

**COLORADO CONFERENCE OF THE
AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS**

REPORT ON THE TERMINATION OF WARD CHURCHILL

November 1, 2011

This report is issued by the Colorado Committee to Protect Faculty Rights (CCPFR), a standing committee of the Colorado Conference of the AAUP. The CCPFR is part of the Colorado Conference and is not affiliated with Committee A of the national AAUP.

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Table of Contents

I. Executive Summary	6
II. Table of Names, Acronyms, and Organizations	11
III. Introduction	14
A. The Basis of the Colorado Conference’s Investigation	15
IV. Churchill’s Early Careers	17
A. Churchill’s Indian Heritage and Service in Vietnam	17
B. The Roots of Radicalism	17
C. An Activist and Prolific Writer	18
V. Churchill’s Career at the University of Colorado, Boulder—Before the Firestorm	20
A. The Activist as Scholar and Educator	20
B. Staff, Administrator, Lecturer: 1978-1991	20
C. An Indian Hire?	21
D. The AIM Split and “Fake Indians”	23
E. Another Promotion: Full Professor	25
VI. “Some People Push Back” – 9/12/2001	27
VII. The Firestorm—2005	30
A. Public and Political Pressure on the University	30
B. CU Regents Join the Fray	32
VIII. Faculty Support for Churchill	37
IX. The Process for Terminating Ward Churchill	39
A. Chancellor’s Subcommittee on Churchill’s First Amendment Rights	39
B. Standing Committee on Research Misconduct (SCRM)	42
C. SCRM Subcommittee: The Investigative Committee (IC)	42
1. Appropriate Research Expertise	42
2. An Unbiased Investigation	45
3. 120 Calendar Days	46
4. Established Standards	46
5. Nonadversarial Proceedings	48

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

D.	The IC's Recommendation to SCRM	50
E.	SCRM's Recommendation to the Chancellor	51
F.	Allegations of the IC's Research Misconduct	52
G.	Churchill's Appeal to the Privilege and Tenure Committee (P&T)	53
H.	P&T's Recommendation to the President	55
I.	The President's Recommendation to the Board of Regents	55
J.	Board of Regents Vote to Terminate Churchill	55
X.	Churchill Sues the Board of Regents	57
XII.	Epilogue	58
XIII.	Analysis of Charges against Ward Churchill	59
A.	Introduction	59
1.	If He Was Guilty, Who Cares that the Investigation Was Improper?	59
2.	But What If Churchill Wasn't Guilty?	59
3.	A Brief Overview of the IC's Method for Assessing Churchill's Guilt	60
B.	Allegation A: Alleged Fabrications Regarding General Allotment Act of 1887	62
1.	The Allegation	62
2.	The IC's Findings	62
3.	Our Analysis	63
a.	Falsifying Evidence: The General Allotment Act	63
b.	Falsifying Evidence: Janet McDonnell 's Book	64
c.	Embellishing Facts and Details of the General Allotment Act	65
d.	Citation of the Robbins and Jaimes Essays	67
e.	Churchill's Refusal to Back Down	69
C.	Allegation B: Misrepresentation of the Indian Arts and Crafts Act of 1990	71
1.	The Allegation	71
2.	The IC's Findings	72
3.	Our Analysis	72
a.	It's Not Literally in the Act, Redux	72

Colorado Conference of the AAUP
 Report on the Dismissal of Ward Churchill

	b.	Misrepresentation and Distortion of Sources	74
	c.	It's Academic Misconduct Not to Debate LaVelle?	75
D.		Allegation C: Captain John Smith and Smallpox in New England, 1614-1618	76
	1.	The Allegation	76
	2.	The IC's Findings	76
	3.	Our Analysis	76
	a.	Churchill's Use of Salisbury	76
	b.	Evidence That the Disease Was Smallpox	77
	c.	The Incubation Period of Smallpox	78
	d.	Circumstantial Evidence	79
	e.	Methodology	81
E.		Allegation D: Misrepresentation of Smallpox Epidemic at Fort Clark and Beyond, 1837-1840	83
	1.	The Allegation	83
	2.	The IC's Findings	83
	3.	Our Analysis	84
	a.	Not His Primary Example	85
	b.	Clash of Methodologies	85
	c.	Exoneration (After Twenty-nine Pages of Condemnation)	86
	d.	Respect for Oral Traditions	87
	e.	Books without Page Numbers, Redux	88
	f.	The Source of the Smallpox Epidemic of 1837	88
	g.	Army Doctors and Post Surgeons	88
	h.	Scatter!	89
	i.	Withholding the Vaccine	90
	j.	A Dispute over the Number Killed	91
	k.	Convicted of <i>Future</i> Misconduct	92
F.		The IC's Allegations of Plagiarism	93
G.		Allegation E: Plagiarism of a Pamphlet by the Dam the Dams Group	94
	1.	The Allegation	94
	2.	The IC's Findings	94
	3.	Our Analysis	94
	a.	Sufficient Credit for Dam the Dams	94

Colorado Conference of the AAUP
 Report on the Dismissal of Ward Churchill

	b.	Adherence to Scholarly Conventions	96
	c.	Plagiarism and the "Moral Indignation" Factor	98
H.		Allegation F: Plagiarism of a Paper by Professor Rebecca Robbins	100
	1.	The Allegation	100
	2.	The IC's Findings	100
	3.	Our Analysis	100
	a.	Churchill Wrote the Robbins Essay (So It Couldn't Have Been Plagiarism)	100
	b.	Well, Maybe It's Not Plagiarism, But We Have to Find Him Guilty of Something	101
	c.	Credit Where Credit Is Due	101
	d.	Creating the False Appearance of Support	102
	e.	The Exclusive Domain of Knowledge	104
I.		Allegation G: Plagiarism of Work by Professor Fay G. Cohen	106
	1.	The Allegation	106
	2.	The IC's Findings	106
	3.	Our Analysis	106
	a.	Cohen's Essay Was Definitely Plagiarized	106
	b.	But Is Churchill the One Who Plagiarized Cohen?	108
	c.	Well, Maybe It's Not Plagiarism, But We Have to Find Him Guilty of Something, Redux	112
XIV.		Violations of AAUP Standards	114
	A.	Violation of Committee A Statement on Extramural Utterances	114
	B.	Violations of the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings	115
XV.		Conclusion	120
XVI.		Endnotes	123

Executive Summary

Ward Churchill was dismissed from the University of Colorado (CU) in 2007, having been convicted of plagiarism as well as fabrication and falsification of evidence for his claims that the United States government had been complicit in the genocide of Native Americans. It was Churchill's essay of September 12, 2001, that drew attention to him—an essay that called victims of the attack on the World Trade Center “little Eichmanns.” For four years the essay, titled “Some People Push Back,” went unnoticed, but in 2005 it caught the attention of faculty and administrators at Hamilton College in New York, and from there it went viral, becoming the topic of nonstop media commentary that lasted for months.

Beginning in February 2005, a firestorm of public opinion raged. Politicians, media commentators, and citizens clamored for Churchill's dismissal from the University, threatening to withhold both state funds and private donations. Realizing that Churchill's right to express an opinion was protected by the First Amendment and that therefore they could not dismiss him for publishing what they felt to be a vile remark about innocent Americans, the University sought other reasons to dismiss Churchill.

During his employment at CU, Churchill had published more and won more recognition for his scholarship, teaching, and service than, perhaps, any other member of the faculty. He had also become a controversial figure in the field of American Indian Studies—incurring both the admiration and the wrath of other Indian activists and scholars. One antagonist—John LaVelle—had complained to CU officials about some of Churchill's scholarly claims several years earlier, but his concerns had been dismissed as not worth pursuing. But now that the University needed to find a means to fire Churchill, it sought LaVelle's help in constructing a case against him for research misconduct. Several charges were lodged against Churchill for falsification and fabrication of evidence as well as plagiarism.

It is obvious that the University would never have begun its investigation of Ward Churchill were it not for his “little Eichmanns” comment, which he made as a citizen, not as a scholar or as a representative of the University. It is also obvious that dismissing Churchill from his position as a professor at the University violated his First Amendment rights. Most U.S. citizens will agree that what keeps America vital are the freedoms enjoyed by its citizens, foremost of which is speech. Without free speech, the U.S. is just another totalitarian state. This is why citizens must jealously guard the rights of their fellow citizens to express opinions, even opinions with which they disagree or that anger them. If Churchill is not allowed to speak freely, none of us are.

In its prosecution of Churchill, the University violated many of its own rules as well as the most basic principles of academic freedom it purports to uphold. The following is from the University of Colorado's own highest laws:

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Faculty members can meet their responsibilities only when they have confidence that their work will be judged on its merits alone. For this reason the appointment, reappointment, promotion, and tenure of faculty members should be based primarily on the individual's ability in teaching, research/creative work, and service and should not be influenced by such extrinsic considerations as political, social, or religious views, or views concerning departmental or university operation or administration. A disciplinary action against a faculty member, including dismissal for cause of faculty, should not be influenced by such extrinsic consideration. (Laws of the Regents V.D.2.b.)

There is no doubt that Churchill's dismissal was influenced by an extrinsic consideration—his political views.

Following are other violations of CU's own rules for guaranteeing Churchill a right to a fair hearing:

- The University convened an Investigative Committee (IC) that contained no experts in the field of American Indian Studies. This became a crucial obstacle to justice, since several of the allegations against Churchill involved matters of historical interpretation that the members of the IC were unqualified to judge.
- The University declined to appoint to the IC any member of the faculty who had expressed support for Churchill's right to academic freedom, while appointing a faculty member who had expressed a strong personal bias against him to chair the committee.
- The number and timing of the allegations made it difficult for Churchill to defend himself. The IC refused to extend its 120-day time frame explicitly because doing so might work in his favor.
- Since "established standards" of research conduct vary, and since the field of American Indian Studies is cross-disciplinary, it was incumbent on the IC to set out the standards they would apply. Yet the IC was obstinately vague about which standards it would apply. Where no standards existed that would fault Churchill, the IC created its own.
- The IC proceedings were supposed to be "nonadversarial," yet they were expressly conducted as a prosecution with Churchill as the defendant.
- In its final report, the IC suppressed and misrepresented evidence that worked in Churchill's favor, and it contrived evidence against him.
- The University repeatedly violated the rules of confidentiality by conducting press conferences, releasing statements to the press, and posting statements and documents on its website during the investigation.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

- The University swept people who might have impeded progress toward Churchill's termination out of the way—CU President Elizabeth Hoffman and Indian scholar Michael Yellow Bird, as examples—and brought in people who would ensure Churchill's termination—former U.S. Senator Hank Brown, for example, a member of the neoconservative American Council of Trustees and Alumni (ACTA), which was overtly committed to the destruction of Churchill's career and reputation because he was an outspoken critic of American foreign and domestic policy.
- Hoffman's successor as President of CU, Hank Brown, disregarded the fact that the Committee for Privilege and Tenure (P&T) had dismissed several of the charges. Brown unilaterally reinstated them with his recommendation to the Board of Regents that Churchill be terminated.

As this report will demonstrate, the allegations against Churchill for fabrication, falsification, and plagiarism are almost entirely false or misleading; the slivers that remain standing are trivial in the extreme, given the volume of Churchill's work and the high regard in which it is held by other experts in the field. Few scholars' work would survive under the microscope held to Churchill's work. In our opinion, the members of the IC would be condemned as academic frauds if their report were subjected to the scrutiny that they applied to Churchill's work—and if they had said "little Eichmanns."

According to experts in the field of American Indian Studies, the IC report, upon which disciplinary recommendations against Churchill were based, is an extended series of falsifications and fabrications offered in the name of correcting the scholarly record.

The seven allegations against Churchill can be broken into three parts: matters of historical interpretation, plagiarism, and use of sources.

Matters of Historical Interpretation

- The allegations that Churchill misrepresented the General Allotment Act of 1887 and the Indian Arts and Crafts Act disappear when one understands that Churchill was interpreting the Acts' meaning by taking into account their implementation and effects, a normative approach to historical interpretation practiced by numerous scholars.
- Churchill's accounts of the smallpox epidemics of 1616 and 1837 are defensible, based on the evidence he presents, according to experts in Churchill's field.
- The strength of the circumstantial evidence regarding Captain John Smith's complicity in the spread of smallpox is debatable, and it should be debated—among historians, not in disciplinary hearings.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

- All of the allegations regarding matters of historical interpretation focus on minor details offered in support of Churchill's much broader themes; these details are supported by reputable sources that the IC either disregarded or rejected. None of the allegations tarnish Churchill's broader themes, all of which are supported by thousands more details and examples with which the University found no fault.

Plagiarism

- None of the authors whom Churchill is accused of plagiarizing have ever accused him publicly.
- The Dam the Dams group asked Churchill to publicize their issue, and Churchill cited the group as his source numerous times. There was clearly no attempt on Churchill's part to steal their work.
- The IC was unable to prove that it was Churchill who plagiarized Fay Cohen. Indeed, the preponderance of evidence points elsewhere.

Use of Sources

- Where the IC cannot substantiate its allegations of plagiarism, it substitutes them with other allegations, primarily a failure "to comply with established standards regarding author names on publications." The failures in this regard are not Churchill's, but the authors who neglected to credit him as co-author.
- The University's charge that Churchill had plagiarized the Robbins essay, which was easily disproven, morphed into a complaint that he had committed an act of academic dishonesty by citing a source that he himself had written in order to support his claims that were otherwise unsupportable. However, many sources besides Robbins corroborate Churchill's claims. The choice to cite one essay over another was not made to deceive the reader.
- The IC claims to respect Indian oral traditions and that Churchill disrespects them. In fact, the IC suppressed evidence that Churchill had fairly and accurately represented oral traditions in his publications.
- Churchill is accused of misrepresenting the contents of works by Russell Thornton, Patricia Limerick, and Neal Salisbury. According to experts in the field, such an accusation amounts to falsification of evidence against Churchill.
- The IC faults Churchill for citing books without including page numbers; they claim he does this in order to conceal the "fact" that the book does not support his claims. In Churchill's case, the books he cites do support his claims. Furthermore, citing books without page numbers is accepted practice when one is referring to

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

the book as a whole and not to any specific passage within the book. In fact, one of the members of the IC has employed this very practice on at least 92 occasions.

- Both the IC and P&T have claimed that the practice of ghostwriting violates accepted academic practice. Both committees disregarded evidence that it is widely accepted practice in certain fields.

Besides contriving their evidence against Churchill, the IC also takes him task for refusing to defer to their findings.

Finally, the Colorado Conference of the AAUP recommends that faculty in search of employment consider a position at the University of Colorado only as a last resort because of the University of Colorado's indifference to the ideals of academic freedom.

Table of Names, Acronyms, and Abbreviations

AAUP: American Association of University Professors
ACLU: American Civil Liberties Union
ACTA: American Council of Trustees and Alumni
AHA: American Historical Association
AIEOP: American Indian Educational Opportunity Program at UCB
AIM: American Indian Movement
AIS: American Indian Studies
Beauprez, Bob: Colorado Congressman
Bellecourt, Clyde: Leader of AIM
Bellecourt, Vernon: Leader of AIM
Bowen, Roger: General Secretary of National AAUP (2004-2008)
Brown, Hank: CU President (2005-2008)
Brown, Thomas: Former Assistant Professor of Sociology, Lamar University
Campos, Paul: Professor of Law, CU; Editorialist for *Rocky Mountain News*
Cherowitzo, William: Professor of Mathematics, CU; designated observer, P&T hearings
Cheyfitz, Eric: Professor of Law and American Indian Studies, Cornell University
Clark, Mark: Black Panther killed by police in 1969
Clinton, Robert N.: Professor of Law, Arizona State University; member of IC
Fay Cohen: Professor, School for Resource and Environmental Studies, Dalhousie University, Nova Scotia; author, “In Usual and Accustomed Places”
COINTELPRO: FBI campaign to subvert radical political organizations (1956-1971)
Committee A: Committee of National AAUP that investigates college and university violations of academic freedom
Corbridge, James: Former Chancellor, UCB
Craven, James M.: Professor of Economics; Chair, Business Division, Clark College, Vancouver, WA
CSERA: Center for the Study of Race and Ethnicity in America, UCB
CU: University of Colorado
Dam the Dams: Canadian environmental group
Delgado, Richard: Former Professor of Law, CU; Seminal figure in the development of critical race theory
Deloria, Vine, Jr.: Founding scholar in the field of American Indian Studies
DiStefano, Philip (“Phil”): Provost, Interim Chancellor, Chancellor—UCB (2001-present)
Eismeier, Theodore: Professor of Government at Hamilton College, New York
Elliff, Eric: IC legal counsel
FIRE: Foundation for Individual Rights in Education
Fish, Stanley: Author and editorialist, *New York Times*
FRPA: Faculty Report of Professional Activity
GAA: General Allotment Act
Getches, David: Dean of CU Law School (2003-2011)
Gleeson, Todd: Dean, College of Arts & Sciences, UCB (2001-2011)

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Gonzalez, Angela: Author, “The (Re)Articulation of American Indian Identity: Maintaining Boundaries and Regulating Access to Ethnically Tied Resources”
Hampton, Fred: Black Panther leader killed by police in 1969
Harjo, Suzan Shown: Indian activist associated with national AIM
Hill, Norbert S., Jr.: Former Director, AIEOP
Hoffman, Elizabeth: CU President (2000-2005)
Hsu, Ruth: Associate Professor of English, University of Hawai’i
IITC: International Indian Treaty Council
INP: Institute of Natural Progress, founded by Ward Churchill and Winona LaDuke in 1982
Jaimes, M. Annette: Editor, *The State of Native America: Genocide, Colonization, and Resistance*
Johansen, Bruce E.: Research Professor in Communications and Native American Studies, University of Nebraska
Katzenberger, Elaine: Senior editor at City Lights book publishers
Knight, Jonathan: Staff member, National AAUP (1979-2008)
Lane, David: Attorney for Ward Churchill
Langer, Philip: Professor of Education and Psychology, UCB; Hearing officer, P&T Committee
LaVelle, John: Professor of Law, University of New Mexico
LeCompte, Margaret: Professor of Education; President of UCB AAUP.
Levine, Shelly (Davis): Former journalist associated with the UKB
Limón, José E.: Director, Center for Mexican-American Studies and Professor of American and English Literature, University of Texas at Austin; Member of IC
Lombardo, Paul: Professor of Law, Georgia State University
Lucero, Tom: CU Regent
Mayer, Tom: Professor of Sociology, UCB
McDonnell, Janet A.: Author, *The Dispossession of the American Indian 1887-1934*
McIntosh, Marjorie K.: Professor of History, UCB; Member of IC
Means, Russell: AIM leader
Middleton, Charles: Former Dean, College of Arts & Sciences, UCB
Naves, Larry: District Court Judge, *Churchill v. Board of Regents*
Nelson, Cary: President of National AAUP (2008-present)
Newill, Bethany: Juror, *Churchill v. Board of Regents*
Owens, Bill: Governor of Colorado (1999-2007)
P&T: Committee on Privilege and Tenure, CU
Pacanowsky, Michael: Former chair, Communication Department, UCB
Radelet, Michael: Professor of Sociology, UCB; Member of IC
Robbins, Rebecca: Author of “Self-Determination and Subordination: The Past, Present and Future of American Indian Governance”
Rosse, Joseph G. (“Joe”): Professor of Business Administration, UCB; Chair of the SCRM
Salisbury, Neal: Author, *Manitou and Providence: Europeans, Indians, and the Making of New England, 1500-1643*
SCRM: Standing Committee on Research Misconduct, CU

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Silver & Gold Record: Faculty newspaper, CU

Standing Elk, Carole: AIM activist

Stannard, David E.: Professor of American Studies, University of Hawai'i

Stearn, E. Wagner, and Allen E. Stearn: Authors of *The Effect of Smallpox on the Destiny of the Amerindian*

Steinhauer, Pete: CU Regent

Stengel, Joe: Former Colorado House Minority Leader

Thornton, Russell: Author, *American Indian Holocaust and Survival: A Population History Since 1492*

Mark Timbrook: Historian; Instructor, Minot State University, Minot, ND

Tinker, George: Professor of American Indian Studies, Iliff School of Theology

UCB: University of Colorado at Boulder

UKB: United Keetowah Band of Cherokee Indians of Oklahoma

ULC: University Learning Center, UCB

VVAW: Vietnam Veterans Against the War

Venne, Sharon H.: American Indian attorney and author, Edmonton, Alberta Canada

Wesson, Marianne ("Mimi"): Professor of Law, CU; Chair of the IC

Williams, Robert A., Jr.: Professor of Law and AIS, University of Arizona

Yellow Bird, Michael: Professor of Indigenous Studies, University of Kansas

Introduction

The case of the University of Colorado's firing of Ward Churchill is deeply disturbing on several levels. In describing the purported motivation of the 9/11 attackers, Churchill used terminology that was abhorrent to many. His speech equated those who worked at lower levels in American finance with Adolf Eichmann, one of the more reviled figures in modern history who enabled the Nazi "final solution." Likewise, Churchill described World Trade Center workers as enablers whose complicity allowed the military-industrial complex to carry out genocidal policies against Islam and that 9/11 was simply "push-back" by those adversely affected. However distasteful to the general public, Churchill's basic exposition was not unique. His thesis was similar in concept to Pat Robertson's statement that 9/11 was God's retribution for Americans' toleration of gays. In other words, both implied that Americans had a collective responsibility for actions that supposedly motivated the attackers. Yet Pat Robertson's career and reputation were not destroyed.

At another level, it is deeply disturbing that, as this report will demonstrate, the Regents and administration and some faculty of the University of Colorado at Boulder (CU) allowed an obvious political vendetta against Ward Churchill to override their honesty, deny due process, violate their own published rules, ignore accepted standards of shared governance and academic freedom, and manipulate the investigative process to produce a predetermined, false conclusion. At few points in recent history have the political machinations to censor opinion been so brazen. The governor testified under oath that he urged CU to fire Churchill because of the views expressed in his essay.¹ One Regent², as well as a dean³ and the interim chancellor⁴ admitted in court that they knew they had violated Churchill's First Amendment rights to freedom of speech. Just before she resigned under pressure, University of Colorado President Elizabeth Hoffman warned the faculty of a "new McCarthyism" at the University. In finding for Churchill at trial, the jury unanimously concluded that his firing was politically motivated and would not have occurred in the absence of his speech.

At yet another and equally disturbing level, the State District Court vacated the jury's decision and ruled that the CU Regents have "quasi-judicial immunity" from litigation stemming from their decisions. The state Court of Appeals has upheld this finding. According to an amicus brief filed by the American Civil Liberties Union, the national organization of the American Association of University Professors (AAUP), and the National Coalition Against Censorship, the implications could be pernicious. If the Colorado Supreme Court upholds the state Court of Appeals, faculty could have no viable legal recourse to challenge decisions of the administration: "Despite this very clear protection of the right of university professors to engage in lawful speech without fear of retaliation, the trial court's opinion renders this protection illusory for the over 8,000 professors in the University of Colorado system."⁵ In other words, academic freedom, including the tenure system on which it rests, will be no stronger than a university's will to protect it in the face of political pressure from Regents, legislators, and the public. And

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

as this report will show, the University of Colorado lacks the requisite backbone to protect academic freedom and Constitutionally protected speech; it bends according to the prevailing political wind.

The Basis of the Colorado Conference's Investigation

Normally, it is the prerogative of Committee A of the national organization of the AAUP, and not state conferences, to investigate cases that involve potentially serious violations of academic freedom. The national AAUP chose not to investigate the University of Colorado's prosecution of Ward Churchill. To place the decision of the national organization in the most generous possible light, a lack of internal communication influenced their decision. (The incident is discussed at some length in Cary Nelson's book *No University Is an Island: Saving Academic Freedom*.) Email records indicate that Churchill asked Committee A to investigate his case. Jonathan Knight, then the staff liaison to Committee A, and Roger Bowen, then the General Secretary of AAUP, apparently withheld this information from Committee A. For years afterward, when asked why the AAUP declined to investigate the most notorious and egregious academic freedom controversy in a generation, representatives of the national AAUP deflected criticism by responding that they had no choice: Churchill never requested an investigation; thus their hands were tied.

Also, according to reports received by the Colorado Conference of the AAUP, some members of Committee A were persuaded by the much-publicized report issued by the Investigative Committee (IC) of CU's Standing Committee on Research Misconduct (SCRM). This detailed, 124-page report found Churchill guilty of numerous counts of falsification, fabrication, and plagiarism. Within months, however, allegations would surface from experts in the field of American Indian Studies that the IC itself had fabricated and falsified evidence, as well as plagiarized sources.

Yet another factor contributing to Committee A's inaction was the unwillingness of national AAUP to investigate cases where the injustices against faculty are perpetrated not by the administration, but by other faculty adhering to a regularized faculty process, even if the results comply with administrative vendettas.

At the turn of the 20th century, the AAUP was founded by John Dewey and others with the understanding that the greatest threat to academic freedom, and thus to America's survival as a vital democracy, rested in political forces outside the university determined to prevent the free exchange of ideas. As the Churchill case amply demonstrates, this threat to democracy exists today. But at the turn of the 21st century, Dewey's corresponding faith in faculty to act in good faith when investigating other faculty seems, as the Churchill Report also demonstrates, a romantic notion, all too frequently contradicted in practice.

The Colorado Conference of the AAUP believes the issues in this case are so far reaching and serious that they must be examined carefully and independently. We have found

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

ourselves compelled to undertake an investigation of the matter on our own initiative and report the results as widely as possible. In so doing, we hope to establish a precedent that serves to empower other state conferences to undertake similar initiatives in cases where the national AAUP lacks the resources or the resolve to act.

Churchill's Early Careers

Churchill's Indian Heritage and Service in Vietnam

In 1966, nineteen-year-old Ward Churchill was drafted into the United States Army. Two years later, he served a ten-month tour in South Vietnam, where GIs commonly referred to the territory outside their own base camps as "Indian Country."

Forty years later Churchill would be ubiquitously characterized as a "fake Indian" and charged, briefly, with "ethnic fraud" by University of Colorado-Boulder chancellor Phil DiStefano. Regardless of these charges, it is uncontested that while he was growing up, he was well acquainted with family stories of his Indian heritage. These reports are bolstered by accounts from acquaintances in Elmwood, Illinois, where Churchill grew up.

The irony of serving in a foreign army waging war on an indigenous population was not lost on Churchill. Churchill has described the experience of "waking up to find myself in the equivalent of Custer's 7th Cavalry, participating in a genocidal war against an indigenous population" as having been the "catalyst for everything in my life that's happened since, intellectually and otherwise."⁶ Always a talented writer, he began issuing mimeographed "anti-war and anti-military screeds" to troops in-country.⁷ These were mostly published anonymously, sometimes under pseudonyms, the risks of attributing such work to oneself being obvious. By the time of his honorable discharge, Churchill considered himself a de facto member of the Vietnam Veterans Against the War (VVAW), an organization that reached prominence when one of its members, John Kerry, testified in 1971 about war crimes before the Senate Foreign Relations Committee.

The Roots of Radicalism

Thoroughly alienated from U.S. policies at home and abroad, as well as the society that embraced them, Churchill returned to downstate Illinois, where his radical growth and activism continued unabated. He became involved with the Rainbow Coalition, a consortium of radical groups, including the Black Panthers. In Peoria, Churchill befriended and became roommates with another Peoria area native, Mark Clark. A year later Clark, along with Black Panther leader Fred Hampton, was killed in a raid on Hampton's apartment, conducted by the Chicago police and the FBI, in what became a seminal event in 1960's radicalism. While the police claimed that they fired at Clark and Hampton in self-defense, it was later determined that the victims were asleep. A grand jury found that the police fired between 82 and 99 rounds. The Panthers fired a single shot in self-defense, determined by the grand jury to have come from Clark in a reflexive death convulsion as he slept in a chair guarding the door, a shotgun in his lap. Ten years later, the Clark and Hampton families received a \$1.85 million wrongful death settlement from the FBI and the City of Chicago.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Of some relevance to Churchill's later intellectual concerns, as well as the unsparing tenor of much of his scholarship, the police were "tipped off" by an informant who had infiltrated the Black Panthers and provided details about Hampton's apartment. This infiltration was part of a massive FBI campaign, known as COINTELPRO, to subvert the Panthers and other radical organizations. According to FBI documents released under the Freedom of Information Act in 1988, Churchill himself was recommended by agents in the FBI's Peoria office for "neutralization."⁸ The theme of government infiltration is one that Churchill would return to often in his scholarly explorations. The FBI informant, William O'Neal, committed suicide after admitting his role.

After what he and others saw as the murders of Clark and Hampton, Churchill published articles under pseudonyms in a variety of underground periodicals, as well as under his own name in the *Chicago Seed* and the *Peoria Free Press*. After 1972, he never published again under a pseudonym, though three decades later the distinction (or, in Churchill's view, confusion) between writing under a pseudonym and ghostwriting for other scholars would become an issue in research misconduct charges against him. In 1972, Clyde Bellecourt, a leader of the American Indian Movement (AIM), recruited Churchill to join AIM, an invitation that he may now regret, given their subsequent history of animosities.

For the next three years, Churchill attended Sangamon State (now the University of Illinois-Springfield). In 1975, he received an MA in Cross-Cultural Communication.

An Activist and Prolific Writer

After Sangamon, Churchill's participation with AIM, a group founded in 1968 by, among others, Russell Means—an iconic figure best known to the general public for leading the AIM occupation of Wounded Knee—accelerated. By the mid-1980s, Churchill was acknowledged as Russell Means's ghostwriter (including a speech published as a cover feature by *Mother Jones*).⁹ Aside from his work with Means, Churchill served many roles with AIM. He was principal author of several interventions submitted by the International Indian Treaty Council (IITC) to the United Nations Working Group on Indigenous Populations, and he was an IITC delegate to the Working Group from 1982-1985. He was dispatched as an AIM/IITC delegate/presenter to political/academic conferences in Libya, Cuba, and elsewhere in the Third World and Europe. A prolific writer even then, Churchill was publishing in activist periodicals and in scholarly journals such as *The Indian Historian*. His first edited book, *Marxism and Native Americans*, came out in 1983; his second, *Culture versus Economism*, co-authored with Elisabeth Lloyd, was published a year later. Such was Churchill's intellectual promise that by now he was "openly adopted" as a protégé of Vine Deloria, Jr., one of the pre-eminent Indian figures of the 20th century and a founding scholar in the field of American Indian Studies, best known to the general public as the author of *Custer Died for Your Sins: An Indian Manifesto*.¹⁰ Under Deloria's influence, Churchill soon became a regular participant in the Western Social Science Association's annual conferences and comparable scholarly venues.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

By 1985, ten years after receiving his MA from Sangamon, Churchill himself had acquired an international reputation as an “oppositional intellectual,” known for his contributions to the indigenist paradigm, a controversial theory that radically counters assumptions of European or white superiority to indigenous peoples, and posits that since the time of Columbus, white Europeans, with the complicity of the white civilian population, have waged a continuous campaign of genocide to eliminate indigenous peoples.

