punched you, where did you get punched and how many times?

A I can't tell you. It all happened so quick. But we were taking hits.

Q On what part of your body were you punched?

A I can't say that I was punched, like, on site, but we were getting, like, sideswiped by the fight that was happening right next to us.

Q So just so we're clear, were you punched or not?

A I said that we were hit. I'm not sure I was punched directly.

Q Okay. Because you asked a question, which was: "Did you just punch me?" That's what you said.

MR. MILLS: Objection. That's not a question. This should be an examination by counsel.

THE COURT: Overruled.

We'll get this straight. I think she's said now --she's answered the question.

BY MR. CANTWELL:

Q So before today, how many people did you tell that you got punched?

MR. MILLS: Objection. That's not her testimony. She clarified this, Your Honor.

THE COURT: He's asked her that question. She can answer the question.

BY MR. CANTWELL:

Q Before today, how many people did you tell that you got punched on August 11th?

A I said that we were hit by the fight. I didn't say I was punched directly. I'm also only saying that because you're showing me this clip, and that looked like you, and that's us running away. So that's all I brought that up for.

Q All right. So I've got the video in slow motion. Let's try to figure out if I hit you. Sound good?

(Video playing.)

Just while we're at it, that guy in the blue shirt who's getting punched by all those guys, do you know who that man is?

A No.

Q Okay.

(Video playing.)

A This is when they start, like -- are you watching that?

MR. MILLS: Is there a question pending, Your Honor?

MR. CANTWELL: We're waiting to find the part where I punch Ms. Romero. So if that's the part, let me know and I'll rewind.

MR. MILLS: Objection. She clearly testified she did not say you punched her.

MR. CANTWELL: Okay. So should we move on to something else, then?

THE COURT: Yes. I mean, that's the whole –

End of Transcript

Ms. Romero was never touched by Cantwell or any other Defendant. She never even alleged that she was. She didn't even get "punched" but rather claims she was supposedly "sideswiped by the fight" (though none of the video corroborates this claim) that broke out after the people she chose to associate with, while seeking confrontation with the Defendants who tried to avoid her, attacked the Defendants.

Absent a conspiracy element, Cantwell cannot be held liable for whoever accidentally bumped into Ms. Romero while her friends were attacking the Defendants.

Ms. Romero never testified that Cantwell or any other Defendant said anything to her. So theories of liability of harassment, even if they were the subject of this litigation, cannot apply to Cantwell and Romero on Count 4. Without a conspiracy element, the Defendants cannot he held liable for the words of unnamed others.

The issues of Cantwell's motivations already explained with regard to Mr. Willis also apply to Ms. Romero. She does not claim she was targeted at all, much less on the basis of her race, and certainly not by Cantwell. She was in the company of violent white men who started a fight, and she claims to have been "sideswiped" as a consequence of their unlawful behavior.

That the violent behavior of Ms. Romero's associates motivated Cantwell to use force against them does not create any coherent or plausible theory of liability under Va. Code Ann. § 8.01-42.1.

4. **The Fact That These Questions Are Even Plausible Renders This Application Of Va. Code Ann. § 8.01-42.1 Unconstitutionally Vague**.

Acknowledging from experience that two people can see the same facts and evidence and reach different conclusions about their meaning in good faith, let us

entertain the possibility that the jury could have found the Defendants liable for racially motivated violence on Counts 3 and 4 without Counts 1 and 2. Let us further entertain the possibility that despite all prior conclusions in this case, a harassment theory of liability could attach.

The fact of the matter is, under those circumstances, we can't know what the jury found the Defendants liable for, because their instructions said the Defendants could be found liable for violence, vandalism, or harassment. This may be an accurate description of Va. Code Ann. § 8.01-42.1, but it tells us very little about the verdict.

The Plaintiffs argue there is a conspiracy to commit racially motivated violence, the Defendants deny the allegation. There is circumstantial evidence that the Plaintiffs claim is proof of a racially motivated violent conspiracy, and the Defendants offer wholly innocent explanations for that evidence.

