



CHAPTER 3

Criminal Injustice and Demonizing Indian Students

The American Indian Student

Lake Matchimanitou High School's finest American Indian students in some time were Niko Roberts and his friends Tahsanchat George, Ben Wilson, and Anthony Mark, whom everyone in Eagletown called Beercan because of his predilection for collecting bottles and cans for the Michigan bottle deposit. In their senior year in high school, they had been the exception to the rule at Lake Matchimanitou High—American Indian students in line to graduate. Only perhaps a quarter of Indian students that started kindergarten in the school district would make it all the way through to graduate on time. And Niko's group was even more exceptional because all of them (with the exception of Beercan) were on the honor roll with a 3.0 GPA or better. Tahsanchat had a four-oh grade point average.¹

Tahsanchat was an import of sorts from the west coast. Her mother was from Eagletown, but her father was from the west coast Yurok Tribe. She had grown up out there, but her father had died when she was in middle school. Her mother packed their things and moved back to Eagletown. She was a very pretty girl, from California to boot, and had transitioned to a new school very well. She played basketball and golf on the side, but was a very hard-working student. The summer she had moved back, right before ninth grade, Tahsanchat had taught Niko to play golf. Their grandmothers had grown up together and saw a good match. It was never to be a romantic relationship, but Niko and Tahsanchat became close friends. Niko joined the Lake Matchimanitou golf team in the fall of his freshman year, as did Tahsanchat. They were both the best players on their respective teams within a year or two.





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Ben and Beercan, who were close friends, had been Niko's acquaintances since they were all little kids. They had seen each other for years at school, powwows, camp meetings, everywhere, but Ben and Beercan weren't real close to Niko. They were a little rougher than Niko, who came from a family that had a little more history of success in education and business. Niko's Gramma Emma was a long-time tribal council member and who had pushed Niko hard throughout grade school to be a serious student and to stay out of trouble. Ben and Beercan hadn't had the same guidance, both from broken homes, but they were intelligent and laid-back fellows. Some would say they were too laid-back, granted the privilege of being known as "stoners" ever since middle school. Niko had never known either of them to smoke, drink, or take drugs, but he could never be sure. They laughed too loud in the school hallways and always seemed a little high in shop class. But they were above-average students, with Ben getting mostly As and Bs and Beercan perennially coming in with a 2.9 average, just outside the honor roll. And since the three guys and Tahsanchat appeared to be the only four American Indian students of their class year to be in line to graduate by the mid-point of their senior year, they had bonded even more. They were survivors.

"How many 'Nishnaabes do you think dropped out over the years?" Niko asked Ben and Beercan over lunch on a fine fall day in early October. Niko, Ben, and Beercan sat together during lunch period, along with the three other non-white guys they knew in Lake Matchimanitou, Ruben Reina, the lone Latino kid, and Charles Dickson, the lone African-American kid. As was their custom, four of the guys would combine their spare change into a few bucks to give to Beercan or Ben on one silly condition—that he would mix together a concoction of their lunch leftovers (ketchup, mustard, French fries, hamburger bun, pizza sauce, onion, cookie crumbs, orange juice, and so on) into a soupy mess and take a bite. Ben and Beercan relished the chance to make fools of themselves for a couple bucks in odd change. That day it was Beercan who took the challenge.

"I don't even know anymore," Ben said. "What a depressing question. I think Johnny will graduate, assuming he doesn't fail practical math. He went to summer school last year, you know. He really wants to graduate."

Beercan, who had made a mess of his plate, took a bite of their leftovers to the collective gasp of the group. But Niko and Ben didn't even notice.

"Think of all the Indian guys in juvie right now," Niko said. "Al, Mark, Stevie, David, Rick, the other Rick. They'd be a helluva basketball team if they could keep in school. Didn't Al used to start on the ninth grade team, way back when?"

Charles had played on that team. "Yeah. He was good, but the coaches





were always benching him and making him run laps. What happened to him? He just sorta disappeared.”

Beercan was Al’s cousin. “Well, it started when he beat up some white kid on the football team. I don’t remember the other kid’s name. I think he moved away. What I heard is that the other kid called Al a timber nigger, whatever that is. I think they might have been fighting over a girl.”

“So the white kid is jealous over Al’s girlfriend, calls Al a racial epithet, and now Al’s in juvie,” Niko said, recalling the story from three years earlier.

“Well, to be fair, Al was pretty violent,” Beercan said. “It wasn’t just that. He got into lots of fights after that. I think he’s in juvie this time because he stole a car or something. He’s supposed to be getting out next month but I doubt he’ll come back to school.”

“The white kid went unpunished, of course,” Ben added.

Charles said, “That doesn’t seem fair.” Charles had quit the basketball team after ninth grade because of the nigger jokes and drunken Indian jokes he kept hearing in the locker room. He was the only African-American kid in his grade, one of only six black kids in the entire high school, and the basketball coaches kept nagging him about rejoining the team.

Al’s was a familiar story. They had all knew how the school’s vice principal, Jim Niles, who was in charge of disciplining students, had an arrangement with the city police department. If a serious fight broke out on the school’s campus, the “Veep” would bring the students in and interrogate them. He apparently fancied himself a serious crimes investigator and knew exactly where he stood in the criminal justice system. His interrogations were quick and always ended with a student signing one of his famous “affidavits,” where the student would admit to starting fights and breaking both school regulations and state criminal laws. The Veep wouldn’t let the student leave the room until he signed the confession, always drafted and then notarized by the Veep himself. Once the affidavit was signed and notarized, the Veep called the police. Once the police arrived and had the confession in hand, they’d almost never conduct their own investigation. The cops would arrest the kid on the strength of the confession and, before the kid knew it, he had a criminal record.²

It was a badly kept secret that almost all, if not all, of the kids that the Veep brought into his interrogation room to sign affidavits were Indian kids. Everyone in the school knew that if a white kid and an Indian kid got into a fight, the Indian kid would be forced into signing an affidavit and hauled away. The white kids would be suspended for a day for fighting, but the Veep never made them sign an affidavit or asked the police to investigate their actions.