Churchill's Career at the University of Colorado-Boulder Before the Firestorm

The Activist as Scholar and Educator

In the mid-seventies, the discipline of American Indian Studies as a distinct field was in its infancy. To gain entrée to the academy, those aspiring to develop AIS were typically compelled to accept positions in other disciplines or centering in activities other than teaching. Churchill's first academic position was an appointment in 1976 as instructor of studio art and art history at Black Hills State College in South Dakota. After a year he moved to Colorado, where for a short time he worked in production at *Soldier of Fortune* magazine, notable because he would later publish an exposé of *SOF*, accusing publisher Robert Brown and the Omega Group of colluding with the United States government to violate numerous international laws, and because Churchill's brief affiliation with *SOF* would help persuade some of his enemies in AIM that he was a federal agent. Eventually he became director of the Title IV Indian Education Program for the Boulder Valley School District. In 1978 Churchill's work with the Boulder schools caught the attention of Norbert Hill, Jr., the newly hired director of the American Indian Educational Opportunity Program (AIEOP) at the University of Colorado-Boulder.

Staff, Administrator, Lecturer: 1978-1991

Churchill continued to exhibit prodigious energy after he was hired at CU. Technically a student counselor, Churchill immediately became AIEOP's primary recruiter and grant writer. Between 1978 and 1986 he brought in over \$10 million in federal funding for the University, enough to pay for his salary through the remainder of his career, several times over. Ironically, twenty years later the University would become the object of ridicule and recipient of threats from the governor and legislators to withhold funding for wasting state money by hiring and coddling a "fake Indian" and "fraudulent scholar." The University would also be applauded for denying Churchill \$20,000 to which, according to University policy, he was entitled in order to defend himself.

In 1980-81 Churchill became acting director of the AIEOP, and director in 1984. He was named director of the University Learning Center (ULC), a program providing developmental instruction to provisionally admitted students, in 1986 and served the University as an administrator in that capacity until 1991. In 1987, he was among the founders of the Center for the Study of Race and Ethnicity in America (CSERA), a precursor to the Ethnic Studies Department. Although it was not among his obligations as a CU administrator, Churchill taught classes almost every semester, receiving among the highest student evaluations at the University.

From the mid-1980s on, despite his administrative and teaching productivity at CU, Churchill's activism and intellectual inquiry flourished. Between 1988 and 1991, when he was hired as a tenured associate professor at CU, he produced a flurry of studies that

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

received international recognition. *Agents of Repression*, co-authored with Jim Vander Wall in 1988, received the Gustavus Myers Award for Outstanding Literature on Intolerance in the United States (the first of four times that Churchill would win this human rights prize), followed by *The COINTELPRO Papers* (co-authored with Vander Wall), an investigation into FBI infiltration of radical organizations, in 1990. Simultaneously, in 1988-89 Churchill published *Critical Issues in Native North America*, an edited volume, with the Copenhagen-based International Work Group on Indigenous Affairs, followed in 1991 by *Critical Issues in Native America, Vol. 2*.

By mid-1991, when he was hired for the tenure-track position, Churchill had two more books in press—*Fantasies of the Master Race* (a collection of his essays on literary and cinematic depictions of Indians) and *Cages of Steel: The Politics of Imprisonment in the United States* (co-edited with Vander Wall). He was publishing regularly in a range of scholarly journals as well as non-academic periodicals such as *Z Magazine*, serving as editor of *New Studies on the Left* and on the editorial boards of numerous other journals, and co-directing Colorado AIM. Churchill also was serving as the national spokesperson for the Leonard Peltier Defense Committee. Peltier was regarded as a political prisoner by Churchill and others both in AIM and elsewhere; Peltier was sentenced to consecutive life terms for aiding and abetting the murder of two FBI agents on Pine Ridge in 1975.

In 1990, Churchill went on unpaid leave to take a position as distinguished visiting scholar of the humanities at Alfred University. By 1991, the number of lectures and keynote addresses he was invited to deliver at universities and academic conferences both nationally and internationally had, by Churchill's own estimation, reached the level of one per week.¹¹

In view of these contributions, Churchill was awarded the University of Colorado's President's University Service Award in 1987, the Robert L. Stearns Award in 1988, and the Thomas Jefferson Award in 1990. The Stearns Award focused on the value of Churchill's political and intellectual work in making the University a better place.

Considering the later relentless criticisms that CU acted recklessly in hiring an unknown quantity, an unqualified "fake Indian," for a tenured position as an associate professor for affirmative action purposes, it is worth pointing out an alternative narrative. By 1991, when Ward Churchill accepted a tenured position at the University of Colorado, he had served CU for 13 years. He was a proven administrator in multiple positions, had earned an international reputation as a dynamic and influential scholar, established a record as one of the most popular teachers on campus and published far more than all but a handful of full professors at CU. He had been awarded three of the four most prestigious awards bestowed by the University of Colorado.

Nonetheless, CU law professor Paul Campos wrote in the *Rocky Mountain News* what, in 2005, became a popular refrain: "The University of Colorado hired Churchill onto its faculty because he claimed to be an American Indian. Anyone who has the slightest

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

familiarity with research universities can glance at his resume and state this with something close to complete confidence.”¹²

An Indian Hire?

In 1990, when Churchill went on leave from CU to Alfred University as distinguished visiting scholar in the humanities, it was understood by all concerned that he did not want to return to CU as director of the ULC. Churchill discussed with Alfred the possibility of staying on permanently at the rank of full professor. He was also offered a full professorship as director of the cultural studies component of the Institute for American Indian Arts (IAIA) in Santa Fe, New Mexico. Word was out. Soon he was in negotiations with California State University at Northridge, for a position as full professor and founding chair of their Native American Studies Program.

At Colorado, an associate professorship in American Indian Studies became available in CSERA as a “special opportunity position” designed to contribute to a more diverse faculty.¹³ A national search was conducted that attracted 39 candidates, including eleven who identified themselves as Indians; Churchill, the internal candidate among three finalists, accepted the position. In Churchill—who would be assuming a less senior position than those offered at IAIA, Alfred, or Cal-Northridge—the University got a proven commodity who had been on campus for 13 years, who had attained international prominence, who had a half-dozen books in print—one of them the recipient of a prestigious academic award—with two more books on the verge of release, an extraordinary teaching record at CU by any standard, and effusive endorsements from scholars in related fields at CU and elsewhere.

That Churchill did not have a Ph.D, a fact that would later infuriate the general public, does not appear to have caused much distress among CU officials. According to the faculty newspaper, then-Arts and Sciences Dean Charles Middleton, who would on numerous occasions praise Churchill’s contributions to the University, argued that the lack of a Ph.D. should “preclude” Churchill from consideration for the position, but the view that Churchill already had “amply demonstrated his work as a scholar and a teacher,” and that it would be a “shame” to lose him based on a “standard which may be irrelevant in this case” prevailed.¹⁴ Nor was Churchill unique in not having a Ph.D. At CU, roughly a dozen senior faculty were known not to have Ph.Ds or other terminal degrees, including the economist Kenneth Boulding and the sociologist Howard Higman, perhaps the Colorado faculty best known to the general public. For this, few people discredited the University. Nationally, among the ranks of acclaimed senior faculty without Ph.Ds were Harvard historian Arthur Schlesinger, Jr., Columbia sociologist Daniel Bell, NYU policy analyst and founder of neo-conservatism Irving Kristol, and Goddard political theorist Murray Bookchin.

While there was little debate about Churchill’s qualifications, there did exist an issue about where Churchill would be rostered, since CSERA lacked department status. This issue reflected, perhaps, a degree of unfamiliarity or incompatibility among other fields

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

with the interdisciplinary foundations of American Indian Studies, a field conceived, in part, to give voice to indigenous perspectives that had been overlooked or nullified in academia and elsewhere by Eurocentric accounts of American history. Communication Department chair Michael Pacanowsky wrote in an email message to his colleagues in January 1991, that the unit had been asked to serve as Churchill's home department after sociology and political science "did not agree to roster him in their departments." Pacanowsky said Churchill had been offered a full professorship at Cal State-Northridge, "making it an urgent matter." On the down side, Pacanowsky wrote, "Ward does not seem to me to be the kind of person who 'fits' our mold of a department focused on interpersonal and organizational communication with groundings in communication and rhetorical theory."¹⁵

In April 1991 the CU Board of Regents approved the appointment of Churchill as an associate professor with tenure in the Communication Department.

If receiving tenure tempted Churchill to ease off on his frenetic productivity, there is no evidence in his resume. From 1991-96, as an associate professor, he published (in addition to *Fantasies of the Master Race* and *Cages of Steel*, both released in 1992) another four books as sole author: *Struggles for the Land* (1993), *Indians Are Us?* (1994), *Since Predator Came* (1995), and *From a Native Son* (1996). These studies were not published in the academic and university presses familiar to most disciplines, but they certainly received attention. *Fantasies*, *Struggles*, and *Native Son* each received the Gustavus Myers Award from the Center for the Study of Bigotry and Human Rights. *Predator* was runner-up (to Deloria's *Red Earth, White Lies*) for the Colorado Book Award in Nonfiction. In 1993, a revised version of *Marxism and Native Americans* was published in German (as *Das Indigene Amerika und die Marxistische Tradition*). A year later, *Indians Are Us?* was published in French under the title *Que sont les Indiens devenus?* Nor did Churchill let up in the classroom, teaching a full load, with student ratings consistently in the top five percent of Arts and Sciences faculty. In 1992, Churchill was awarded an honorary doctorate from Alfred University. In 1993, he served as rapporteur of the People's International Tribunal on the Rights of Indigenous Hawaiians. In 1994, Churchill received the Boulder Faculty Assembly award for excellence in teaching. Also in 1994, he was selected as a Bishop Foundation lecturer at the University of Hawaii-Manoa. He maintained his schedule of delivering invited lectures and keynote address both nationally and internationally, as well as his editorial activities. Importantly, given the context of this report, he continued his participation on the leadership council of Colorado AIM.

The AIM Split and "Fake Indians"

In 1993, in an event whose reverberations continue to fracture the Indian community, Colorado AIM, under the leadership of Churchill, Glenn Morris, and Russell Means, along with several other state chapters that functioned as wholly autonomous organizations, refused to join forces with Vernon and Clyde Bellecourt in the creation of a national AIM. Among other significant causes commonly cited, the split had roots in

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

the mid-1980s when several state chapters supported the rebellion of the MISURASATA, a largely indigenous force in Nicaragua, against the socialistic Sandinista government. (Opposition to the Sandinistas, some thought, diminished the Indian movement in the eyes of the radical left.) More generally, the split reflected discomfort with what many state chapters saw as the autocratic leadership of the Bellecourts—and the parallel view that a centralized leadership made the movement an easier target for the government to infiltrate. National AIM almost immediately—and continually—issued press releases and reports decrying Churchill, Morris, and others as “fake Indians” who for many years, taking their directive from the White House, had created divisiveness in order to destroy AIM. In return, the Colorado chapter accused the national organization of collusion with the government in its campaign of genocide.

Since 1986, long before Churchill was offered a tenured position at CU, Churchill’s rivals within AIM had registered complaints with CU about what they considered Churchill’s passing himself off as an Indian. According to Sara Lawrence, Metro editor of the *Native American Press/Ojibwe News*, an independent Indian newspaper, Churchill was not the only activist within the American Indian movement to be labeled a fake Indian by the Bellecourts. As Lawrence wrote in 1994 in a letter to then-CU President Judith Albino:

Unfortunately, many others have had to endure the Bellecourts’ brand of smear tactics that are currently being inflicted on Mr. Churchill. They always operate in the same manner, starting out with a series of vicious rumors, followed by those famous words, “He/She’s not a real Indian!” if the person is light-skinned, and utilizing, “He/She’s an FBI informant!” if the individual passes scrutiny by the “purity police.” Then they proceed on to harassment of the individual’s employer, funder, sponsor, etc., and speaking in loud, authoritative voices they try to preach their way to intimidation, all the while threatening legal action. Sadly, we in Minnesota know their ways very well.

In 1994, responding to a complaint from AIM activist Carole Standing Elk, an ally of the Bellecourts, Boulder chancellor James Corbridge, though not taking a position on Churchill’s ethnicity, wrote Standing Elk that “it’s always been University policy that a person’s race or ethnicity are self-proving.” Corbridge added that the Equal Employment Opportunity Commission took the view that “observation and self-identification are always the most reliable indicators of one’s racial grouping.”¹⁶ Corbridge added, in a remark that many of Churchill’s enemies within the Indian community received with skepticism, that Churchill’s ethnicity had no bearing upon his employment.

Since we have used the term “fake Indian” numerous times in this section of our report concerning the University of Colorado’s prosecution of Ward Churchill, the significance of the term—and the casualness with which it is tossed about—warrants a brief discussion. In the American Indian community there exists considerable division, with much at stake, about what constitutes a “real” Indian. According to the government, a legitimate Indian is enrolled in a tribe that is recognized by the American government.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Numerous tribes endorse this definition. These Indians, whose parents or grandparents, if not themselves, typically raised on reservations, can readily prove their ethnicity and qualify for enrollment in a tribe. As enrolled tribal members, many believe (no doubt with justification) that they are the ones who are entitled to the benefits that one receives for being an Indian. While there is (also no doubt) a financial interest influencing their point of view, particularly since the advent of reservation gambling, there are also considerations of cultural cachet and what one might call ownership of voice. If someone is to speak as an authentic voice of the indigenous population, they believe, it should be someone who has grown up, or is only recently removed, from the daily reality of being Indian. No one else is “real.”

Another school of thought, to which Churchill subscribes, takes the view that this definition is too narrow; that it excludes most Americans of Indian heritage who, the progeny of generations passing themselves off as non-Indian in order to avoid discrimination, cannot meet the tribal requirements or “prove” that they are Indian; that the end-product of such narrow definition, after a few more generations of inter-marriage, will be the disappearance altogether of what was once the indigenous population; that the genocide that began with Columbus will become complete by other means.

Another Promotion: Full Professor

In 1997, on the strength of Churchill’s record, numerous recommendations from nationally recognized experts in his field and related disciplines, and yet another book in press, Churchill was promoted to the rank of full professor. Since CSERA had attained departmental status, his tenure was transferred from Communication to Ethnic Studies. In 2002, he became chair of Ethnic Studies by unanimous vote of the faculty. By this time he had published *A Little Matter of Genocide* (1997), *Pacifism as Pathology* (1998), and edited a posthumous collection of writings by his late wife, Leah Renae Kelly (*In My Own Voice*, 2001). A substantially revised and expanded edition of *Fantasies* was also published in 1998, while South End Classics editions of *Agents of Repression* and *The COINTELPRO Papers* were released in 2002. By the time he was appointed chair of Ethnic Studies, Churchill was the most widely cited scholar in the field of Ethnic Studies.

He had three more books under contract—*Perversions of Justice*, *Acts of Rebellion*, and *On the Justice of Roosting Chickens*—all published in 2003. That year, a substantially revised and expanded version of *Struggle for the Land* was published. Against this backdrop, befitting Churchill’s renown, several overtures were made by other schools; two of these Churchill considered sufficiently attractive that he discussed the matter with Arts and Sciences Dean Todd Gleeson. In his May 3, 2003, counteroffer, Gleeson wrote to Churchill: “On behalf of the College of Arts and Sciences and the Department of Ethnic Studies, we are pleased to recognize your outstanding contribution to scholarship and teaching in the area of Native American studies. Retaining you as a valued member of our faculty is a high priority for both the Department and the College.”¹⁷

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

In addition to a substantial salary increase for Churchill, Dean Gleeson ultimately gave the Ethnic Studies Department three new tenured positions at the associate professor rank.¹⁸

In 2004, *Kill the Indian, Save the Man* was published, as was *Islands in Captivity*, the much-delayed record of the 1993 People's Tribunal in Hawaii, co-edited with Sharon Helen Venne. In 2004, Churchill was named to the Martin Luther King, Jr., Colloquium of Scholars at Morehouse University. Although as chair of Ethnic Studies, Churchill was entitled to a reduced teaching load, he continued to teach his full complement of courses as well as a regular overload. He continued to receive superlative evaluations. In 2005, after the events immediately relevant to this investigation were underway, Churchill was the overwhelming choice of voting students for the Herd Award for Outstanding Teaching, presented by the University of Colorado Alumni Association.

The Alumni Association withheld the award.

“Some People Push Back” – 9/12/2001

On September 12, 2001, less than 24 hours after the attacks on the Pentagon and the World Trade Center, Churchill posted “Some People Push Back: On the Justice of Roosting Chickens,” on *Dark Night Field Notes*, an electronic journal dedicated to the struggle for liberation of indigenous peoples. While it would eventually be calculated that nearly 3,000 civilians were killed in the attacks, some initial estimates, during the hours that Churchill wrote the essay, ran much higher.

The essay has been described by Churchill as a “gut level” reaction to the events, inspired by media characterizations of the civilian victims as “innocent.” Written in prose frequently less fluid than that found in Churchill’s formal publications, the essay reads like the dry run that it proved to be; a revised and much expanded treatment, *On the Justice of Roosting Chickens: Reflections on the Consequences of US Imperial Arrogance and Criminality* (2003), would be among the runner-ups for the Gustavus Myers Award.

“Some People Push Back” is a wide-ranging argument that the attacks were a “natural and inevitable” response to long-term American policies in Iraq, Palestine, and elsewhere in the Middle East, which, Churchill contends, are but the latest manifestations of the imperialist war on Islam. Additionally, Churchill harkens to a theme common to indigenist scholarship: the complicity of the civilian population in the foreign policy of its government. In the famous paragraph that would vividly (to some, pungently) illustrate this view, Churchill writes:

There is simply no argument to be made that the Pentagon personnel killed on September 11 fill that bill. The building and those inside comprised military targets, pure and simple. As to those in the World Trade Center . . .

Well, really. Let’s get a grip here, shall we? True enough, they were civilians of a sort. But innocent? Gimme a break. They formed a technocratic corps at the very heart of America’s global financial empire—the “mighty engine of profit” to which the military dimension of U.S. policy has always been enslaved—and they did so both willingly and knowingly. Recourse to “ignorance”—a derivative, after all, of the word “ignore”—counts as less than an excuse among this relatively well-educated elite. To the extent that any of them were unaware of the costs and consequences to others of what they were involved in—and in many cases excelling at—it was because of their absolute refusal to see. More likely, it was because they were too busy braying, incessantly and self-importantly, into their cell phones, arranging power lunches and stock transactions, each of which translated, conveniently out of sight, mind, and smelling distance, into the starved and rotting flesh of infants. *If there was a better, more effective, or in fact any other way of visiting some penalty befitting their participation upon the little Eichmanns inhabiting the sterile sanctuary of the twin towers, I’d be really interested in hearing about it* (italics ours).

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

In *Eichmann in Jerusalem: A Report on the Banality of Evil*, Hannah Arendt's influential study of the trial of Adolf Eichmann, the Nazi official who served as the principal logistician of the final solution, Arendt illustrates a concept that is central to Churchill's argument. From the distance of his station in Berlin, Eichmann quietly designed solutions to the inevitable logistical quagmires that might arise from the transport of millions of people to death camps. While there have been monsters like Hitler through history, genocide cannot be carried out without a population willing to quietly design and assemble the infrastructure necessary to deliver evil.

In the immediate aftermath of September 11, the essay, though it would be posted on a few leftwing websites, all but disappeared. Four years later, reactions to Churchill's characterization of civilians killed in the attacks as "little Eichmanns" whose deaths were a "penalty befitting their participation" starkly reflected a clash of belief systems. From a Eurocentric viewpoint, the characterization is obscene, hurtful, distressful, inhuman.

If one accepts the proposition, however, that the life of a child in Iraq, or a Cherokee woman 150 years ago, may have meant as much to them, and to their families, as the life of a receptionist at Cantor Fitzgerald meant to her or her family, we can open the door to understanding a deeply-held alternative perspective. Churchill's addendum to "Some People Push Back" takes the form of an incantation:

The preceding was a "first take" reading, more a stream-of-consciousness interpretive reaction to the September 11 counterattack than a finished piece on the topic. Hence, I'll readily admit that I've been far less than thorough, and quite likely wrong about a number of things.

For instance, it may not have been (only) the ghosts of Iraqi children who made their appearance that day. It could as easily have been some or all of their butchered Palestinian cousins.

Or maybe it was some or all of the at least 3.2 million Indochinese who perished as a result of America's sustained assault on Southeast Asia (1959-1975), not to mention the millions more who died because of the sanctions imposed thereafter.

Perhaps there were a few of the Korean civilians massacred by US troops at places like No Gun Ri during the early '50s, or the hundreds of thousands of Japanese civilians ruthlessly incinerated in the ghastly raids of World War 2 (only at Dresden did America bomb Germany in a similar matter). And, of course, it could have been those vaporized in the militarily pointless nuclear bombings of Hiroshima and Nagasaki.

There are others, as well, a vast and silent queue of faceless victims, stretching from the million-odd Filipinos slaughtered during America's "Indian War" in their islands at the beginning of the twentieth century, through the real Indians,

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

America's own, massacred wholesale at places like Horseshoe Bend and the Bad Axe, Sand Creek and Wounded Knee, the Washita, Bear River, and the Marias.

Was it those who expired along the Cherokee Trail of Tears of the Long Walk of the Navajo?

Those murdered by smallpox at Fort Clark in 1836?

Starved to death in the concentration camp at Bosque Redondo during the 1860s?

Maybe those native people claimed for scalp bounties in all 48 of the continental US states?

Or the Raritans whose severed heads were kicked for sport along the streets of what was then called New Amsterdam, at the very site where the WTC once stood?

One hears, too, the whispers of those lost on the Middle Passage, and of those whose very flesh was sold in the slave market outside the human kennel from whence Wall Street takes its name. And of the coolie laborers, imported by the gross-dozen to lay the tracks of empire across the scorching desert sands, none of them allotted "a Chinaman's chance" of surviving.

The list is too long, too awful to go on.

No matter what its eventual fate, America will have gotten off very, very cheap.

The full measure of guilt can never be balanced or atoned for.¹⁹

From an indigenist perspective, in the early hours after September 11, civilian casualties, American lives this time around, must have seemed only the first installment in the retribution of history.

The Firestorm—2005

Public and Political Pressure on the University

In December, 2004, Theodore Eismeier, a professor of government at Hamilton College in upstate New York, noticed that Ward Churchill was scheduled to speak at Hamilton on February 3, under the sponsorship of the Kirkland Project, a program that Eismeier considered to have an unacceptably leftist agenda. Eismeier, who had previously been successful in helping create a hostile climate that discouraged speakers he believed to be leftist from speaking at Hamilton, looked up Churchill on the Internet. He sent links to “Some People Push Back” and other writings he thought unsuitable for student consumption to the administration, and requested that they cancel Churchill’s appearance.

The Hamilton administration took a stand in support of freedom of speech and initially refused Eismeier’s request. In mid-January Eismeier and two other professors submitted editorials about Churchill, along with links to “Some People Push Back,” to the Hamilton College newspaper. On January 21, the student paper ran a story, quoting certain portions of Churchill’s essay. Five days later, a newspaper in nearby Syracuse picked up the story, which was immediately posted on a prominent conservative website. According to the *Chronicle of Higher Education*, the first comment was registered eleven minutes later. The reader recommended that Churchill be shot in the face.²⁰

On February 3, 2005, *The O’Reilly Factor*, the top rated staple of Fox News, ran a segment on the Churchill controversy, in which O’Reilly characterized Churchill as “insane.” This was the first of what was to be, by Churchill’s count, 41 segments of *The O’Reilly Factor* devoted to Churchill over the next 90 days. During this three-month period, Churchill was to be the focus of over 400 articles and editorials appearing in the four Denver metro area newspapers. Nonstop local coverage in traditional conservative venues such as the *Rocky Mountain News* and Clear Channel’s KHOW radio (“All Churchill, All the Time” went the slogan of one popular and incendiary program) was augmented by numerous national commentaries in the guise of news coverage concerning “the worst professor in America.”²¹ While such characterizations advanced a political agenda, there is little doubt that by this time Churchill had suddenly become one of the most famous professors in America.

Simultaneously with the first *O’Reilly* segment, Colorado governor Bill Owens, an active participant in “The Governor’s Project,” an initiative organized by the American Council of Trustees and Alumni (ACTA), announced his intention to withhold funds from the University unless Churchill was immediately and summarily fired.²² ACTA, a national advocacy organization that claimed to be politically bi-partisan, was dedicated to eliminating “left wing-bias in the academy.”²³ ACTA had created a “blacklist” of professors whose classroom comments they believed to be insufficiently patriotic in the wake of 9/11.²⁴ Numerous Colorado state legislators seconded the governor’s sentiments. Colorado House Minority Leader Joe Stengel threatened direct “oversight” of the

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

University unless Churchill was fired.²⁵ On MSNBC's *Scarborough Country*, Colorado congressman Bob Beauprez, when asked whether University of Colorado leaders had the guts to fire Churchill, registered his view: "I certainly hope so. . . . I've certainly been calling for him to be fired. . . . I don't think we should be turning our taxpayer funded universities into collegiate *madrasas* to teach hatred and poison the minds of our young people."²⁶

On the evening of January 28, Governor Owens phoned CU President Elizabeth Hoffman at her home, demanding Churchill's immediate firing and threatening to "implement Plan B" if she refused to comply.²⁷ While Plan B was never explained, Hoffman did refuse. A month later, she cautioned the CU faculty that a "New McCarthyism" was afoot,²⁸ and under pressure resigned three days later.

On February 1, Owens—who would later testify that his demand for Churchill's dismissal was in direct retaliation for the professor's 9/11 essay—began a mass distribution, under state letterhead, addressing "all decent people" in Colorado, informing them that they were "not compelled to accept [Churchill's] pro-terrorist views at taxpayer subsidy or under the banner of the University of Colorado."²⁹

Some donors also made their fury at Churchill clear to the University. Among those opting to withhold funds pending "resolution of the Churchill situation" was the Daniels Fund, directed by former Colorado senator Hank Brown. Brown also was one of the founders of ACTA, which immediately began showcasing Churchill as the "poster boy" of its campaign to "restore balance" to America's universities.³⁰ Brown would soon be selected to replace Hoffman as CU president. In this capacity, he would ignore faculty recommendations and ask the Board of Regents to fire Churchill.

Our data concerning the frequency of newspaper articles or television and radio segments, as we've reported previously in this section, does little to capture the intensity of the media frenzy from January until late March of 2005—even given the understanding that much of this media attention was both excoriating and of questionable validity. Childhood acquaintances were quoted as saying that they had no recollection of Churchill discussing his Native American heritage with them over 40 years ago. One former wife was quoted as calling Churchill a liar; another, who hadn't seen Churchill in years, claimed that she felt unsafe around him. Exposés emerged that he may have inflated his combat experience in Viet Nam. There were reports of intimidating phone calls made by Churchill in the middle of the night. Allegedly he once spit in the face of a "grandmother" (Carole Standing Elk, one of the national AIM activists who had insisted that the University fire Churchill because he was a "fake Indian").³¹ A student reported that Churchill lowered her grade because of a personal grudge; another claimed she was penalized because she disagreed with Churchill in a class paper.

National AIM's Vernon Bellecourt, who first complained to CU about Churchill in 1986, now offered Churchill's comportment as proof that he was an ethnic fraud: "You've seen his demeanor, his arrogance. That's not the Indian way. We're a compassionate

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

people.”³² Similarly, Suzan Shown Harjo, another prominent Indian activist who was a long-time enemy of Churchill’s, reportedly claimed to have detected upon her first encounter with Churchill years before that he wasn’t an Indian, in good part because of what she perceived as Churchill’s reluctance to discuss his family.³³ By Churchill’s count, the question of his ancestry was the focus of well over forty news stories in the Denver press—a half-dozen of them investigative features—in barely sixty days.³⁴

Anyone who challenges the status quo and does not immediately back down in the face of hostility from those with a stake in maintaining the status quo is likely to acquire enemies—particularly if, like Churchill, he argues from what he considers an ethical and moral foundation. Still, it seems indisputable that during this period an extraordinary number of people who had once encountered Churchill, or claimed to have encountered Churchill, were willing to go on the record to condemn him. At best, he seemed, in these accounts, like a man with a way of inspiring grudges. Even in accounts of those sympathetic to Churchill, he seemed far afield of the disinterested scholar scrupulously indifferent to the outcome of his empirical investigations. Even in those accounts where he wasn’t depicted as a terrorist sympathizer, he seemed like a man easy to dislike.

Other stories recounted complaints, some of which had been published in the professional literature, of plagiarism or factual misrepresentation in Churchill’s scholarship. Subsequently, many scholars would dispute these allegations as misrepresentations themselves, overblown and parochial. These scholars would claim that there are bases for Churchill’s contentions at least as reasonable as any bases cited by those who dispute Churchill. But these scholars were not interviewed in the early newspaper accounts. Churchill’s own short-hand explanation of his method, “reading against the grain” to draw contextual inferences from the record and then “connecting the dots,” thereby reaching conclusions often at odds with “established truths”—a particular necessity in the field of American Indian Studies, where so many of the “truths” were constructed through the lens of Eurocentric assumptions—was taken as a confession of his indifference to truth, rather than as a boiler-plate description of the method that every scholar employs. These stories in early 2005, based upon the accounts of scholars with competing claims or “experts” unfamiliar with the evidence, cemented public perceptions that Churchill was not just a “fake Indian,” but a “scholarly fraud” as well.