We know for certain that there is no evidence, not even any allegation, that any Defendant spoke to or touched Romero or Willis on August 11th, and yet the jury found liability on Count 4. The Jury even went so far as to award compensatory damages comparable to those offered to Ms. Romero for being hit by an allegedly weaponized vehicle.

The Plaintiffs themselves argue that Mr. Kessler can be held liable for harassment on Count 4, when confronted with the fact that Kessler harmed nobody. This, even though Count 4 lacks any conspiracy element, and Kessler is not alleged to have spoken a word to Romero or Willis. They seem to be offering a theory of liability that the event itself was harassment, and every participant is liable just for being there. This is legally nonsensical. It is pure ideological dogma.

The Plaintiffs simultaneously argue that Cantwell should be held liable for violence on Count 4, even though he is not alleged to have touched or spoken to any Plaintiff on that night.

But Cantwell and Kessler were found equally liable on Count 4. Are we to conclude that the jury finds racially motivated violence and harassment equally troubling? Shall we conclude that words and assault are equal?

One may hope any 12 registered Virginia voters would at least fail to agree on something so preposterous (as these jurors apparently did on Counts 1 and 2). Violence and harassment are worlds apart in terms of law, and in their impact on victims. It boggles the mind what motivated the legislature to lump them all in together in one statute, as if lawmakers were known to be shy about spilling ink over civil rights.

It will be argued later that the damages are unreasonable. The Plaintiffs already argue that Defendants' conduct was so outrageous that this Court should ignore the plain text of the law limiting punitive damages. Without a certain determination of whether the Defendants were held liable for violence or harassment, how is the Court to determine this vital question?

It may be said that the time to raise this argument was when dealing with jury instructions, and in hindsight, perhaps the lawyers, on both sides, should have seen this coming. But Cantwell is not a lawyer, and all of the pre-trial conclusions of this litigation were based on the assumption that the violations of Va. Code Ann. § 8.01-42.1 simply followed from the implications of Counts 1 and 2.

Had there been a verdict on Counts 1 and 2, we would all be under assumption that the liability on Counts 3 and 4 were for violence, because that is what all the assumptions of the case were based upon. Indeed, though the Plaintiffs argue Kessler should be held liable for harassment on Count 4, they claimed victory in a post trial press conference stating that Defendants were held liable for violence. Without that finding of Counts 1 and 2, if we assume that violence could be found on Counts 3 and 4 without that finding, we are left to guess whether they mean to deceive the Court or the Public.

This is especially important with regard to the punitive awards. Punitive damages are meant to punish Defendants, but the Defendants are left without the vaguest idea what they are being punished for.

Courts are not in the business of playing guessing games. The verdict as rendered either means the Defendants were held liable for harassment, or leaves it uncertain as to what theory of liability applies to the Defendants. For these reasons, if the Court declines to dismiss the case outright, it should order a new trial to determine the answer to this question.

5. **The Court's Jury Instruction Was Not Sufficient To Overcome the Prejudice of Cantwell Being Excluded From Depositions By Plaintiffs' Misconduct**

So obvious is this fact, that the Plaintiffs included testimony against Cantwell in their deposition designations from Kline, Hopper, Rousseau, and Pistolis. None of which were admissible against Cantwell. They knew full well that the jury could not compartmentalize this testimony, so they included it knowing it was inadmissible against Cantwell anyway.

Since Cantwell had never seen these depositions, and was preparing for trial during trial, he did not prioritize going through depositions that were inadmissible against him to discover this fact. Cantwell found out at the same time as the jury that

witnesses he could not question were providing inadmissible testimony against him.

Moreover, Cantwell was accused of participating in a conspiracy, and on Count 3, was found liable for conspiracy. Evidence of the alleged conspiracy existing is evidence against Cantwell. There is no compartmentalizing this.

If the Court does not dismiss the claims outright, or order a new trial for all Defendants, it must order a new trial on the grounds that Cantwell was denied the right to confront witnesses against him.

6. **Cantwell's Objection To The Plaintiffs' Motion To Sever Did Not Waive His Due Process Objections Or Motions To Continue.**

Cantwell was arrested in January of 2020. The Plaintiffs informed the Court of his arrest immediately, and Cantwell promptly informed the Court of his change of contact information. Cantwell also requested documents be provided to him, including the complaint. It was not provided.