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"I wonder how many of the Veep's affidavits Al signed before they expelled him from school," Ben said.

"Who knows?" Niko said. "Everyone who signs one gets kicked out sooner or later. Once you have a criminal record, even if it's just a misdemeanor for disrupting school, you're screwed forever. It just gets worse. You're automatically guilty if anything else happens because of your record."

"I bet about twenty Indian kids started with us in kindergarten," Beercan said. "I'll have to go back and look at our elementary school pictures. And now there's us three and Johnny. Plus, a couple girls I don't know real well."

"Melissa and Erica," Ben said.

"And Tahsanchat," Niko said. "But she didn't start with us in the beginning."

"So six out of twenty are going to graduate," Beercan mused. "Assuming no one else gets in trouble or flunks out. Remember, Johnny's already been in trouble once."

"Jesus, don't jinx him!" Niko said.

They were silent. Only about a half-minute remained before the bell would ring and they would have to go off to their next classes.

Ruben broke the silence. "Is there any way to prove that the school is discriminating against Indian students? This is so frustrating. There's got to be a way to prove it."

It got Niko thinking.



The Lake Matchimanitou Band's representative to the school board that year was Tina Adderly. Niko had asked his gramma Emma to ask Tina for the school district's annual report, especially the discipline statistics. In the 1970s, because the school district started receiving federal funds under the Johnson-O'Malley Act,³ they began reporting statistics by breaking them down by race. The breakdown included separate categories for American Indians and other races, but the American Indian category was the only one that was statistically significant. In the 1970s, the statistics confirmed what everyone knew—that an education crisis had arrived at the school regarding American Indians and something needed to be done. Indian students usually began kindergarten comprising about twenty percent of the student body, but, by high school graduation time, they were less than two percent. In addition to the alarming dropout rates, American Indian students had the worst test scores and highest incidences of disciplinary action. Despite the influx of federal funds in the 1970s, gradually replaced by federal grants, tribal money, and, even later, tribal





gaming revenue sharing with local units of government, the statistics never improved. The negative statistics regarding American Indian students stopped being a call to action over the decades and instead became a self-fulfilling prophecy, from the point of view of the all-white school administration.

In fact, during the period of Vice Principal Niles' tenure beginning in the mid-1980s, the high school discipline rates had increased significantly. When Niko reviewed the statistics, he saw the amazing discrepancies of discipline rates between American Indian students and white students. Every year, about one-third of all of the American Indian students in middle and high school would be disciplined, whereas less than five percent of white students would be disciplined. Many of those Indian students would sign one of the Jim Niles' affidavits, which had become extremely popular with the school board and had spread to the middle school as well. Twelve-year-old Indian students in seventh and eighth grades were being hauled away by local police. In the last year, Niko's eleventh grade year, eleven percent of the American Indian students in Lake Matchimanitou junior and high schools had been arrested for crimes on the schools' campuses—a total of fourteen students. Only one white student had been arrested and Niko knew from personal knowledge that the charges against that student had been dropped.

Niko further saw how the absolute numbers of Indian students declined grade by grade as Indian students dropped out, or were expelled, or transferred to other school districts like Colonial Point, about twenty miles north. As he and his friends speculated, less than a third of students who started in the school district as five-year-old children made it through to become eighteen-year-old seniors in high school. The numbers in high school told a stark tale. The year before, there were nineteen American Indian freshmen, fifteen sophomores, nine juniors (including Niko and his friends), and only four seniors. Only one of the four seniors graduated. Niko knew that only seven of the nine from his class had bothered to come back for their senior year and speculated that some of them might drop out before graduating—and Niko's classmates counted as a banner year for American Indian graduation at Lake Matchimanitou high.

Emma Roberts, who sat as the liaison between the school board and the tribal council, began to discuss with the rest of the LMB tribal council the problem of the Lake Matchimanitou school district, but it was an old story with no realistic solutions. No one knew what to do about it, but it did begin the discussion about founding a separate Indian school someday. Emma reviewed the statistics with her grandson Niko and then took them to the tribal attorney Bryan Montana.

"Well, I've seen these stats before," he said. "They're not good. I guess we





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could make a claim that the stats prove there's a racially hostile educational environment, but I'm sure it would get dismissed. Probably all but a few schools with a significant American Indian student population had similar stats. In reality, a federal district judge would be swayed by the fact that every one of these school districts would be subject to suit on stats alone. I think they should be, but we have to face the fact that the law reform federal judiciary is gone. The federal district court judges in our district, the Western District of Michigan, would be extremely hostile to this kind of claim. We need more proof."

"What about the increase in disciplinary actions since Jim Niles became the VP in charge of discipline?"

"That is interesting, but we need more."

"What about his affidavits?"

"Excuse me?"

Emma told Bryan about the affidavits. Bryan immediately prepared a litigation strategy for the tribal council, and they began work.



But legal disputes do not arise in a vacuum. A month later, as the fall football season began to wind down, the Lake Matchimanitou High varsity football team lost an important game to a local rival in Traverse City. The loss dropped the team from the playoffs for the first time in over a decade. The mood in the school turned dark. Many of the senior football players expected to make a deep run into the state playoffs and even make a strong challenge for the state title game to be played in Detroit. A season that had started promising turned sour.

The first incident that could be traced to the football team's frustration involved Beercan and Ben about a week after the season ended. The boys had lockers next to each other, and during off times in school they would talk about the events of the day. That day, Beercan made an off-hand remark about the lousy play of the football team in a joking manner, implying that he had little sympathy for the seniors who had ruined their chance to win the state championship. A senior defensive back, who was white, as was every member of the football team, overheard Beercan's remark as he passed in the hallway. Within seconds, the defensive back, Fred Hendricks, had grabbed the front of Beercan's shirt.

"What did you just say, timber nigger?" Fred asked Beercan.

Beercan, who could by no stretch of the imagination be considered an athlete but was as big or bigger than the wiry defensive back, said nothing. He was surprised by the attack, not having been bullied since before eighth grade.

Ben responded. "Let him go, you ignorant loser."





