



Lakota People's LAW PROJECT

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On Tuesday, February 12th, 2019, famed Atlanta, Georgia Libel & Defamation Attorney L. Lin Wood, who has declared that [“the pendulum has swung too far in favor of the First Amendment.”](#) announced that he had been hired by Attorney Todd McMurty of Covington, Kentucky—[the lawyer who has volunteered to act as legal counsel for the family of Nick Sandmann](#). Wood also [announced](#) that his firm would be filing a civil lawsuit against Nathan Phillips, the Omaha Nation elder who was subjected to “war whoops” and “tomahawk chops” at the foot of the Lincoln Memorial at the conclusion of The Indigenous Peoples March in Washington, D.C. on Jan. 18 after Phillips stepped between a group of five insult-hurling members of the Black Hebrew Israelite cult and at least 100 teenage boys, most from the Covington Catholic High School (CovCath) in Kentucky. On the weekend before Martin Luther King Day, these boys were captured on video shouting and appropriating the Indigenous Maori Haka dance and war chant, which they have stated was intended to counter insults coming from the cult members. Nathan Phillips has consistently stated that his choice to bring a drum and song between the two groups was an attempt to keep them separate and to bring calm to the situation.

In response to several videos of this incident that went viral and generated a surge of comments by a range of public people criticizing the conduct of the Covington youth, the Kentucky law firm of Dressman, Benzinger & Lavelle retained a small investigation firm by the name of Greater Cincinnati Investigation, Inc. to conduct a [“third party investigation”](#) of the incident on behalf of Covington Catholic High School and the Covington Diocese. On Monday, February 11th, this private investigative firm publicly released [its report](#), widely described as “exonerating” the CovCath boys from meaningful misconduct. However, a closer reading of the four-page report reveals numerous flaws and weak points. These are as follows:

1. This report is by no means an independent or objective investigation. It is, in fact, a self-serving report prepared at the behest of a law firm representing Covington Catholic High School and the Diocese of

Covington, both of which have been publicly [named](#) by Attorney L. Lin Wood as potential defendants in a multi-million dollar civil lawsuit for “defamation.” The law firm retained by these two entities surely understands the interests of the clients who hired them. And the investigative firm from the hometown of the Sandmann family’s private attorney surely understands what is expected of them. The wording of this report clearly reflects, from our legally-informed point of view, a catering to the interests of the clients of the law firm that hired the investigators.

2. For example, in several instances in the report, the investigative firm attempts to give the impression that the “facts” exonerated the Covington Catholic High School teens, whereas, in reality, all that the report actually finds is that: “We found no evidence” of problematic behaviors in the media it chose to examine, i.e. that the CovCath students were “making offensive or racist statements”; chanted “Build The Wall”; or that there was a policy on the part of Covington Catholic High School prohibiting the wearing of political apparel like the “Make America Great Again” hats sold and distributed by Donald Trump’s Presidential campaign.

3. A key piece of context from an Indigenous perspective completely missing from the report is that Trump regularly makes racist comments about Native Americans, even going so far as to [joke about genocidal acts against First Nations people](#). The wearing of MAGA hats has taken on a whole new meaning, especially for Native Americans. And the lack of this firm’s finding of evidence against the students completely ignores the teenage boys chanting of mock “war whoops” at Nathan Phillips. Meanwhile, the report simply dismisses the boys’ tomahawk chop in the vicinity of Mr. Phillips as an attempt to be “joining in Mr. Phillips’ chant”—ignoring the fact that this action on their part would naturally be taken by a Native person as a mockery of his culture and, therefore, his person. This demonstrates a total ignorance of — or, more likely, a willful refusal to acknowledge — the racist connotations of this action on the part of the Kentucky hometown investigative firm.