In March of 2021, it was discovered that Plaintiffs had continued sending all correspondence in this case to Cantwell via email, even after they repeatedly updated the Court on every stage of his criminal proceedings.

Upon this discovery, Cantwell moved to sanction Plaintiffs for their misconduct.

The Plaintiffs sent Cantwell a 2 Terabyte encrypted hard drive at the Strafford County Jail, and Cantwell notified the Court that this combined with the conditions of his confinement made going through all of this material impossible.

The Court denied Cantwell's sanctions motion, stating that this somehow did not prejudice his defense. It very clearly did.

This is particularly relevant to Plaintiffs' "expert" witnesses. Cantwell only learned of these witnesses when he received the Court's decision on his codefendants' motions to exclude them. Cantwell then told the Court he had to alter his defense strategy if they were to be admitted, because this testimony shifted the burden of proof. Cantwell told the court that he wanted to depose (among others) Thomas Massey, who started the fighting at University of Virginia, and Emily Gorcenski, a proud Antifa criminal who lied under oath to see him arrested. Cantwell had these and other witnesses on his witness list. He moved the court to compel their testimony. The Court was unable to do this due to their distance from the Court.

To make matters worse, Cantwell was subsequently transferred to the Corrections Corporation of America facility in Tallahatchie, Mississippi. There, Cantwell informed the Court that he had been stripped of the hard drive and all of his papers, that the light in his cell was broken, that he had only a gold pencil to write with,

and that the facility would not allow him to receive the hard drive unless it came from his attorney.

Cantwell tried to explain the meaning of "pro se Defendant" to the facility staff, but before he could exhaust administrative procedures, he was shipped to the United States Penitentiary in Marion, Illinois a month later.

Promptly upon reaching USP Marion, Cantwell again informed the Court of his change of contact information, and stated that he had once again been stripped of all his papers, and that the conditions of his confinement, 23.5 hour lockdown in a COVID quarantine at the time, made his participation in this litigation impossible.

Cantwell then received a proposed trial schedule, which Cantwell objected to on the grounds that he had not been consulted, that the proposal stated it would be assumed all had consented if they did not object before the date Cantwell received it, and that the conditions of his confinement made trial preparation impossible.

The Court approved the schedule, noting Cantwell's objection.

After leaving COVID quarantine, Cantwell became aware of severe restrictions placed upon him by the Communications Management Unit (CMU) at USP Marion. These conditions prejudiced his defense, and he informed the Court of them in subsequent motions.

Cantwell made arrangements to have Plaintiffs' hard drive delivered to him at USP Marion. USP Marion held the drive in their possession for weeks before giving it to Cantwell, and subsequently gave him limited access to the drive on a computer that would not allow him to save or edit files. Nor would they permit his "lay counsel", Bill White, into the computer room with him to review the materials. Cantwell's only means to review the materials outside his limited access to the computer was to write things down by hand and take them back to his cell.

Cantwell asked Plaintiffs' counsel to provide paper copies of documents so he could have time to review them outside of his limited computer access, he subsequently moved the Court to compel this production. The Court did not respond before Cantwell was moved for trial, and subsequently denied the motion.

Plaintiffs did produce hundreds of pages of documents, including (finally) the complaint, and Plaintiffs' responses to interrogatories. USP Marion staff acknowledged receipt of the materials, but said that Cantwell would not be able to view them until they had been reviewed by CMU personnel, and that even after this, he would only be able to view them in the presence of a staff member in an office not near the computer or the typewriters or any other prisoner.

Cantwell subsequently moved for a 1 year continuance, detailing his many travails.

The documents were finally shown to Cantwell in October, the day before he was shipped to Virginia for trial.

When Cantwell was ordered to pack his property before being moved, he asked how he was supposed to bring the hard drive and his legal papers with him. He was told that he could not. When he said that he had to, he was told to ask Intelligence Research Specialist Kathy Hill in writing to ship the materials to him. This would not get a response before he was to leave.