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Fred did as instructed, only to give Ben a good hard shove into the locker. The sharp crash filled the hallway with noise. The few people around to witness the first few seconds of the incident swelled to several dozen.

Ben was several inches shorter than Fred and, like Beercan, no athlete. But he was not one to back down from an obvious affront and punched Fred in the nose. Fred shrugged it off and tackled Ben like he was taught by the football coaching staff, rising to pummel Ben's midsection with wild body blows. Many of the student onlookers began to chant "Fight! Fight! Fight!" Ben had no defense and was receiving a beating like he had never experienced before until Beercan pushed Fred away from his friend. At that moment, two male math teachers—one of them an assistant coach on the football team—appeared to separate the fighters. All three were hauled down to see The Veep.

Tahsanchat George was about twenty feet away when it happened. No one ever asked her what she saw.

After conferring with the two teachers who broke up the fight, the Veep brought the students separately, one by one, Fred, Ben, and Beercan—in that order—into his office.

Before the Vice-principal for Discipline James Niles

Jim Niles: So what happened, Fred?

Fred Hendricks: Beercan called me out and met him. It was a challenge.

Jim Niles: What do you mean?

Fred Hendricks: He insulted me and my teammates. He insulted this whole school by bad-mouthing the football team. The guy has no class.

Jim Niles: I know the Native American students here don't care much for football, but that doesn't mean you can attack every one who bad-mouths the football team. I know the hurt is still recent, but you have to move on. Isn't basketball season coming up?

Fred Hendricks: Yeah, we already started practice.

Jim Niles: Okay. So, what happened exactly?

Fred Hendricks: I heard Beercan say that the football team was a bunch of losers, or something like that. I confronted him like a man. I asked him what he said. I wanted him to back him up. I was mad, I admit.

Jim Niles: Who was the instigator? Was it Beercan?

Fred Hendricks: Uh, no. Well, yeah. I dunno. I just know that I was looking at Beercan, talking to him, and all of a sudden, I got





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- pushed. I don't know if it was him or that asshole Ben Wilson.
- Jim Niles:* Watch your language.
- Fred Hendricks:* Sorry. But you know there's a problem with those Indians and discipline. That's why none of them are on the football team. They don't work hard enough. They're lazy and they get drunk all the time. They come from generations of drunks. They can't help it.
- Jim Niles:* Okay, that's enough. I just want to know what happened today, not what happened yesterday. So, to repeat my question, who pushed first?
- Fred Hendricks:* I think it was Ben Wilson. He jumped in on us. He could've just left me and Beercan alone. Nothing would have happened if Wilson would've just let me talk some sense into Beercan.
- Jim Niles:* You willing to testify to that effect?
- Fred Hendricks:* You mean sign one of those affidavits? Yeah.
- Jim Niles:* Okay, that's good. Now you know I have to suspend you for two days for fighting. That's school policy. No exceptions. I got two teachers saying you were punching Ben Wilson in the torso. And you'll get one day off for good behavior.
- Fred Hendricks:* What?!?! He started it! What am I supposed to do, just turn the other cheek when some Indian blindsides me?
- Jim Niles:* You're excused. Go home for the rest of the day and think it over. Relax. I'll make sure you're not given any unexcused absences.

Before the Vice-principal for Discipline James Niles

- Jim Niles:* Anthony Mark, also known as Beercan. Why do they call you Beercan? Do you drink?
- Anthony Mark:* Nope. Never touch the stuff. I know where you can get all the booze you want. Ask Fred Hendricks. He's drunk every weekend.
- Jim Niles:* That's enough, Mr. Mark! This isn't about Fred and you know it. All I want to know is who started that fight. You or Ben Wilson. Who was it?
- Anthony Mark:* Neither of us. It was Fred.
- Jim Niles:* Don't insult my intelligence. I have two teachers telling that they saw you pushing and punching Fred. It looked





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to them and to me that you and Ben Wilson ganged up on Fred and starting beating him up.

Anthony Mark: Wow. You're crazy, aren't you? You have it so wrong. He called me a "timber nigger."

Jim Niles: I doubt that very much. I've known Fred since he was a little kid. I know that he'd never use such an obnoxious racial epithet. And no one in this school would ever even hear that phrase if it weren't for the Native American kids using it all the time.

Anthony Mark: Well, whatever. I'm just telling you what happened.

Jim Niles: I already know what happened. Here. I want you to read this affidavit and sign it.

Anthony Mark: This says Ben started the fight and I joined in. It's not true.

Jim Niles: As far as I'm concerned, it is.

Anthony Mark: But he really called me a "timber nigger."

Jim Niles: I don't want to hear it. You want to graduate, don't you? Now sign the affidavit.

Anthony Mark: Okay, whatever.

Before the Vice-principal for Discipline James Niles

Jim Niles: Ben Wilson. I'm so deeply disappointed in all this. Beercan, I guess, I expected, given his reputation. But Ben, I thought you'd go to college and make something of yourself. I thought you'd get out of here and escape the rez.

Ben Wilson: I don't have anything to say to you.

Jim Niles: Fine. Fred and Anthony said it all. It's all right here on the affidavit. You must know the drill from all your friends. So, take a look and sign it. Then you can go home.

Ben Wilson: Yeah, I know the drill. But I'm not signing no confession.

Jim Niles: It's not a confession. It's an affidavit. It's just a document I need for my report. I need the truth. You haven't even looked at it.

Ben Wilson: Fred Hendricks called us "timber niggers." Then he jumped Beercan. I tried to defend my friend. End of story.

Jim Niles: You just confessed to fighting. That's two days' automatic suspension.

Ben Wilson: You said this wasn't a confession.

Jim Niles: Enough of the smart mouth. I'll lay it on the line for you—you're not leaving until you sign the affidavit. If you don't sign the affidavit, you don't graduate.





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Ben Wilson: Wait a minute. It says I started the fight. That's not true.

Jim Niles: It's what Beercan told me. And Fred, too. Their stories are consistent. They signed the affidavit.

Ben Wilson: Bullshit.

Jim Niles: That's another day of automatic suspension. Swearing.

Ben Wilson: Jesus, what's wrong with you?

