

Massachusetts Trial Court
District Court Department
Central Berkshire (Pittsfield) Department
12 27 RO 235

Meredith Nilan v. Dan Valenti

AFFIDAVIT OF DAN VALENTI

JULY 5, 2012

I, DAN VALENTI, testify under pains of perjury that all of the following statements are, to the best of my knowledge and recollection, either true or believed to be true; all of the following statements of belief are believed to be true; and that all of the following statements of law are beliefs that I believe to be true.

I am filing this response to an application filed by Meredith Nilan on June 22, 2012 and the subsequent granting of a temporary harassment order against me and my website, planetvalenti.com for my reporting and commentary in a case involving Meredith Nilan and her hitting Peter Moore while she drove an SUV.

I - How I Got Involved in the Story

On Dec. 8, 2011, Ms. Nilan drove an SUV into pedestrian Peter Moore, nearly killing him, in an incident that happened on Winesap Avenue in Pittsfield, Mass. According to police, she crossed lanes and struck Moore, who was out walking his dog. About a week later, I received an e-mail from a source asking me if I knew anything about it. To that point, I hadn't heard.

It struck me odd that there should be a serious incident like this and no news on it. My website doesn't cover the police beat per se, and we usually get involved on stories like this after the fact. Consequently, I did no investigations into the report.

Sometime later, to the best of my recollection, another source with direct knowledge of what happened contacted me, giving me information that confirmed and went beyond what my original source said. Subsequent revelations including informal contact with media colleagues and a police source also confirmed what had happened. These reports alleged many of the same facts.

My first story, which Ms. Nilan dates as Jan. 13, 2012, came more than a month after the incident involving Ms. Nilan and Mr. Moore. This clearly demonstrates that I had no other overriding or ulterior interest in the story other than its value as an unreported news piece that would be of interest to the community at large. Prior to this, I didn't know there was a Meredith Nilan.

To this date, I have never met her, talked with her, been near her, contacted or attempted to contact her, or spoken to Meredith Nilan, let alone "harass" her.

I had learned that on the evening of the incident involving Mr. Moore, Ms. Nilan had previously attended a "networking social" party put on by the Berkshire Chamber of Commerce for its Berkshire Young Professionals (BYP). Those who are familiar with the BYP's networking socials said, as a matter of routine, there was heavy drinking at them, when they were held at a restaurant or where alcohol was being served. This particular gathering was in Allium's restaurant in Great Barrington, Mass. This party was

characterized to me as one that combined the "networking social" of BYP and Christmas. Again, this information came to me without me trying to get it.

As I began to accumulate a body of credible knowledge of the case, among my concerns was the total news blackout on what is typically an incident covered by and reported by the mainstream media, particularly the police beat reporter of the local daily newspaper, *The Berkshire Eagle*. I noted the fact that Ms. Nilan's father, Clifford, served as head of probation in the Pittsfield court house. He is a man who serves locally in Pittsfield and has served on prominent political boards and occupied fiduciary roles on behalf of the public. He has political prominence.

I approach the story neutrally, as I do with all stories, with the simple determination to go where the facts took me. My goal was to bring the story of a man run down and nearly killed by a driver who left the scene prior to police arriving – a story for more than a month hidden and oddly left in the dark – out in the open, as best I could, in a factual manner. I would let the facts speak for themselves, and I would engage in suitable and reasonable commentary based on what the facts of the case were saying to me, using common sense, inductive and deductive logic, analysis, and reasonable surmise.

II – My Professional Background

It is important for the court to understand my background. I'm not "just a half-cocked blogger" without standing as a writer or journalist. I am not capriciously writing for the purpose of what Ms. Nilan calls a "malicious attack" on her reputation. I

am a professional journalist, writer, author, broadcaster, commentator, and educator, and in the case in question, I was tracking down an important story that justice demanded of me.