CU Regents Join the Fray

Amidst this firestorm, the Board of Regents convened an emergency meeting on February 3. While many university governing boards or trustees are responsive to political pressure, the University of Colorado Regents are perhaps unique in their vulnerability; they are elected officials, representing each congressional district, with two at-large seats. At the emergency meeting, the Regents did not fire Churchill. Instead, they authorized a procedure proposed by the interim-chancellor of the Boulder campus, Phil DiStefano, who noted that he found Churchill’s opinions to be “appalling,” “repugnant and hurtful.”³⁵

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

In accordance with DiStefano's proposed procedure, the content of Churchill's extensive published material and public lectures and speeches over an undefined period of time would be examined for the express purpose of determining whether any of his opinions might constitute legally defensible grounds to fire him. Ultimately, according to the University website, the following materials were consulted in this initial stage of CU's investigation into Churchill's opinions:

ADDRESSES, SPEECHES

"The *Next* Five Hundred Years," Alfred University Commencement Address," (1992)
Speech at UMC, Video (2005)

ARTICLES, ESSAYS, PAMPHLETS, LAW REVIEW, POLEMICS

"Agents of Repression Revisited," Social Justice (2003)
"An American Holocaust? The Structure of Denial," Adelaide Institute, Vol. 17, No. 1 Issue #33
"An American Holocaust? The Structure of Denial," Scholarly Essay, Socialism and Democracy (2003)
Anarchy: A Journal of Desire Armed, #35, #43 and #45, Magazines (1993, '97, '98)
"Dismantling the Politics of Comfort," Essay, Satya (2005)
"Forbidding the 'G-Word': Holocaust Denial as Judicial Doctrine in Canada," Other Voices (2000)
"Kizhiibaabinesik, A Bright Star, She Burned too Briefly," Essay listed separately from book forward of same name (2001)
"Some People Push Back: On the Justice of Roosting Chickens" (2001) and Abridgement (2002)
"Sports Team Names, American Indians and Mascots," Heartland: A Free American Journal, (p.32, 2001)
"The People Must Be United," polemic in Earth First Journal (2000)
"The Specter of Hannibal Lecter," Green Anarchy # 13 (2003)
White Studies: The Intellectual Imperialism of Higher Education (Pamphlet) (2002)

BOOKS

Acts of Rebellion, A Ward Churchill Reader (2003)
Agents of Repression (1988, 1990, and 2002, with Jim Vander Wall)
American Indian Holocaust and Survival (by Russell Thornton 1987)
Fantasies of the Master Race (1992)
Kill the Indian, Save the Man (2004)
On the Justice of Roosting Chickens: Reflections on the Consequences of U.S. Imperial Arrogance and Criminality (2003)
Perversions of Justice: Indigenous Peoples and Angloamerican Law (2003)
The State of Native America: Genocide, Colonization and Resistance (by Annette Jaimes ed. 1992)

BOOK REVIEWS

- “A Critical Review of James Treat’s *Around the Sacred Fire: Native Religious Activism in the Red Power Era*” (2004)
“American Indian Literature, Environmental Justice, and Ecocriticism: The Middle Place” (2003)
“Roanoke and Wampum: Topics in Native American Heritage and Literatures” (2002)
“For This Land: Writings on Religion in America, by Vine Deloria, Jr.” (2002)
“Native American Representations: First Encounters, Distorted Images, and Literary Appropriations” (2002)

BROADCAST TRANSCRIPTS, TAPES, INTERVIEWS

- “At Large with Geraldo Rivera, 07:16, (2/12/2005), 10:00:00 P.M.” Broadcast Transcript (1/29/2005)
Fox 31 Newscast 5:00. Broadcast Transcript (2/1/2004)
Fox News Channel “Dismantling the Politics of Comfort: The Satya Interview with Ward Churchill,” Satya (2004)
KBCO Morning Show (2/28/2005)
Interview, Peter Boyles radio show (1/31/2005)
Caplis/Silverman radio show (1/25/2005)
Rosen radio show (1/31/2005)

CDS, CASSETTES

- “Colonialism, Imperialism, Globalization” (2002)
“Doing Time: The Politics of Imprisonment” (2001)
“Images of Indians: How Hollywood Stereotyped the Native American” (2003)
“In a Pig’s Eye: The Rise of the American Police State” (2002)
“Life in Occupied America” (2003)
“Monkey Wrenching the New World Order” (2001)
“Pacifism and Pathology in the American Left” (2001)
“The Drums of October, Legacy of a Pernicious Hero” (2001)
Vernon Bellecourt Phone Message, 2 Cassettes (1993)

CHAPTERS -- BOOKS, INTERVIEWS

- “A Question of Identity,” A Will to Survive: Indigenous Essays on the Politics of Culture, Language and Identity (2004)
“American Indians in Film: Thematic Contours of Cinematic Colonization,” Reversing the Lens: Ethnicity, Race, Gender and Sexuality Through Film (2003) (with second article, “Let’s Spread the Fun Around”)
“Contours of Enlightenment: Reflections on Science, Law, Theology, and the Alternative Vision of Vine Deloria, Jr.,” Native Voices, American Indian Identity & Resistance (2003)
“Crimes against Humanity,” Introduction to Ethnic Studies (2004)
“Genocide by Any Other Name: North American Indian Residential Schools in

- Context,” Genocide War Crimes and the West: History and Complicity (2004)
- “Like Sand in the Wind: The Making of an American Diaspora in the United States,” Struggle for the Land: Native North American Resistance to Genocide, Ecocide and Colonization (2002)
- “Naming Our Destiny: Toward a Language of American Indian Liberation,” originally written in 1994 in “Indians Are Us” – reprinted in Understanding Prejudice and Discrimination (2003)
- “‘Nits Make Lice’: The Extermination of American Indians 1607-1996,” Defining the Horrific: Readings on Genocide and Holocaust in the Twentieth Century (2004)
- “Perversions of Justice,” Voices of Wisdom (2001) and same article in Moral Controversies: Race, Class, and Gender in Applied Ethics (1993)
- “Rise and Repression of the American Indian Movement,” Encyclopedia of American Social Movements (2004).
- Reference Book Entry: “Self-Determination and Subordination: The Past Present and Future of American Indian Governance,” (by Rebecca L. Robbins) The State of Native North America: Genocide, Colonization and Resistance (1992)
- “Spiritual Hucksterism: The Rise of the Plastic Medicine Men,” Shamanism: A Reader (2002)
- “Subverting the Law of Nations: American Indian Rights and U.S. Distortions of International Legality,” Native Americans (2002)
- “The Bloody Wake of Alcatraz: Political Repression of the American Indian Movement during the 1970s,” Putting the Movement back into the Civil Rights Movement (2004)
- “The FBI’s Secret War against the Black Panther Party: A Case Study in State Repression,” Race in 21st Century America (2001)
- “To Disrupt, Discredit and Destroy: The FBI’s Secret War against the Black Panther Party,” Liberation, Imagination, and the Black Panther Party: a New Look at the Black Panthers and their Legacy (2001)

INTRODUCTIONS, FORWARDS, PREFACES, COEDITED BOOKS

- Cages of Steel: The Politics of Imprisonment in the United States* (1992)
- “Critical Issues in Native North America,” Document No. 68 (1991)
- “Introduction: Critical Issues in Native North America” (1988 and 1989)
- “Indigenist Scholarship at its Finest: Barbara Mann’s Decolonization of Native North American History,” forward to Native Americans, Archeology, and the Mounds (2002)
- “Illuminating the Philosophy and Methods of the Animal Rights Movement,” forward to Terrorists or Freedom Fighters? Reflections on the Liberation of Animals (2004)
- “Kizhiibaabinesik: A Bright Star Burning Briefly,” preface to In My Own Voice: Explorations in the Sociopolitical Context of Art and Cinema (2001)
- “Reclaiming the Native Voice: Reflections on the Historiography of American

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Indian Oratory,” forward to Speakers of the Eastern Woodlands (2001)
“The Third World at Home,” introduction to Cages of Steel (1992)

LETTERS TO THE EDITOR, OP-EDS

“Columbus Day Honors Human Tragedy,” Colorado Daily (2001)
“The Debate over the Uniqueness of the Holocaust,” Chronicle of Higher Education (1996)
“Today Ought to Be U.S. Day of Atonement,” New Haven Register (2000)
“Ward Churchill Responds,” Z Magazine (1997)

Before ending the February 3 emergency meeting, the Board of Regents unanimously passed a resolution of apology “to all Americans, especially those targeted in the 9/11 attacks and those serving in our armed forces, for the disgraceful comments of Professor Churchill.”³⁶ In the interests of both fairness and accuracy, the Regents might have added that Churchill was fulfilling his professional responsibility to society to analyze and provoke thought about current events, no matter how uncomfortable that enterprise might make students and citizens. They also might have mentioned, in their apology to members of our armed forces, that Churchill was himself a Vietnam veteran.

Throughout what would ultimately be three levels of investigation of Churchill over the next two years, several Regents would persist in publicly “persuading” the investigative committees to reach the “proper,” rather than a subjective, conclusion. Regent Tom Lucero, an ACTA activist, immediately announced his intention to initiate an “overhaul” of tenure, beginning with a proposal “that CU revise its policies so that leaders can take action against professors without relying on a subjective faculty review, which is now required.”³⁷ (Later, Lucero would campaign for office on the platform that he’d “kicked Ward Churchill’s ass.”³⁸) Regent Pete Steinhauer seemed to agree with Lucero, publicly describing Churchill as “the poster child for any argument to abolish tenure.”³⁹

To Chancellor DiStefano’s credit, his proposal of an investigation to determine whether any of Churchill’s opinions “overstepped the bounds” may well have prevented the Board of Regents from firing Churchill at the February 3 emergency meeting. From an AAUP standpoint, this would be the highpoint of DiStefano’s academic statesmanship. As he would later say, he was determined to put the decision about Churchill in the hands of faculty.

DiStefano staged a press conference immediately after the Regents’ meeting to announce his investigation into whether Churchill’s opinions were grounds for termination, in violation of University precepts regarding confidentiality in personnel matters that might result in a disciplinary outcome. This press conference would be among numerous occasions when DiStefano’s actions would violate University and AAUP guidelines. Throughout the University of Colorado’s prosecution of Ward Churchill, it appears that Chancellor DiStefano continually subverted Churchill’s right to an unbiased process.

Faculty Support for Churchill

Initially, many on the CU faculty rallied behind Churchill. One week after the Regents' action at the emergency meeting of February 3, the Arts and Sciences (A&S) Council passed a resolution by a vote of 18-2, protesting the "decision to open an investigation of Professor Churchill's writings and ideas with the express intent of determining if his conduct provides grounds to dismiss him from his position as a tenured member of the faculty." The resolution demanded that the "investigation of Professor Churchill's scholarly record be stopped immediately as violating the moral principles and the standards of due process enshrined in the Faculty Handbook, the Laws of the Regents, *and the very idea of the university itself*" (italics ours). Interim Chancellor DiStefano responded that he had "no intention" of halting the process.⁴⁰

On February 27, 2005, 199 members of the Boulder faculty placed a full-page advertisement in the local newspaper protesting the investigation as a violation of academic freedom and calling upon the Board of Regents to halt the investigation immediately. The next day, as quoted in the *Denver Post*, Regent Pete Steinhauer commented that, irrespective of faculty views, "We are not going to stop our investigation. Tenure does not give a person impunity from his actions."⁴¹

It is difficult to quarrel with Regent Steinhauer's views on the limitations of tenure, but it remains unclear to which actions of Churchill's he was referring. To this point, the only actions at issue were Churchill's expressions of political opinion.

According to the faculty newspaper, the *Silver & Gold Record*, at a March 17 meeting of the A&S Faculty Council, six weeks after their resolution supporting Churchill's right to voice his political opinion without being subject to an investigation, Mark Dubin, a professor of molecular, cellular, and developmental biology, expressed specific reservations about Churchill: "I insist on supporting academic freedom, but I find it impossible to support a particular individual, in this case."⁴²

Not all members of the council shared Dubin's anxieties about separating the individual from the issue. At the same A&S Council meeting, Professor Chris Braider of French and Italian countered, "Academic freedom, as a principle, doesn't mean anything if it doesn't apply to specific cases and, in particular, difficult ones. . . . Many, if not all, of the charges [against Churchill] have arisen in order to justify an investigation that was already under way."⁴³

A&S Council Chair Gail Ramsberger, a professor of speech, language, and hearing sciences, submitted the resolution approved 18-2 to the Board of Regents and CU administrators with the following comment: "To summarize faculty sentiment, the investigation of Professor Churchill's professional work was initiated only because of concern over ideas expressed in a particular essay. Allegations of academic and

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

professional misconduct surfaced after, and it might be argued because, the investigation was initiated.”⁴⁴

The *Silver & Gold Record* reports that at this March 17 meeting, Chancellor DiStefano was “peppered with questions” from faculty about why he would allow a single essay to serve as the basis for launching a comprehensive review of a faculty member’s entire body of work. “The question I get asked most is why I didn’t stand up and say no,” DiStefano recounted. “The reason is because there was going to be an inquiry, and it was going to come from outside the University [the regents]. I wanted to keep this within the campus, rather than having an external group do it.”⁴⁵

DiStefano told the faculty that this wasn’t the first time he had initiated such a review when determining whether to begin dismissal proceedings against a faculty member, but admitted that the Churchill review was “much more than what we’ve done in the past . . . [b]ecause of the media attention. . . .”⁴⁶

One skeptical faculty member at this meeting observed that the Churchill investigation already had a “chilling effect” on academic freedom. “We hear of colleagues who are changing what they’re teaching,” he said. Another faculty member posed a rhetorical question: “If any of us said we agree with [Churchill’s] essay, would we be investigated?”⁴⁷

On March 23, Chancellor DiStefano concluded his procedure initiated at the February 3 emergency meeting of the Regents by announcing another investigation of Churchill. He would refer five allegations to the Standing Committee on Research Misconduct (SCRM) for further review.

Four hundred and fifty faculty members from across the country signed a letter protesting this new stage of the Churchill investigation. DiStefano’s referral of allegations to SCRM, according to this letter, “represents the continuation of a serious assault on dissent, critical inquiry, and academic freedom.”⁴⁸

Fifteen months later, after the SCRM Investigative Committee convicted Churchill of serious academic misconduct—deliberate plagiarism, fabrication, and falsification—faculty support for Churchill, at Colorado and elsewhere, all but disappeared.

The Process for Terminating Ward Churchill

Chancellor's Subcommittee on Churchill's First Amendment Rights

The committee DiStefano appointed shortly after February 3, 2005, to determine whether Churchill's opinions were protected by the First Amendment, consisted of DiStefano himself, Arts and Sciences dean Todd Gleeson, and interim dean of the Law School David Getches. The inclusion of David Getches, who was an expert in natural resources and Indian law, would prove particularly unfortunate for Churchill. Prior to the February 3 Regents' emergency meeting, Getches wrote an email conceding that Churchill's opinions were protected by the First Amendment but that "his inaccurate and irresponsible comments cast doubt on his competence and integrity as a scholar."⁴⁹ In the same email, Getches proposed that Churchill be asked to step down as chair of Ethnic Studies, and that he be suspended with pay pending the outcome of an investigation into his "competence and fitness as a faculty member."⁵⁰

It is unclear whether Dean Getches was confused about the parameters of the investigation into the extent of Churchill's First Amendment protections, or whether he deliberately set out to construct other grounds on which Churchill might be dismissed for his objectionable views. What is clear is that Getches soon contacted John LaVelle, a law professor at the University of New Mexico and long-time Churchill antagonist. Getches was acquainted with LaVelle's animus toward Churchill. In 1999, LaVelle published an essay faulting Churchill's interpretation of the General Allotment Act. Around that time, according to Getches, LaVelle had driven him to an airport in Vermillion, South Dakota, after Getches had given a talk at the local university where LaVelle was then on the faculty. During the drive, LaVelle "complained about Churchill in a sort of animated way."⁵¹ Soon afterward, LaVelle sent Getches a copy of his essay criticizing Churchill. In 1999, Getches dismissed LaVelle's concerns as a "bona fide dispute among scholars," rather than evidence of research misconduct.⁵² Indeed, numerous AIS scholars support Churchill's interpretation of the General Allotment Act.

In 2005, however, during DiStefano's two-month investigation into Churchill's First Amendment protections, Getches solicited LaVelle's assistance, via telephone and email, on numerous occasions and for various purposes. Although LaVelle himself never filed a formal complaint against Churchill, his views would provide the basis of research misconduct allegations filed by DiStefano.

At Dean Getches's urging, LaVelle also contacted Fay Cohen, a professor at Dalhousie University in Nova Scotia, suggesting that she call Getches. In 1997, a Dalhousie attorney had concluded that an essay written by Cohen had been plagiarized. The essay was published under the name of an organization that Churchill had founded, in a book edited by Churchill's former wife, M. Annette Jaimes. At the request of Getches, Cohen sent CU a copy of the attorney's letter, which would find its way into news coverage of Churchill. While Cohen never accused Churchill of plagiarism—the record shows that

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

she repeatedly declined entreaties to do so—and would complain to Getches that there were inaccuracies in Getches’s representations to her that were “rather serious in nature,”⁵³ allegations concerning Cohen’s essay would provide the basis of plagiarism charges against Churchill.

On March 23, 2005, Chancellor DiStefano reported the findings of his two-month preliminary investigation: Churchill would not be disciplined based upon his opinions; they were protected by the First Amendment. However, there would be another investigation of Churchill. “[D]uring the course of [their] review,” it was reported, “the Chancellor received additional allegations against him, primarily in the area of research misconduct.” These five allegations, DiStefano continued, would be forwarded to the University’s Standing Committee on Research Misconduct (SCRM):

1. That Churchill “fabricated an historical incident” regarding U.S. Army culpability in the 1837 smallpox epidemic infecting the Mandan Indians.
2. That Churchill falsely claimed that a half-blood quantum was applied for identifying Indians under provision of the 1887 General Allotment Act.
3. That Churchill falsely claimed that a quarter-blood quantum was applied for identifying Indians under provisions of the 1990 Act for the Protection of American Indians Arts and Crafts.
4. That Churchill, in three separate instances, engaged in plagiarism.
5. That Churchill, as a strategy for enhancing his academic credibility, committed ethnic fraud by identifying himself as being of Indian descent.

The March 23 announcement of the subcommittee findings apparently did not conclude DiStefano’s preliminary investigation. On June 13, he referred three additional allegations to SCRM:

6. That Churchill fabricated another historical incident by stating that there was “circumstantial evidence” implicating Captain John Smith in the deliberate infection of the Wampanoag Indians with smallpox.
7. That Churchill engaged in plagiarism by incorporating a 1972 pamphlet by Dam the Dams, a Canadian environmental group, into his own work.
8. That Churchill committed three copyright violations involving other scholars—two while compiling an anthology, the other while editing a journal.

On August 27, DiStefano referred a final allegation against Churchill for SCRM to investigate:

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

9. That Churchill committed academic fraud by misrepresenting aspects of his late wife's life in the biographical preface to a posthumously published book of her writings.

Several of the allegations that Interim Chancellor DiStefano referred consisted of downloaded newspaper articles for which DiStefano had never investigated the validity.⁵⁴ Some, such as the accusation of “ethnic fraud,” had been assessed and dismissed by the University over a decade earlier. (DiStefano maintained that the context was different in nature this time; because Churchill may have used his Indian status to “advance his career,” it could be construed, if true, as academic misconduct.⁵⁵) Others, such as the charge that Churchill had committed academic fraud by getting certain details wrong in the preface to his late wife's book—for example, the name of the hospital in which she died—were originally rejected as frivolous by DiStefano himself before he reconsidered and submitted them to the SCRM several months later. Still other charges concerned events that had occurred before Churchill accepted the tenured position in 1991. Churchill would argue that the sheer proliferation of charges referred by DiStefano, as well as the nebulous nature of many, impaired his ability to mount an adequate defense within the allotted time.

The day after DiStefano's formal forwarding of the initial five allegations, Shelly (Davis) Levine, a former journalist associated with the United Keetowah Band of Cherokee Indians of Oklahoma (UKB), wrote to DiStefano with the offer of documentary evidence conclusively demonstrating the falsity of one allegation against Churchill. DiStefano's response was to contact Getches, who then contacted LaVelle to request “background” information on Davis. Getches would soon advise DiStefano to exercise caution with Levine because she “seems supportive of WC” and “may even be part of a plan to support him.” Getches wrote DiStefano that Levine was fired from her position as a reporter with *News from Indian Country* for her “inaccurate and biased reporting” on Churchill and the AIM Confederation.⁵⁶

Getches's quick condemnation of Levine speaks of a determination to punish Churchill for his opinions, if not his character. Levine had left journalism to teach in the public schools. Her “biased” story involving Churchill and AIM received the American Indian Journalists Association Award for Best News Story of 1994. Whether Getches's judgments of Churchill were informed by the relentless negative portrayals of Churchill in the media, or whether Getches leaked stories to the media himself (on at least one occasion Getches asked a reporter not to use his name in connection with information he had provided⁵⁷) is unclear. What is clear, based on Getches's later testimony about his contacts with LaVelle and Cohen—and in contradiction to DiStefano's repeated claims that none of the allegations against Churchill were solicited—is that Getches worked very hard during this two-month preliminary investigation to construct a case against Churchill.

Interim Dean Getches's view—that anyone who found Churchill's work to be legitimate was a “supporter” whose expertise could be disregarded on that basis—would prove

common throughout the first two levels of the University's prosecution of Ward Churchill.

Standing Committee on Research Misconduct (SCRM)

Chancellor DiStefano's nine allegations against Churchill were referred to the Standing Committee on Research Misconduct (SCRM). In accordance with University law, SCRM appointed an investigative committee (IC) to examine the charges. According to SCRM, its selection of the IC involved the following considerations:

[The] Investigative Committee . . . by rule is to include individuals who are separate from the SCRM and who have expertise relevant to the allegations being investigated. In forming the Investigative Committee, a primary criterion was to recruit individuals with established reputations for academic integrity, fairness, and open-mindedness. In accordance with our rules, we explicitly inquired into potential biases or conflicts of interest, a process that included Professor Churchill's input regarding potential members of the committee. We also sought individuals with expertise in the areas of law (general and Native American), history, social studies more broadly, and ethnic studies. Finally, we sought a balance of scholars from UCB and from other institutions. We believe that the final Investigative Committee . . . performed their work in exemplary fashion.⁵⁸

Before referring the charges to the IC, SCRM dismissed Chancellor DiStefano's allegations that Churchill had committed "ethnic fraud" in misrepresenting himself as Native American in order to advance his career, that he had engaged in copyright violations, and that the handful of factual errors in Churchill's preface to his wife's book constituted a form of scholarly fraud.

SCRM Subcommittee: Investigative Committee (IC)

Conduct of the investigation entailed five principles of particular interest to this report, each discussed in turn:

- That committee members would possess appropriate research expertise
- That the committee would conduct an unbiased investigation
- That the investigation would be completed within 120 days
- That the committee would use "established standards" of research practice
- That the proceedings would be "nonadversarial."

Appropriate Research Expertise

The IC's operating rules⁵⁹ with regard to committee selection say the following:

Investigating committee members may be selected from inside or outside the University, excluding members of the Standing Committee. Attention in selection

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

should be paid to (1) avoiding conflicts of interest and (2) including appropriate research expertise within the committee to evaluate the allegation(s) under consideration. (VI.A.2)

Accordingly, Churchill requested that the IC be composed entirely of experts in his field brought in from institutions in other states. He also requested that no one from the law school be appointed to the committee, given the influence wielded by Paul Campos and Dean David Getches and their well documented prejudice against him. SCRM rejected both proposals, appointing law school professor Marianne Wesson to the IC, despite her expressed hostility toward Churchill. In contrast, SCRM did disqualify from consideration all 199 members of the Boulder faculty who had signed their names to the previously mentioned ad that appeared in the *Camera* on February 28, 2005, expressing support for Churchill's academic freedom and demanding that the "investigation of Ward Churchill be stopped immediately."⁶⁰

Two recognized experts in Churchill's field of American Indian Studies—University of Arizona law professor Robert A. Williams, Jr., and University of Nebraska research professor in Communications and Native American Studies, Bruce E. Johansen—were originally appointed to the IC. Churchill had previously written a blurb for a book by Johansen—at the request of the publisher, not Johansen, whom he had never met. Williams had issued a statement asserting Churchill's right to academic freedom some months earlier. Both had occasionally cited Churchill's work (as have most scholars in the field of American Indian Studies). As a result of these connections to Churchill, the *Rocky Mountain News* editorialized that there was "no choice" but to remove both Johansen and Williams from the IC because of their "obvious lack of objectivity" as they were "cheerleaders" of the "Ward Churchill fan club."⁶¹

Both Williams and Johansen resigned in the wake of accusations that they were biased. In his resignation letter, Williams writes that, upon revealing the names of the committee members, CU should have taken steps

to aggressively defend the process that's been set up, explain why each of us was chosen, reveal what conflicts were discussed and vetted before selection, what was the due diligence done on each of us, etc. . . . Today, for example, the Provost ought to be calling a news conference responding to the Denver paper's editorial. If UC [sic] believes in its process, it has to be willing to defend it. UC needs to be proactive on this, and it seems incapable of doing so.

Williams goes on to say that CU is an institution that "simply has no clue how to handle the mess it's created, and could care less about the reputations of the two outside committee members it's dragged into it." He suggests that all the committee members resign, "citing UC's utter failure and inability to get this process started in a way that brings honor on everyone participating in it, and is worthy of the public's trust that the matter will be handled in a fair and impartial and most importantly, minimally competent fashion."⁶² In his subsequent testimony before the Privilege and Tenure Committee,

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Williams explained again his decision to resign: “I said, you know, you’ve already destroyed Ward’s reputation by the sloppy way you’ve run this. I’m not going to let you destroy [mine].”⁶³

Johansen requested and was given the opportunity to reply to the *Rocky Mountain News* editorial. He discusses the episode in his *Silenced! Academic Freedom, Scientific Inquiry, and the First Amendment under Siege in America*:

I requested and was provided op-ed reply space in the *Rocky Mountain News* (Johansen, November 10, 2005). I said, in part, that I was leaving the committee because the level of discourse on this issue in the Denver area had become nearly neurotic and because my continued membership on the committee in such a toxic atmosphere was going to inhibit its ability to conduct a proper investigation.⁶⁴

After the resignations of Williams and Johansen, several other well qualified professors and experts in the field of American Indian Studies were rejected by SCRM. For example, Michael Yellow Bird, Professor of Indigenous Studies at the University of Kansas, was rejected because he had not yet attained the rank of full professor. (The SCRM “Guidelines” contain no requirement that committee membership be limited to full professors.) Yellow Bird was raised on the Fort Berthold Reservation where the Mandan, Hidatsa, and Arikara (Sahnish) peoples now reside. He is a traditional Sahnish chief, and, according to Churchill, the ranking expert with regard to issues surrounding Churchill’s account of events of the upper Missouri River in 1837.

Richard Delgado, an originator of the research paradigm known as critical race theory, was rejected because his schedule might prevent his attending every meeting of the IC. Instead, SCRM appointed José E. Limón of Austin, Texas, to be a member of the IC, despite the fact that his wife was terminally ill, which would preclude his attendance at meetings. Professor Limón participated in most of the IC meetings by telephone; he was physically present on only one of the six occasions on which the IC assembled.

In his testimony before P&T, Joe Rosse (SCRM chair and professor of business administration) said that Delgado was rejected because the SCRM didn’t want anyone who might have “a chip on their shoulder towards CU sitting on the committee.”⁶⁵ Since Delgado had been a long-time professor at CU, Rosse’s view is interesting. During the trial of Churchill’s lawsuit, Rosse was asked, “In fact, you rejected a number of people from being potentially involved in the [Investigative Committee] based on what you perceived to be their bias in favor of Churchill; isn’t that correct?” Rosse replied, “Yes.”⁶⁶

The Investigative Committee of the Standing Committee on Research Misconduct at the University of Colorado at Boulder concerning Allegations of Academic Misconduct against Professor Ward Churchill was fully constituted in December 2005 and met for the first time on January 11, 2006.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Its members were the following:

- Chair: Marianne (Mimi) Wesson, Professor of Law, University of Colorado at Boulder;
- Robert N. Clinton, Professor of Law, Arizona State University
- José E. Limón, Director, Center for Mexican-American Studies and Professor of American and English Literature, University of Texas at Austin
- Marjorie K. McIntosh, Professor of History, University of Colorado at Boulder
- Michael L. Radelet, Professor of Sociology, University of Colorado at Boulder

Despite the stipulation that the IC would include members who possess appropriate research expertise, after Williams and Johansen's resignations, no one competent in Churchill's discipline was included, at least according to scholars in the field. The University contends that Professor Clinton is a recognized American Indian Studies (AIS) scholar. That claim has been refuted by Michael Yellow Bird,⁶⁷ Robert A. Williams, Jr.,⁶⁸ Cornell University Professor of Indian Studies Eric Cheyfitz,⁶⁹ and Professor Sumi Cho, a former colleague of Clinton's.⁷⁰ According to Williams, Clinton is a recognized expert in federal Indian law—as is Dean Getches—but he has no discernible record or competence in AIS.⁷¹

Churchill challenged Limón's qualifications on the basis that he specialized in literature, a field completely distinct from the questions of legal and historical interpretation involved."⁷² Of the three IC members from the University of Colorado, none claimed expertise in the field of AIS or even the relevant areas of history or law.

An Unbiased Investigation

The IC's guidelines with regard to bias include the following:

The Standing Committee shall appoint an investigating committee charged with conducting a thorough, informed and unbiased investigation of the allegations of misconduct.⁷³

Some months after the investigation, Churchill discovered that Chair Marianne Wesson had written an undetermined number of emails prior to the investigation expressing a bias against him. One such email, dated February 28, 2005, reads in part:

I confess to being somewhat mystified by the variety of people this unpleasant (to say the least) individual has been able to enlist to defend him [T]he rallying around Churchill reminds me unhappily of the rallying around OJ Simpson and Bill Clinton and now Michael Jackson and other charismatic male celebrity wrongdoers (well, okay, I don't really know that Jackson is a wrongdoer.)⁷⁴

Rosse acknowledged in court that it would be a "reasonable interpretation" of Wesson's email that it indicated that she had "a chip on her shoulder" regarding Churchill, but that

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

he had nonetheless appointed her to chair the Investigative Committee.⁷⁵ In fact, Wesson told Joe Rosse that she would not participate unless she could chair the committee.⁷⁶ Rosse was aware of Wesson's emails before he appointed her chair of the IC. Wesson testified before P&T that she wrote "a large number" of comparable emails about Churchill during the period in question and that she provided copies to Rosse.⁷⁷ Rosse testified before P&T that Wesson never provided him with copies of the emails but described "a couple" of disparaging emails to him before he appointed her chair of the IC.⁷⁸

120 Calendar Days

With regard to a time frame for conducting the investigation, the IC's Operating Rules say:

The investigating committee shall reach a decision as to whether misconduct did occur and shall report its findings to the Standing Committee within 120 calendar days of the initiation of the investigation, unless a longer period is clearly warranted. (VI.B.1)

Given the array of charges he was facing, Churchill twice requested an extension of the 120-day time period to prepare his responses.⁷⁹ His requests were ignored; in fact, they may never have been communicated to members of the committee for their consideration. Professors Clinton, McIntosh, and Radelet testified before P&T that they were not aware of any requests for extension.⁸⁰ Wesson testified that the members of the IC had discussed the matter and collectively declined to grant Churchill an extension.⁸¹ An email from Wesson to Clinton, dated March 1, 2006, enlists Clinton's cooperation in meeting the May 9, 2006, deadline, saying "dragging this out is somewhat to [Churchill's] advantage."⁸² As this email makes clear, Wesson was more concerned about keeping Churchill at a disadvantage than ensuring that the allegations against him were fully examined and that he was allotted the time necessary to refute each of the offenses with which he was charged.