Cantwell packed his legal materials in a separate box from the rest of his property, and marked it as “legal work”. Cantwell wrote to Ms. Hill, requesting the box be shipped to him, though noting that he had no idea where he was being shipped to or when he would arrive. Hill never shipped the materials.

Cantwell was then shipped to the county jail in Grady County Oklahoma, and given no clue as to when he would leave. Cantwell again informed the Court of his change of contact information, and Plaintiffs’ good friends in the US government kept them apprised, allowing Cantwell to attend the deposition of Benjamin Daly. Cantwell also informed the Court that the Grady County Jail would not grant him access to computers, that he was once again stripped of all his papers, and that he had nothing but a golf pencil to write with.

Two weeks later, Cantwell was again stripped of all his papers, and shipped, ultimately, to the Central Virginia Regional Jail. There, he once again notified the Court of his change of contact information, that he had again been stripped of all his papers, did not have access to computers, and was limited to a "flex pen" that barely worked, to write with.

Upon coming into Court, the Court asked if everybody was prepared for trial, and Cantwell stated that in no uncertain terms, he was not prepared, and that he had repeatedly over the course of months informed the Court of why this was the case. Cantwell stated that his due process rights were being violated by this state of affairs, and all of a sudden, people started to take his complaints seriously.

On the eve of trial, Mr. Bloch got a message to Cantwell asking Cantwell to call him. Cantwell did call, and over the phone, Mr. Bloch read aloud his motion to sever the trials, and Mr. Kolenich's opposition to that motion. Cantwell subsequently learned that Mr. Smith had likewise opposed the motion.

With no time to consider or research the matter, Cantwell joined his codefendants in opposing the motion, and wrote out what little response he could from his memory of it, using his "flex pen". Cantwell stated that this moment arrived as a predictable consequence of his prior complaints being ignored or dismissed, and that this prejudiced his defense in a manner not resolved by the motion to sever.

Specifically, that if the Court would not remedy the misconduct of Plaintiffs and his captors, then all this would do is strip him of what little benefit he gained by having codefendants who were not being prevented from participating, and prolong the abuse Cantwell was suffering.

It would also have the effect of rewarding Plaintiffs for their misconduct, and for the misconduct of those who improperly acted to assist them by interfering in Cantwell's litigation. Allowing the Plaintiffs a still further head start, and the opportunity for a practice run at his codefendants before trying Cantwell, would have granted Plaintiffs an even more unfair advantage than they had already obtained.

Cantwell offered an alternative solution. The Plaintiffs could drop, or the Court could dismiss without prejudice, the Plaintiffs' claims against Cantwell, and the Plaintiffs could refile their suit against him alone.

The Court rejected this alternative, and gave Cantwell a binary choice. Proceed now or sever. Cantwell maintained his objections by stating "given that binary choice, I'll proceed."

Plaintiffs' Counsel Roberta Kaplan said that "as far as we're concerned" Cantwell waived his prior objections. The Court incorrectly stated that Cantwell consented

to move forward, when he was only choosing between two options which violated his due process rights.

This Court cannot compel Cantwell to choose from a menu of which of his due process rights will be violated, simply to cover up the misconduct of those who persecute him for his political views. Cantwell had every right to be kept apprised of these proceedings, which the Plaintiffs (negligently, at best) failed to do. Cantwell had every right to demand that the government stop interfering in this litigation. Cantwell had every right to demand a continuance when those rights were repeatedly and egregiously violated and the Court refused to act. Cantwell had every right to object to the severance, as did his codefendants. Cantwell never waived his rights by expressing a preference for one violation over the other. Cantwell's rights were violated. Cantwell's defense was prejudiced. Cantwell did not get a fair trial. Cantwell cannot be held liable for harassing people who stalked him due to the verdict of an unfair trial.

If the Court declines to dismiss this case outright, or to order a new trial for all Defendants, it must order a new trial for Cantwell based on these violations of his rights and the prejudice those violations caused to his defense.

7. Plaintiffs' Experts Should Have Been Excluded, Especially Against Cantwell.

As briefly touched upon above, Cantwell did not even find out about Plaintiffs' experts until the Court ruled against his codefendants' motions to exclude them.