I would like the court to know the outline of my career, so that I may establish the point, namely, that I brought all of my professional skills to this story, as I would do, have done, and continue to do, on any topic that draws my interest. My background includes:

- Master's degree (M.A.) in journalism, S.I. Newhouse School of Public Communications, Syracuse University (1975), one of the top journalism schools in the country.
- Worked for and/or written for numerous newspapers, including the Syracuse, N.Y., *Post-Standard*, the Pennsylvania *Times Leader*, the *Berkshire Eagle*, and the *Pittsfield Gazette*. My work has been published in many newspapers and magazines across the country, including the *SF Chronicle*, the Boston papers, and many others. I broadcast on the radio for two years in the mid-80s at WUPE and WUHN (Pittsfield, Mass.), then 14 years (1992-2006) at WBRK and WRCZ (Pittsfield).
- I've written and edited numerous books, 18 I think, from major publishers such as Viking Penguin and Bantam to small literary presses. My work has been reviewed in many publications, including the *New York Times Book Review*.
- I've been a member of the English Department faculty at Berkshire Community College for 20 years (1992-2012), where I teach composition and writing. BCC honored for my service in May of this year at a recognition dinner at Wahconah Country Club in Dalton, Mass. I also taught for two years

at LeMoyne College, Syracuse, N.Y., teaching expository writing and communications.

- All told, I've written approximately four million published words. I have hosted (mostly) and guested on radio (mostly) and TV about 4,000 times, including 3,000 editions of my talk show in WBRK. I have taught the equivalent of 4,000 college classes (90 courses).
- I have been a member of the Society of Professional Journalists, the National Education Association, the Massachusetts Teachers Association, and other such group.[§]_^
- My work has received numerous awards and honors.

In short, I have a stellar reputation as a writer and broadcaster, who applies the highest professional standards to his work. Ms. Nilan's affidavit of June 22 involves an irresponsible attack on a lifetime of professional achievement. In Part IV of this affidavit, I shall be refuting specific statements in her Affidavit of June 22, 2012, in a point-by-point fashion.

III - About Planet Valenti

I began my website, Planet Valenti, on Sept. 29, 2010. I did it for several reasons, including to practice my craft in an exciting new medium, to see if I could wed my skills as a writer and journalist the "wild, wild west" of cyberspace. I made three important determinations: to try to develop daily content, to keep the site non-commercial, and to allow reader comments and feedback.

As to the first, I wanted to create a daily habit among readers, who would go to my website on a regular basis. This was

important, since I did no traditional advertising. I would start it from scratch and rely on word-of-mouth from satisfied and interested readers. The second decision, to keep the site non-commercial, was done to keep the site as independent as possible. As to the third, it was to practice one of my core beliefs, namely, in the importance of "the free marketplace of ideas." I wanted to encourage reader feedback.

The argument against opening the site to comments is that such sites in cyberspace tend to degenerate into the cesspool, as anonymous comments often do, an example of which is (was) Topix, which locally permitted the most outrageous, scurrilous, malignant, and irrelevant comments to stories. Nonetheless, with direct control and diligent monitoring, I felt confident that I could allow as full a range of commentary while keeping the comments section of Planet Valenti to a high standard.

It's a constant battle to keep the irresponsible commentators in check while allowing free reign to public commentary and opinion, but it was a battle that I judged to be important: To let people have their say. I regularly police and trash comments that, in my judgment, are over the top or inappropriate, and we did so with numerous comments on the Nilan-Moore case. We have repeatedly advised our readers to keep commentary on target, and not just on this story. Our barometer for a comment is: "Does this comment move the story forward?" Thus, even in the most unpredictable element of writing in cyberspace, I have insisted on the highest standards and applied them as best as I can within the balancing act of allowing free and robust opinion. It's not an easy thing to do but worth it, since my readers have provided the ideas for future stories and actions.

I think of Planet Valenti as "The Voice of the Little Guy." The purpose is to help people connect with their community by giving them information, news, analysis, commentary, opinion, and the like that they would not otherwise get. I want Planet Valenti to be, and I have worked hard to make it, a force of positive change for the community (Berkshire County, with a focus on the county seat, Pittsfield). I want to introduce alternatives to traditional media and provide more competition for them, with the purpose of making them better and more responsive in their coverage.

Since I make no money off my site, I maintain it as a public service. I have published approximately 530 stories in 635 days (to date, roughly). I treat this as if it was a daily "newspaper."