Wesson's rush to judgment appears to have been fueled by concern about donations to the University. The above-referenced email from Wesson to Clinton contains a forwarded email from a concerned citizen who mentions donations as a reason for urgency.

Established Standards

The IC's guidelines refer to an Administrative Policy Statement (APS) that defines misconduct as follows:

Under this policy "research misconduct" shall include but shall not be limited to: (1) Fabrication, falsification, plagiarism and other forms of misappropriation of ideas, or additional practices that seriously deviate from those that are commonly

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

accepted in the research community for proposing, conducting, or reporting research.

(2) Material failure to comply with federal and University requirements for the protection of researchers, human subjects, or the general public or for ensuring the welfare of laboratory animals.

(3) Failure to adhere to other material legal requirements governing the field of research.

(4) Failure to comply with established standards regarding author names on publications.

(5) Retaliation of any kind against a person who reported or provided information about suspected or alleged misconduct and who has not acted in bad faith.⁸³

Only two of the above rules are relevant in Churchill's case, #1 and #4. However, there are many different and sometimes conflicting sets of professional standards, and the IC had difficulty deciding which set of standards it was applying—those set out by the American Sociological Association (ASA), the American Psychological Association (APA), the American Historical Association (AHA), etc. On February 13, 2006, Churchill's attorney, David Lane, wrote a letter to Eric Elliff, IC counsel, asking that he "Please provide copies of all rules or standards, articulated by the University of Colorado or any other entity, against which you will be assessing Professor Churchill's performance."⁸⁴

Elliff answered that "the Investigative Committee has not yet adopted a standard."⁸⁵ In response to further requests for clarification, Marianne Wesson stated, "[W]hen we reach the point of coming to our conclusions and documenting them, we will try to be as transparent as we can about the standards we are applying. . . ."⁸⁶ In other words, Churchill would be notified at the end of the process, not at the beginning, as to which professional standards had been applied. The IC members were clearly aware of the disadvantage at which this placed Churchill. As Marjorie McIntosh stated, "I recognize that your position is difficult because you don't know exactly what you have to defend yourself against."⁸⁷

According to the Investigative Report, Churchill concurred on February 18, 2006, that the IC would use the "Statement on Standards of Professional Conduct" prepared by the American Historical Association as a general point of reference: "Our assessment has therefore been informed by that statement, though we have made no decisions based solely upon it." A footnote, however, registers Churchill's reservations "that the AHA standards are unrealistically high, that not all historians are in practice held accountable to them, and that the standards are not in themselves sufficient for assessing his scholarship."⁸⁸

That the application of American Historical Association standards might be controversial, at least in the eyes of Churchill and other scholars in the field of American Indian Studies, merits a brief discussion. From the perspective of the indigenist paradigm, most contemporaneous written accounts of historical events dealing with indigenous peoples—

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

the source material for many Western historians—are constructed through the lens of Eurocentric assumptions. While these accounts may scrupulously adhere to AHA standards and are generally, one assumes, sincerely rendered, they are often, to an indigenist scholar, versions of history so one-sided as to be unreliable if not obscene in their degree of historical distortion. Nor, from this perspective, do the AHA standards readily accommodate the ways in which knowledge is acquired and transmitted in historically repressed oral cultures—the source material for many indigenist scholars. Therefore these “standards” are considered outdated, if not largely irrelevant, to legitimate scholarly inquiry in American Indian Studies.

Another reason that AHA standards are not sufficient for assessing Churchill’s scholarship is that they do not address the ethics of ghostwriting, an issue that emerged when Churchill indicated that although they had been published under the names of other scholars, he himself had written two of the articles he was accused of plagiarizing. The issue was complicated by the fact that Churchill, in several instances, had cited the articles he had written as corroborating his claims. IC member Robert Clinton testified that standards in this area are more a matter of “common understanding” than statute. For example:

I think that there is an overwhelming academic view that [citation of items one has ghostwritten as third-party sources] is inappropriate in scholarship. . . . Does that appear in an ethical code anywhere? I don’t think so. I think you’ll look long and hard to find it as part of the AHA or other standards. And . . . I think this kind of fraud does not need to be set forth. . . . I don’t think it requires enumeration in a code to make it clear. . . . [F]raud is not made illegal by a code. It’s made illegal by common law. . . . It’s a common law doctrine.⁸⁹

In his testimony, Clinton does not address the question of why—if the practice at issue is so obviously “fraudulent” that it need not be listed under the “convention of the norms of a[ny] particular discipline,”⁹⁰—plagiarism, falsification of data, and other such obviously fraudulent practices *are* set forth in those very same “conventions of norms.” In fact, the issue appears far from clear cut; Churchill has pointed out instances in which “ghostwriting is actually considered a professional competency by ranking communications scholars, and that courses designed to impart the necessary craft proficiency have been offered at Penn State and other universities for decades.”⁹¹

The point here is not to argue the merits of ghostwriting, or even the practice of citing a work that one has ghostwritten, but to highlight the IC’s apparent tendency to invent standards when reliance on AHA standards did not yield the desired results. Instead, the IC rested its accusations on the unsubstantiated assertion that ghostwriting and related practices are condemned by “an overwhelming academic consensus.”⁹² Procedurally, the burden of proof was on the IC; at the very least, the IC failed to comply with its own rules that it demonstrate that the respondent was not in compliance with either practices “that are commonly accepted in the research community” or “established standards.”

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Nonadversarial Proceedings

The IC's guidelines stipulate that the proceedings should be nonadversarial:

The investigation is an information-seeking, nonadversarial proceeding to explore further the allegations of misconduct and to evaluate whether any or all of the allegations are substantiated by a preponderance of the evidence. (VI)

Nonetheless, there are indications that the IC was deliberately adversarial. According to Joe Rosse, Mimi Wesson was selected chair on the basis of her prior experience as a prosecutor.⁹³ The first time Churchill appeared before the IC, Wesson informed him that he should consider himself as being "in the same position as someone who's accused in a court of law."⁹⁴ A court of law is predicated, it should go without saying, on the adversarial system. Since Churchill was the accused in these proceedings, and had retained legal counsel, her instruction can certainly be construed as placing herself in the role of prosecutor, the basis for which Rosse appointed her as Chair.

There were, however, certain rules to which Wesson adhered strictly. According to the guidelines:

The respondent and the respondent's advisor may be present during the committee's questioning of witnesses. Neither the respondent nor the respondent's advisor may question witnesses directly; however, they may suggest questions to the committee. (VI.B.2.c)

IC members could pose any questions they wanted, verbally, at any time. In contrast, Churchill was required to email his questions to Wesson, who was sitting across the room, and Wesson would read them to the witness. According to Churchill, Wesson would sometimes alter the questions or interject questions of her own. Two witnesses, George Tinker and Michael Yellow Bird, complained that the procedure impaired their ability to testify. The IC Report does not mention this oddity or Churchill's repeated objections to it; the Report does, however, offer the following:

In keeping with the procedures required by the Operating Rules, Professor Churchill was permitted to suggest questions to be asked of the witnesses, and the chair of the Committee screened and then put forward his questions. In no case did the chair refuse to ask the witness a question suggested by Professor Churchill, although on a few occasions she rephrased the question for purposes of clarity or relevance, and on one occasion she advised a witness that he did not have to answer a question she deemed inflammatory and irrelevant. (The witness declined to answer it.)⁹⁵

This procedure was in keeping with the "Operating Rules"; however, in this case, the rules themselves interfered with due process. Wesson "screened," "rephrased," and "deemed inflammatory and irrelevant" questions that Churchill asked.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Churchill himself faced difficulties in framing his responses to questions posed by the IC. One problem is that the questions were sometimes changed after they had been answered, beyond practical matters of rephrasing. For example, during the proceedings Wesson asked Churchill why he had cited an article that he had written as one of his sources. Churchill claimed that he had done no such thing and went to considerable lengths to provide evidence that no citations of the article appeared in either edition of the book in question, the difficulty of proving a negative notwithstanding. Wesson's question was then reframed: why was the article listed in the acknowledgments that were pasted onto the end of the introduction?⁹⁶

At times, Churchill was led by the IC to believe his answers were adequate, only to discover while reading their final Report that the IC regarded them as inadequate. For example, at one point during the proceedings, Churchill used the example of C.L.R. James to illustrate a point about pseudonymic self-citation and ghostwriting. Churchill asked whether he should include more examples, to which Wesson replied, "I don't need anything further unless you want to submit something else on C.L.R. James."⁹⁷ The IC Report, however, states that "[A] single counterexample, however distinguished, cannot nullify an overwhelming consensus about established practice."⁹⁸

In another example, Professor Thomas Brown of Lamar University submitted a complaint against Churchill after the investigation had begun. Marjorie McIntosh informed Churchill that "[W]e're not giving [Brown's submission] credence as any kind of formal evidence [so] I encourage you not to spend any time going through and answering his allegations."⁹⁹ The IC Report, however, particularly the section attributed to McIntosh, relies heavily on Brown's claims, so much so that Brown himself has implied plagiarism, writing that the IC Report "bears some striking parallels to [Brown's] *Plagiary* article."¹⁰⁰

There is further evidence that the IC had disregarded its obligation to conduct business in a nonadversarial manner. Rather than ascertain whether Churchill had a reasonable basis for reaching his conclusions, they set about discrediting his sources. For example, after Churchill cited a source directly supporting an interpretation of events he had allegedly fabricated, McIntosh traced the chain of citation to an 1833 journal kept by Maximilian, Prince of Wied,¹⁰¹ in an effort to prove that both Churchill and his source were wrong. To its credit, P&T concluded that that this maneuver on the part of the IC "goes beyond the Investigative Committee's charge [and] strays into evaluating Professor Churchill's references, rather than seeing if he had a rational basis for his conclusions."¹⁰² According to Churchill, the IC Report is riddled with less conspicuous examples of the same technique being employed.¹⁰³

The IC's Recommendation to SCRM

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

On May 9, 2006, the IC issued its report on Churchill. The 124-page report is saturated with footnotes, scholarly discriminations, and proclamations asserting consensus by scholars in the field.

At the beginning of the IC Report, the Committee acknowledges the suspicious circumstances under which charges were brought against Churchill—that the investigation commenced “*after*, and perhaps in response to, the public attack on Professor Churchill for his controversial publications”; that Churchill’s scholarly opinions had been properly rejoined in scholarly publications, which is where these disputes ought to take place; and that some of the allegations had been lodged a decade earlier, and the University, after a preliminary investigation, had taken no further action on them:

Thus, the Committee is troubled by the origins of, and skeptical concerning the motives for, the current investigation. The Committee’s disquiet regarding the timing of these allegations is exacerbated by the fact that the formal complainant in the charges before us is the Interim Chancellor of the University, despite the express provision in the Laws of the Board of Regents of the University of Colorado that faculty members’ “efforts should not be subjected to direct or indirect pressures or interference from within the university, and the university will resist to the utmost such pressures or interference when exerted from without [F.D.2].”

Nevertheless, serious claims of academic misconduct have been lodged and they require full investigation and responsible and fair treatment.¹⁰⁴

With this last sentence, we disagree. Administrators at the University of Colorado had brought these charges against Churchill in response to political and public pressure. From an AAUP perspective, the faculty’s obligation was, as the Laws of the Regents say, to resist political pressures “to the utmost.”

In the end, two of the IC members voted to recommend that Churchill be suspended from the University without pay for two years. Two voted to recommend suspension from the University without pay for five years. One member, José Limón, in the only session he attended in person, voted for revocation of tenure and dismissal from the University. The IC’s grounds for recommending sanctions, and the rebuttals by ranking scholars in the field of AIS, are reported in the section of this report titled “Analysis of the Charges against Ward Churchill.”

SCRM’s Recommendation to the Chancellor

On May 16, 2006, the IC submitted its findings, conclusions, and recommendations in a 124-page report to the SCRM, who accepted the IC Report uncritically and issued its own report, which noted that “(1) complaints of research misconduct were lodged; (2) these complaints required a response by the SCRM.” The SCRM voted their own

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

recommendations: of the nine voting members, six recommended dismissal, two recommended suspension without pay for five years, and one recommended suspension without pay for two years. The SCRM final report was then sent to Chancellor DiStefano, who had referred the charges to the SCRM.

On June 26, 2006, DiStefano announced to the press his recommendation that Churchill be dismissed.

Allegations of the IC's Research Misconduct

During the SCRM proceedings, the Boulder Chapter of the AAUP, spearheaded by Margaret LeCompte, released several statements of protest, including its "Statement of the AAUP Chapter at the University of Colorado at Boulder Regarding the Investigation and Recommended Termination of Professor Ward Churchill"¹⁰⁵ and an "Open Letter from Faculty Calling for Churchill Report Retraction."¹⁰⁶ On May 10, 2007, nine members of the faculty from the University of Colorado, plus Michael Yellow Bird of the University of Kansas, and Eric Cheyfitz of Cornell University, submitted "A Filing of Research Misconduct Charges against the Churchill Investigating Committee."¹⁰⁷ This latter statement cites numerous specific instances in which misrepresentation of sources, serious distortion, or outright falsification of data, fabrication, and plagiarism were committed by the IC in their Report. The University has never denied the validity of these allegations; it simply refused to hear them and declared the IC Report an "administrative report"¹⁰⁸ rather than a research report or a scholarly work, effectively protecting the authors from scrutiny of the same standards of professional scholarship they had purportedly applied to Churchill.

The designation of the IC Report as an "administrative report" is belied by the SCRM's assertion that "public release of the Investigative Committee's report" was undertaken to "allow correction of the research record" and that the "national attention [it] has garnered . . . has largely accomplished this objective."¹⁰⁹ The Investigative Report itself repeatedly refers to its work as "research."¹¹⁰ Chair Marianne Wesson publicly referred to the "research integrity" of the Investigative Report and its place in the "scholarly record."¹¹¹ Robert Clinton said in testimony before P&T, "When you essentially attempt to present works as scholarship with footnotes, then presumably, you're saying, 'this is the result of scholarship.'"¹¹² Clinton also said during the P&T hearings that he was prepared to see his work in the IC Report subjected to scrutiny under the same standards as had been applied to Churchill's.¹¹³ There is, however, no record of Clinton's having objected to his immunization from allegations that he and his committee submitted a report that was substantially fraudulent.

On May 28, 2007, another complaint was filed against the IC, this one titled "Research Misconduct Complaint Concerning Investigative Committee Report of May 9, 2006." It enumerated and elaborated upon five instances of "misrepresentation, falsification, fabrication, and/or suppression of evidence and for exceeding their mandate in their

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

report of May 9, 2006.” The complaint was signed by seven scholars in the field of Native American studies:

- James M. Craven (Omahkohkiaayo i’poyi) (Blackfoot), Professor of Economics and Chair, Business Division, Clark College, Vancouver, WA
- Jennifer Harbury, Attorney and Author of *Truth, Torture and the American Way*, Weslaco, TX
- Ruth Hsu, Associate Professor of English, University of Hawai’i
- David E. Stannard, Professor of American Studies, University of Hawai’i
- Haunani-Kay Trask (Kanaka Maoli), Professor of Hawaiian Studies, University of Hawai’i
- Sharon H. Venne (Cree), Attorney and Author, Edmonton, Alberta Canada
- Michael Yellow Bird (Arikara, Hidatsa), Director, Center for Indigenous Peoples’ Critical and Intuitive Thinking, Assoc. Professor of Indigenous Nations Studies, University of Kansas.

Churchill’s Appeal to the Privilege and Tenure Committee (P&T)

Once the Chancellor announced his recommendation to terminate Churchill’s employment, Churchill requested review by the Privilege and Tenure Committee. While the SCRM Investigative Committee reports to the Chancellor, P&T reports to the President of the University.* P&T commenced its hearings on January 8, 2007.

Members of the committee were:

- Hearing officer, Philip Langer, professor of education and psychology
- Professor Peter Bryant, professor of business
- Professor Mary Ann Cutter, professor of philosophy
- Professor Dick Deitrich, professor emeritus at the medical school
- Professor Adelina Gomez, professor of communication
- Professor Robert Poyton, professor of molecular biology and cell biology
- Professor Don Morley, professor of communication
- Designated observer, William Cherowitzo, professor of mathematics

Almost immediately, the familiar issue arose in these hearings as to which set of professional standards should be employed. Philip Langer, chair of the committee, declared that the reviewers were going to “stick to evidence about practices accepted in A&S [Arts and Sciences].”¹⁴ Accordingly, Churchill pointed out the prevalence of ghostwriting in political science:

* At the University of Colorado, each campus has its own Chancellor; the President is the chief executive of the entire University system.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

The people who are being hired in political science departments quite often, coming out of government agencies or working on staff for senators, congressmen, sometimes even the president, primarily are engaged in what amounts to ghostwriting, formulating policy statements and so forth.

Those go out under the senator's name or the president's name. . . .Who do we cite?¹¹⁵

The committee acknowledged that in this case, the person who gave the speech, not the speech writer, would be cited. In other words, for citation purposes, the ghostwriters *cum* professors customarily attribute authorship to the political figure(s) under whose name(s) the material appeared. This practice is clearly accepted by the research community of political science. P&T insisted, however, that this situation does not happen in an academic setting and that the foregoing example is not analogous to Churchill's practice of citing an article that he himself had ghostwritten.

Churchill's attorney, David Lane, pointed out the example of legal scholarship:

[W]hen a law professor wants to write a law review article, the law professor will engage research assistants who are law students. It's a scholarly article to be published in a law review, which is a scholarly work, and the research assistants put the whole thing together. The professor tweaks it here and tweaks it there and then signs it.¹¹⁶

Langer acknowledged that he is not a lawyer himself, but that his daughter is.¹¹⁷ According to his daughter, Langer noted, the issue of ghostwriting never came up and that it is "common enough practice. But it is not, as far as [Langer is] concerned, a statement of the majority, at least of values within the institution."¹¹⁸ Langer's logic is obviously problematic, particularly for someone in a position to allow or disallow evidence. First, he has no first-hand knowledge of the issue. Second, the issue doesn't arise precisely because it is common practice and therefore needs no discussion. Third, if it is common practice, it does in fact represent the values of a significant portion of the community. Nonetheless, Langer disallowed evidence that ghostwriting was an established academic practice.

In the end, P&T, like their predecessors on the SCRM Investigative Committee, asserted that ghostwriting and similar practices are condemned by "what we take to be accepted standards by large components of the academic world"¹¹⁹ even though they admitted to "difficulty in finding specific guidelines" or "established University policy."¹²⁰ If such policies and guidelines existed, it seems certain that the SCRM, the SCRM Investigating Committee, or P&T would have found them. At any rate, it seems obvious that material ghostwritten for Professor X and being published under that professor's name always implies that Professor X has approved it and attests to its accuracy.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

The University of Colorado's Laws of the Regents (5.E.5.A.1.c) say that the standards of the National Science Foundation "apply to University members on all campuses who are conducting research under different circumstances, regardless of whether or not it is in the field of science." In the NSF formulation, the passage reads, "A finding of research misconduct requires that—(1) There be a significant departure from accepted practices of the relevant research community." From an AAUP perspective, that not a single member of the SCRM, the IC, or the P&T appellate panel legitimately could be described as a member of Churchill's research community is remarkable. That *every single witness* belonging to the AIS research community who testified during the investigative process, the P&T appeal, and the trial, indicated that Churchill's scholarly practices were and are in fact accepted, is even more remarkable.

P&T concluded that three of the IC's seven findings of research misconduct against Professor Churchill were unsustainable and that a significant portion of a fourth was deficient. However, it upheld the IC's finding against Churchill's violation of a rule against ghostwriting and related practices, even though they were not able to find such a rule, as well as two accusations of plagiarism—to be discussed more in detail in the section titled "Analysis of the Charges against Ward Churchill." Three of the five voting members of the P&T panel recommended demotion and suspension without pay for one year. Two recommended dismissal.

P&T's Recommendation to the President

In accordance with the rules, P&T sent its findings and recommendations to University of Colorado President Hank Brown. Brown would then make his own recommendation to the Board of Regents. Churchill sent Brown a letter asking him to recuse himself due to his conflict of interest as a member of ACTA:

It is public knowledge that you were a founding member of the American Council of Trustees and Alumni (ACTA), continue to be quoted and praised by ACTA as one of its "Friends in High Places," and participate in various ACTA projects. It is also well-known that ACTA, in May of 2006, published a widely disseminated study entitled "How Many Ward Churchills?" using my case as illustrative of what ACTA finds to be wrong in higher education today.

The President's Recommendation to the Board of Regents

Brown declined to recuse himself. Furthermore, he unilaterally "reinstated" two of the three IC findings dismissed by P&T and submitted his own recommendation to the Board of Regents that Churchill be fired for cause. As a justification, Brown pointed out in his letter to the chair of the Board of Regents, somewhat misleadingly, that "more than twenty-five professors involved in the investigative and hearing processes unanimously determined (1) Professor Churchill engaged in intentional and repeated research misconduct; and (2) the misconduct required a severe sanction."¹²¹ It is true that every member of the faculty involved in the process found Churchill guilty of some form of

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

misconduct, but not all of them found him guilty of all of the charges, and the majority had called for suspension instead of dismissal.

Board of Regents Vote to Terminate Churchill

The Board of Regents voted 8 to 1 in favor of Brown's recommendation to dismiss Churchill for cause. The single dissenting vote, Regent Cindy Carlisle's, was cast in deference to P&T's recommendations.¹²² One of the Regents who voted for Churchill's dismissal admitted later that he was motivated to do so by Churchill's expression of political views.¹²³

On the same day that Churchill was fired, Brown sent letters to the entire list of university donors (thousands of them) informing them of the outcome.¹²⁴

Churchill Sues the Board of Regents

The day after the Board of Regents voted to fire him, July 25, 2007, Churchill filed a lawsuit against the Board of Regents. After a four-week trial, during March 2009, the jury returned a unanimous verdict that Churchill was fired not because of his supposed research misconduct—as the university continues to insist he was—but in retaliation for his exercise of his First Amendment rights. They voted to award Churchill \$1 in economic damages.

After the verdict, five of the six jurors, including Bethany Newill, met with attorneys representing both Churchill and the University during an informal post-verdict meeting convened by the judge in his chambers. According to Newill, who would echo her comments to newspaper and radio outlets, “Jurors thought the academic misconduct charges were not valid,” that “the procedures afforded to Churchill by the University of Colorado, especially the P&T Hearings and the hearing given by the Regents, were unfair and biased,” and “the majority of the University of Colorado’s witnesses were biased and dishonest.”¹²⁵

While the jury also found that Churchill suffered damage as a result of the University’s unlawful actions, he sought no monetary compensation, asking only that he be restored to his professorship. As for the \$1 award, according to Bethany Newill, five of the six jurors had strongly favored awarding Churchill a “substantial” sum in damages, but were unsure about how to determine the actual amount. One juror, moreover, was opposed to awarding him anything at all. Rather than delay the verdict, or risk the prospect of hanging the jury on an issue about which Churchill himself had professed to be unconcerned, the jurors, after consulting with the judge, awarded Churchill \$1 in damages,¹²⁶ the minimum allowed under Colorado law.

After the jury verdict stating that the University had violated Churchill’s First Amendment rights by dismissing him, the University entered a motion seeking dismissal of the verdict on grounds that the Board of Regents—and by extension the University itself—enjoys “quasi-judicial immunity” from liability in personnel matters, even when its actions are unlawful. On July 7, 2009, Judge Larry Naves granted the motion, vacating the jury verdict and allowing Churchill’s dismissal to stand.

In his opinion granting the University’s motion that he refuse Churchill’s request for reinstatement, Judge Naves relied heavily on his understanding of the “implicit” meaning of the jury’s decision to award Churchill \$1 in damages. In this, Judge Naves’s interpretation of the jury’s intentions varied starkly with that of the jurors themselves. Judge Naves’s interpretation also appeared to disregard the jury’s verdict that Churchill’s termination harmed Churchill. (Newill, whose comments on the jury’s deliberations were widely publicized, filed an affidavit regarding the jurors’ intentions, which Judge Naves disallowed as a matter of law.) According to Judge Naves, that the jury awarded Churchill the minimum in damages meant that, in the view of the jury, Churchill had

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

suffered no damages from his dismissal from the University and thus, also in the view of the jury, was not entitled to reinstatement: “I cannot order a remedy that ‘disregards the jury’s implicit finding’ that Professor Churchill has suffered no actual damages that an award of reinstatement would prospectively remedy.”

Judge Naves also ruled, in contradiction to the jury’s actual findings and statements, that the jury did not address whether Churchill engaged in research misconduct. After all, Judge Naves ruled, such a finding can only be made by a faculty committee.

In her affidavit, Bethany Newill wrote, “I feel that my time was wasted as a Juror, and I feel that the Jury’s verdict was disrespected because the Judge did not follow what the jury found. I am frustrated because I sat through the entire trial and our pronouncements were ignored by the Judge.”¹²⁷

Churchill filed an appeal. Because Judge Naves’s interpretation of law would establish a precedent potentially leaving faculty fired for *whatever* reason without legal recourse, thereby gutting tenure and reducing the promise of academic freedom to little more than vacuous rhetorical posturing, the legal staff of the national AAUP, together with the national and Colorado offices of the ACLU and the National Coalition against Censorship, filed an *amicus curiae* brief augmenting Churchill’s effort to overturn Naves’s order.¹²⁸ On November 24, 2010, a three-judge panel of the Colorado Appellate Court of Appeals unanimously affirmed the lower court’s decision to vacate the jury’s verdict.

On May 31, 2011, the Colorado Supreme Court decided to hear Churchill’s appeal on three counts: (1) whether an investigation convened solely on the basis of a professor’s expression of political views constitutes a violation of his/her First Amendment rights; (2) whether the Regents can legitimately enjoy quasi-judicial immunity; and (3) whether Churchill should be reinstated at the University of Colorado.

Epilogue

In 2011, CU Law School Dean David Getches named law professor Marianne Wesson the inaugural Schaden Chair in Experiential Learning. Also in 2011, CU’s Law School awarded Judge Larry Naves the William Lee Knous Award, the law school’s highest award given to an alumnus or alumna in recognition of outstanding achievement and sustained service to the Law School.

Analysis of the Charges against Ward Churchill

Introduction

If He Was Guilty, Who Cares that the Investigation Was Improper?

On May 16, 2006, in an act that is perhaps unique as a subversion of confidentiality rights in academic disciplinary matters, Chancellor Phil DiStefano and IC Chair Marianne Wesson conducted a press conference to announce the findings of the SCRM Investigative Committee: Ward Churchill was guilty, as charged, of repeated instances of falsification, fabrication, and plagiarism. Additionally, the IC discovered serious instances of academic misconduct not covered by the charges, for which they duly convicted Churchill.

From that time onward, the IC Report would be the intellectual justification for Churchill's eventual termination from the University for cause. The extraordinary publicity generated by the public release of the IC Report remains central to widespread perceptions today that Churchill is a "fraud." Even among organizations and individuals alarmed by the University's brazen violations of Churchill's procedural rights, the perception persists that, however incautious the University had been with regard to the academic freedom ramifications in their prosecution of Churchill, a just result was achieved. As a report issued by the Foundation for Individual Rights in Education (FIRE), an organization concerned with academic freedom issues from a politically conservative perspective, concludes, "In sum, the University of Colorado's improper investigation has reached the substantively correct result."¹²⁹

On July 2, 2011, a day after the Colorado Supreme Court agreed to hear Churchill's appeal, the *Denver Post* ran an editorial expressing continued skepticism about Churchill. In decrying a potential Churchill victory as "a serious blow to faculty accountability" the *Post* stated:

But make no mistake: whatever the final decision, Churchill deserved to be fired. Moreover, he was not fired because of his vile 9/11 essay and his equally vile views on a number of other historical topics. He was fired because he was a serial plagiarist and an academic fraud.¹³⁰

But What If Churchill Wasn't Guilty?

The Colorado Conference of the AAUP, in deciding to investigate the dismissal of Ward Churchill, took into consideration the following factors:

1. That two groups of reputable scholars filed academic misconduct charges against the IC for fabrication, falsification, and plagiarism;

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

2. That the University of Colorado refused to investigate these allegations against the IC;
3. That devastation to the free exchange of ideas may result from District Judge Larry L. Naves's granting the University of Colorado's motion that their Board of Regents should enjoy "quasi-judicial immunity" from any legal consequences of the University's treatment of faculty;
4. That Ward Churchill's reputation has been significantly damaged by the IC report;
5. That the National AAUP's failure to take action created an unconscionable void, which the Colorado Conference is compelled to fill.

In this section, we are particularly indebted to two ranking scholars in American Indian Studies, Eric Cheyfitz of Cornell and Michael Yellow Bird of the University of Kansas, as well as to Tom Mayer, a long-time professor of sociology at the University of Colorado. We also rely upon transcripts of the IC hearings, the P&T hearings, and the court trial. These transcripts were made available to us by Ward Churchill.

A Brief Overview of the IC's Method for Assessing Churchill's Guilt

In analyzing an allegation that Churchill misrepresented a source in his discussion of the 1887 General Allotment Act, the IC Report declares that:

Standing alone, this referencing failure might constitute some level of sloppiness, but certainly would not constitute research misconduct. When it is combined with other misconduct reflected in this and other allegations, however, the Committee is left with a firm impression, by a preponderance of the evidence, that it constituted *a deliberate research stratagem to create the appearance of independent support for verifiable claims that could not be supported through existing primary and secondary sources [italics ours]*. To put it most simply, it was part of a pattern and consistent research stratagem to cloak extreme, unsupportable, propaganda-like claims of fact that support Professor Churchill's legal and political claims with the aura of authentic scholarly research by referencing apparently (but not actually) supportive independent third-party sources.¹³¹

Throughout its 124-pages, the IC Report expresses variations of this central finding: Churchill fabricated events and falsified details of actual events as a deliberate stratagem to advance propaganda. According to the IC, this stratagem takes one of three forms: 1) Churchill cites articles that provide no support for his textual claims; 2) Churchill frequently does not use pinpoint citations (as mandated by the American Historical Association) but rather references an entire article or book, thereby forcing readers to scrutinize the entire article or book in order to determine the accuracy of his references; and 3) Churchill sometimes cites works that he has ghostwritten to give the false impression that independent support exists for his claims.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

At numerous points, the IC also appears aggrieved at Churchill's refusal to "back down" from his claims in the face of their findings—to "denounce himself," as Stanley Fish writes in a perceptive essay on the IC Report¹³²—and pledge to confess and correct his multitude of sins in future writings. Indeed, Churchill's stubbornness was a consideration in determining the severity of their recommendations, and was judged by itself a form of academic misconduct.