This testimony shifted the burden of proof in the case, by making ideology itself the conspiracy. Their testimony could fairly be summarized as stating that visiting misery on non-Whites was the whole point of Defendants' political views, and that lawful activity was simply in furtherance of this cartoonish depiction.

When Cantwell discovered this, he promptly notified the Court that it altered his Defense strategy such that he would need to depose other witnesses and discover other evidence to combat this fictional narrative. Then, as described in detail above, he was prevented from doing so by the conditions of his confinement and repeated transfers. His attempt to get those witnesses into the courtroom to question them at trial were thwarted by their distance therefrom.

Plaintiffs' (at best) negligent failure to notify Cantwell of these experts, combined with the conditions of his confinement left him no opportunity to find a rebuttal witness, or obtain the testimony and discovery necessary to combat their narrative. This inexcusably prejudiced Cantwell's defense specifically, and if the Court declines to dismiss the case outright, or order a new trial for all Defendants, it must order a new trial for Cantwell to correct this injustice.

Moreover, the testimony of Plaintiffs' experts proved more prejudicial than enlightening, as Cantwell's codefendants predicted. There was no code to break. There were no secret handshakes to be explained.

Simi's purpose seemed to be little other than to call the Defendants violent racists, and to improperly introduce hearsay from a Jewish man pretending to be a Nazi. This was the Daily Stormer article "Operational Security for Right Wing Rallies" by Andrew Alan Escher Auernheimer, aka "weev", After commenting at length about the article's instructions for destroying and hiding evidence on direct, Simi testified that Auernheimer was Jewish under Cantwell's cross examination. This discovery outraged Plaintiffs' counsel, which they said was "beneath the dignity of the Court" in an effort to keep it secret from the Jury.

Blee's testimony seemed designed to do little more than conjure images of the Holocaust in the minds of the jurors, so as to remind them of the supposed horrors that would ensue of Defendants were allowed to participate in our political system, as is their right.

This testimony was improper, and should have been excluded before trial. Now that we have seen it and its outcome, the Court should order a new trial to correct this error, in the event it declines to dismiss the claims outright.

8. The Jury Likely Acted Based on Improper Passion and Prejudice.

Plaintiffs' case was racially charged, and could hardly have been better designed to inflame the passions of jurors. The Defendants' political views were discussed more than any other single feature of the case, and given the meticulously designed racial makeup of the jury, the stage was set for such an outcome.

Plaintiffs struck exclusively white jurors, and raised a meritless Batson challenge when Defendants struck a black juror based on nothing other than the Defendants' political views. The Court's refusal to decide against the Plaintiffs in the moment left Defendants walking on eggshells for the remainder of jury selection, sure that if any black juror was struck, they would end up with both jurors they meant to strike and none of the strikes to otherwise utilize.

The jury also consisted of an open Antifa sympathizer who said that political violence was sometimes acceptable, despite Defendants' motion to strike this juror for cause. The same juror also managed to avoid being peremptorily struck, because the Court refused to strike for cause another who could arguably have been a Plaintiff himself. Cantwell regrets that his access to trial transcripts is limited to what Plaintiffs' financiers posted on their website, and that this lacks the jury selection phase. Otherwise, he would be more specific.

That the jury asked if "words are a form of violence" during deliberations tells us so much about this. Such a concept is not the product of a rational thought process.

It is passion at best, and more likely, as Defendants warned during jury selection with our Antifa sympathizer, the product of political extremism. Lady Justice is surely less injured by this verdict than she would have been had all the jurors agreed with this ideology, but she needs this court to mend her wounds still.

The Jury agreed the Defendants speech was enough to find them liable on Counts 3 and 4, but did not agree that there was a conspiracy to engage in racially motivated violence to hold them liable on Counts 1 and 2. This alone is indicator enough that the jury acted on an improper motive, and the verdict should be set aside in its entirety, or at a minimum, on Counts 3 and 4.

But there's more.

Cantwell previously filed a letter questioning if Thomas Baker was Jewish or homosexual, for reasons to be addressed momentarily. Nothing in his trial transcript indicates this. Baker mentioned a wife, whom he did not bring to the event because he was expecting violence.