The role of THE PLANET, as I refer to the site – which is, among other things, to give voice to the voiceless – can be illustrated in the Nilan-Moore Case. I let the story of the victim, Peter Moore, be heard. Jonathan Levine, publisher of *The Pittsfield Gazette*, wrote in an editorial (June 28, 2012) commenting on what he called the "shocking" ruling of Judge Bethzaida Sanabria-Vega:

"Valenti has never met or spoken with Nilan. Rather, he has forcefully chronicled the attempted cover-up of her late-night driving into and then ignoring Peter Moore, who suffered multiple injuries. Many residents, including Valenti, have speculated that Nilan received special treatment through the efforts of her father, Cliff, who is probation department chief. It has certainly been an unorthodox case with the car being sanitized before police saw it followed by court shenanigans.

Valenti can be relentless and redundant. He is rarely delicate. But he also can be tenacious, as he has in questioning peculiarities in the case and by giving a voice to [Peter] Moore."

I take the most accomplishment in that last line: "... by giving a voice to [Peter] Moore." Otherwise, Mr. Moore had no one. The incident that almost took his life and that most reasonable analysis would show was being covered-up, would have remained hidden, in the dark, the way subsequent aspects of this case were apparently handled. When information came to me that showed what had happened and what was likely going on, I could not be silent, not just in the name of Mr. Moore and his family but also in the interests of the overall good of the community.

I did not start THE PLANET to play "Underdog." I started it to help out the community, to make it better and stronger by being more informed and thoughtful. From the get-go, this case has been nothing more, nothing less. There was not any attempt to "malicious[ly] attack ... my reputation," as Ms. Nilan wrongfully asserts in her affidavit.

PART IV – Point-by-Point Response and Refutation to Ms. Nilan's Affidavit

1. Ms. Nilan begins by writing: "Starting January 13, 2012, the Defendant began a regular and malicious attack on my reputation." – Incorrect. On that date, The Planet published a story on the case after we learned certain facts of the case. That is all we did.

2. She writes that this "attack" included but was not limited to "publishing on his website ... lies and innuendo regarding a traffic accident from December 2011." – Incorrect. I can't recall where else, if anywhere, that I publicly discussed this issue outside of my website. For instance, I made a few appearances on a local talk show on WBRK Radio hosted by Bill Sturgeon. At Bill's request, we did not mention this case whatsoever. Ms. Nilan makes the blanket statement of my alleged "lies" without mentioning a single specific example. What she calls "innuendo" I call fair comment based on and derived from what facts in the case I was able to learn and share with my readers.

3. She writes: "Additionally, he has contacted police, court officials, lawmakers, and my business associates asking them to weigh in on my case, and, as he wrote on his site, sharing with them his own faulty and sensational interpretation of events surrounding it." – To the best of my knowledge, I did not directly contact in a substantive manner such people that Ms. Nilan claims. I therefore could not have shared my "interpretation" with them (police, court officials, lawmakers, her work mates). As I have stated previously, the story largely came to me. To the best of my recollection, I did directly contact two people: (a) Mr. Alfred "Alf" Barbalunga, chairman of the Pittsfield school committee and probation officer of Southern Berkshire District Court, who was pictured in a photograph taken with Ms. Nilan on the evening of Dec. 8 at the BYP party at Allium's restaurant, and (b) Ms. Ashley Sulock, PR director for the Berkshire Chamber of Commerce.

4. Ms. Nilan writes of me: "He has urged his readers to express their outrage on his pages" – Incorrect. I invited readers to share their view of the case, who and which, incidentally, overwhelmingly expressed outrage. This was THEIR outrage, not the invention of THE PLANET or some kind of magic, Svengali-like sway I have over my readers. The public opinion we have seen, read, or heard expressed elsewhere has, too, expressed outrage at Ms. Nilan's actions and behavior in this case and sympathy for Peter Moore and his family. For the record, I published several comments to THE PLANET taking Ms. Nilan's side. I state the facts, share my analysis, and invite comments from my readers. Period. In general, of course I welcome and encourage fair comment of my readers to stories. To claim, as Ms. Nilan does, that because I allegedly "urged readers to express their outrage" they would blindly do that is an insult to the readers of my blog and to the general public at large, which is far more perceptive and free-minded than Ms. Nilan gives them credit for being.