Allegation A: Alleged Fabrications Regarding General Allotment Act of 1887

The General Allotment Act (GAA) of 1887, which was implemented over a period of forty-seven years, was ostensibly designed to advance Indian assimilation into white culture by individually deeding 160-acre tracts of reservation land to Indians who could demonstrate their legitimacy. The Act provided that once all eligible persons within a reservation had been allotted their parcels, the balance of the reservation land would be declared surplus and made available for non-Indian acquisition. As a consequence of the GAA, by 1934 two-thirds of what had been Indian land in 1887 was owned by non-Indians or the federal government.

The Allegation

The IC Report charges Churchill with numerous instances of academic misconduct in connection with his depiction of the GAA of 1887. The allegations involve the following paragraph Churchill wrote in his essay “Perversions of Justice,” published in his *Struggle for the Land* (1993):

One of the first of these was the General Allotment Act of 1887, “which unilaterally negated Indian control over land tenure patterns within the reservations, forcibly replacing the traditional mode of collective use and occupancy with the Anglo-Saxon system of individual property ownership.”[63] The Act also imposed for the first time a formal eugenics code—dubbed ‘blood quantum’—by which American Indian identity would be federally defined on racial grounds rather than by native nations themselves on the basis of group membership/citizenship.[64]¹³³

The first quotation in Churchill's passage above is from an essay by Rebecca Robbins; the second quotation is from an essay by M. Annette Jaimes. During the course of the IC's investigation, Churchill acknowledged having ghostwritten both essays. Consequently, he stood accused by the IC of using his own work to corroborate his otherwise unsupported claims.

The principal source of these allegations is John LaVelle, a professor of law at the University of New Mexico, who had complained that much of the information in this passage, which he perceived as an attack on the historical autonomy of Indian tribes to determine their own identity, is incorrect and misleading. A lengthy footnote in the IC Report acknowledges that LaVelle and Churchill are long time antagonists, resulting from the “schism” within the American Indian Movement (addressed earlier in this report).

The IC's Findings

The IC's discussion of Churchill's representation of the General Allotment Act of 1887 concludes:

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Based on the foregoing, the Committee finds by a preponderance of the evidence that (a) Professor Churchill has engaged in research misconduct with respect to Allegation A regarding the General Allotment Act of 1887; and (b) that such research misconduct was not and could not have been inadvertent and was therefore deliberate. Specifically, the Committee finds by a preponderance of the evidence that:

1. Professor Churchill repeatedly and deliberately cited the General Allotment Act of 1887 and once cited Janet McDowell's book for the details of historical and legal propositions that he advances. Because both sources in fact contradict his claims, this is a form of falsification of evidence.
2. Professor Churchill has deliberately cited two essays as independent sources of support for the details of his historic claims regarding the General Allotment Act of 1887, the Robbins and Jaimes essays, which he says he actually authored "from the ground up." He did not disclose either at the time of publication of those two essays or at the time he cited them in other later works that he had written the essays. This is a form of both evidentiary fabrication and failure to comply with established standards regarding author names on publications.
3. Professor Churchill deliberately embellished his broad, and otherwise accurate or, at least, reasonable, historic claims regarding the General Allotment Act of 1887 with details for which he offered no reliable independent support of any kind in his publications or in his defense during this investigation and for which the Committee was unable to find that any reasonable and reliable supports exists. This is a form of fabrication of such details and embellishments.¹³⁴

Our Analysis

Falsifying Evidence: The General Allotment Act

First, Churchill is accused of misrepresenting the contents of the GAA of 1887. The IC ran a computer check for the words "blood," "quantum," "half," "fifty percent," and "50%," and found, among other faults with Churchill's representation, that:

The General Allotment Act of 1887, as originally enacted, simply applied to "Indian[s]" and, unlike many later statutes, contained no definition of Indian whatsoever. It certainly did not, as repeatedly claimed by Professor Churchill, expressly require any blood quantum, let alone one-half or more Indian blood.¹³⁵

It is difficult to quarrel with the IC's finding that the words for which the IC ran the search are not literally in the text of the GAA of 1887. It does not require an expert in AIS (or even a computerized word search) to discern that these words simply are not there.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

According to the IC, in adjudging Churchill's academic conduct, however, the issue went beyond whether Churchill was right or wrong: "[T]he ultimate question is whether Professor Churchill employed rational techniques for finding truth in making the assertions attacked by Professor LaVelle, not merely whether he is correct or incorrect in his claims."¹³⁶

Unlike Robert Clinton, to whom this portion of the IC Report is attributed, Churchill is not a legal scholar. Consistent with his method of critical inquiry in other areas, Churchill practices an interpretive approach that considers the social and historical context in which the Act (or event) is constructed to be part of the Act (or event) itself. For example, few laws will betray racial intentions in their literal language, but a law's intentions can be found in the ways in which the law is implemented. According to Eric Cheyfitz, who is a legal scholar as well as an expert in AIS, Churchill practices the standard approach to critical inquiry: "[I]t is normative to interpret acts of congress or any legal document . . . to include both their implementation and effects." The IC report, Cheyfitz continues, "insists on violating this standard and confining the acts under investigation to their literal language. . . . This approach clearly runs counter to the accepted practices of scholarly and critical interpretation, the purpose of which is to encourage a range of interpretations as long as plausible evidence can be produced in their support."

Cheyfitz surmises that the reason for the IC's "arbitrary exclusion" is that Clinton, the one legal scholar on the Committee, and LaVelle, the source of the allegations, "hold an opposite position to Churchill on these matters and so have a vested interest in discrediting him."¹³⁷

Falsifying Evidence: Janet McDonnell's Book

If we allow the possibility that the method of historical interpretation practiced by Churchill and numerous other scholars is "a rational technique for finding truth," many of the problems with Churchill's footnotes (his "stragem" to create the illusion of support for that which is unsupportable)—suddenly disappear.

For example, the IC condemns Churchill for referencing a book by Janet McDonnell:

Unfortunately, our review of the McDonnell book indicates that it does not support Professor Churchill's description of the General Allotment Act of 1887 . . . as requiring of Indians 'that they were one-half or more degree of Indian blood' to be eligible for allotment.¹³⁸

Further, the IC writes: "Churchill referenced this book in the footnote by again referring to the *entire* book," rather than using a pinpoint citation: "This referencing of a lengthy source without pinpoint page or chapter citation, as he did with the General Allotment Act of 1887, creates the appearance of support without providing a reader with appropriate tools to rapidly check his authority" and "masks the fact that he has simply

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

misstated the contents of his sources and therefore falsified support for his historical claims. . . .”¹³⁹

As the Report concludes its discussion of Churchill’s falsification of McDonnell:

Either Professor Churchill had not read his independent third-party sources, such as the General Allotment Act of 1887 or the McDonnell book, or he has engaged in a deliberate pattern of research misconduct misrepresenting their contents to support his prefabricated conclusions.”¹⁴⁰

The Report’s condemnation of Churchill here, in the strongest possible terms, seems persuasive. Very few readers could read such language, following an authoritative discussion, and conclude other than that Churchill is a fraud. The only problem with this perception is that, if one considers Churchill’s method of interpretation, in which Acts include “both their implementation and effects,” to be rational, then, according to the discussion in the IC Report itself,¹⁴¹ Churchill’s representation of the McDonnell book is entirely accurate.

Embellishing Facts and Details of the General Allotment Act

Interestingly, the Report acknowledges that “the core of [Churchill’s] broad point (i.e., that the General Allotment Act of 1887, as implemented, required—albeit by implication—some Indian blood quantum to be eligible for an allotment) is correct, or at least arguable.”¹⁴² Still, even conceding that Churchill might be correct in his broad historical assertions, the report concludes that he has “virtually all of the details of that history wrong”:

The general thrust of Professor Churchill’s underlying basic point (seemingly and surprisingly rejected by Professor LaVelle) . . . certainly has a firm historical basis, dating back at least to the *Rogers* decision. Professor Churchill nevertheless has virtually all of the details of that history wrong. This racism predated the General Allotment Act of 1887, as *Rogers* demonstrates. It was not imposed either for “the first time” or in any express way by the General Allotment Act of 1887, as Professor Churchill claims, although blood quantum was certainly employed to *implement* the Act during its fifty-year history of wreaking havoc in Indian country and justifying massive transfers of two-thirds of the Indian land base into non-Indian ownership. There was *never* a half-blood quantum requirement for eligibility for an allotment under the Act, although that distinction was employed by administrative fiat for three years of the fifty-year period of implementing the Act. . . . Finally, to label it a “eugenics code” falsely implies enforced legal racial separation. . . .¹⁴³

In sum, the IC finds (and presents as fact) that Churchill is factually incorrect that a blood quantum was imposed for the first time by the Act (the *Rogers* decision got there first), that he is wrong that there was ever a half-blood quantum requirement (there never was, according to Robert Clinton), and that Churchill falsely labels the blood quantum a “eugenics code.”

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

The only problem with the report's finding that Churchill got virtually all these details wrong is that, at least according to experts other than Robert Clinton, Churchill got these details mostly right. As Cheyfitz testified before the P&T Committee:

[T]he interpretation of Robert Clinton on *U.S. v. Rogers* is wrong. Blood quantum does not begin with *U.S. v. Rogers*. *U.S. v. Rogers* deals with the racialization of the term "Indian. . . . [T]here's no mention of blood quantum in *U.S. v. Rogers* because it had not been developed yet as a formal paradigm. It does not get developed as a formal paradigm until the . . . time of the allotment.¹⁴⁴

In the view of Robert Williams, an expert in AIS who is also a legal scholar (Williams collaborated with David Getches on a classic Indian law casebook), only legislation, not case law, can be the source of legal code. Testifying during the P&T hearings, Williams expressed skepticism that Robert Clinton might be genuinely confused about the distinction:

Rogers was a Supreme Court case. It wasn't a code. So this implication of Professor Clinton . . . which says, Well, you're wrong because it was recognized in *Rogers*, there is a dramatic—and Clinton knows it—there is a dramatic difference between a decision based on federal common law by the Supreme Court and an entire legislative apparatus which was constructed under the Allotment Act.¹⁴⁵

The IC also found Churchill factually wrong because there "was never a half-blood quantum requirement for eligibility." Interestingly, the next parenthetical note in their sentence ("although that distinction was employed by administrative fiat for three years of the fifty-year period of implementing the Act")¹⁴⁶ admits that Churchill is, in fact, right. But of course that Churchill might be right—that further, that he might be aware that the words in dispute are not literally in the GAA—implies that the standard critical method of locating the "truth" practiced by Churchill and numerous other scholars is rational.

The final detail that Churchill got wrong, according to the Report, is his reference to the GAA as a "eugenics code." In an expansive essay on his prosecution by the University of Colorado in the academic journal *Works and Days*, Churchill argues that Clinton, in claiming that the GAA was not a eugenics code and finding Churchill factually incorrect for claiming that it *was*, offers no citation to support his assertion, is "contradicted by the standard literature on eugenics," and confuses the subset "negative eugenics" with "positive eugenics."¹⁴⁷ Churchill's opinion here cannot be seen as entirely disinterested, but Paul Lombardo, a law professor at Georgia State University and an expert on the history of eugenics, made the same point even more strongly in his testimony at the trial. Noting that no member of the IC could be considered professionally knowledgeable about eugenics, Lombardo testified that "[T]he definition they gave was extremely limited. . . . [I]t was focused in a way that excluded whole bodies of work"¹⁴⁸ including, Lombardo added, his own.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

In our analysis of this portion of the IC Report attributed to Robert Clinton, we have made the case that Clinton, an eminent legal scholar, has disregarded or dismissed as irrational a standard critical methodology that, one must assume, he is aware is widely considered to be reputable; that he has, according to other legal experts, confused legal code with case law; and that he has pretended to have an expertise in eugenics that he does not possess. If we are correct, the reason may be that, at least according to Robert Williams, scholars in federal Indian law such as Clinton are uncomfortable with AIS scholars such as Churchill who apply critical race theory, the philosophy that interprets events through the lens of racism that provides much of the theoretical foundation for the field of American Indian Studies:

[S]cholars like Robert Clinton and David Getches are very critical of critical race theory . . . because you have been taught that law is neutral principal, that law is pursuit of justice, that law doesn't care about race. . . . But if you look at the history of American Indians you know that's not true. . . . What do you think it means to a legal scholar to have written for 20 or 30 years on a topic and never have mentioned that racism may have something to do with the way this Act has been administered . . . and then along comes somebody who throws things out like eugenics code? . . . I'm not saying there was any animus or ill will by Professor Clinton or Professor Getches . . . [but] I can tell you they are hostile to the perspective that racism is a dominant factor in American Indian Law and would be inclined to try and disprove it because their entire professional career is invested in proving exactly the opposite.¹⁴⁹

Citation of the Robbins and Jaimes Essays

In assessing Churchill's factual errors, the IC Report notes:

Getting the general point correct but virtually all of the details wrong is certainly not the level of professional work one would expect of an ethnic studies scholar writing on important events in Indian studies. . . . Nevertheless, reaching incorrect scholarly conclusions by itself does not constitute research misconduct unless some clear deviation from generally accepted scholarly practices produced such errors.¹⁵⁰

The "clear deviation from generally accepted scholarly practices" allegedly occurs in the two footnotes, #63 and #64, included in Churchill's two sentences about the GAA of 1887 quoted at the beginning of this section. The essays cited in these two footnotes, attributed to Rebecca Robbins and Annette Jaimes, "do contain statements of the type that Professor Churchill claims [and] that might have put an end to the matter of research misconduct regarding this allegation," the IC report says, "except for the fact that in response to the separate allegation that he had plagiarized the Robbins essay . . . Professor Churchill said . . . that he had in fact ghostwritten *both* the Robbins and Jaimes essays, in full." Both essays were published in a volume edited by Jaimes, at the time

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Churchill's wife, for which "Churchill appears to have written under his own or a different name about half the essays. . . ." ¹⁵¹

Churchill's practice of ghostwriting for other scholars in the early 1990s, and the IC's conclusion in 2005 that his having done so constitutes "a serious problem of research misconduct," is analyzed in its own section later in this report. But they are of extraordinary relevance to the IC's findings in Allegation A:

As already noted, the Act does not expressly provide what Professor Churchill claims and therefore can provide no support for his claims whatsoever. The two other *apparently independent third-party sources*, the Robbins and Jaimes essay, turn out not to be independent sources at all but, rather, to have been ghostwritten in their entirety by Professor Churchill. This action provided him with *apparent* independent sources that he could and did in fact cite to support otherwise insupportable claims of legal and historical fact. . . . The Committee is not claiming that Professor Churchill fabricated his general conclusions; rather, he fabricated the underlying data employed to support the insupportable details bolstering those conclusions. ¹⁵²

Thus, according to the IC, Churchill fabricated and falsified by manufacturing, through his footnoting "strategem," the illusion of support for his propaganda-like claims for which no authentic support exists.

This formulation, constructed by the IC in order to condemn Churchill, requires, of course, that Churchill's claims be otherwise unsupportable. As we have observed throughout this section, if one allows for the possibility that the method of historical inquiry practiced by Churchill and numerous other scholars—one that is normative, according to Cheyfitz—is rational, then virtually all of Churchill's claims, far from having no support whatsoever, are familiar if not widely-held in the field of American Indian Studies. For example, as Angela Gonzalez writes in "The (Re)Articulation of American Indian Identity: Maintaining Boundaries and Regulating Access to Ethnically Tied Resources":

BLOOD QUANTUM

When treaty making ended in 1871, the prevailing attitude of the federal government was that Indians should be assimilated and transformed into productive members of society. To hasten this transformation, Congress passed the General Allotment Act in 1887, aimed at the dissolution of collectively held tribal lands into individual land allotments. The criteria used to determine allotment eligibility was based on individual Indian "blood quantum."

Reflecting the scientific ideology of the time, blood was believed to be the carrier of genetic and cultural material. The amount of blood that an individual possessed of a particular race would determine the degree to which that individual would resemble and behave like persons of similar racial background. Inferred from the racial background of the parents, if both parents were of 100 percent Indian blood,

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

their offspring would also be 100 percent and quantified at four-fourths Indian blood quantum. Children of mixed parentage, for instance, if the father was white and the mother was Indian, would possess one-half Indian blood quantum.

Determining blood quantum, however, required a benchmark, so beginning shortly after passage of the act, federal enumerators began canvassing Indian lands, counting Indian households, and recording the number of adults and children and the blood quantum of each. Given that few Indians possessed "official" birth certificates, enumerators had to rely on subjective judgment, individual self-report, and information supplied by neighbors, friends, and relatives. Compiled into what became known as the Dawes Rolls, these records continue to be used by Indian tribes for enrollment decisions and determination of eligibility for special programs and services provided by the federal government for American Indians.¹⁵³

From the perspective that Churchill's methods are rational, his two sentences under scrutiny, taken from a much longer essay that is not much concerned with the GAA of 1887, compress a great deal of historical information accurately. Numerous sources give essentially the same information that Gonzales gives. So why might Churchill have footnoted James and Robbins, whose essays he wrote himself? There are numerous possibilities, including that they offer the best available discussions for the reader. Indeed, Cheyfitz credits the Robbins essay as one of the best discussions he knows of on federal Indian law.¹⁵⁴ But that Churchill cited James and Robbins because no other support existed is demonstrably false.

It is our view that it is not best practice to cite works that one has ghostwritten to support one's own claims. However, there is a vast difference between doing it to facilitate a discussion and doing it to "support the insupportable," as the IC repeatedly says that Churchill does.

Churchill's Refusal to Back Down

The Committee ends its brief detailing of Churchill's misrepresentation of the GAA of 1887 with the following observation:

We note . . . that Professor Churchill has offered no public retraction or correction of his claim which . . . he easily could have done without blunting the force of his underlying point. Furthermore, rather than conceding the historical inaccuracy of many of the details of some statements about the General Allotment Act of 1887, Professor Churchill has stood by them and attempted to defend them to this Committee, as best he could.¹⁵⁵

Later in the report, when the IC discusses how the gravity of Churchill's misconduct factored into the severity of their disciplinary recommendations, they return to this theme: "Another factor that affected our consideration of seriousness is Professor Churchill's

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

attitude toward shortcomings in his work identified by other scholars or our Committee's investigation. . . . He did not back down."¹⁵⁶

Concerning the GAA of 1887, we can surmise why Churchill, even though it might have saved his job, did not "back down" and admit that the IC, composed of Robert Clinton and four others unacquainted with issues and methods common in American Indian Studies, was right and he was wrong. Perhaps it was because he did not believe they knew what they were talking about.

If there are legitimate issues concerning the interpretive methods of Churchill and numerous other scholars, the debate should be conducted in an academic setting, not in a disciplinary hearing, with only one side represented among the inquisitors.

Allegation B: Misrepresentation of the Indian Arts and Crafts Act of 1990

The Indian Arts and Crafts Act was originally passed by Congress in 1935 to address issues concerning who might qualify as an authentic Indian for purposes of selling Indian arts and crafts. Reportedly, under the original legislation no one was ever prosecuted. The Indian Arts and Crafts Act was amended in 1990 in response to an influx of Asian imports that were represented and sold as Indian art.

The Allegation

The passage in which, according to the IC, Churchill fabricated and falsified the Indian Arts and Crafts Act of 1990, appeared in “Nobody’s Pet Poodle,” an article originally published in the activist tabloid *Crazy Horse Spirit* in 1990, shortly after the Act was passed, and reprinted in 1994. Churchill eventually came to believe that his interpretation of the Act, in attributing to the legislation the definition of Indianess as “one quarter degree of Indian blood by birth,” was over-generalized. In 2003, in a much expanded treatment, Churchill published a reconsideration of the Indian Arts and Crafts Act of 1990.

Allegation B, like Allegation A, was brought to the attention of the University (through the intercession of David Getches) by John LaVelle, a law professor at the University of New Mexico. LaVelle’s antagonism toward Churchill, as the IC Report acknowledges, is no secret. Indeed, below are the opening two paragraphs of LaVelle’s 1996 review of Churchill’s collection of essays, *Indians Are Us?*. This review provided the basis of some of the charges brought against Churchill.

Indians Are Us? is a collection of commentaries on American Indian political and social affairs, written in the truculent tone that readers have come to expect from writer Ward Churchill. Like its predecessors, *Fantasies of the Master Race* and *Struggle for the Land*, this latest Churchill project consists largely of polemical pieces hastily compiled from obscure leftist publications.

Through the course of all his writings, Churchill gradually has emerged as a spokesman of sorts for those persons derisively referred to as Indian “wannabees”—individuals with no American Indian ancestry or tribal affiliation who nonetheless hold themselves out to the public as “Indians” by aggressively inserting themselves into the political affairs of real Indian people. Churchill’s appeal among the “wannabees” lies both in the boldness with which he expresses contempt for Indian tribes, and in the scholarly façade he gives his anti-tribal propositions; indeed, many Churchill fans appear to have been won over by the mere fact that Churchill’s books contain an abundance of endnotes. By researching those copious endnotes, however, the discerning reader will discover that, notwithstanding all the provocative sound and fury rumbling through his

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

essays, Churchill's analysis overall is sorely lacking in historical/factual veracity and scholarly integrity.¹⁵⁷

The IC's Findings

The IC Report concludes its discussion of Allegation B as follows:

It seems obvious that Professor Churchill, a major writer about Indian affairs, must have been thoroughly familiar with the Indian Arts and Crafts Act of 1990 since he wrote a major essay solely on that Act. Based on a preponderance of the evidence, we therefore conclude that in his 1994 essay, "Nobody's Pet Poodle," Professor Churchill seriously and deliberately misrepresented the specification of a blood quantum requirement of one-quarter Indian blood in the Indian Arts and Crafts Act of 1990. Moreover, Professor Churchill has again compounded this misrepresentation by citing his own writings as if they were independent third-party sources written by others. He has also distorted the scholarship of distinguished scholars to his own ends. We conclude that this misrepresentation was not scholarly error but serious research misconduct and part of a general pattern of such misconduct in support of his political views.¹⁵⁸

Our Analysis

It's Not Literally in the Act, Redux

Both Robert Clinton, the expert in federal Indian law, and José Limón, the literary scholar who wrote this section of the report, testified at the trial that this allegation, by itself, would not pose a serious act of misconduct, were it not, as noted in the conclusion above, "part of a general pattern of such misconduct in support of his political views."¹⁵⁹

We analyzed an aspect of Churchill's "pattern" of fabrication in the previous section, where the Committee finds Churchill guilty of research misconduct for practicing an interpretative method that is, in their estimation, irrational. According to Allegation B, Churchill is at it again: "The [Indian Arts and Crafts Act of 1990] does not contain anything even remotely suggesting a federal recognition/definition of 'Indianess' and clearly not a blood quantum of any kind."¹⁶⁰

Indeed, radically different perspectives on historical and statutory interpretive methodology are evident throughout the transcript of the IC hearings. For example, in the following exchange concerning the Indian Arts and Crafts Act of 1990, Churchill does not appear to quite understand the nature of the allegation against him:

PROFESSOR LIMÓN: But these examples you're giving, Professor Churchill, I mean, they don't speak to the act itself, and the way you phrase the statement, you say that there is a federal definition of Indianess contained within the act that is usually called a blood quantum.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

PROFESSOR CHURCHILL: Yes there is. Let me run through it again. By implication—

PROFESSOR LIMÓN: No, no, no, I don't want by implication. I want by explicit statement within the act, which is—I think is what you're saying.

DR. RADELET: In other words, why didn't you say when you published it "by implication"? I think that's the question.

PROFESSOR CHURCHILL: I see no need to. If you're required to have a quarter blood quantum to be enrolled, and if required to be enrolled in order to be allowed to do your art, let's just cut to the chase here, you're required to be a quarter blood. That's my interpretation, that's what I said. I don't see any other interpretation.

PROFESSOR CLINTON: But...¹⁶¹

In its report, the IC recognizes, as it did with respect to the GAA, that when one considers the implementation of the 1990 Act, Churchill is correct.

[T]he Act in some, perhaps large, numerical sense depends and may be reinforcing such an historically required blood quantum measure. That is, when a tribe determines the Indian identity of an artist, it may be relying on some historically required and varying measure of blood quantum, and therefore the intensification of such a blood requirement may be a consequence of the Act.

If one might think that such a recognition would open the door to the possibility that Churchill could be something other than a fraud, one would be mistaken. In the next sentence the IC declares victory:

Professor Churchill made that point in Submission D, noting that whether one refers to the Act itself or the implementation of the Act, it is "to say the same thing." Professor Churchill thus appears to be conceding that the Act itself has no requirement of "blood quantum" within its text as he had originally stated. Rather, he now seems to say that its requirement that federally-sanctioned tribes determine the Indian identity of artists depends on and therefore reinforces the use of prior and unspecified "blood quantum" requirements derives from other historical agencies and moments as amply documented in our analysis of Allegation A.¹⁶²

Professor Limón may think that Submission D (a written supplement to Churchill's testimony, which he was invited to submit) is a confession, but it is difficult to imagine that Churchill would see it the same way. As we have demonstrated in the previous section, the IC's "amply documented" evidence refuting Churchill on Allegation A is entirely consistent with Churchill's claims. But, of course, that Churchill might also be right about the Indian Arts and Crafts Act of 1990—that further, he might be aware that the words in dispute are not literally in the Act—requires one to acknowledge that the

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

standard critical methodology of locating “the truth” practiced by Churchill and numerous other scholars is rational.

According to Cheyfitz, the IC Report, in insisting on “confining the acts under investigation to their literal language,” violates the “accepted procedures of scholarly and critical interpretation.”¹⁶³ Nor does Cheyfitz believe that the Committee has done this unwittingly. Cheyfitz appears to detect, as does Williams, an implicit antagonism toward critical race theory: “By following this method, the report restricts interpretations of the acts in a way that privileges its own understanding of them and excludes alternative explanations, which it may find challenging to this understanding.”¹⁶⁴

Misrepresentation and Distortion of Sources

In terms of his own “historical/factual veracity and scholarly integrity,” one guesses that LaVelle cannot be entirely pleased with either the IC Report, which finds some fault with his findings, or recent essays by Eric Cheyfitz and others, which discredit him. Still, at times, the IC found him persuasive, at least when it came to exposing Churchill’s footnoting “stratagem” of citing works that do not support his claims:

Professor LaVelle contends that Professor Churchill willfully distorts the scholarship of both authors [Patricia Limerick and Russell Thornton] to buttress his claims concerning Indian statistical extermination. Although that issue is not central to the allegation before us, the Committee’s reading of Limerick’s and Thornton’s original writings finds that Professor LaVelle is correct in this instance as well; those authors do not support Professor Churchill’s claims.¹⁶⁵

Churchill asserts that the IC’s endorsement of LaVelle in this instance demonstrates that they have not read the works of other scholars whom they claim that Churchill misrepresents. As we have noted earlier, Churchill’s opinion cannot be taken as disinterested, but in “A Filing of Research Misconduct Charges Against the Churchill Investigative Committee,” dated May 10, 2007, nine senior CU faculty, along with AIS scholars Cheyfitz of Cornell and Yellow Bird of Kansas, agree that the IC’s representations of Limerick and Thornton here are spurious:

LaVelle’s work . . . contains substantial errors in its understanding of Native history (General Allotment Act, the Indian Arts and Crafts Act and the legal construction of Native identity through blood quantum) and in its misreading of two of Professor Churchill’s sources: Limerick and Thornton, misreadings that the Investigative Committee affirms and imports into the Report. For example, on page 266 of his 1999 essay in *Wicazo-sa Review*, LaVelle asserts: “But in fact, Thornton makes no such prediction about the demise of Indians in the twenty-first century—not within the range of pages cited by Churchill nor anywhere else in Thornton’s book.” And yet we find such “predictions” not only within the pages that Churchill cites (see 180 in *American Indian Holocaust and Survival*) but elsewhere in the book (239). As for LaVelle’s assertion that Churchill is quoting Limerick out of context on the effects of quarter-blood quantum, the context of

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

the Limerick [work] (see 338 in *The Legacy of Conquest*) appears to affirm Churchill's use of it and calls into question LaVelle's reading. . . . Further, other scholars have used this quote from Limerick in precisely the same way that Churchill uses it (see Cheyfitz, *The Columbia Guide to American Indian Literatures of the United States Since 1945*, p 25).¹⁶⁶

It's Academic Misconduct Not to Debate LaVelle?

That the IC did not find the 2003 essay, with which they apparently had one small problem, to be exculpatory, is, frankly, bizarre. It speaks of a determination to interpret the evidence in the most incriminating possible light. It appears that the only problem with the 2003 essay, in the eyes of the IC, is that Churchill did not acknowledge LaVelle's criticisms as the source of his revised understanding of the Act. In fact, there is no evidence that Churchill has ever considered LaVelle to be a responsible scholar. An alternative explanation for Churchill's revision is that over a period of thirteen years he had acquired a deeper understanding of the Indian Arts and Crafts Act of 1990 and chose to revisit the issue. Nonetheless, the IC ends its conclusion that Churchill misrepresented the Act by scolding Churchill:

We take note that Professor Churchill has evidently modified his position, both in "The Nullification of North America" (2003) and in his submissions during the process of our investigation. One might think that this modification resulted from the intervening appearance of Professor LaVelle's 1999 essay. Yet it is telling that Professor Churchill's second essay nowhere references LaVelle's criticisms or responds to them as is appropriate for a scholar and an intellectual engaged in academic discourse. Indeed, Professor Churchill told our committee that he did not even read Professor LaVelle's critique until four years after it came out and then he did not think it warranted a response. Professor Churchill has thus not taken advantage of scholarly debate to arrive at an accurate presentation of this matter.¹⁶⁷

One wonders why the IC expended their, and Churchill's, valuable time, parsing an essay that Churchill had already reconsidered and revised.