Jim Niles: Look, just sign the paper and we can go. I'll let you go home for the rest of the day. No unexcused absences.

Ben Wilson: I'm not stupid. I know what happens around here. I sign that thing and you call the police. They haul me and Beercan away. Fred gets away scot-free.

Jim Niles: Fred didn't do anything. Beercan started it, right? Everyone said that Beercan was talking trash to Fred. You, too. What did you guys expect? They're the pride of this school, this whole township, and you kick them while they're down.

Ben Wilson: What are you talking about? Even assuming we were talking trash to anyone, does that mean we have to go to jail?

Jim Niles: No one said anything about jail except you. All I want is this information for my records, so when I mete out punishment, I have documentation to support my decision. Moreover, you're the only one who disputes what happened. That makes you a liar in my book. Lying to a school administrator is cause for discipline as well. Sign the paper and I'll forget you were lying to me.

Ben Wilson: I'm not signing it. I know it'll be used against me in court. Don't I have a right to a lawyer?

Jim Niles: I suppose, if I were the police. But I'm not.

Ben Wilson: Look. You let me write my own affidavit and I'll consider signing it.

Jim Niles: Why? The truth is already on that paper and that's all I need to know. I'm not going to waste my time waiting for you to write a bunch of lies on paper. The facts are clear. Let's just get this thing done.

Ben Wilson: No.

Jim Niles: You don't sign it, I expel you from school and I call the police. You won't graduate and you'll probably spend the rest of your life walking around with a criminal record like all the rest of your friends.

Ben Wilson: You don't even know how racist you are, do you?

Jim Niles: That's it. You're expelled for gross misconduct. Get out of here. Wait in the front office until the police come.





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Two officers from the Madison Bay police department arrived thirty minutes later. They took the affidavit that Beercan signed and another affidavit that Jim Niles signed, the same one that Ben refused to sign. They read them both and then arrested Beercan and Ben on suspicion of disrupting school activities and simple assault. Ben and Beercan were taken to the Madison Bay lockup and held there for four hours, until school was out for the day. Only then were they allowed to make a call home. No one ever asked them any questions. No police ever conducted an investigation at the school. Fred Hendricks went home and never received any contact from the Madison Bay police. Fred never showed up for his in-house suspension. No one punished him further. Ben had been suspended for an entire week or until the school board could decide whether or not to adopt the recommendation from Jim Niles to expel him. Beercan had also been given in-house suspension for an entire week for fighting and lying to Jim Niles.

During this time, tensions between Lake Matchimanitou varsity athletes, especially the football and basketball players, and the dozen or so American Indian students increased. In the second incident, several members of the Lake Matchimanitou football team cornered Johnny Raider. No one really knew what happened, who started the fight, or why, but both Johnny and a white kid named Eli Hall ended up with black eyes and bloody noses. And it was the same old story with the Veep. Eli Hall was sent home for the day without punishment while the Madison Bay police picked up Johnny during last period. He was cuffed and walked out right in front of the school, much like the major corporate criminals are sometimes arrested at work and walked out by federal prosecutors and FBI agents. Johnny already had a record from a previous encounter with the Veep. No one expected him to ever come back in time to graduate from high school. Students speculated he'd spend at least six months in jail because he was eighteen and would be prosecuted as an adult.

The day Beercan returned to his classes was the day his government teacher, Hal Banks, brought up Indian tribes. Mr. Banks felt he had little choice but to acknowledge the existence of a third sovereign in the United States if for no other reason that one, right down the road, operated government services such as a police department, small fire station, health clinic, education and employment office, public housing, and roads maintenance crew. His students wanted to know why they did these things, why they supposedly didn't have to pay taxes, and why they could fish on the bay and the big lake without state permits. Over the years, Mr. Banks dedicated one half of one class period to Indian tribes, trying to keep it pared down to twenty minutes and also trying not to discuss Indian religion, language, customs, or anything else. All he wanted to do was





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answer the questions as fast as possible and avoid talking much about it at all costs. Some years, none of his students paid any attention and allowed him to move on without discussion. On the odd occasional year, one or more students really wanted to know more because of an unexplained intellectual curiosity. And on some years, one or more students just wanted to vent about the dirty Indians down the road. The year that Ben Wilson and Beercan Mark fought Fred Hendricks, almost every student in class wanted to vent about the dirty Indians down the road and, indeed, right there in class with them.

Mr. Banks should have seen it coming, but he was tricked by the first fifteen minutes of his lecture, which went by without so much as a peep from the students. After he mentioned that some tribes (not the Indians down the road, however) had legal casinos and some of those tribes made their members wealthy, the floodgates opened.

“Why do they get casinos? Why not white people?” And, as an afterthought, “Or Blacks or Hispanics or Chinese?”

“My father lost his livelihood to those Indians taking up all the whitefish with gillnets. It’s not fair.”

“I heard they worship the devil. That’s what Lake Matchimanitou really means. I betcha you didn’t know that.”

“They don’t fit in. They never talk to us or go the games. We’re honoring them by calling our teams the Warriors and they dis us.”

“Indians lost the land fair and square, so why did we give it all back?”

“Indians are always talking about a lost language and culture. Whatever. All they need is English and church. If they had that in the first place, they’d be fine, instead of all poor. And drunk. Right, Beercan?”

Mr. Banks, given the year, expected one of these lines of questions, but he had no chance when confronted with that year’s hostile barrage. He looked over at Beercan, sitting in the back row, and shook his head. “Okay, that’s enough. We don’t have time to go through all of this. Suffice it to say that Indians have casinos and that’s how they have governments and money to pay for government services. Okay? Great!”

It didn’t satisfy the class at all, but those who had asked the questions and made the comments didn’t need answers or responses. Rhetorical questions and inflammatory comments never do. From Beercan’s perspective, it looked like his teacher had saved his own skin by sacrificing his sole Indian student.