The purpose of that question was to determine if Sines and Wispelwey were cut out of awards on Count 3 due to a combination of their racial, religious, and sexual identity. Tellingly, Plaintiffs' counsel moved to strike that letter, without addressing the question raised. Given they were surely aware that Mr. Baker testified to having a wife, one element would have been easy enough to dispute,

but instead Plaintiffs' feigned outrage about mentioning identarian characteristics in a case they designed to center on this element. This tells me they know he is Jewish, and that saying he was married without mentioning this part would have given away the game. One or more members of the Jury may have been able to tell this from looking at him, though Cantwell himself requires a browser plugin to spot these things. Tellingly, no photos of Baker appear on the website of Plaintiffs' financiers at "Integrity First For America" despite a searchable database of trial exhibits posted there.

Wispelwey was an open Antifa sympathizer and a fake religious figure who lied on the stand for all to see. His being excluded from all awards makes plenty of sense from this perspective. Sines could have been excluded on similar grounds (as could all the Plaintiffs, as we'll address shortly), but why else would the jury cut Sines out of awards on Count 3, then pay her out on Count 6?

The answer seems clear. On Count 3, the jury was doling out hate speech reparations to Plaintiffs they identified as members of protected groups. They gave a token amount in compensatory damages in a legally inadequate attempt justify their punitive awards, and they cut out from those awards the Plaintiffs they identified as benefactors of "white privilege".

This is an improper motive. It is not justice, and this Court cannot give it force of law.

9. The Court Should Order a New Trial Due To Incredible Testimony

At the time of the Court's decision on Cantwell's Rule 50 motion at the conclusion of Plaintiffs' case, the Court noted it could not at that time make judgements about witness credibility.

The time for that judgement has come, and since the Court is entirely too well aware of the witnesses' dishonesty, it is obligated to act.

Nearly every Plaintiff denied seeing weapons, disguises and protective gear in the Leftist mob, but the Court and the jury clearly saw these items in evidence.

An early draft of this document attempted to go through witness testimony, first of the weapons being denied, then the weapons being showed to the Plaintiff in evidence. Unfortunately, in text this becomes tedious with a lot of skipping around in video pointing at a screen, that this format cannot do justice. Cantwell relies on the Court's memory of the experience for this reason, but will cite video exhibits, and insert one photograph where the weapons are seen.

Ms. Romero and Mr. Willis are featured in Exhibit CCEX140A with a woman illegally open carrying a firearm at University of Virginia, and a man carrying pepper spray in his right hand with the black glove.

But, when questioned about it…

22 N. Romero – Direct

Q Did you see anyone with you, that was with you that evening, that had weapons, mace, or any objects to throw?

A That was with me? Uh-uh. No.

- Plaintiffs' Exhibit 3207, the video Ms. Sines took before and during the car crash.
- Plaintiffs' Exhibit 0313
- Plaintiffs' Exhibit 1360
- Plaintiffs' Exhibit 0297

Those videos (and others) capture the Leftist mob before it was hit by Mr. Fields's car. This mob was walking down the street chanting "Antifascista!" with weapons. But the Plaintiffs' all described the mob as peaceful and unarmed, at least, until they were shown the weapons in the video, at which point they simply denied knowing about it at the time. But a gang of armed criminals violating a dispersal order and attacking vehicles with weapons does not a peaceful joyous crowd make.

Nearly all Plaintiffs likewise denied hearing the "Antifascista!" chant. Even Ms. Sines, who was recording the video as the chant was loudly going on all around her.

In the case of Ms. Sines, she denied seeing weapons, masks, and protective gear that she recorded all around her, even as the video was played before her eyes in open Court. She denied hearing the "Antifascista!" chant which she recorded herself, and which no reasonable person can believe she or the people in her company missed, due to its overwhelming volume, and the great number of people in the crowd chanting it.

But despite this roaring war cry, every Plaintiff in the mob who was asked, denied hearing it, and denied having any knowledge of Antifa being present.