Allegation C: Captain John Smith and Smallpox in New England, 1614-1618

The Allegation

The fabrication and falsification found by the IC refers specifically to two sentences published in Churchill's 2003 essay, "An American Holocaust? The Structure of Denial":¹⁶⁸

There are several earlier cases [of diseases spread by whites in order to eradicate the Indian population], one involving Captain John Smith of Pocahontas fame. There's some pretty strong circumstantial evidence that Smith introduced smallpox among the Wampanoags as a means of clearing the way for the invaders.

In this passage, Churchill cites Neal Salisbury, *Manitou and Providence: Europeans, Indians, and the Making of New England, 1500-1643*, pp. 96-101.

The IC Report then asserts the first of several serious charges based upon the preceding two sentences:

The pages referenced by Professor Churchill in the Salisbury book do not contain the word "Wampanoags" and have no discussion of any disease or epidemic (including smallpox). They contain no suggestions that John Smith or anyone else intentionally introduced a disease.¹⁶⁹

The IC's Findings

The IC Report concludes its discussion of Allegation C as follows:

The Committee finds, by a preponderance of the evidence, that Professor Churchill misrepresented his sources in two essays when describing Captain John Smith and smallpox, a form of falsification. We conclude also that he fabricated his account, because no evidence—not even circumstantial evidence—supports his claim.¹⁷⁰

The second essay referred to in the preceding passage is "Nits Make Lice," which contains a single sentence regarding the relationship of John Smith to the 1616-1618 epidemic: "Mysteriously—the Indians had had close contact with the Europeans for years without getting sick—epidemics broke out in the immediate aftermath of Smith's expedition."¹⁷¹

Our Analysis

Churchill's Use of Salisbury

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Multiple claims made by the IC regarding Churchill's citation of Salisbury are patently false. The pages cited by Churchill *do* mention diseases and epidemics numerous times. The pages in Salisbury also name the Pokanokets (p. 102), which scholars in the field of American Indian Studies would have recognized as another name for the Wampanoags. In fact, the formulation "Wampanoags (Pokanokets)" appears on the very page of Churchill's 1997 essay at issue in the investigation—an essay that the IC claims to have read.

In an April 12, 2007, letter that appeared in the *Silver & Gold Record*, IC Chair Marianne Wesson acknowledged the finding of her committee—that "It is simply false to assert that the pages cited from Salisbury's work support the claims made in the relevant passages by Professor Churchill"—was "literally incorrect."¹⁷² Despite Wesson's admission, the IC Report remains posted on CU's website, uncorrected.

Evidence That the Disease Was Smallpox

A second issue raised by the IC Report concerns the debate about whether the disease was, in fact, smallpox: "The Committee's reading of relevant literature indicates that there is no clear evidence about the exact nature of the epidemic and *nothing* that points specifically to smallpox"¹⁷³ (italics ours). Thus, they conclude that Churchill's identification of the disease that ravaged the indigenous New England population from 1616 to 1618 as smallpox is "unsubstantiated."

Here again the IC reveals its lack of familiarity with the subject matter it purports to judge. In a formal complaint accusing the IC of falsification, fabrication, and plagiarism (charges against which the IC was immunized by the CU administration), Professor James M. Craven, et al, point out the following:¹⁷⁴

There are, in fact, numerous readily accessible sources, which describe the disease as smallpox, thus refuting the conclusions of the Committee. To quote only a few examples: "For example, the first smallpox epidemic, in 1616, sharply reduced populations of Indians along the northeast Atlantic Coast." John F. Richards, *The Unending Frontier: An Environmental History of the Early Modern World* (Berkeley: University of California Press, 2003) p.503.

"Importation of smallpox also decimated the native peoples of North America, facilitating the European colonization of the continent. In 1616-1619, a smallpox epidemic cut down almost nine-tenths of the Indian population in the Massachusetts Bay area. . . ." Jonathan B. Tucker, *Scourge: The Once and Future Threat of Smallpox* (New York: Atlantic Monthly, 2001) p.11.

"New England Indians, from Massachusetts to Maine, suffered a smallpox from 1616-1619." Sana Loue, *Gender, Ethnicity, and Health Research* (New York: Kluwer Academic, 1999) p.136.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

In addition, numerous timelines of early American history list a 1616 smallpox epidemic in the northeast as a seminal event. See, e.g., John W. Wright, ed., *The New York Times Almanac 2007: The Almanac of Record*, (New York: Penguin, 2006) p.78; Larissa Juliet Taylor, ed., *Great Events from History: The 17th Century* (Pasadena, CA: Salem Press, 2005) (Table of Contents, “1617ff., Smallpox Kills Native American Populations”); David Lea, et al., *A Political Chronology of the Americas* (London: Europa, 2001), p.225.

Dozens of other examples can be found by a simple Google or Amazon.com engine search.

Craven, et al conclude:

If the Committee was “unable,” as it claims, to locate such references, it is because they did not look, not because such references do not exist. Its claim to have engaged in “further research” which yielded “no evidence” is therefore a deliberate misrepresentation and a falsification and/or suppression of readily available evidence.

As Craven demonstrates, Churchill’s claim that the disease was smallpox is, if sometimes contested, commonly acknowledged throughout the relevant literature. That the IC might not have known this is understandable; the issue fell outside their individual and collective realms of expertise. But for the IC to declare that there is *nothing* in the literature “that points specifically to smallpox” is a different matter. Here, as elsewhere throughout the Report, the IC pretended to knowledge they did not possess.

The Incubation Period of Smallpox

Thirdly, although the IC declares in a footnote that “[t]his report will not deal with the medical aspects of smallpox,”¹⁷⁵ it notes the incubation period of the smallpox virus in an effort to demonstrate that Churchill’s suspicions about Smith are fabricated. John Smith left Massachusetts in 1614, and the epidemic broke out in 1616. “Clearly,” says the IC Report, “eighteen or more months passed between Smith’s departure and the outbreak of the epidemic. We have found no evidence that the time between exposure and the outbreak of an epidemic could be that long.” For support the IC cites Clyde Dollar, who claims that the smallpox incubation period varies from eight to fourteen days.¹⁷⁶

However, the IC was in possession of a more recent source that sheds new light on the incubation period of smallpox: as Dean R. Snow and Kim M. Lanphear, whom the IC Report also cites,¹⁷⁷ point out, “the smallpox virus can remain active and infectious for up to seventeen months if wrapped in raw cotton and kept in an environment in which temperature and humidity are controlled.”¹⁷⁸ The estimation of “seventeen” months is Snow and Lanphear’s best guess: as they clarify, earlier conditions cannot now be duplicated in laboratory experiments. Nonetheless, the epidemic could have been triggered by the Wampanoags’ exposure to active smallpox virus through contact with

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

infected items left behind by Smith, even as long afterwards as early 1616. Incubation time becomes a relevant factor only at such time as exposure/infection occurs.

Snow and Lanphear's findings, presented in a book whose contents the IC comment upon as if they had read it, indicate that Churchill's claim is plausible.

Circumstantial Evidence

Thus far regarding Allegation C, the IC has convicted Churchill of falsifying a source (Salisbury) that he clearly has not falsified. They have convicted Churchill of fabricating the identity of the disease because there is "nothing that points specifically to smallpox" in the relevant literature, when, in fact, there are numerous specific references to smallpox. The IC has also sought to discredit Churchill by noting that the incubation period for smallpox varies from eight to fourteen days, when, according to a source that the IC claims to have consulted, the virus "can remain active and infectious for up to seventeen months."

For the IC, however, Churchill's major fabrication regarding Allegation C occurs in the following sentence: "There's some pretty strong circumstantial evidence that [John] Smith introduced smallpox among the Wampanoags as a means of clearing the way for the invaders."

As discussed above, the IC Report tries to discredit Churchill's claim by suggesting (misleadingly) that it was impossible for the virus to survive the eighteen months between Smith's departure and the outbreak of the pandemic. Therefore Smith could not possibly have done it. Case closed.

As has been the case with other allegations, this says much about the IC's insistence on reading the evidence in a way that Churchill clearly did not intend. There is little in the record to suggest that Churchill claims that John Smith spread the virus by himself, personally, specifically, and individually. As Churchill testified at the trial:

My circumstantial evidence in what I did explain to the committee is that there is more than one way of using the term "John Smith." When they talk, for example, about Patton's drive across France in World War II, George Patton was not in the motor car by himself crossing. And they use the term "Patton." He was in command. So it's Patton and those he commanded. . . . John Smith was in command—that's uncontested—in 1614 in what he named New England. . . . I did not mean that he necessarily personally did it. . . .

The IC Report summarizes the circumstantial evidence that Churchill submitted to the IC as follows:

(1) John Smith had a "lethal bellicosity towards the Indians"; (2) the Wampaoags were decimated by a disease in the "immediate aftermath" of Smith's departure;

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

and (3) he put these two pieces together to find “strong circumstantial evidence” that Smith might have deliberately infected the Wampanoags.¹⁷⁹

It is accurate that Churchill submitted these “two pieces” to the IC, but he also submitted considerably more. As Churchill recounts (condensed here) in his trial testimony:

I specifically pointed out and repeatedly [to the IC], my main source of circumstantial evidence was Smith’s own writing during this period. . . . [Smith] leaves in 1614 and he goes back to England and is extolling how beautiful this particular area is that he is calling Plymouth. . . . And he is also saying, “If I can muster a group of colonists, this is the best uninhabited land you’ll ever encounter.” Well, how do you get from the most populated sector on New England between the point he leaves and the point they are coming back? . . . [Smith] is already proclaiming the fact that this heavily populated area will be uninhabited when the settlers arrive. . . . Squanto later told his people, what were left of them, . . . that the English had the means and they had deliberately infected [the Wampanoags] prior to the arrival of the Mayflower and they had the means to do it again. . . .”¹⁸⁰

In response to the IC Report, Craven, et al, elaborate on the story of Squanto:

Squanto, a Wampanoag who dealt extensively with the English settlers, not only believed that the infection was deliberate, but told others that the colonists had the means to do so “buried in the ground” and “could send it amongst whom they would.” (This was reported by William Bradford on p. 175 of his *Plymouth Plantation*, 1908 edition.)¹⁸¹

At the trial, David Lane, Churchill’s attorney, asked Churchill: “Did you tell the committee what you just told the jury?”

CHURCHILL: “Yeah, by and large. I talked about Squanto. I talked about Smith’s statements in his, I don’t know what you call it, sort of, chronicle of his adventures and it’s also a sales pitch to people to come fill up this unoccupied land. . . .”

While Churchill addressed the issue with more detail at trial, the SCRM transcripts confirm that he told the IC about Squanto and Salisbury and Smith’s journals.¹⁸²

At the P&T hearings, Churchill seemed miffed that the IC Report understated the extent of the circumstantial evidence that he had submitted, both during the hearings and in his written submissions. He questions Michael Radelet, who wrote the section of the IC Report regarding Allegation C:

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

CHURCHILL: Would it be fair to say that I did in fact provide you with more information connecting the dots [of circumstantial evidence] than you're crediting me for in the report or your testimony here?"

RADELET: ... The answer to that is yes. If you did submit [Squanto's story], I can assure you that we did look at that and found that it did not support the sentences."¹⁸³

As is evident in the SCRM transcripts, Churchill and the IC had different ideas about the meaning of the term "circumstantial evidence." Churchill repeatedly claims during the IC hearings that he was using the term not in a legal, but in a "colloquial" manner: "Circumstantial evidence means that there's indication thereof, not conclusive proof. That's how I intended it—that's what I thought it meant."¹⁸⁴

Radelet, on the other hand, found such a colloquial usage to constitute research misconduct. He consulted *Black's Law Dictionary*: "Testimony not based on personal knowledge . . . but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved."¹⁸⁵ In other words, because (as Radelet points out in the P&T transcripts) defendants can be convicted on the basis of circumstantial evidence, that evidence had better be reasonably conclusive or somebody had better not call it circumstantial evidence.¹⁸⁶ "Thus," according to the IC Report, "circumstantial evidence involves putting together chain links to infer a possible or plausible conclusion. As such, the more implausible the conclusion [such as that John Smith deliberately introduced smallpox among the Wampanoags] the more circumstantial evidence is needed to buttress it."¹⁸⁷

Is there "pretty strong" circumstantial evidence here, based not on what the IC report claims were the links cited by Churchill, but rather upon the links that, according to the SCRM, P&T, and trial transcripts, Churchill actually submitted to the IC as part of his "chain"? Given Churchill's colloquial use of the term, it is certainly arguable.

We find that the IC so thoroughly exposed its own incompetence in this matter that splitting hairs over the strength of Churchill's circumstantial evidence implies a determination not to arrive at a truth concerning the weight of the evidence, but to find Churchill guilty of *something*, no matter how inconsequential.

Methodology

In a footnote on pages 45-46 of its Report, the IC reveals its intractability with regard to Churchill's research methods:

The Committee does not agree with David Henige's statement, quoted approvingly by Professor Churchill, that when scholars are attempting to challenge established beliefs about topics for which evidence is limited, "the aim is to convince without being able to demonstrate. In the circumstances,

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

disputants are forced to take liberties with the evidence and presentation, for to maintain rigorous standards would be to abandon the contest as unwinnable.”
(Numbers from Nowhere: The American Indian Contact Population Debate
[Norman: University of Oklahoma Press, 1998] p. 8 (as cited by Professor Churchill in Submission C, with the comment, “Exactly so.”)

The members of the IC were free, of course, to disagree with Henige, a scholar noted for his substantial contributions to historiography, including the nature of oral history and myth. What they were not free to do was treat the approach itself as “a form of research misconduct” and convict a colleague for having practiced it.

Allegation D: Misrepresentation of Smallpox Epidemic at Fort Clark and Beyond, 1837-1840

The Allegation

The IC calls into question parts of six essays, no part over two paragraphs in length, in which Churchill alleges that the U.S. Army deliberately spread smallpox to the Mandan Indians, using infected blankets taken from a military infirmary in St. Louis and distributed from the steamboat *St. Peter's* during its passage from St. Louis, Missouri, to Fort Union, North Dakota, setting off an epidemic that reduced American Indian populations along the upper Missouri River by as much as ninety percent.

The IC's Findings

Following is the summary of the IC's findings in regard to Allegation D:

In presenting our summary conclusions concerning this allegation, the Committee emphasizes that we are not making a judgment in either direction about Professor Churchill's historical claims more generally. Our investigation dealt only with one particular instance that he adduces in support of his broader thesis.

Based upon what Professor Churchill wrote in the essays cited in this allegation and our own investigation, our conclusions are as follows.

1. We do not find academic misconduct with respect to his general claim that the U.S. Army deliberately spread smallpox to Mandan Indians at Fort Clark in 1837, using infected blankets. Early accounts of what was said by Indians involved in that situation and certain native oral traditions provide some basis for that interpretation.
2. Professor Churchill has not, however, respected those Indian traditions. He did not mention native oral sources in any of his published essays about Fort Clark. Instead he raised the possibility that he had drawn on oral material only in an attempt to produce after-the-fact justification for his claims during the course of this investigation. At that point, he purported to defend the legitimacy of his account by referencing oral tradition, but he provided no evidence that he had done any research whatsoever into the traditions of the Mandan or other relevant tribes regarding the smallpox epidemic of 1837 before publishing his essays. The Committee concludes that this behavior shows considerable disrespect for the native oral tradition by employing it as a defense against research misconduct while failing to use or acknowledge it in his published scholarship. In doing so, he engaged in a kind of falsification of evidence for his claims.
3. Professor Churchill engaged in poor scholarly practice but not research

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

misconduct in providing incomplete references: citing a book without page numbers and giving no citation for specific numerical information mentioned in the text.

4. We found serious problems in the following areas:
 - a. Professor Churchill misrepresented some of the published sources he cites, which do not in fact support his accounts.
 - b. Because neither his own statements nor our investigation produced evidence to support some of his more detailed claims, we conclude that Professor Churchill has created myths under the banner of academic scholarship. Those points are:
 - (1) That infected blankets were taken from a military infirmary in St. Louis.
 - (2) That an army doctor or post surgeon advised the Indians to scatter once smallpox broke out among them, thereby spreading the disease.
 - (3) That the army had stored rather than administered a smallpox vaccine distributed for the purpose of inoculating Indians.
 - c. Professor Churchill provided insufficient evidence in his essays to support his assertions that as many as 100,000, 125,000, 250,000, or 400,000 Western American Indians died in the smallpox pandemic of 1837-1840 (different numbers appear in different essays). Nor did he provide further information when requested by this Committee.
5. The problems mentioned here appear in printed form over a period of ten years and generally become more extreme over time.
6. Although Professor Churchill appeared in his submissions to our Committee to acknowledge that several of his claims are not supported by the evidence, he emphasized that he plans to re-publish with only minor changes in wording, not substantive revisions, the essay that provides the fullest—and most extreme—account of the Fort Clark situation.
7. We therefore find by a preponderance of the evidence a pattern of deliberate academic misconduct involving falsification, fabrication, and serious deviation from accepted practices in reporting results from research.¹⁸⁸

Our Analysis

Not His Primary Example

The IC Report states that Churchill's accounts of the episode "constitute the primary example he adduces in support of his argument concerning intentional genocide against Indians by the U.S. Army."¹⁸⁹ In fact, his 159-page essay titled "'Nits Make Lice': The Extermination of American Indians, 1607-1996" contains only two paragraphs devoted to the smallpox epidemic along the upper Missouri. Other passing mentions of the 1837 situation occur five times, each reference ranging from one sentence to two paragraphs, out of roughly 4,000 pages of Churchill's publications (not counting reprints and translations). Clearly, the 1837 epidemic is peripheral to Churchill's broader argument that the U.S. Army committed genocide against the American Indians. Nonetheless, the IC Report devotes no less than forty-four of its 124 pages to this example.

Clash of Methodologies

Just as our analyses of Allegations A, B, and C dramatize a clash of methodologies between Churchill and the IC, Allegation D involves a methodological clash over use of sources. Allegation D was written by Marjorie McIntosh, a noted historian on women's issues in medieval England who had recently developed an interest in African oral traditions. For McIntosh and many other mainstream historians, primary sources (contemporaneous written accounts regarding the historical event) and accounts handed down through oral traditions are both acceptable foundations from which a scholar might reach a rational conclusion.

To Churchill and other AIS scholars, if the primary sources were written by colonialists whom they consider to be disingenuous in their concerns about the unfortunate plight of the Indian, these sources constitute an unreliable basis for reaching rational scholarly conclusions. Similarly, from the perspective of the indigenist paradigm, "official" accounts of tribal oral traditions can be highly qualified equivocations of a culture terrified of offending the white man who, based on a long history of experience, is determined to eliminate indigenous peoples and does not require additional provocation. Thus, a scholar such as Churchill, who is well known to his sources as someone who is genuinely on their side and will put the information to work on their behalf, is far more likely to have access to such "real" knowledge than would a researcher such as McIntosh.

With regard to Allegation D, McIntosh acknowledges that "the belief that the U.S. Army intentionally spread smallpox to Indians by means of infected blankets is widely held."¹⁹⁰ This is a claim that, throughout the hearings, Churchill maintained he had heard repeatedly in over forty years of studying Indian issues. To Churchill, as is the case with other indigenist scholars, when a disparity exists between "common knowledge" (a kind of oral tradition) and the "official" accounts of tribal oral traditions, the more reliable truth is common knowledge. Hence he will make a claim without citing a source because he believes 1) no source is necessary (it's common knowledge) and 2) available sources are irrational.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

To McIntosh, making a claim of “common knowledge” that is contradicted by primary sources and not substantiated by the “official” accounts of oral traditions is historical fabrication, particularly if that common knowledge is cited by a scholar—like Churchill—who was not raised within the directly affected indigenous population.

We have no reason to doubt the sincerity with which either McIntosh or Churchill hold their beliefs about the rational use of sources, other than to note that only McIntosh’s view was represented on the IC. We also note that throughout Churchill’s questioning of McIntosh during the P&T hearings, her condescension toward Churchill is unmistakable as she repeatedly scolds him, saying (if not in so many words) that his perspective, the nature of his sources, and his understanding of his sources is unacceptable scholarly practice.

Exoneration (After Twenty-nine Pages of Condemnation)

The IC Report devotes twenty-nine pages to an investigation of Churchill’s claim that the U.S. Army deliberately spread smallpox to Mandan Indians at Fort Clark in 1837, using infected blankets, only to arrive at the conclusion that, since native oral traditions support his claim, he is not guilty of academic misconduct.

The IC Report offers six pages’ worth of excerpts from “primary sources,” none of which fully corroborate Churchill’s version of events.¹⁹¹ The IC Report then offers another three pages worth of excerpts from Indian texts, including the lyrics to a song from Buffy Sainte-Marie and books by Ella C. Deloria and her nephew, Vine Deloria, Jr., also none of which fully corroborate Churchill’s version of events.¹⁹² The IC Report briefly recounts personal interviews with various Indians and historians, it summarizes the text of the testimony of Jefferson B. Smith before the U.S. House of Representatives in 1949, and it then offers three more pages’ worth of summaries from historical accounts based upon written documents, again, none of which agree one hundred percent with Churchill’s version of events.¹⁹³

In short, the IC Report offers voluminous evidence that *no one* sees the causes and effects of the smallpox epidemic at Fort Clark and beyond exactly the way Churchill sees it, only to arrive at the seemingly unearned conclusion that “certain native oral traditions provide some basis for that interpretation.” As for why the IC might employ such a curious rhetorical strategy, in their “Filing of Research Misconduct Charges against the Churchill Investigating Committee,” a CU faculty group offers a possible explanation:

But why spend almost one-third of the Report investigating a charge that is substantially dismissed unless one wants to make it look as if there is something to the charge in order to prejudice the reader against Churchill, even as one basically concedes his interpretation? This again strikes us as an act of bad faith, an act of deliberate distortion.¹⁹⁴

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

To say that the IC stops short of convicting Churchill in this instance is not to say that they give him his due. Rather, McIntosh goes on to cite myriad instances of alleged citation errors, sloppy referencing, and general distortion of history, arguing that Churchill “has created myths under the banner of academic scholarship”¹⁹⁵ regarding the U.S. Army’s alleged role in spreading the epidemic, the transmission of the disease, the numbers killed and whether the Army withheld vaccines from the Indians.

Respect for Oral Traditions

The IC Report’s second conclusion with regard to the smallpox epidemic of 1837 says that Churchill has not respected Indian oral traditions: he claimed them as sources only as a defense against research misconduct. In her P&T testimony, McIntosh says that the IC was “really kind of shocked”¹⁹⁶ by Churchill’s behavior in this regard.

Considering that the basis of Churchill’s scholarship is to present indigenist perspectives (often passed on orally) not found in the official accounts, we would be shocked, too, if Churchill had disrespected oral sources. According to the “Research Misconduct Complaint Concerning Investigative Committee Report of May 9, 2006,” signed by seven professors, all scholars in indigenous studies and related fields, the IC, in faulting Churchill, misrepresents both the fundamentals of oral citation and their own account of their awareness that Churchill uses oral sources:¹⁹⁷

The [IC] Report acknowledges that one may be unable to pinpoint sources “when a person has simply grown up with a particular understanding, having heard it from various members of the tribe over time . . . or when it is necessary to protect tribal people who fear negative consequences of their statements” (p. 46). Yet the Committee continues, “We *believe*, however, that scholars *need* to indicate in their published work when they are drawing upon native traditions, even if they cannot provide specific documentation of particular conversations” (p.46, emphasis added). No evidence is provided that this is anything other than the Committee’s subjective belief; it cites no standards. Further, should such “standards” be articulated, they would be blatantly discriminatory, for what determines “common knowledge” aside from one’s particular culture?

. . . Further, the Committee misrepresented, distorted, and/or suppressed the evidence presented by all of Professor Churchill’s witnesses – professors George Tinker, Glenn Morris and Michael Yellow Bird, and author/activist Russell Means – that Professor Churchill’s accounts reflected, comported with and were supported by Indigenous oral traditions. Each of these witnesses is Indigenous, and both Russell Means and Michael Yellow Bird testified to firsthand understandings of the history of this epidemic, deriving from the Mandan, Arikara, and Hidatsa peoples (pp. 57-58).¹⁹⁸

Here, the conclusions reached by the seven AIS experts contrast sharply with the conclusions reached by the IC. These indigenist scholars view Churchill as an

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

authentic interpreter of Indian experience whose representations resonate with their understanding of their own culture and history. McIntosh portrays Churchill as a mythmaker who foists exaggerated and poorly attributed claims on readers and disrespects oral traditions by not citing individual oral sources.

Books without Page Numbers, Redux

The IC Report's third conclusion with regard to the smallpox epidemic of 1837 complains that Churchill has cited a book—*Chardon's Journal at Fort Clark, 1834-1839*—without page numbers. As we will discuss in the section titled "Allegation E," in one of McIntosh's own books, *Working Women in English Society*, McIntosh omitted page numbers on 92 occasions. In her own case, she did not consider these citations to constitute research misconduct, or poor scholarly practice, because she wrote them according to the request of her publisher.¹⁹⁹

Anyway, it is standard practice to cite books without page numbers when one refers to the whole book, not to a specific passage. Churchill says that his purpose in citing Chardon is to acquaint the reader with a tone of racism that pervades Chardon's journal; therefore, it is appropriate to cite the whole book rather than a specific passage. The IC's complaint is that it is not clear that that was Churchill's intention in referencing Chardon. Here, they have a point, but it strikes us again as an inconsequential one: in scrutinizing 20,000 footnotes written by Churchill over the course of his career, they find a footnote whose purpose is not abundantly clear, and imply that it is part of a pattern of deliberate obfuscation, though no pattern has been demonstrated.

The Source of the Smallpox Epidemic of 1837

The IC takes issue with Churchill's claim that infected blankets were taken from a military infirmary in St. Louis.

According to the SCRM transcripts, Churchill admits that he may have erred on the question of whether the source of the infected blankets was a military infirmary in St. Louis. Mark Timbrook of Minot State University, an expert on the Fort Clark epidemic, testified before the IC that he had spent three years "digging" at the St. Louis Historical Society for evidence that the infection had begun at Jefferson Barracks, an army post in St. Louis.²⁰⁰ Although Timbrook's efforts at finding the source of the epidemic in St. Louis have not resulted in verification of the theory, the time lapsed between the *St. Peter's* departure from St. Louis and the first manifestation of smallpox (12 days) leads to a reasonable inference that that the infection began in St. Louis. Churchill now believes the infected articles came from Baltimore—but the proposition that he was "creating myths" in claiming that a military infirmary in St. Louis was the source is farfetched.

Army Doctors and Post-Surgeons

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Besides the disputed source of the smallpox epidemic is a dispute over whether Army doctors were complicit in the spread of the epidemic. Churchill has admitted that he used the term “army doctors” erroneously in 1993 in *Indians Are Us?* and that he has not repeated the mistake.²⁰¹ Yet, despite the fact that Churchill had conceded his 15-year-old error, the IC report refers several times²⁰² to the absence of a “military or Army doctor” at Fort Clark and Fort Union.²⁰³

After hearing the testimony of Timbrook during the IC hearings, Churchill—although he had cited the source on which he premised his depiction of troops being based at Fort Union in 1837—pronounced himself convinced that Army personnel were not occupying the forts that far north in 1837.²⁰⁴ Still, Churchill points out that the Indian Bureau was a division of the U.S. Department of War at the time, and that both Indian agents operating on the upper Missouri at the time—Joshua Pilcher and William Fulkerson—held the army rank of major. As Churchill sees it, since both agents were by all accounts key figures in the transmission of smallpox upriver from St. Louis, “the U.S. Army” was still both present and involved.²⁰⁵

As for the use of the term “post surgeon,” Churchill argues that the usage is entirely appropriate (and in coinage at the time) in reference to personnel with even a modicum of medical training who were assigned to “forts.” These personnel included Major Joshua Pilcher at Fort Pierre, Francis Chardon at Fort Clark, and Charles Larpenteur and Edwin Denig at Fort Union.²⁰⁶

Scatter!

The IC also takes issue with Churchill’s claim that Army personnel encouraged infected Indians to return to their homes where they would spread the disease to other Indians. According to Churchill, several sources in the literature referenced by the IC corroborate the story that, once infected, the Indians were told to scatter,²⁰⁷ including an account in the memoirs of Charles Larpenteur, who exposed a group of forty Assiniboins camped outside the fort to a child in the most highly contagious stage of the disease, then told them to flee back to their home villages.²⁰⁸ While the IC also recounts this event, in their version the child is held above the pickets so that the Indians could see the child, and there is no mention of their being told to flee.²⁰⁹ According to Michael Yellow Bird’s testimony at the P&T hearings, Churchill’s version is not “myth under the banner of scholarship,” as the IC claims, but entirely consistent with the oral traditions of the affected populations.²¹⁰

Another incident regarding the deliberate spread of the disease regards Chardon’s dispatch of Toussaint Charbonneau, a veteran trader, and his infected Hidatsa wife to visit her relatives in a village near Fort Clark, which until then had remained uninfected. R. G. Robertson claims that “no one suspected” that the woman was infected.²¹¹ Yet according to Churchill:

This is patent nonsense. While it might be true that it was not yet *known* that she

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

was infected, it is unquestionable that anyone exposed to active cases of smallpox was considered to be potentially infected—this was the whole principle underlying the practice of quarantine, after all—and thus potential transmitters of the disease itself. The threat thus attached to Charbonneau as well as his wife, and to their garments and any gifts they may have taken to her family.²¹²

That all concerned—Indians, fur traders, and post surgeons alike—understood at the time the principles of quarantine was verified by historian Mark Timbrook before the IC.²¹³ (It remains unclear to us why, if *all* concerned understood the risk of infection, as both Timbrook and Churchill maintain, Charbonneau and his wife were not equally responsible for the spread of the disease. However, unlike the IC, we are willing to let the historians work it out.)

Withholding the Vaccine

Because the IC “found no evidence” supporting Professor Churchill’s claims that vaccine intended for Indians was withheld at Forts Union and Clark, it therefore concludes that he had “fabricated those statements.”²¹⁴ The IC’s statement is directly contradicted by its own acknowledgment of two sources referenced by Professor Churchill—Evan S. Connell’s *Son of the Morning Star: Custer and the Little Bighorn*^{215 216} and R.G. Robertson’s *Rotting Face: Smallpox and the American Indian*.²¹⁷ The IC acknowledges that Professor Churchill’s account “accords in part” with Connell’s work. However, the IC then proceeds to dismiss this source as “problematic” because “Connell’s description does not agree with the primary evidence and the accounts provided by other historians.”²¹⁸ The IC also dismisses Robertson as a viable source, because “a careful examination of the train of [Robertson’s] citations indicates that Robertson is incorrect.”