Other Indian students suffered similar indignities. A ninth grader stopped coming to school when the phys ed teacher laughed a little too loud at an overheard joke about drunken Indians. Two tenth grade Indian girls began crying when their geography teacher explained that nothing derogatory inhered in the word “squaw” in places like “Squaw Peak” or





“Squaw Lake” because that’s just what Indian women were called. The most popular joke around school was the one about whenever Indian people complained about something—sports mascots, or racism in the movies, or anything—they’d just make it start raining outside. All around school, the old grievances about treaty fishing and tax immunities served as flashpoints for arguments and snide commentary. No Indian student felt welcome.

On the eve of the special hearing before the Lake Matchimanitou school board to decide whether or not to expel Ben Wilson from high school, Johnny Raider, facing several months in jail, committed suicide.

Because of the traditional four-day grieving process, few LMB members could attend Ben’s hearing. While Bryan Montana attempted to reschedule the hearing, the school board chairman Steve Madison refused to allow it. Tina Adderly, Johnny’s aunt, and Beercan did not attend the hearing because of their responsibilities in the grieving process. However, Ben and Beercan’s friends Niko, Tahsanchat, Ruben, and Charles sat with Ben at the hearing.

Before the Lake Matchimanitou School Board

Steve Madison: I call this meeting to order. My name is Steve Madison and I am the chair of the Lake Matchimanitou School Board. Will the other members of the school board introduce themselves?

Lori Burke: Lori Burke.

Jefferson Madison: You all know me. Jeff Madison.

Dave Thompson: Same here. Dave Thompson. We’ve been on this board for a long time, right, Jeff? In your case, since caveman times.

[laughter]

Helen Katz: Helen Katz. I just got elected.

[laughter]

Steve Madison: All righty then.

[laughter]

Well, we are here to discuss the possible expulsion of a student from the high school. His name is Ben Wilson. And it appears the grounds for expulsion are fighting and insubordination? Vice-principal Niles, is that correct?

Jim Niles: Yes, it is.

Steve Madison: I understand that Ben Wilson is being represented by counsel. Is that correct?





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Bryan Montana: Yes, Mr. Chairman. My name is Bryan Montana, and I am the general counsel for the Lake Matchimanitou Band of Ottawa Indians. I will be representing Ben Wilson, who is a member of the tribe, in this important matter.

Steve Madison: Well, ordinarily, we don't allow attorneys in here. This is not a court proceeding. Where are the parents? Did they ask you to come in here? Jeff, help me out.

Jefferson Madison: Yes, this is not a courtroom. No legal representation is necessary. The school district is unrepresented. I don't see why the student should be.

Bryan Montana: Excuse me, Mr. Jefferson. As everyone in this room knows, you have been informally acting as legal counsel for the school district for at least the last thirty years. Didn't the Chairman just seek your counsel just now?

Jefferson Madison: Objection.

Steve Madison: Huh?

Jefferson Madison: You're supposed to tell Mr. Montana that he can sit down now.

Bryan Montana: I *will* represent Ben Wilson this evening. You are about to railroad yet another Indian kid out of this school district, and I am charged with making that as difficult as possible. And I have been instructed to appear before the school board each and every time in the future that an Indian student is charged with expulsion or suspension or anything.

Steve Madison: Even I know that this is not a legal proceeding. We're here to see if we can help this student. I guess I can't stop you from speaking today, Mr. Montana, but it is unfortunate that we have to muddy these proceedings with legal counsel.

Mr. Niles? Do you want to begin?

Jim Niles: Sure. The facts are simple. I have here three signed statements. The first statement is signed by Fred Hendricks.

Bryan Montana: Is he here tonight?

Jim Niles: I don't believe so.

Bryan Montana: Well, how am I supposed to ascertain the veracity of this statement?

Steve Madison: See what I mean? Mr. Montana, this is not a courtroom, as Jeff said.





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- Bryan Montana:* Well, it's on the record, right? You're recording it and there's a person taking minutes.
- Jim Niles:* Well, this statement was made and signed before me. I signed the affidavit as the witness. Fred is a good student and I could tell he wasn't lying.
- Dave Thompson:* So what happened?
- Jim Niles:* The statement makes clear that Anthony "Beercan" Mark saw Fred in the hallway between classes. Beercan called him out by saying something about the football team. Fred, unfortunately, felt the need to defend himself and his teammates from this verbal assault and slander. He approached Beercan and spoke to him. Ben Wilson, Beercan's friend, was nearby. As the discussion between Beercan and Fred became louder, Ben pushed Fred hard, knocking him over.
- Lori Burke:* What did he say about the football team?
- Jim Niles:* I think he called them losers or something.
- Lori Burke:* Hmmm. What have any of the Indians done to help the football team, except Gil Ogema? They never even go to the games.
- Jim Niles:* Well, it is true that Fred was a bit sensitive to the remarks. The timing of the fight was bad, right after the big game. Anyway, after Ben pushed Fred, both Ben and Beercan began punching Fred. Fred, again unfortunately, began fighting back. Two teachers restrained them and stopped the fight before any serious damage could be done.
- Lori Burke:* Was anyone injured?
- Jim Niles:* Not seriously. Just minor scrapes and abrasions.
- Okay, the second affidavit was signed by Beercan Mark. It confirms what Fred stated. Ben started the fight by pushing Fred. Beercan joined in with punches. Under state law and our school's policy, Beercan was the initial instigator of this incident. And Ben's attack on Fred is assault, plain and simple. After the fight and the execution of these affidavits, Madison Bay police arrested Beercan and Ben.
- Helen Katz:* Why isn't Anthony Mark here, too? Shouldn't we be discussing his possible expulsion as well?
- Jim Niles:* Simple leniency. Beercan cooperated with the investigation by talking to me and signing the affidavit. He faces serious criminal charges, but at this time we are