4. Additionally, the report completely skips over all of the conduct of Nick Sandmann—notably his own clearly visible tomahawk chop in the vicinity of Nathan Phillips, standing among *several* other CovCath students similarly tomahawk chopping toward Mr. Phillips. This makes Mr. Sandmann’s statement, as reported by [“Today Show”](#) host Savannah Guthrie and presumably coached by the RunSwitch P.R. firm, that he saw no one performing tomahawk chops among the CovCath students demonstrably false. The report merely cites “Nick Sandmann’s Jan. 20 Statement” in lieu of a new, good faith effort to scrutinize all public statements by Nick Sandmann.

5. The report claims that Nick Sandmann’s official statement on January 20, 2019 “appears to accurately reflect the facts.” And yet a truly objective take on the facts would at least acknowledge that, arguably, Nick

Sandmann’s claim that his interaction with Nathan Phillips was only an attempt to “diffuse [sic] the situation” is suspect, at best. Nick’s claim is belied by his decision to smilingly stare down Nathan Phillips for an extended period of time only inches away from the elderly man. If we take the CovCath boys at their word where they say, according to the investigative report, that “none of the students felt threatened by Phillips”—and we don’t see any reason not to—it’s untenable that Nick would have experienced a need to defuse anything with a staredown directed at an elderly man. Nick prevaricated in his statement, written by the GOP-affiliated P.R. firm RunSwitch, founded and run by [rightwing protege of Karl Rove](#), Scott Jennings. Our analysis is that Nick’s act toward Nathan Phillips was a micro-aggression enacted by a young, white male surrounded by nearly 100 other white, young males toward an aged Native American man.

6. The report states that “few, if any, of the students were wearing MAGA hats when they left Covington Catholic to head to Washington, D.C. Most students reportedly purchased the hats (in Washington, D.C.)” This is an example of a potentially biased effort on the part of the investigative firm to give the dubious impression that virtually none students were wearing these MAGA hats before their arrival in Washington, D.C. The report completely omitted how many students continued to wear the hats at the Lincoln Memorial, directly in the presence of chaperones and of Mr. Phillips.

7. While the report acknowledges that one young man in the midst of the CovCath students did, in fact, shout: “It’s not rape if you enjoy it,” the report merely declares: “Our investigation concludes that the individual who made this comment was not a student at Covington Catholic.” The only evidence supporting this given is: “viewing longer videos of this comment reveals that another person in the crowd states: ‘He does not go to CovCath,’ almost immediately after the comment was made.”

8. It is notable that any attempts made by the investigators to get a Native, first-hand perspective from Mr. Phillips were half-hearted, at best. Indeed, not a single person affiliated with Mr. Phillips or the Indigenous People’s March (IPM) was consulted as part of the investigation. The report, meanwhile, states that the investigators attempted to find Mr. Phillips at his home in Michigan but gave up after six hours. Nevermind that Mr. Phillips has been accessible through the Lakota People’s Law Project (LPLP) for the majority of the time since the incident—as indicated by the numerous interviews Mr. Phillips has conducted that were organized by LPLP. Neither LPLP nor IPM were contacted for comment nor for assistance in tracking down Mr. Phillips.

9. The report takes pains to point out that no video footage has surfaced showing the students chanting “Build The Wall.” But there is footage of young men who look very much like CovCath students, wearing MAGA hats, near in time and place to the incident with Nathan Phillips harassing two girls walking by, yelling “Build The Wall!” About this footage, the report states simply: “We cannot confirm that the students in the

video are students at Covington Catholic. It is also not totally clear what was said in the video.” [Numerous media reports quote the girl herself](#) who shot the video as asserting that “Build The Wall” is what the students yelled at her. Moreover, why were “professional, objective investigators” not able to show these videos to any of the 43 CovCath students or any of 13 Covington chaperones to ascertain whether the boys shouting these insults to these girls were, or were not, CovCath students? It seems that the standard that these investigators employed was extremely low as to whether what the boys were shouting was racist or offensive. Unfortunately, these investigators simply chose to claim that “we cannot confirm” that the assertions made against these boys are true.” Taken together, none of this serves as any kind of legitimate exoneration of the students.