5. Ms. Nilan claims that I have "printed anonymous rants that include lies and threats against me, which he often writes in agreement with." –Incorrect. I have printed people's opinions about the case. As for "threats," we redacted or trashed numerous over-the-top comments before they could be published. We tried our best not to allow comments that we judged were of the kind to which Ms. Nilan refers. Sometimes I will offer a reaction to a reader's point, either to agree or disagree, but I would argue, that is

precisely the point of communication and participating in the free marketplace of ideas.

6. She writes: "He repeatedly said I committed a hit and run and 'left a man to die' when that case was unresolved; it has since been adjudicated and the charge dismissed, and he continues to make the allegation of guilt." Incorrect. I reported factual statements and reasonable fair comment on her actions on and subsequent to Dec. 8, 2011.

7. Ms. Nilan writes in her Affidavit: "He has printed photos taken without my permission from the inside of my garage, as well as pictures of my neighborhood and of me." – Incorrect and deliberately misleading. I "printed" no photos. "Printed" implies I made prints, for what purpose I don't know. Here's what I did: I published photos of her damaged vehicle that were sent to me by Mr. Thomas Moore of Hernando, Fla., father of Peter Moore and retired captain of the Hartford Police Department. The photos were subsequently published by other news outlets and depicted the vehicle in question (the SUV Ms. Nilan was driving when she struck and nearly killed Peter Moore).

I couldn't tell the location of the damaged SUV, whether it was on the Nilan property or not. The photos clearly show heavy front-end damage and a head-sized hole in the windshield near the driver's position – damage that would be consistent with hitting a human being. The demands of this story, including the best factual reporting possible, required, as a news site, that we publish these photos. It

has never been asserted by Ms. Nilan or anyone else that the photos of the vehicle depicted anything other than the vehicle she was driving on the evening of Dec. 8, 2011, when she hit Peter Moore.

8. Ms. Nilan writes in her Affidavit: "Mr. Valenti's continued vitriol and his repeated inclination to print lies and sensationalize every aspect of my case has made me fear for my personal safety." – Incorrect. My coverage was vitriolic in my commentary, where I concluded an injustice had been done to Mr. Moore on a number of levels, if we take "vitriolic" to mean "trenchant and harsh." As for her assertion about THE PLANET's "repeated inclination to print lies," again, this is an overgeneralized, blanket statement with no specifics to back it up. The specifics aren't there because I told no lies nor did I try to fabricate factual claims to deliberately deceive readers.

9. Ms. Nilan writes: "His site has published details of where I work and live" –Incorrect. I reported where she works (Berkshire Bank) and where she lives, as have other media. I mentioned the name of the bank and gave her address on Winesap Avenue, strictly as routine, factual items. I have not published "details" of these, since I have no details of these. I have never been near her home on Winesap Avenue. I haven't been in Berkshire Bank at 66 West Street where she works in years.

10. Ms. Nilan mentions that some readers suggested that she "be fired or that they boycott my work or march en masse on my street." – Again, these are readers' opinions,

a couple among many. There were only a handful of suggestions like this, and they reflect the sense of outrage in the community based on the reasonable perception that her case received favorable treatment owing to her father. I did not encourage or discourage anyone's opinions. I shared the facts of the case, shared my own views, and left it up to readers.

11. Ms. Nilan mentions, "He used his website to help organize a benefit, attended by hundreds, that represented me as a drunk driver who ran a man down and left him to die - all false." - Incorrect. Yes, I used my website to help organize a benefit that was held to benefit Peter Moore, the true victim in this case. Peter Moore was nearly killed by what Ms. Nilan pleaded guilty to in court: "negligent" driving. He will be dealing with the physical, emotional, and mental aftermath of this trauma for a long time, maybe for the rest of his life. The benefit in question actually came about as a suggestion on my website from a reader, in one of the comments. People responded to it with little prompting from me, and they expressed eagerness to join in such a benefit for the Moores.

A local organizer and promoter, Mr. Andy Poncherello, stepped forward, to manage and direct the benefit, and Chameleon's nightclub on East Street in Pittsfield agreed to serve as venue. The benefit was held, it was well-attended, with proceeds going to help Mr. Moore. More importantly, the benefit allowed the chance for the good people of Pittsfield and Berkshire County to step forward to present to the Moores a compassionate, caring side of

the community, a contrast to the taste of the city that the Moores received from the actions of the Nilan family. That benefit was a success because of the caring and compassion of so many good, decent, law abiding citizens of the area.