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- not seeking his expulsion. He was suspended for a week and served that time. We'll reassess once the criminal case concludes.
- Steve Madison:* Seems pretty open and shut to me. We've seen a lot of these cases, very similar to this. If I may, I would have to opine that there seems to be a very serious problem with discipline of these Indian children. After all we've done, all the federal government has done, to grant Indian tribes their lands and privileges, their children still engage in this horrific behavior.
- Bryan Montana:* Mr. Chairman, that's enough editorializing. I'd like to ask a few questions of Mr. Niles.
- Steve Madison:* What, you mean like a cross-examination?
- Bryan Montana:* No, not at all, I just want to clarify a few things.
- Jefferson Madison:* Sounds like a cross-examination to me.
- Steve Madison:* Jeff, should I not allow it?
- Jefferson Madison:* Harumph. It's too late now, nephew of mine.
- Lori Burke:* But didn't Mr. Niles say there was a third affidavit?
- Jim Niles:* Yes, I signed the third affidavit. I spoke with Ben Wilson and, while he didn't cooperate by signing the affidavit, he confirmed what I already knew. That Beercan instigated the fight with Fred and Ben started the fight by throwing the first punch.
- Bryan Montana:* So, you signed your own affidavit?
- Jim Niles:* Yes.
- Bryan Montana:* I'm not a criminal defense attorney, but you better revisit your practices, Mr. Niles. Can I ask a few questions now?
- Steve Madison:* Sure. Go ahead. Don't take too long.
- Bryan Montana:* Oh, it won't take long at all.
- Mr. Niles, is it your common practice to ask the students in trouble for fighting to sign affidavits admitting guilt?
- Jim Niles:* Well, they simply write down what happened and then they sign it. I never ask about guilt or innocence. That's for the police and prosecutors to determine.
- Bryan Montana:* Do you conduct your own separate investigation?
- Jim Niles:* Well, this is an investigation. I talk to all the concerned parties and get their story. It's usually very simple.
- Bryan Montana:* Do you ever ask any witnesses for their version?





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- Jim Niles:* Well, no, it's too burdensome. Everyone's got their own story. I'm a little worried that students who weren't there will change facts or confabulate things. It's high school, you know. I just keep it simple by asking the direct participants what happened. In this case, there were three people who all agreed upon what happened. Almost all cases are like that.
- Steve Madison:* It's like that movie, *Memento*. The main character says that police officers prefer confessions because eyewitness reports are so unreliable. I think he said, "The police don't solve crimes by sitting around and remembering stuff."
- [laughter]
- Bryan Montana:* Mr. Chairman, I don't regard this case lightly. Remember that in a similar case, Mr. Niles suspended an Indian kid and had him arrested. His name is Johnny Raider and he committed suicide last night.
- Mr. Niles, do you know if the police conduct an investigation after you call them? Do they ask to talk to students?
- Jim Niles:* I usually don't call them until after school is over and the students are gone, so I don't know one way or the other if they conduct an investigation.
- Bryan Montana:* Mr. Niles, do any of your students ever ask for an attorney or for their parents to be present?
- Jim Niles:* Why would they need to? I'm not the police.
- Bryan Montana:* But do they?
- Jim Niles:* Well, yeah, students always ask for an attorney. It's what they learn by watching cop shows or something. It's a joke.
- Bryan Montana:* What about their parents?
- Jim Niles:* Sometimes. Mostly, they would rather have their lawyer. I think I remember hearing Bob Eggerson down at the middle school say the younger ones are more likely to ask for their parents.
- Bryan Montana:* Did either Ben or Beercan ask for a lawyer?
- Jim Niles:* Well, I don't recall. Maybe.
- Bryan Montana:* So, who writes the affidavits? These are typed and look almost professionally done.
- Jim Niles:* Well, I usually type them. But the text comes from what the students tell me.
- Bryan Montana:* What also strikes me about these three affidavits is





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that they are identical. Did you have them typed after you interviewed all three?

Jim Niles: Well, no, I don't remember.

Bryan Montana: Ben told me that after you interviewed Fred he left. So he must have signed the affidavit before you interviewed Ben and Beercan.

Jim Niles: Maybe, but I got the story from Fred, and the other two confirmed it.

Bryan Montana: So did you type it while Fred was in your office or did you have it prepared even before you met with Fred?

Jim Niles: Uh

Bryan Montana: You don't type do you?

Jim Niles: I don't remember if I had it prepared before or not. I might have. And if so, the students confirmed what I suspected.

Bryan Montana: Or maybe Fred confirmed what you wanted to hear and then you imposed that version of the facts on Ben and Beercan.

Jefferson Madison: That's not necessarily what happened, Mr. Montana. You're badgering the Vice-Principal and I think your questioning is over.

Steve Madison: Agreed.

Bryan Montana: I apologize. I do have two more questions for Mr. Niles. I promise to behave.

Steve Madison: Make it quick.

Bryan Montana: When you ask students to sign the affidavit you've prepared, do you threaten them with suspension or expulsion?

Jim Niles: Well, not really. It depends.

Bryan Montana: Did you tell Beercan that he would be expelled and would not graduate if he didn't sign the affidavit?

Jim Niles: Yes.

Bryan Montana: One last question. Did you tell either Ben or Beercan that you were going to call the police and give them these affidavits?

Jim Niles: I don't remember. Maybe. They must have known that I would.

Bryan Montana: Thanks. Okay, I have a few statements from students that I'd like to present.

Steve Madison: Jeff?

Jefferson Madison: Well, once again we have to remind Mr. Montana that





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this isn't a courtroom and this isn't an adversarial proceeding. Ben Wilson, it would seem, should be able to say a few words to the school board, but that's it. Are your statements written?

Bryan Montana: Well, Ben will be making a statement, as will several other students, Niko Roberts, Tahsanchat George, Ruben Reyna, Charles Dixon, and Yong Lee.

Jefferson Madison: That's highly irregular. We don't have all night.

Lori Burke: I find it telling that Beercan Mark isn't here.

Bryan Montana: Beercan is a member of Johnny's lodge and will be helping to maintain his fire for the next four days. And since the school board would not reschedule this meeting, he could not be present.

Lori Burke: Well, they're not related, are they? I don't see the problem.

Jefferson Madison: Steve, I recommend against turning this proceeding into a fiasco by letting Mr. Montana call the entire Lake Matchimanitou tribe.

Steve Madison: Well, Mr. Montana, were any of these students present at the fight?

Bryan Montana: Yes, Tahsanchat George. But each of them has important and compelling stories to tell about the racially hostile educational environment at the high school, an environment caused by and exploited by the Vice-Principal.