The black Antifa flag was also prominently featured in Plaintiffs' Exhibit 0291 (Red arrow added for purposes of this document to identify the flag)

And, tellingly, Plaintiffs' financiers at "Integrity First for America" conspicuously excluded this exhibit from their publicly searchable database of evidence, when they went to brag about their supposed victory in this case.

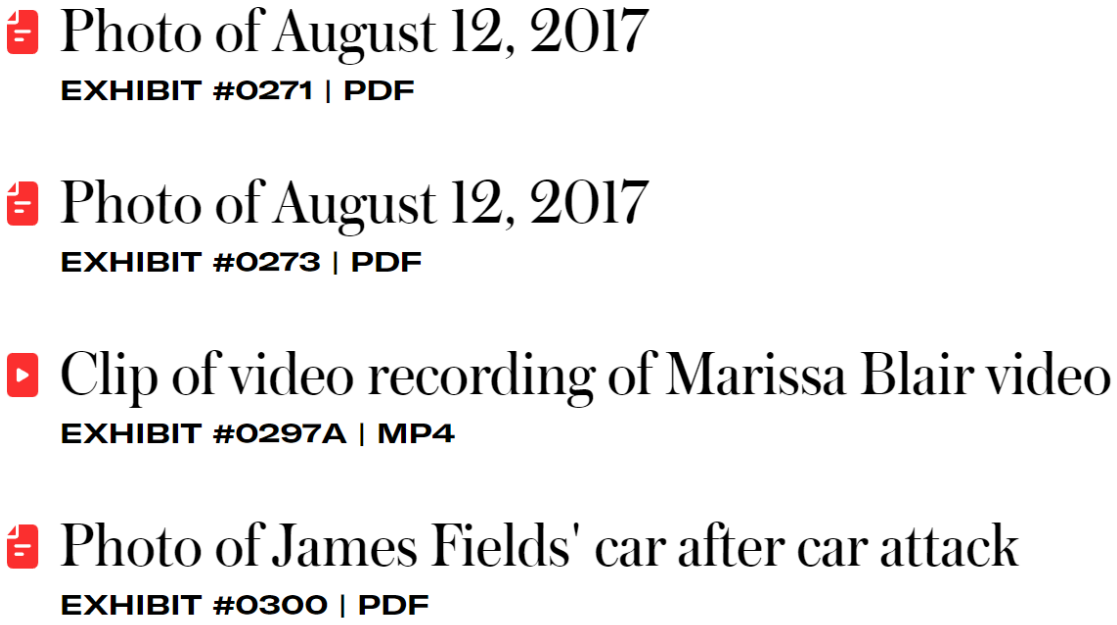

Figure 1https://www.integrityfirstforamerica.org/exhibits?

Exhibit #0297A is a video of the car crash, so Plaintiffs can spare us the line about traumatizing people by publishing the truth.

This is consciousness of guilt.

Seth Wispelwey's testimony was so dishonest, that the jury refused to pay him for it. So, as amusing as it may be, we won't spend much time on his perjury. But, he too denied knowing anything about Antifa, even when confronted with his Tweets that said "Jesus is Antifa" and his blog post in Slate (CCEX52) where he stated that "battalions" of Antifa came ready to brawl with their "community defense tools".

These are only the most obvious examples of the Plaintiffs attempting to deceive the Court, the jury, and the public. Less obvious ones include Devin Willis denying that he knows Emily Gorcenski, then referring to Gorcenski, who is transgender, as "they" in the singular form (so as to avoid gendered language).

Q Did you hear somebody say, "there's a fucking lot of them"?

A I don't remember that.

Q You don't remember that.

Okay. Do you know who Emily Gorcenski is?

A I don't. I've heard of her name, but I don't know who she is, or who they are.

Q Who they are?

A I'm just sensitive to people's pronouns.

Q I understand. So first you said you don't know who she is, and then you said you don't know who they are, right?

A Well, on the off-chance I had misgendered her, I wanted to correct that.

Q Do you know what Gorcenski's gender is?

A I don't.

Q You don't know if Gorcenski is transgender?

A I do not.

Emily is a common enough female name to make a female inference, and the rest of Willis's testimony shows he has no problem using "he" and "she" to refer to human beings. Willis knows exactly who Gorcenski is, and that he lied about it shows consciousness of guilt.