This is a constant theme throughout this section of the IC Report, as reflected through the SCRM and P&T transcripts: McIntosh disagrees with Churchill’s sources and therefore Churchill has fabricated historical events. In other instances, McIntosh adjudges that Churchill has no sources for his claims, not because he can provide no substantiating sources, but because she considers the sources that he cites to be unreliable. One example involves McIntosh’s treatment of Connell. In historical accounts that are aimed for a wide audience, often the writer will attribute thoughts to an historical character when the writer cannot possibly know what the character thought. Therefore, because such instances can be said to be fictionalized, according to McIntosh there is no way to know what else within the account is fictionalized. Thus McIntosh dismisses Connell’s *Son of the Morning Star*, one of the most acclaimed and popular works of historical nonfiction of the last two decades, as fiction, and therefore proclaims it to be an unreliable source. Similarly, because Churchill’s oral sources are not derived from the native populations most directly effected by the 1837 smallpox pandemic (the Mandans, the Arikaras, the Hidastas) but derive from an adjacent population (the Lakotas), McIntosh rejects Churchill’s oral sources as unreliable, then later convicts Churchill of “a kind of falsification” for disrespecting oral traditions.

The P&T Committee recognized that McIntosh was overzealous in her treatment of Churchill: “We think this strays into evaluating Churchill’s references, rather than seeing if he had a rational basis for his conclusions.”²¹⁹ Yet her judgment remains posted on the University of Colorado’s website, uncontested and perpetuating damage to Churchill’s reputation.

A Dispute Over the Number Killed

The IC contests Churchill’s estimate in one essay that 400,000 Western American Indians died in the smallpox pandemic of 1837-1840, largely on the basis that different numbers appear in different essays written by Churchill. They also say that Churchill did not provide further information when requested by the IC.

In his essay “An American Holocaust?” (2003), Churchill writes that his source, UCLA anthropologist Russell Thornton,²²⁰ “suggests [the number] may have been as many as 400,000” (p. 55). The number 400,000 caught the IC’s attention. They checked pages 94-95 of Thornton’s book and found “no basis for a figure of 400,000.”²²¹

In fact, on page 95 of his book, Thornton cites page 94 of E. Wagner Stearn and Allen E. Stearn’s *The Effect of Smallpox on the Destiny of the Amerindian*.²²² On page 94 of the Stearns’ study is a chart providing estimated death tolls. Here, we defer to Churchill’s explanation of his reading of the Stearns’ chart:

For north-central California alone, the estimates given by the source to which Thornton refers his readers run as high as 300,000 dead; for the upper Missouri peoples, 25,000; for the “Prairie Tribes,” 22,000; for the Choctaws, 500; for Alaska, 4,000. [Churchill’s note: The upper Missouri peoples are broken out as being the Mandan, Arikaree [*sic*], Minnetaree, Gros Ventres, Assiniboine [*sic*], Cree (Knisteneaux), and Blackfeet. The “Prairie Tribes” mentioned are the Crow (Upsarokas), Pawnee, Kiowa, Apache (presumably Kiowa Apaches and/or Jicarillas), Comanche, Cheyenne, and Dakota/Yanktonais.] No estimates are provided in the Stearns chart for the Chickasaw, Winnebago, Cayuse, or Indians of New Mexico and Canada, all of whom appear on Thornton’s list [of ravaged peoples]. Even without estimates for these peoples, however, the total exceeds 350,000. Adding the standard estimate for western Canada brings it to over 370,000. [Churchill’s note: Robert Boyd, *The Coming of the Spirit of Pestilence: Introduced Infectious Diseases and Population Decline among Northwest Coast Indians* (Vancouver: University of British Columbia Press, 2000), p. 136.] Including the other “missing” peoples produces a figure well within range of the 400,000 I said Thornton offered as a “maybe.”²²³

We find that citing Thornton, who cites Stearn and Stearn, is sufficient to discredit the IC’s conclusion that “Professor Churchill has proposed figures that are not supported by the evidence he cites.”²²⁴ Clearly his calculations based on Stearn and Stearn are plausible. However, in this instance, we consider the IC’s confusion to be understandable,

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

though not their recommendation that he be severely disciplined for research misconduct.

Nor is Churchill alone in arriving at the figure of 400,000. At the Churchill trial, David Stannard, a professor at the University of Hawaii who studies genocide and indigenous populations, validated Churchill's calculation of 400,000.²²⁵

The IC has complained that Churchill's estimates escalated over a period of time. But it is standard practice for scholars to revise their theories and assessments. That Churchill has done so does not strike us as constituting research misconduct.

Convicted of *Future* Misconduct

The IC complains that Churchill "plans to re-publish with only minor changes in wording, not substantive revisions, the essay that provides the fullest—and most extreme—account of the Fort Clark situation." In other words, to the IC, Churchill is guilty not only of past offenses but also future ones.

In conclusion to this section, Churchill's broader thesis is that the U. S. Army's actions were genocidal, and not simply an inadvertent series of unfortunate events that led to the devastation of the Indian populations, a thesis that he has not abandoned. Churchill uses the Fort Clark epidemic as one supporting example. While it is arguable that he has overstated the role played by the Army, he used reliable sources and made logical inferences. When new information comes to light, Churchill does what historians are supposed to do—revise his conclusions. That McIntosh and Committee have discovered that some scholars disagree with Churchill, or that Churchill himself may not have rendered his final statement on the issue, does not make him guilty of research misconduct or merit his disenfranchisement from the academy.

The IC's Allegations of Plagiarism

Everyone knows that plagiarism is wrong, or they should know it. Commonly defined, plagiarism is copying the work of someone else, passing it off as one's own, and fraudulently reaping the benefits of someone else's labor. It is instructive that the June 2, 2011, editorial in the *Denver Post* characterizes Churchill as a "serial plagiarist."²²⁶ Perhaps more than any other of the allegations against Churchill, the charges of plagiarism resonate with the general public as particularly despicable.

Scholarly understandings of plagiarism can be more complex than those held by the general public or newspaper editorialists. Scholarship, if it is to be taken seriously, builds upon the insights of other scholars, and those insights must be attributed. Few scholars, particularly in the humanities, are unaware of the challenges involved with summarizing the contributions of other scholars without plagiarizing the expression of those insights. One can only assume that, were this hyperscrutiny that was applied to Churchill's work similarly focused on articles by a great many other scholars, allegations of plagiarism would be far more frequent.

Writers investigating historical events are particularly vulnerable to allegations of plagiarism. In recent years, Lawrence Tribe, Charles Ogletree, and Alan Dershowitz have been charged with plagiarism. All of them, like Churchill, are "public intellectuals." None, as is also the case with Churchill, claim to be professional historians. Although Churchill's scholarship inevitably reflects upon historical events, he approaches his material not strictly as an historian, but as a scholar in American Indian Studies, a field that draws upon numerous disciplines that have varied citation protocols.

As an observer of the P&T hearings, William Cherowitzo expressed confusion as to why the standards of the American Historical Association (AHA) needed to be scrupulously applied to writers like Churchill who did not claim to be professional historians: "I'm a mathematician, and I'm having some difficulty with one of the major issues here. As a mathematician, when I look at a piece of work that contains mathematics but is not written by a professional mathematician, it doesn't even cross my mind that I would be applying the guidelines for mathematical publication to such a work. So for me, I have to—I have to know where the difference is. Why, in history, is that critical?"²²⁷

Cherowitzo's question was never satisfactorily answered.

Allegation E. Plagiarism of a Pamphlet by the Dam the Dams Group

The Allegation

According to this allegation, Churchill plagiarized a pamphlet called “The Water Plot,” published in 1972 by a Canadian environmental group known as the Dam the Dams Campaign. According to Churchill, while he was appearing at a conference in Toronto, John Hummel, representing the all-but-defunct Dam the Dams Campaign, approached Churchill and asked for any help that he could give them in keeping their issue alive. Hummel later sent to Churchill “a box full of materials, including the pamphlet in question.”²²⁸

Churchill subsequently wrote four essays about the Dam the Dams issue. In the first essay, published in 1989, authorship was attributed not to Churchill but to both the Dam the Dams Campaign and the Institute for Natural Progress. A second article, using much of the same material, was published in 1993 in *Z Magazine*, with Churchill listed as the sole author. A third essay appeared in his 1993 collection, *Struggle for the Land*, and a much-expanded version appeared in the second edition of the same book in 2002. In both those instances, Churchill was credited as the sole author. Churchill is accused of plagiarism in all four publications.

The IC's Findings

The Committee concluded their report on this allegation:

We find by a preponderance of the evidence that Professor Churchill's misappropriation of the contents of the Dam the Dams pamphlet was academic misconduct in the form of plagiarism. The steps that must have been taken to appropriate language from the pamphlet and incorporate it in the later works lead us to find that the misconduct was not accidental, but deliberate.²²⁹

Our Analysis

Sufficient Credit for Dam the Dams

As the IC report notes:

Churchill submits that the 1989 article was proper because it mentioned the Dam the Dams Campaign as a co-author, and claims that he was not responsible for the omission of Dam the Dams as co-author of the *Z Magazine* article. He further argues that the work published in the 1993 and 2002 editions of *Struggle for the Land* under his name is sufficiently different from the allegedly misappropriated work that his claim of sole authorship is justified, especially as he gave proper credit to the 1989 article by citing it in footnotes in both versions of the book.²³⁰

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

In part, the IC agreed with Churchill: “Each iteration of the Dam the Dams material is longer and more elaborate than its predecessor . . . and each is more informative about intervening events.”²³¹ As they later note, “There are also many passages in the later works that do not appear in the original—indeed, by its last appearance in 2002, the essay had grown to several times the size of the pamphlet. Nevertheless, the repeated occasions of near-verbatim repetition constitute the clearest and most undeniable evidence of plagiarism.”²³² Elsewhere in the report they observe that “no amount of supplementation can cleanse plagiarized work of its taint.”²³³

Curiously, in that there is no disputing that chunks of each essay are virtually identical, the IC writes, “Professor Churchill is not, by the evidence, a clumsy plagiarist who would merely lift verbatim material from an uncredited source and publish it, unaltered and unaugmented, as his own.”²³⁴ The art of his plagiarism, in the Committee’s view, appears to be that Churchill does credit Dam the Dams in all the essays: “The proper use of footnotes to indicate the source of *some* quotations suggests that Professor Churchill understood the need to credit the source of borrowed language, an understanding that he put to use inconsistently”²³⁵ (*italics ours*).

But if Churchill does not credit Dam the Dams to the IC’s satisfaction, he does so more than they acknowledge in their report.

Because Churchill lists Dam the Dams as co-author in the 1989 article, and, further, at the end of the article names 27 members of the organization individually and attributes them with “assembling the original paper from which this paper was written,” and then provides contact information (which turned out to be the address of Hummel’s parents), the IC did not convict Churchill of plagiarizing the Dam the Dams pamphlet in the 1989 article. Still, they scold, Churchill’s informal acquisition of the material nearly two decades before fell short of scholarly standards: “Good practice in a co-authorship situation calls for the obtaining of written permission, and an explicit effort to negotiate the language of the entire work with the co-author, rather than the informal and questionably authorized transaction Professor Churchill describes.”²³⁶

The IC notes Churchill’s explanation of the 1993 *Z Magazine* article that the editor “took off Dam the Dams name without his consent” and adds, “This claim, like many of Professor’s Churchill’s claims, is difficult to disprove, but it is the responsibility of an author working with a publisher to ensure that proper credit is given to co-authors and sources.”²³⁷ Churchill offered to provide them with the editor’s contact information. Chair Wesson declined his offer.²³⁸ “In any event,” the report continues, “no such disclaimer of responsibility can pertain to the 1993 and 2002 articles, as Professor Churchill himself was the editor of those volumes.”

As we have observed previously in this section, Churchill justified his claim of sole authorship for the 1993 and 2002 articles because these versions were “sufficiently different from the alleged misappropriated work . . . especially as he gave proper credit to the 1989 article by citing it in footnotes in both versions of the book.”²³⁹ It is Churchill’s

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

attribution through the footnotes that the Committee finds so misleading as to deliberately distort Dam the Dams's contribution in order to steal credit for their work. They summarize his attribution as follows:

In the 1993 addition one footnote (note 16) cites the 1989 essay for the proposition that maps and information about proposed water diversion and hydroelectric projects have become hard to obtain; one (note 106) cites the 1989 essay for the proposition that certain water projects have been postponed; and three others (notes 91, 94, and 114) serve to annotate quotations. The use of footnotes (notes 16, 91, 94, 100, and 137) in the 2002 addition is nearly identical. These footnotes appear among many others citing various works by numerous authors; they are not associated with the passages just noted; they do not justify the near-verbatim use of language from the 1989 essay; and they would be in any event insufficient to dispel the plagiarism of the original pamphlet; the existence of which they do not even acknowledge.²⁴⁰

In Churchill's essay in *Works and Days*, Churchill dissects claims made by the IC that, in his view, lent themselves to misinterpretation by subsequent levels of review. For example, P&T found persuasive the IC's "gotcha" moment, when they reveal that, despite Churchill's professions of anger at *Z Magazine*, he continues to cite the *Z Magazine* article.²⁴¹ However, Churchill says, "I have *never* cited the *Z* article, *only* the 1988 book chapter . . . where a list naming every member of Dam the Dams who participated in producing the pamphlet is provided. In any case, citing the pamphlet *rather than* the book chapter [as the IC report asserts would have been appropriate] would have been absurd, given that the pamphlet had long ago been inaccessible to readers by the time I might ever have cited it."²⁴²

Adherence to Scholarly Conventions

In *Works and Days*, Churchill concedes that he might have been guilty of "close paraphrasing/loose citation."²⁴³ Indeed, his laxity in adhering to strict citation standards may have had unfortunate consequences: rather than citing Dam the Dams at the end of the paragraphs in which he paraphrased their material, it might have avoided some confusion on the part of the IC if he had done so directly at the end of every sentence. If the IC had more readily discerned the relationships between his footnotes and the paraphrased material, they might not have concluded that "they are not associated with the passages just noted," or that Churchill had not acknowledged the existence of the Dam the Dams pamphlet, since his five citations of the 1988 book chapter list Dam the Dams as lead author. Churchill writes, "If my failure to adhere quite that strictly to certain conventions of scholarly behavior constitutes plagiarism, however, then academia is truly littered with comparable offenders (e.g., historian Jon Weiner, in his *Historians in Trouble: Plagiarism, Fraud, and Politics in the Ivory Tower*, which was devoted in no small part to the nuances of academic plagiarism...)." ²⁴⁴ As Churchill points out, Weiner is only one of many who have "loose citations" in their scholarship, were one inclined to locate them.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

As we have noted earlier in this report, the Committee unanimously convicted Churchill of research misconduct for his occasional practice of citing an entire volume (as part of his “stragem” for creating the illusion of support for claims that are otherwise unsupported) rather than using pinpoint citations that refer the reader to a particular page. During the P&T hearings, Churchill questioned Marjorie McIntosh about her own book, *Working Women in English Society*, in which she had cited entire books on 92 occasions, and on another 388 occasions had cited entire book chapters and articles, forcing the reader to scrutinize the entire book or article in order to evaluate the validity of her sources, rather than using pinpoint citations.

McIntosh answered, concerning chapters or articles, unless a direct quotation is involved there’s no rule that the writer must provide a page number. Anyway, McIntosh says, it wasn’t her fault: “I gave them in the earlier draft and the press [Cambridge University Press] asked me to take them out just to save space because, as you can see, the book is very heavily annotated.”

McIntosh goes on to explain that, in any case, Churchill’s citation requirement was different, because page numbers are also required whenever a source is cited in support or refutation of an argument or presentation of data, so that the reader can easily scrutinize the validity of the reference.

As Churchill recounts in *Works and Days*:

Handing McIntosh a copy of *Working Women*, I then asked her to read aloud one of numerous notes I’d marked. After much dissembling, she finally did so, running through a lengthy array of statistical data. . . . In support, she cited two sources, providing page references in neither. The obvious followed.”²⁴⁵

The following is from the P&T transcript:

Q: So where within those would you look to verify those precise percentages [you] articulated?

A: You’d look for them in the article that I cited.

Q: Right. So you would basically need to read the whole article to adduce whether or not the information presented was accurate, correct? And it is precise information, is it not?

A: It is precise information, yes. And yes, if another historian wished to check . . . they would have to go back to the article I cited, which is based on primary evidence, primary sources, to check that. . . . Are we done with this now?²⁴⁶

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

They were done. After all, the issue at hand was not the academic misconduct of Marjorie McIntosh or the failure of numerous other scholars to live up to the strictest standards of documentary citation. The issue at hand was the failure of Ward Churchill.

Plagiarism and the “Moral Indignation” Factor

Did Churchill commit plagiarism?

“[T]he whole point of plagiarism is to pretend that you wrote something somebody else wrote,” according to Marc Cogan, a philosophy professor at Wayne State and, in 2005, the chair of the AAUP Committee on Professional Ethics. “As a general rule, if the sources are given, and given enough so that they can be seen . . . then plagiarism doesn’t come in. . . .”²⁴⁷

In *The Little Book of Plagiarism*, the federal judge and eminent legal theorist Richard Posner writes, “The reader has to *care* about being deceived about authorial identity in order for the deceit to cross the line to fraud and thus constitute plagiarism. . . . There are innumerable intellectual deceits that . . . arouse not even tepid moral indignation, and so they escape the plagiarism label.”²⁴⁸ Posner also writes, “The plagiarist by plagiarizing improves his work relative to that of his competitors and so increases his sales and his fame relative to theirs.”²⁴⁹

Cheyfitz, in reconciling the two passages by Posner previously quoted, observes that you cannot separate plagiarism from motive: “If I follow Posner here, in order for the reader ‘to *care* about being deceived about authorial identity,’ the reader must feel that there has been *intent* to deceive with intent implying *for gain*.”²⁵⁰ By this test, considering that it is difficult to imagine what Churchill may have had to gain by plagiarizing the Dam the Dams pamphlet, Cheyfitz finds that Churchill’s actions, as described in the IC report, fall far short of qualifying as plagiarism.

The IC, citing the AHA standards, wherein plagiarism is “the expropriation of another author’s work, and the presentation of it as one’s own,” enforces a far more literal definition of plagiarism than that understood by Posner or Cogan. They do not consider, in their report, what a writer as prolific as Churchill, who “could easily have written essays on the subjects of this misappropriated work,” would have had to gain by plagiarizing, beyond noting that it is “unexplained.”²⁵¹

To put the question slightly differently, in view of the evidence, would Churchill be rational in believing that he was not plagiarizing Dam the Dams? As he claims, he was given the material and urged to do with it what he pleased, but to do something to keep the issue alive. And so he did. The material had not been published in a scholarly venue but as a pamphlet written by a dormant environmental organization and published without authorial attribution beyond the name of the organization—clearly the product of an activist ethos in which materials are typically shared in the expectation that they be used, with or without authorial attribution, for the good of the cause. Stylistically, at least

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

based upon the excerpts in the IC report, the passages Churchill is alleged to have stolen are at best functional. He was the editor (though not listed as co-author) of the first article that gave Dam the Dams more credit than they could have reasonably expected. According to Churchill, he also listed Dam the Dams as co-authors of a second, expanded article, although the editor dropped their name without his permission (a claim that the Committee could have easily confirmed or disproven, were they so inclined). In the third and fourth articles, further expanded treatments with the latter expression many times the length of the pamphlet, Churchill cited Dam the Dams at the end of the paragraphs (though not the end of the sentences) in which he paraphrased their material. On these five occasions, the footnotes referred to Dam the Dams as lead author of the 1988 chapter.

In her testimony before P&T, IC chair Marianne Wesson indirectly addressed the issue of “moral indignation” that Posner defines as central to plagiarism. “I just wanted to say, I’m afraid you may be getting the impression from the way I’m talking about this that we thought this was, like, some terrible act of misconduct. And if this had been the only allegation against Professor Churchill, although I think we were compelled by the definition of plagiarism to find there was plagiarism here, by itself, this allegation is not that serious.” As Wesson goes on to assert, this was part of a pattern: “It was, however, not by itself. It was in the context of many other allegations. . . .”²⁵²

This theme permeates the IC report: in isolation, each allegation may not amount to much (and often far less than the IC claims), but when placed in the context of the other allegations that also do not amount to much, there is a pattern of misconduct warranting severe sanctions.

As Tom Mayer, a sociology professor at the University of Colorado, observed in his analysis of the plagiarism charges against Churchill, “In particular John Hummel, who is Churchill’s contact with Dam the Dams Campaign, has praised his contribution to the water transfer protest. Calling this plagiarism is an exercise in malicious hyperbole.”²⁵³

Allegation F. Plagiarism of a Paper by Professor Rebecca Robbins

The Allegation

In a 1999 article published in the *Wacazo Sa Review*, John Lavelle, of Allegations A and B fame, observed that passages from an essay by Rebecca Robbins bore striking similarities to several passages in essays by Churchill. LaVelle did not accuse Churchill of plagiarism, but rather speculated that Churchill had written significant portions of the Robbins essay. During the course of his preliminary investigation into Churchill's writings, Chancellor DiStefano came across LaVelle's article and referred allegations of plagiarism against Churchill to SCRM.

The IC's Findings

The IC, in comparing the essays, found that there was "little or no verbatim repetition of language," and, further, that the similar passages were sufficiently different, that they did not "constitute plagiarism." However, in the course of defending himself against the allegation, Churchill "confessed" that he had (just as LaVelle suspected) written the Robbins article himself, "from the ground up."²⁵⁴ Obviously, one cannot plagiarize oneself.

With regard to Allegation F, therefore, the IC found as follows:

Although we find that Professor Churchill is not guilty of plagiarism in connection with the "Rebecca Robbins" essay, we also find by a preponderance of the evidence that Professor Churchill's publication of an essay in the name of Rebecca Robbins, another actual scholar in his field, when he was the author (in his words, "from the ground up") constitutes research misconduct for its failure to comply with established practices concerning author names on publications.²⁵⁵

Our Analysis

Churchill Wrote the Robbins Essay (So It Couldn't Have Been Plagiarism)

Churchill's story, as recounted in the IC transcripts, is that he had been asked by South End Press to edit a volume of essays (eventually published as *The State of Native America: Genocide, Colonization, and Resistance*, 1992) but gave the project to his then wife, M. Annette Jaimes, who is also a scholar in AIS and who now teaches at San Francisco State University, because she needed something for her resume. As is often the case with such endeavors, many of the solicited contributors failed to deliver publishable essays in a timely fashion. To keep the project alive, Churchill drafted several essays and gave them to Jaimes. Because an edited volume cannot be considered viable if half the essays are attributed to the same author, the Churchill drafts were sent to several of the projected contributors, including Lenore Stiffarm, Phil Lane, Jr., Theresa Halsey, Jorge Noriega, and Rebecca Robbins. Many of these drafts were revised extensively before

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

publication, according to Churchill in the IC transcripts.²⁵⁶

According to the IC Report, Churchill is “ambiguous and infused with a claimed lack of memory” as to the extent that these essays he had “confessed” to having written, at least in part, really were revised by the attributed authors; after staging a comparison, the IC found that Churchill “was the principle, if the not sole, author of these works.”²⁵⁷

Rebecca Robbins, as Churchill understands, signed off on the draft that Jaimes sent her, in its entirety. Indeed, Robbins was pleased enough with the essay, eventually titled “Self-determination and Subordination: The Past, Present, and Future of American Indian Governance,” that she listed it on her CV as recently as 2005.²⁵⁸

While the IC, in comparing the Robbins essay to several Churchill essays and to Robbins’s doctoral dissertation, concluded that it is likely that Churchill wrote the Robbins essay, it is a measure of their skepticism about Churchill that they initially assumed that Churchill had written the essay and that Jaimes had included it in the volume without either the approval or awareness of Robbins. The IC contacted Robbins through her attorney. Robbins declined to address the issue. “We were unable to determine the degree of Rebecca Robbins’ complicity in this conduct,” the IC Report says, “but it [Churchill’s having written the essay attributed to Robbins] is misconduct whether or not she acquiesced in it, or irrespective of any benefit she may have enjoyed as result of it.”²⁵⁹

Well, Maybe It's Not Plagiarism, But We Have to Find Him Guilty of Something

But what kind of misconduct was it? The IC Report reflects a dilemma:

Our finding that Professor Churchill is not guilty of plagiarism in connection with the “Rebecca Robbins” essay *requires* us to consider whether his behavior pertaining to it and/or the essays he published under the names of other authors constituted a different form of research misconduct (*italics ours*).²⁶⁰

If we were to adopt the methodology that the IC employs throughout its Report, we would state that we are “bending over backward to be fair” to the IC. And then we would parse the above-quoted sentence. We would lift it from its context. We would conclude that there is no rational way to read that sentence as other than a “confession” by the IC that, if they could not convict Churchill of the alleged charges, they were *required* to find other grounds on which to convict him. We would allow that the IC might claim that they meant something other than what the words literally say, but then we would conclude that the meaning is clear and, in any event, all of the IC members, regardless of who may have written the passage, signed off on the content.

Credit Where Credit Is Due

The “different form of research misconduct” that the Committee locates is in the

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

University's System Administrative Policy Statement on Misconduct and Research and Authorship, and also in the SCRM operating rules and procedures, subtitled "Failure to Comply with Established Standards Regarding Author Names on Publications."²⁶¹

This is a curious rule with which to penalize Churchill, considering its obvious purpose. In academia, there is a long-standing practice (or scandal, depending on one's perspective) wherein senior scholars take advantage of the labors of more junior scholars, or graduate students, and publish papers which do not give them proper credit for their contributions to the project. The rule is thus designed to safeguard junior faculty or graduate students against senior scholars who might exploit their labors. It is not designed to penalize the junior colleague, as the IC penalizes Churchill, who did all the work and did not receive credit for his contribution. If there is academic misconduct in this case, it is on the part of Rebecca Robbins, who was the more senior faculty, which perhaps explains why she declined, through her attorney, to talk to the Committee.

Creating the False Appearance of Support

To the IC, Churchill's obvious purpose in writing the essay for Robbins is to deceive the reader:

The failure [of Churchill to adhere to the rule] is particularly egregious when a misattribution of one's own writing to another actual person is then exploited by the author by using the misattributed work as apparently independent authority for claims that he makes in his own later scholarship, as Professor Churchill has done. . . . This sequence of events permits the author to create the false appearance that his claims are supported by other scholars when, in fact, he is the only source for such claims.²⁶²

The IC further notes that "there is extended discussion of this practice in Allegation A above."²⁶³

The problem here, as we have noted in our discussion of Allegation A, is that if one considers the interpretative methodology used by Churchill and numerous other scholars—in which the implementation and effects of an act are considered to be part of the act itself—to be rational, then the IC's finding that no independent support exists for Churchill's claims is, to place it in the best possible light, exceedingly facile.

In fact, Churchill, Williams, and Cheyfitz argue that using an article that one has written under the name of another scholar as independent third party support is valid even in the absence of other third party substantiation. According to Cheyfitz:

[I]ndeed, it [the articles by Robbins and Jaimes] is third party evidence, because two reputable scholars signed off on it and lent their names to it. So we are getting not just [Churchill's] opinion backing [him] up, but . . . the opinion of Rebecca Robbins and M. Annette Jaimes.²⁶⁴

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Elsewhere Cheyfitz writes:

[N]one of the authors who signed the . . . essays that Churchill acknowledges writing have come forward to disown the work or charge Churchill with anything. We can therefore consider the work collaborative and that the persons whose names are on the essays take responsibility for their content and are therefore taking the position of authors of the essays."²⁶⁵

Although we believe that Robbins exploited Churchill by not attributing him as co-author of the essay, Churchill himself has never claimed that Robbins exploited him. Consistently, throughout all levels of his prosecution, he has insisted that ghostwriting is a widely accepted practice in many areas of academic discourse, particularly in political science and in law. He also insists, as we have discussed earlier, that at no level of his prosecution could anyone involved locate a legitimate standard proscribing ghostwriting. Mayer agrees with Churchill:

Having dismissed the plagiarism charge, the investigating committee should have dropped the matter altogether. Instead, the committee resorted to an ad hoc reformulation of the misconduct charge, bringing up the issue of ghostwriting. According to its strained and adventitious interpretation of the standing rules, publishing one's own work under another name constitutes research misconduct. This interpretation effectively proscribes using a pseudonym or ghost writing of non-fiction papers and books. Yet not only is the practice of ghost writing relatively frequent, but during times of political repression (e.g. the McCarthy era and perhaps today) it enables vulnerable scholars to publish and participate in public discourse. The notion that ghost writing of non-fiction work is impermissible is not only pernicious but astonishing. Ghost writing is common in the fields of medical research, political commentary, and biography. . . . The committee seems determined to find Ward Churchill guilty of something and to exaggerate the magnitude of his alleged offense."²⁶⁶

It may be that, as is the case with much of the Churchill prosecution, what we see is not research misconduct or an extended exercise in bad faith on the part of the IC and P&T, but a clash of cultures. The IC rejects all evidence offered by Churchill that there are "respectable precedents for the practice" and asserts that "an overwhelming consensus" exists that ghostwriting is verboten. When Churchill provides the example of C.L.R. James, Chair Wesson tells him that no further examples are necessary unless he has more to say about James.²⁶⁷ Churchill takes Wesson at her word. But, based on our reading of the IC transcripts, she tricked him. As the part of the Report that has been attributed to Wesson states, "In any event a single counterexample [C.L.R. James], however distinguished, cannot nullify an overwhelming consensus about an established practice."²⁶⁸

P&T also refused to admit evidence from Churchill that the practice of ghostwriting in academia is far more widespread than many academics like to admit, found the evidence

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

he did present to be “unpersuasive,” and then concluded, in their final report, that although they also could locate no “specific guidelines” proscribing ghostwriting, “in light of what we take to be accepted standards by large components of the academic world,” the practice was “inherently deceptive.”²⁶⁹

In other words, although they can produce no evidence that ghostwriting is wrong, given their own social construction—the received values and beliefs that determine their worldview—they just *feel* that it is wrong, and they cannot be persuaded otherwise.