Jim Niles: Outrageous!

Steve Madison: What a load

Jefferson Madison: Well, that's easy. That goes way beyond the scope of this meeting. Deny it, Steven.

Steve Madison: Okay, denied. I have to let Ben speak because it's his hearing, but the rest of the witnesses will have to sit this one out.

Bryan Montana: Is that the view of the entire school board?

Steve Madison: Shall we have a vote? Anyone in favor of allowing more witnesses? No? Okay, then, that settles it.

Bryan Montana: I urge you to reconsider. Basic notions of due process require that a person with an important liberty or property interest has the right to a fair hearing before he is deprived of the right.

Jefferson Madison: This is not such a hearing. This is not a courtroom.

Bryan Montana: So be it. Before we begin, I'd like to make a few remarks.





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Steve Madison: Make it short. This is Ben Wilson's time to speak, not your's.

Bryan Montana: Okay then. Recall that a few moments ago, Jim Niles admitted that his pattern and practice when it comes to school fighting is to have the participants sign an affidavit, without the presence of legal counsel and without the presence of the students' parents. That document is then given to the police and, based on that document, students are prosecuted. As far as we know, the only investigation conducted of these incidents is the interrogation by Mr. Niles of the students.

Jefferson Madison: I object to that characterization. Mr. Niles' interviews are not interrogations.

Bryan Montana: Thank you, Mr. Madison, for that reminder. But let's leave that judgment to the school board as a whole after Ben's statement.

Ben?

Ben Wilson: Thank you, Bryan.

Jefferson Madison: You know it's illegal to prepare witnesses for trial by telling them what to say.

Bryan Montana: I assure you

Ben Wilson: These are my own words, Mr. Madison. The only person in this room making up stories is The Veep.

Jefferson Madison: Harumph. We'll see.

Ben Wilson: Here's what happened and why I wouldn't sign that affidavit. I didn't start that fight and neither did Beercan. I think Beercan and I were talking about the football team. You have to remember that us Indians and the football team have a weird relationship. We like football just like any others, but none of us like to go to the games. Niko can tell you about his mom trying to get the school board to change the name of the sports teams from the Warriors to something less offensive.

Jefferson Madison: Wait a minute! What is this all about?

Bryan Montana: Mr. Madison, please do not interrupt my client again! He has a right to speak.

Ben Wilson: Like I said, Niko's mom used to go to the football games and people would ask her what she was doing there. It was really hostile and it still is. So, when me and Beercan talk about the football team, we don't





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- have the same school spirit as the rest of you. We don't always actively wish they would lose, but we don't feel any pain when they do. Keep in mind that we would go to the games and root like the rest of you, but you have that dancing Indian down there and all the painted faces and fake Indian songs. We can't go even if we want to. And don't think that guys like Fred Hendricks don't know that. He knows why we don't go. And they give us crap for it all the time. These students don't think it's offensive to use Indian heads and face paint and all that crap that makes fun of Indians. And they give us all sorts of crap for it.
- Lori Burke:* I'm sorry to interrupt, but my son plays football and I never see anything offensive at the games.
- Bryan Montana:* Ms. Burke, please let Ben speak. This fight occurred because of a great sense of hostility in the school. Ben is establishing that his feelings and the feelings of many other Indian students *are* injured by the use of this name and logo.
- Lori Burke:* Well, I don't see it, I'm sorry.
- Ben Wilson:* Well, that day, me and Beercan were talking about the football team and the use of the name "Warriors." I'm not sure what Fred thought he heard when he passed by, but he must have been pretty angry. He called us "timber niggers" before we even knew he was there.
- Steve Madison:* Did anyone else hear him say that? Jim Niles says nothing like that happened.
- Ben Wilson:* Everyone in the hallway must have heard it. He shouted it at us. He's done it before. It's his favorite racial epithet. His second favorite is just plain "nigger." All the football players tell "nigger" jokes and that's what he and his friends call Charles Dixon behind his back. They call Ruben Reina "Sandinista" to his face.
- Jim Niles:* I doubt that very, very much!
- Ben Wilson:* I'm sure you do, Mr. Niles, but what you don't know fits into the gym and the football field combined.
- Steve Madison:* Enough of this, Ben. Say your piece and sit down. And it better be about that fight, or else I'm going to shut this down.
- Ben Wilson:* Okay. He called us "timber niggers" and then he





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came all into Beercan's grill. He actually grabbed Beercan's shirt and was screaming obscenities at him. I'm no hero but I could see that my friend was in big trouble. His eyes were all big. It looked like Fred was about to beat the crap out of Beercan, so I tried to get in between them. I told Fred to let him go. Fred turned his attention to me and he shoved me hard against the locker. I hit my head and saw stars. That's when I took a swing at Fred. I shouldn't have done that, I know, but I was scared and I was in pain. I didn't know what else to do. At that point, Fred starting beating the hell out of me. All I remember at that point was covering up and hearing kids shout "Fight! Fight! Fight!" I've gone my whole life trying to avoid being a part of some stupid fight like in the movies and it took this ignorant football player to put me right in the middle of it. Beercan, who is a little bigger, was able to get Fred off me and then I think the teachers arrived. I don't think Beercan ever threw a single punch or even shoved Fred at all. Fred hit me about twenty times in the ribs. They're still sore. [At this point, Ben Wilson pulled his shirt up and revealed that his ribs were covered in black and blue bruises.]

Bryan Montana: How many students do you think witnessed this fight?

Ben Wilson: Geez, I don't know. The hallway was crowded right then. It was between classes and people were moving all around. They cleared a nice circle for Fred to operate and began shouting at us to fight. I'd guess at least ten to fifteen people would have heard Fred call us "timber niggers" and a bunch more watched him beat me up.

Bryan Montana: What happened in the Vice-Principal's office?