Willis, Romero, and Baker (at least) all denied knowing who told them about the events in dispute. Willis also resisted giving up the names of the people he was with on August 11th, and denied knowing any identifying characteristics about two of them even after the Court told him he had to give up the names. He is covering for his co-conspirators, and his detected lies should undermine the credibility of those not detected.

Romero displayed her dishonesty as described earlier when she, in the moment, began then recanted an accusation against Cantwell for assaulting her. Her answers were so evasive that the Court had to intervene repeatedly.

This section could go on forever, but in the interests of time, Cantwell will let these examples serve to refresh the Court's own memory. The testimony of the Plaintiffs was broadly dishonest and evasive and contradicted by audio video evidence. This Court is obligated not to carry out injustice through force of law. If the Court does not dismiss the claims outright, it should order a new trial on all counts due to incredible witness testimony to avoid being party to this dishonesty.

9. Damages Are Excessive

Failing dismissal or new trial, the Court should reduce the damages awarded.

Cantwell's co-defendants have sufficiently argued certain parts of this, and Cantwell joins those arguments to the extent they are not inconsistent with his own. In particular that Virginia law limits punitive awards to $350,000 per action, not per Plaintiff, that nothing about this case would allow this Court to flout that law, and that a punitive to compensatory ratio of 500,000 to 1 is unconstitutional.

Specifically to Cantwell, he is unable to pay any of this. He was driven into poverty by Plaintiffs' calumny before his arrest in January of 2020, causing his lawyers to move to withdraw as counsel twice. His financial situation has not improved while he spent the last three years in prison. It is not likely to improve in the near future, and it is certain not to improve if Kaplan carries through on her repeated public vows to use this case to haunt Defendants for the rest of their lives. Cantwell has submitted an IFP application with the court, along with numerous sworn declarations stating that he is indigent. Cantwell cannot pay his persecutors anything, much less anything resembling the verdict. The Court knows this, and commits a profound injustice with every cent awarded to the Plaintiffs from Cantwell.

In addition, Cantwell reiterates his arguments above that without a finding on Counts 1 and 2, the Court cannot conclude that the Plaintiffs were found liable for racially motivated violence on Counts 3 and 4. The Jury's instructions on Counts 3 and 4 allowed them to find liability for racially motivated harassment. The Jury asked if "words are a form of violence" before concluding their deliberations, indicating there was discussion of finding the Defendants liable for Counts 1 and 2 on words alone, but could not come to agreement on that absurd premise. The Plaintiffs' racially inflammatory case and prejudicial witnesses caused the racially stacked Jury to attach liability to the Defendants for their words.

If the Court does not dismiss the claims or order a new trial, it should at least find some amount that more soberly the assesses the penalty for Defendants' thoughtcrime.

10. Plaintiffs Should Not Be Allowed To Collect Attorney Fees or Costs For A Case They Failed To Prove

Plaintiffs spent years slandering Defendants in the press and wasting millions of donor dollars to prove a violation of federal civil rights laws prohibiting racially motivated violent conspiracy. Their failure to prove that case is reflected in the deadlock on Counts 1 and 2.

Their hate speech reparations consolation prize on the remaining counts does not entitle them to now obtain duplicates of those fraudulently obtained, and subsequently wasted donor dollars, from the Defendants.

If the Plaintiffs' financiers had told the public they were suing the Defendants for harassment, they would not have raised the millions they did, they would not have spent those millions, and they would not now be trying to recover them, because the trial would never have happened. Since the Jury did not find a racially motivated violent conspiracy on Counts 1 and 2, it is nonsense to suggest they found one on Counts 3 and 4, for reasons already explained above.

If the Court lets this verdict stand, and insists on trying to compel the Defendants to pay for this matter, it should at least make sure Defendants are not made to pay attorneys fees for a case the Plaintiffs failed to prove.

Cantwell leaves the question of amount to those better trained than he. In any case, Cantwell cannot pay a penny of it for reasons stated above, and the Court commits a profound injustice against Cantwell specifically, with every penny awarded.

Respectfully Submitted,

Christopher Cantwell - December 25th 2022