They needed no help from me, but I was sure to give it to them. I publicized the benefit on my site and contributed donations to be used to raise money. Ms. Nilan makes it sound criminal to want to help her victim. I am proud that I did. I am proud of all those in the community who stepped forward to help Mr. Moore. It was, from the testimony of those who attended, a healing event for the community, a community upset over this case and the official handling of it.

I also supported Mr. Ken Ramsdell, who organized a dog walk to honor Toby, the dog Peter Moore was walking on the night Ms. Nilan struck him with her SUV. On a cold, dark night, Ms. Nilan drove away from the scene without confirming she had struck a human being, which she did. Toby Moore stayed with his unconscious master so long that his fur froze to his master's blood. I did not attend either benefit, and have no knowledge of anyone characterizing Ms. Nilan in any way, including "as a drunk driver."

12. Ms. Nilan writes: "The fact that he has printed my likeness, several times, also makes me afraid to go public; I am under constant emotional distress because of his vicious lies." – Incorrect. I printed her likeness, as have other media outlets, because she was the key player in a

prominent news story and not to cause her distress. Once again, Ms. Nilan refers to "vicious lies" without any exemplification, specifics, examples, or illustrations. She claims all my lies as a blanket statement without pointing to any of them. This is because there are none.

13. Ms. Nilan writes: "His repeated claim that 'the fix['] was in on~~ly~~ my case make [sic] me fear vigilante justice." – The claim that "the fix" was in on her case was a supposition based on her actions, and the actions and position of her father. It was never made on THE PLANET as a statement of fact, to the best of my knowledge. Moreover, a writer, reporter, commentator, and journalist – all roles I serve on THE PLANET – cannot be held responsible for the subjective feelings or fears of the readers of his or her coverage.

14. Ms. Nilan writes, "He himself once wrote that my actions – and he lied about what these were – made one wish that there was a place where people could be 'put down' – Again, she refers to lies without being specific, and brings up a phrase that was clearly meant to be figurative.

15. Ms. Nilan writes: "I fear for my safety from these constant actions that I feel represent cyberbullying and harassment." – I cannot call this statement incorrect because I have no way of knowing first hand or being responsible for her "fear" and "feel[ings]." My coverage of her story was regular not "constant." It was, in fact, intermittent, with reportage and commentary only when the story warranted.

16. Finally, Ms. Nilan concludes her statement: "I recently received death threats which I believe are related to Mr. Valenti's words and this has heightened my stress level." – Again, I can't call this incorrect, because only Ms. Nilan knows what she believes. She is apparently referring here to phone threats made by a man who lives in Las Vegas, Nev. I know nothing of this man beyond what has been reported in the local media. She may "believe" this man's alleged actions are "related" to my "words," but there is no evidence to support this belief, and I would strongly disagree with that interpretation. There is, in my view, no causal relationship whatsoever between this or any threats to Ms. Nilan, real or imagined, and my coverage of Ms. Nilan's case. To the best of my knowledge, no threats were made to her on my site. I did, in fact, trash such comments as I received them, taking care as best I could to prevent such posts. I must add, however, that as a percentage of the total reader commentary on this case – which was largely substantive and that move the story and discussion forward – such threatening posts were a tiny part of public commentary. I would also loudly condemn any threats made to her as a result of her involvement in this case with Peter Moore.

PART V – Final Thoughts.

I would like to conclude by saying that Ms. Nilan's actions against me in this application for a restraining order are unjustified. These ~~se~~ claims recklessly attempt to damage and call

into question my professional reputation on a story where I have worked hard to report honestly, fairly, diligently, and justly. The prior restraint has caused me not to add further commentary on my website, Planet Valenti, including this case. This ruling as I understand it prevents me from publishing new articles in any way mentioning her. The judge's order required me to pull content from my website, material already published, as if the Nilan-Moore case didn't happen. The judge's actions in allowing a temporary restraining order violate my First Amendment rights under freedom of speech as a citizen and freedom of the press as a journalist. I respectfully ask the court to drop this restraint order and restore my constitutional rights as a citizen of the United States of America and as a writer.

Dan Valenti July 5, 2012