Ben Wilson: Exactly what the Veep said. He brought in Fred for interrogation and Fred came out a few minutes later and went home. Then he brought in Beercan and a few minutes later Beercan came out and sat down with me. Before I could talk with Beercan, the Veep brought me in. He told me that Fred and Beercan had signed the affidavit and that if I didn't, he'd kick me out of school and I'd never graduate. He said he'd





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call the cops if I didn't sign it. It was pretty intimidating. I mean, I knew lots of other Indian students got the same treatment, but I was a good student. I never expected to have it happen to me. It was almost comical how bad it was. I've heard about these things before, these affidavits, from some of my friends, but all the stories were true. Every one of them. And it was an atrocity.

Bryan Montana: So the affidavit isn't accurate?

Jefferson Madison: Leading question . . .

Ben Wilson: Absolutely not. It happened the way I said and Tahsanchat can back me up. She was there.

Bryan Montana: Thank you, Ben. That took courage.

Mr. Chairman, I'd like to bring up Tahsanchat George next. She's an eyewitness.

Jefferson Madison: I don't see the point. These people are just going to back each other up. It doesn't prove anything.

Bryan Montana: She prepared a signed statement in anticipation of this meeting without my participation. I have not seen this document at all and am willing to swear to that under oath.

Steve Madison: Is Ben done then? We're done here.

Dave Thompson: Wait a minute. We have an eyewitness here. I'd like to hear what she says.

Helen Katz: I would, too.

Lori Burke: Me, too. I bet she'll come up with some other crazy story.

Steve Madison: Okay, then. Bring her up.

Bryan Montana: Ms. George, can you introduce yourself for the record?

Tahsanchat George: Tahsanchat George. I am a senior at Lake Matchimanitou high and a member of the Yurok Tribe in northern California. My mother is Lake Matchimanitou Band Ottawa. I am captain of the girls' golf team and I have a four-point-oh GPA.

Bryan Montana: So, what did you see that day?

Tahsanchat George: I was a little ways down the hall from Ben and Anthony. I saw Fred Hendricks call them a racial epithet. I hate to say it, but it was "timber niggers." I moved closer, like everyone else, and saw that Fred had grabbed Beercan's shirt and was threatening him, bullying him. Ben shouted at Fred to stop and





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so Fred shoved Ben into the locker, hard. Ben took a swing at Fred, but I don't know if he hit him. But then Fred jumped on Ben, began to punch him in the sides like a wild man. Beercan pulled Fred off of Ben and then it was over because the math teachers were there. It started and ended so fast.

Bryan Montana: How many other people saw the fight?

Tahsanchat George: I'd say twenty or thirty. The hallway was packed.

Bryan Montana: Did school administrators or the police ever question you about this incident?

Tahsanchat George: No. That's the way it always happens. We all know it. An Indian kid and a white kid get into a fight. The Veep sends the Indian kid off to jail and the white kid gets nothing.

Dave Thompson: What do you mean by that?

Tahsanchat George: Well, it seems like the police are called to the school once a month or so. Sometimes more, especially during football season. I think it has to do with testosterone.

[laughter]

Anyway, all my friends and I know that they're almost always coming for some Indian kid. Usually, the kid didn't even do anything. Most times, it was some white kid starting a fight or being a bully. It's awful. You people should do something about it.

Jim Niles: Obviously, that's just a point of view about the real problem of Indian student discipline, an answer coached by Mr. Montana.

Bryan Montana: I wish I were that prescient, Mr. Niles.

Tahsanchat George: I assure you, Mr. Niles, nobody coached me. This is the truth. I wrote it all down last night after I heard Johnny committed suicide.

Bryan Montana: Mr. Thompson, consider these facts. And these facts come from the school's own reporting. Last year, the police arrested nine kids at the high school. Eight of those kids was a member of the Lake Matchimanitou Band or descendants. All of those kids spent some time in jail or juvenile detention, sometimes as much as a month. The one Caucasian student to be arrested was never charged and only spent a few minutes at the police station.

Jim Niles: Statistics can mislead. You, as a lawyer, know that.





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Bryan Montana: Consider then that in the eight instances where an Indian student was arrested, in six of those incidents, a fight broke out between an Indian and a white kid. In all of those instances, you coerced the students into signing an affidavit that the Indian kid started the fight.

Jim Niles: Because they did!

Bryan Montana: Just like in this case? Mr. Niles, everyone in the room knows what happened now. Fred Hendricks started a fight by using a racial epithet and then jumping an Indian kid. The only eyewitness testimony that disputes this, as far as we know because you didn't conduct an investigation, not even a cursory one, is the self-serving testimony of the kid that probably started the fight. And, like you always do, you believed the white kid over the Indian kid. That, Mr. Niles, is hypocrisy. That is racism.

Jim Niles: There's no proof.

Dave Thompson: Mr. Niles, do you ever conduct an investigation? Or do you just put the pieces together about these fights from the kids' stories?

Jim Niles: I'm not a cop. I wasn't trained to do CSI stuff.

Dave Thompson: Did any teachers see anything?

Jim Niles: I told you! They confessed! They started this fight with poor Fred Hendricks! Why doesn't anyone believe it!?!?

Steve Madison: That's enough, Jim. Settle down. We'll get to the bottom of this, but we might have to let Ben Wilson back into school for the time being. And I don't think we need to hear from any more witnesses, Mr. Montana. We'll schedule a proper hearing for a later date.

I move that we table the question of whether to expel Ben Wilson and allow him to return to school pending an investigation into these matters. Any objections? If none, then we are adjourned.

Ben returned to school the next week. A sullen mood had descended upon the school. More fights broke out between Indian kids and white kids, but Jim Niles stopped calling the police. Suspensions were handed out evenly, with white kids and Indian kids spending equal time in detention.

At Ben and Beercan's arraignment, Bryan Montana introduced the tape





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and transcript of the school board hearing over the objections of the county prosecutor. He played snippets of the tape where Jim Niles described his interrogation techniques. The Madison Bay police officers who responded to Niles' call that day admitted they conducted no independent investigation. Other than Fred Hendricks' unverified statement that Jim Niles admitted drafting, no evidence suggested that Ben or Beercan started the fight. The judge had little choice but to dismiss the charges against Ben and Beercan.

No school board hearing was called to restart Ben's expulsion proceedings.