The Exclusive Domain of Knowledge

To Churchill, however, ghostwriting does not feel as wrong as it apparently feels to the IC. As Mayer summarizes:

[G]host writing is widely practiced in movements for social change. Within such movements the production of knowledge is often conceived as a collective activity, not as the exclusive domain of individual scholars. In these contexts, the purpose of knowledge production is not building personal careers, but rather empowering social change.²⁷⁰

Cheyfitz, in his P&T testimony, applies a similar observation to an Indian context: “[I]n Indian oral history and in traditional Indian practices, authorship is of no importance whatsoever. What is important is what is said.”²⁷¹ In his testimony, Cheyfitz recounts his initial displeasure, when working with the Navajo, in seeing an idea of his being attributed to the group as a whole: “And I—when I first got out there, being a Westerner and being egocentric, like most Westerners, when I would have an idea and it would get circulated in the group and then it would come out as everybody’s idea, I would really get sort of uptight internally. . . . I never said anything externally,” Cheyfitz adds, because, in order to have access to the group he wanted to study, he needed to be “part of the group.”²⁷²

The P&T report acknowledges, “Advocates of these views might not find the evidence in favor of a finding of misconduct [against Churchill] as persuasive as we do.”²⁷³

To most academics, or at least those—including the authors of this report—who view experience through the lens of Eurocentric assumptions, ghostwriting is a thoroughly counterintuitive activity. In Mayer’s terms, we want knowledge to be our exclusive domain (if we can be acknowledged for it) and we are interested in building personal careers, or at least we do not want others to build their personal careers using our knowledge and labor and get no credit ourselves. But from the perspective of the indigenist paradigm, as Churchill suggests to the mostly deaf ears of the IC and P&T, “it is the articulation,”²⁷⁴ and not whether Ward Churchill or Rebecca Robbins get credit for it, that contributes to understanding and knowledge.

As Stanley Fish observes in his consideration of the Churchill case, divergent

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

perspectives are “part of the game” in academia and should not be resolved in disciplinary hearings: “If the standards for dismissal adopted by the Churchill committee were generally in force, hardly any of us professors would have jobs.”²⁷⁵

Allegation G: Plagiarism of Work by Professor Fay G. Cohen

The Allegation

This allegation of plagiarism against Churchill involves another essay published in the 1992 volume, *The State of Native America: Genocide, Colonization, and Resistance*, edited by M. Annette Jaimes. Jaimes, as discussed in the previous section, was married to Churchill at the time of the volume's preparation and publication. The authorship of the essay "In Usual and Accustomed Places" is not attributed to Churchill, but to the Institute of Natural Progress (INP). According to the "Contributors" section of the volume, "Institute for Natural Progress is a collective research institute founded by Ward Churchill and Winona LaDuke in 1982. It produces occasional studies and policies important to the well-being of Native North America. Churchill assumed the lead role in preparing the INP contribution to this volume."²⁷⁶ By 1992, the INP was largely defunct.

"In Usual and Accustomed Places" contains significant passages that are similar to passages in "Implementing Indian Treaty and Fishing Rights: Conflict and Cooperation," an essay by Fay G. Cohen that was published the previous year in *Critical Issues in Native America*, volume 2, edited by Churchill.

The IC's Findings

The IC Report concludes this section as follows:

Professor Jaimes' refusal to speak with the Committee makes it difficult to determine exactly how the misappropriation of Professor Cohen's work occurred. But under all the circumstances that point to his substantial role in the preparation of this volume, and his claim of credit for the INP essay, we are convinced and find by a preponderance of the evidence that Professor Churchill was at least an accomplice, if not a principal, in an act of academic misconduct.

Plagiarism is defined in the "Statement on Standards of Professional Conduct of the American Historical Association" as "the expropriation of another author's work, and the presentation of it as one's own." Professor Churchill's close association and identification with the Institute of Natural Progress, and his claim of credit for the essay in his Faculty Report of Professional Activities, give some support to a finding that he committed plagiarism in his misuse of Professor Cohen's work. But even if this was not an act of plagiarism, it certainly constituted a misappropriation of the work of another and thus constitutes "failure to comply with established standards regarding author names on publications," a form of research misconduct under our Research Misconduct Rules.²⁷⁷

Our Analysis

Cohen's Essay Was Definitely Plagiarized

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

According to the IC report, in response to written questions submitted by the IC and Churchill, Cohen claims that her essay was scheduled to be revised and republished in the Jaimes-edited volume, *The State of Native America*. According to Cohen, Churchill was her contact for both volumes.²⁷⁸ The IC Report states:

Disputes with Professor Churchill over the editing and production of her essay led Professor Cohen to withdraw it from inclusion in the second volume. She provided our Committee with copies of the letters she sent to Professor Churchill, Professor Jaimes, and the publisher of the second volume announcing that she was withdrawing her contribution. Shortly thereafter, however, it appeared in that volume, somewhat altered and credited to the Institute for Natural Progress.²⁷⁹

In a letter dated February 9, 1997, the legal counsel at Dalhousie University in Nova Scotia, where Cohen was on the faculty, issued an opinion that Cohen's essay was plagiarized in the essay attributed to INP. The letter does not identify Churchill as being responsible for the plagiarism.

The IC also opines that Cohen's essay was plagiarized:

Although substantial portions of the later work seem to be original (or at least not derived from the Cohen work), the robust similarities between the Cohen article and certain portions of the INP essay could not be coincidental. The author of the INP article knew of the Cohen essay: it is cited in footnotes at three points (in notes 2, 13, and 55, the first two instances using an incorrect title.) The systematic employment elsewhere in the INP essay, without attribution, of phrases, sequences, and sentences from the Cohen essay satisfies the definition of plagiarism.²⁸⁰

Tom Mayer, in his review of the Churchill plagiarism allegations, agrees with the IC that "In Usual and Accustomed Places" indisputably plagiarizes the Fay Cohen paper:

Thirty-two out of the fifty-five footnotes in Professor Cohen's paper are repeated verbatim in this article. Long passages are entirely the same or have trivial modifications. The overall structure . . . parallels that of the earlier paper, and about one third of the quotations used are the same.²⁸¹

Still, Mayer observes considerable differences (as does the IC report) between the two essays:

Cohen's paper emphasizes the role of law in helping Native Americans regain their proper fishing rights and the emergence of a cooperative spirit in relations between Indians and whites. By contrast, "In Usual and Accustomed Places" stresses the effectiveness of resistance (indeed, the effectiveness of armed resistance), the persistence of white efforts to expropriate Native Americans, and the likelihood of future conflict about fishing rights issues.²⁸²

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Mayer also notes that the paper “does give some credit to Fay Cohen: her work is cited in seven of the footnotes.”²⁸³

But Was Churchill the One Who Plagiarized Cohen?

According to the IC Report (and as validated by the hearing transcripts), Churchill, not disputing that the Cohen essay was plagiarized, maintains that others are responsible:

[Churchill] claimed that he did not write the “About the Contributor” entry in which he is given credit for the INP essay, and he had no knowledge until recently of what it said. He said that he did some minor editorial work in the nature of copyediting for the *State of Native America* volume at the request of Professor Jaimes, including on the INP essay, but he claimed that he did not recognize the essay as containing large portions of the Cohen chapter that had appeared in the volume he edited one year earlier. Professor Churchill said that he believes the offending essay to be the work of Professor Jaimes and others unknown to him.

Professor Jaimes declined through her attorney to speak to the Committee. There is thus before us no direct refutation of Professor Churchill’s claim that others were responsible for the plagiarism of Professor Cohen’s essay.²⁸⁴

Following this concession by the IC that they have no evidence that directly refutes Churchill’s version of events, they are nonetheless deeply skeptical about Churchill’s account. In this instance, the IC’s skepticism about Churchill rests on three planks. The first two they find most compelling:

1. Churchill listed the article on his 1991 Faculty Report of Professional Activity (FRPA). The FRPA is a report that faculty fill out annually to list their professional activities over the previous calendar year. It is often used as the basis for annual merit raises.

The IC reports, “Contrary to his claim that he did only light editing work on it, the essay in question . . . is listed as a work written (not edited) by him . . . followed by the parenthetical notation “for the Institute of Natural Progress.”²⁸⁵ Further, the IC notes that the essay is listed on Churchill’s FRPA in the same category as another essay published in the same volume, for which he was named the sole author, and another for which Churchill was listed as a co-author with Winona LaDuke.

In response, according to the IC Report, Churchill claimed that he did not “personally prepare” his FRPA in 1991, “that some assistant, or possibly Professor Jaimes [his wife] prepared it and erroneously included the essay.”²⁸⁶ The IC Report expresses some skepticism about Churchill’s response, “but in any event Professor Churchill signed the document and is responsible for its contents.”²⁸⁷

Notwithstanding the IC’s irrefutable declaration that because Churchill signed the

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

document he is responsible for it, is Churchill's response plausible on substantive (rather than dismissible on technical) grounds? Or is it a version of "my dog ate my homework" that academics, like those on the IC, have heard a thousand times before and assume is the case with Churchill?

Churchill testified throughout the hearings that his FRPA was filled out by the office assistant of CSERA, Karen Moreira. According to Churchill, Moreira typically filled out the annual reports for other faculty as well (sometimes, in Churchill's case, aided by Jaimes). Churchill provided the investigative committee with Moreira's name.

We cannot guess why the IC never contacted Moreira, beyond the obvious implication that they did not think it was necessary. But that the IC did not ask for her independent recollections suggests that they have far less faith in their smoking gun—Churchill listed it on his FRPA—than they claim in their Report.

2. Churchill was closely identified with the Institute for Natural Progress.

Churchill had founded the INP, along with Winona LaDuke and Oscar Rodriguez, in 1982. According to Winona LaDuke, the INP had never been much more than an idea. No one disputes that by 1992 the INP was largely defunct.

All of this implicates Churchill, in the eyes of the IC:

Moreover, it appears that Professor Churchill had, at the time of the Cohen article's misuse, a history of putting the name of the Institute for Natural Progress on work authored by others. Only one year earlier, he had included an article co-credited to the Institute for Natural Progress and a Canadian environmental group called Dam the Dams Campaign in the 1991 volume that he edited—the same volume that contained Professor Cohen's original essay. (See the further discussion in the report on Allegation E above, where we conclude that the essay made substantial unacknowledged verbatim use of language from an earlier publication by the Canadian group.) It thus appears that Professor Churchill had included, in a book that he personally edited a year previously, an essay containing material authored by another and credited to the INP. This observation makes even more implausible his claim that he had nothing to do with a similar act of misappropriation in favor of the INP the following year.²⁸⁸

At least, one could say about the preceding paragraph, the IC is willing to commit its reasoning to paper. But all one really has to consider is the parenthetical statement in the middle of the paragraph. We refer you to our discussion of Allegation E, where you will find that, contrary to the claim made here, the IC did not conclude that the essay co-credited to Dam the Dams Campaign and the INP "made substantial unacknowledged verbatim use of language from an earlier publication by the Canadian group." You will find that, far from the use of language being "unacknowledged,"²⁸⁹ Dam the Dams is listed as first author of the essay, and that at the end of the essay Churchill lists the names of 27 members of the Dam the Dams Campaign and credits them with "assembling the

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

original paper from which this essay was written” and then provides contact information for the group.

Once again, if we were to adopt the methodology of the IC, we would emphasize the direct contradiction between IC’s claims in the parenthetical statement and the actual conclusions of the IC regarding Allegation E. We would identify grave significances and conclude that, based on the preponderance of evidence, the above parenthetical statement qualifies as falsification and fabrication and thus academic misconduct. We would conclude that their academic misconduct is especially severe because the effect of their behavior has damaged a colleague’s reputation.

At the very least, the sentence says a great deal about the attitude of the IC toward Churchill. Even when they clear Churchill of a charge, they remember having convicted him. No doubt, with the time-released procession of allegations against Churchill referred to SCRM by DiStefano, it all got a little hard to keep straight. But they might have checked their report for internal consistency before submitting it.

According to Churchill, he suggested to Jaimes that she attribute authorship of the essay to the INP rather than to herself because her name had already appeared too many times in this volume for which she was the editor.

3. Churchill was the editor of a volume the previous year in which Cohen’s essay appeared, and he was her contact for the Jaimes volume.

According to the IC Report, “[Churchill’s] representation that he did not recognize large portions of the original Cohen article in ‘In Unusual and Accustomed Places’ strains credulity.”²⁹⁰

Common sense would suggest that Churchill, who admits to being “the rewrite guy” for this essay, would have recognized large portions of an essay he had edited, or at least included in a volume he had edited, the previous year. We agree, but not that it “strains credulity” that Churchill might not notice. Consider his rate of production, both as a writer and an editor, his record (as evidenced throughout this report) of helping associates with their work, and the enormous amount of reading that is involved with scholarship. Also consider that during this time Churchill was teaching full loads and reading student papers, and that, as evidenced by Dam the Dams, organizations Churchill had never heard of would provide him with boxes of material, asking him to help publicize their causes, and it becomes at least plausible that Churchill might not recognize an essay by Fay Cohen he had included in a volume he had edited a year after the volume was published. Particularly if, as Mayer suggests, it was on a topic—Native American fishing rights—that there is no evidence, judging from his extensive oeuvre, that Churchill has ever been interested in enough to write about.

Mayer also argues that “the task of manuscript acquisition is often quite distinct from that of editing and writing.”²⁹¹ In other words, that Churchill, who had included Cohen in a

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

volume he had edited the year before, was Cohen's contact person for the Jaimes volume does not contradict Churchill's claim that he played only a marginal role in the preparation of the plagiarizing essay.

Mayer, in his consideration of the charge, finds substantial evidence in the text itself that Churchill was not centrally involved:

The paper has the earmarks of a manuscript written by a committee. It is an ungainly integration of a text about fishing rights law with a text about the Native American fishing rights movement. A few unanalyzed time series are thrown in for quantitative relief. Communication between the presumably multiple authors of the manuscript seems to have been imperfect at best. For example, footnote sixty-two on page 232 explains how Native Americans do not like the term "treaty rights". This term implies that the rights involved were created by the treaty rather than existing beforehand and being simply acknowledged by the treaty. The writer of this section seems unaware that the very same point is made twelve pages earlier in an extended quote by an Indian elder.²⁹²

According to Mayer, other textual evidence points away from significant involvement by Churchill:

The plagiarisms, though extensive, are not distributed evenly throughout the text. They appear in clusters. The text on fishing rights law is heavily plagiarized while the text on the Native American fishing rights movement involves little if any plagiarism. Not only does this pattern support the collective composition of "In Usual and Accustomed Places", but it also sheds light on the role of Ward Churchill. Anyone who reads Professor Churchill's writing soon becomes familiar with his distinctive polemical style with frequent use of sarcasm, pejorative comment, and cynicism about state policy. Very few such stylistic identifiers appear within the text of "In Usual and Accustomed Places", and those that do, occur in the non-plagiarized sectors about the fishing rights movement. The article also contains errors that would not have occurred if Churchill were deeply involved in its preparation: Fay Cohen's name is misspelled in footnotes one and two ("Faye"), and footnote two also gives the wrong title for her article in *Critical Issues in Native North America*.²⁹³

Ward Churchill has always been a provocative and controversial scholar, During the three decades in which he has functioned as a leading intellectual of the embattled American Indian Movement, Churchill's enemies have called him many things including "truculent", "intimidating" and even [as Annette James has called him] "despicable". But two things he has not been called are crude and unintelligent. The plagiarism committed by "In Usual and Accustomed Places" is both crude and unintelligent. As such it falls outside the modus operandi of Ward Churchill as experienced by both friends and foes.²⁹⁴

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Others who are familiar with Churchill's work have arrived at similar conclusions. For example, during her testimony at trial, Elaine Katzenberger, senior editor at City Lights publishers, offered an analysis all but identical to Mayer's.²⁹⁵

Well, Maybe It's Not Plagiarism, But We Have to Find Him Guilty of Something, Redux

It is difficult to view the plagiarizing of Fay Cohen's essay as anything other than a "he said/she said" without the "she said." Very little, if any, of Churchill's account has been contradicted by evidence. Fay Cohen has never publicly accused Churchill of plagiarism. David Getches claims that she accused him in a telephone conversation that occurred eighteen months prior to his stated recollection of the conversation in a memo.²⁹⁶ Cohen claims that she addressed these allegations to the IC only at the solicitation of the University of Colorado. David Getches claims that she was not solicited.²⁹⁷ Annette Jaimes presumably would have a lot to say about this charge, but refused through her attorney to talk to the IC, which hardly deflects Churchill's contention that she was responsible.

The IC itself equivocates. After spending most of their discussion pointing the finger at Churchill because they simply do not believe him, they declare the waters too muddy to see clearly: it is "difficult to determine exactly how the misappropriation of Professor Cohen's work occurred."²⁹⁸ Later they conclude, after reviewing again the evidence they find persuasive—Churchill's listing of the essay on his FRPA and his close association with the INP—that "even if this [Churchill's behavior] is not an act of plagiarism" it is a "failure to comply with established standards regarding author names on publications"²⁹⁹ and thus research misconduct.

This is the same rule that the IC invoked to convict Churchill because Rebecca Robbins's name was on an essay for which Churchill had done all the work. And as with the Robbins charge, it does seem that the IC is looking in the wrong place to assign guilt. Why this "failure to comply with established standards regarding author names on publications"³⁰⁰ would be Churchill's, not Jaimes's, failure, since she was the editor of the volume, is unaddressed in the IC Report. Perhaps, as with the alleged plagiarism of Rebecca Robbins, if the IC could not find Churchill guilty of the allegation, they believed themselves to be "required" to search for another reason to convict him.

Did Churchill have some direct responsibility for the plagiarized passages of the Cohen essay appearing in the INP essay? Realistically, there is no way to know on the basis of the evidence available. The little evidence that is available does not contradict Churchill's account. We believe that the IC should have dismissed Allegation G because there was not nearly enough evidence on which to base a rational determination. However, the evidence throughout this report suggests that either they did not think that they could dismiss an allegation or they had already presumed him guilty.

As Mayer writes, in their report the IC "convicts Professor Churchill of plagiarism for a paper he did not sign, claims not to have written, which is published in a book he did not

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

edit, and whose text clearly diverges from significant features of his published work.”³⁰¹

In his defense of Churchill that some see as heroic (including the authors of this report) and that others regard as nonsense by a fellow traveler in radical propaganda, Mayer, a long time sociology professor at CU, hints at what has spurred him to tirelessly undertake an unpopular cause:

Due to my own involvement in [Churchill’s] defense, I have talked to many people about the Ward Churchill affair. Most of these interactions have been disheartening to say the least. Among other things, I have received a considerable number of hate letters and e-mails characterized mainly by inarticulate rage and vulgarity. More discouraging, however, is the response of many purported liberals who claim to support academic freedom and who know something about the history of McCarthyism. Usually these individuals are completely unfamiliar with Churchill’s work and misunderstand the “little Eichmanns” phrase that is reiterated ad nauseam in the media. Knowing that a panel of reputable academics has found him guilty of plagiarism, all concern for academic freedom vanishes and my liberal interlocutors often express contempt for Churchill and support draconian penalties. They fear that the reputation of liberalism might suffer from the support of a proven plagiarizer. They recoil from thinking that a panel of reputable academics could be swayed by private animosity or the prevailing political climate. Only with the greatest reluctance do these purported liberals consider contrary arguments or evidence. During these interactions I become painfully aware of how profoundly both Professor Churchill and freedom of critical thought have been wounded by this politically inspired inquisition. . . . The damage to freedom of thought may be irreparable in the near future.³⁰²

Violations of AAUP Standards

Violation of Committee A Statement on Extramural Utterances

In October 1964, in its clarifying statement on the original 1940 Statement on Academic Freedom and Tenure, Committee A of the AAUP adopted the following:

The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness to serve. Extramural utterances rarely bear on the faculty member's fitness for continuing service.

Committee A asserts that it will view with particular gravity an administrative or board reversal of a favorable faculty committee hearing judgment in a case involving extramural utterances. In the words of the [AAUP] 1940 *Statement of Principles*, "the administration should remember that teachers are citizens and should be accorded the freedom of citizens." In a democratic society freedom of speech is an indispensable right of the citizen.

There is no dispute that Churchill made his statement on 9/11 as a private citizen. One question relative to this standard is whether his opinion clearly demonstrates his unfitness for continuing service as a faculty member. Churchill argues that American policies toward the Middle East constitute an imperialistic war on Islam and that the complicity of the civilian population is necessary for the operation of the military industrial complex that carries it out. He goes further: that adversely affected peoples can be expected to "push back," and that the only viable means available to push back against civilian workers whose efforts make the imperialism possible is to attack them directly. Churchill clearly espouses a legitimate political/academic viewpoint, though it is one held by a small minority (in the U.S.) and one that is distasteful, repugnant and even obscene to most who view the events of 9/11 through the prevailing Eurocentric lens.

Churchill's minority viewpoint, distasteful as it might be to many, does not demonstrate that he is unfit to serve as a faculty member, especially in an institution that is dedicated to freedom of inquiry and to the expression of alternative, sometimes competing ideas. Our other finding relative to this standard addresses the reversal by President Brown and the Board of Regents "of a favorable faculty committee hearing judgment in a case involving extramural utterances." P&T recommended that three of the SCRM charges against Churchill be dropped and judged that a fourth was deficient. Three members of the committee voted that Churchill be demoted and suspended without pay for a year; two voted that Churchill be fired. President Brown's reinstatement of charges against Churchill and recommendation to the Regents that Churchill be fired—as well as the Regents' acceptance of Brown's recommendation—stand as a brazen violation of AAUP standards.

Violations of the 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings

The 1958 Statement on Procedural Standards in Faculty Dismissal Proceedings was prepared by a joint committee representing the AAUP and the Association of American Colleges (now the Association of American Colleges and Universities) and was approved by these two associations at their 1958 annual meetings. The Statement sets forth eight specific recommendations for procedural standards that should be applied in cases that involve possible faculty dismissal. As such, the Statement sets forth standards that constitute “academic due process.” Numbered quotations in the following correspond to the numbered procedural standards in the 1958 Statement.

2. Violations of standards in the “Commencement of Formal Proceedings” section:

In setting the date of the hearing, sufficient time should be allowed the faculty member to prepare a defense. The faculty member should be informed, in detail or by reference to published regulations, of the procedural rights that will be accorded.

Sufficient time to prepare a defense: Under SCRM rules, the IC had 120 days to complete its investigation. This time period could be extended on request and Churchill made requests to do so in order to prepare his defense. IC Chair Wesson refused to extend the period. Wesson admitted to at least one panelist *during* the investigation that she was desperate to wrap things up because “dragging this out is somewhat to [Churchill’s] advantage.” Further, at its first meeting the IC informed Churchill that they might drop some of the charges against him and that he should not begin to formulate his responses until the second IC meeting, a date well into the 120-day period. Toward the end of the 120-day period, SCRM Chair Joe Rosse demanded that Churchill respond to new allegations of research misconduct advanced in the form of a written complaint lodged with Chancellor DiStefano by an individual named Ernesto Vigil almost a year earlier and held in abeyance by the SCRM until this point. These actions diminished Churchill’s ability to form an effective response and withholding the charge until late has the appearance of “stacking the deck” against him. Moreover, Churchill’s overall problem in constructing a defense was compounded by there not being any experts on American Indian studies on the IC panel. This by itself caused him to spend significant time formulating his responses to the charges in a way that would familiarize the IC with the methodological and theoretical aspects of his discipline.

Informing the defendant of procedural standards: Churchill and his attorney repeatedly requested the IC to specify the standard they would use to judge the integrity of his work but the committee either was unable or unwilling to do so. Ultimately, the panel established American Historical Association guidelines as

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

“a general point of reference,” despite testimony by Churchill and others that these guidelines were not responsive to accepted methodologies within Churchill’s discipline. When the panel could not find Churchill to be in violation of these or other published guidelines, they invoked a nebulous theory of “academic common law” in lieu of a clearly stated standard. This violation of AAUP precepts allowed a more subjective evaluation of Churchill’s responses and made it difficult for him to know how to prepare his defense.

3. Violations of standards in the “Suspension of the Faculty Member” section:

Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member’s continuance.

Law school dean David Getches recommended to then Provost Philip DiStefano that Churchill be suspended with pay. At the beginning of spring semester 2006, he was suspended, with pay. Given student rallies in support of Churchill and the lack of disturbances at venues where he gave speeches, there is no question that students, faculty members, or others would not have been subject to immediate harm if he continued normal duties. Suspension, even with pay is a violation of this standard.

4. Violations of standards contained in the “Hearing Committee” section:

The choice of members of the hearing committee should be on the basis of their *objectivity and competence* and of the regard in which they are held in the academic community [emphasis added]. The committee should elect its own chair.

Objectivity: Chair of the Standing Committee on Research Misconduct (SCRM) Joseph Rosse appointed Marianne Wesson as Chair of the Investigating Committee (IC) despite knowing beforehand that she was hostile to Professor Churchill. Rosse rejected the appointment of Richard Delgado, one of the founders of critical race theory—which provides the theoretical foundation for much American Indian Studies scholarship—ostensibly because he might not be able to attend all IC meetings. In court testimony, however, Rosse stated that he rejected Delgado because he thought Delgado might have a “chip on his shoulder” toward CU. In his place, Rosse appointed José Limón who attended only one of the IC’s meetings and who cast the lone vote for firing Churchill. Finally, Rosse rejected considering for IC membership any of the 199 CU professors who signed the ad affirming Churchill’s right to academic freedom because they might have a pro-Churchill bias. This selectivity in appointing those with an anti-Churchill bias and rejecting those who might have a pro-Churchill bias defeats satisfaction of the AAUP Objectivity standard.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Competence: It is striking that no one on the IC had a background in American Indian history despite charges against Churchill that should have been considered by someone with such knowledge. Experts such as Richard Delgado, mentioned previously, and Kansas University Indigenous Studies Professor Michael Yellowbird were available but not chosen. Other acknowledged experts in Indian history were not solicited for appointment. The IC did, however, include Robert Clinton, a professor of law at Arizona State University, whose expertise was in federal Indian law rather than history. Clinton's perspective on Indian law, which by all reports significantly influenced the panel in the absence of other perspectives, is the source of controversy in the field of AIS. (As a generality, many experts in AIS consider federal Indian law to be colonial rather than constitutional; they also criticize legal scholars such as Clinton for not understanding or applying critical race theory.) Others appointed to the final IC had academic specialties in death penalty studies and ethnic literature. The final panelist, an expert in medieval English women's studies who would write an extensive section of the SCRM report, would later testify that she never heard of critical race theory.³⁰³ This violates the AAUP Competence requirement in the above standard.

Evidence of the IC's incompetence is abundant throughout the SCRM report. For example, the IC found that Churchill had fabricated a source when writing that there was circumstantial evidence that John Smith had introduced smallpox to the Wampanoags. Churchill attributed the source to Neil Salisbury, who had written this about the Pokanoket Indians. The IC could find no mention of the Wampanoags in the cited source, so they concluded that Churchill had fabricated it. "Pokanoket," however, is simply another word for "Wampanoag." (It should be noted that after their mistake was pointed out, Chair Wesson published a retraction in the faculty newspaper and announced that the IC would withdraw their "fabrication" conclusion on this count,³⁰⁴ although the original finding is still included in the published report.)

Similarly, the IC would convict Churchill of falsification for referencing a passage in which the IC could not locate a reference to whites spreading smallpox among the Mandan population. However, as Eric Cheyfitz has noted, the passage does refer to Four Bears's speech, which anyone familiar with American Indian history would know is famous for Four Bears's dying accusation against the whites of infecting the Mandans with smallpox.³⁰⁵

The consequences of the IC's lack of expertise in Indian history also have been demonstrated by several outside groups. For example, with the assistance of experts, the CU-Boulder chapter of the AAUP examined the conclusions of the IC. Side by side, they compared what Churchill wrote to what the IC said and to the original sources cited by Churchill. They found numerous specific instances where they conclude that the IC report misrepresented its sources, seriously distorted or falsified data, and apparently fabricated other data, all to the detriment

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

of Churchill. Assuming that the fabrication of the IC report was not a purposeful action of the IC, it is the inevitable result of the IC's incompetence to evaluate the allegations brought against Churchill by the Chancellor.

According to CU Chancellor DiStefano, competence in the field of AIS was not required because the complaints involved "research methodology, not a particular content." The IC was well qualified, according to DiStefano, to examine Churchill's methodology: "I'm not one bit concerned about the expertise of the committee because I believe they are experts in examining a piece of work and whether it was plagiarized, falsified, or fabricated."³⁰⁶ As demonstrated throughout this report, the IC repeatedly convicted Churchill of academic misconduct for practicing scholarly methodologies regarding statutory interpretation and legitimacy of sources that, according to AIS scholars, are normative in the field of AIS.

In fairness to CU, it should be noted that two more qualified professors initially were appointed to the IC. Professor Robert Williams was the only Indian appointed, and Bruce Johansen is a professor of journalism and Indian studies. Both withdrew after vicious attacks by the right wing media and CU's neglect in defending them against these attacks.

Elected Chair: The Chair of the IC was appointed rather than elected by its members. This also violates the above AAUP standard.

5. Violations of standards contained in the "Committee Proceeding" section:

The faculty member or the faculty member's counsel and the representative designated by the president should have the right, within reasonable limits, to question all witnesses who testify orally. The faculty member should have the opportunity to be confronted by all adverse witnesses. Where unusual and urgent reasons move the hearing committee to withhold this right, or where the witness cannot appear, the identity of the witness, as well as the statements of the witness, should nevertheless be disclosed to the faculty member.

During the IC hearings, Churchill was forced to email his questions to Marianne Wesson who was sitting across the room. Wesson then would read the questions to the committee and/or witnesses. The IC Report acknowledges that Wesson screened Churchill's questions and, on occasion, "rephrased" and "deemed irrelevant" some of them. These procedures can disrupt the witnesses' responses as well as the questioner's thought process and the flow and logic of his follow-up questions to the witness. Both Michael Yellow Bird and George Tinker later testified that these restrictions inhibited their ability to fully engage Churchill's and the IC's concerns. While this was done in accordance with the Operating

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

Rules of the IC, the rule itself subverted due process. As such, the procedures here are in violation of this AAUP standard.

6. Violations of standards contained in the “Consideration by the Hearing Committee” section:

The committee should reach its decision in conference, on the basis of the hearing. Before doing so, it should give opportunity to the faculty member or the faculty member’s counsel and the representative designated by the president to argue orally before it. . . . Publicity concerning the committee’s decision may properly be withheld until consideration has been given to the case by the governing board of the institution.

In our opinion, the entire process was manipulated to produce a preordained conclusion. Not allowing extensions of the 120-day period, the introduction of charges late in the 120-day period when they could have been introduced earlier, the exclusion of potential IC members with expertise in Indian history, the exclusion of potential IC members who were suspected of having a bias for Churchill while those with a demonstrated bias against him were included, the failure of the IC to follow up on exculpatory evidence, the IC’s refusal to define a standard for its decision and ultimate citing of unwritten laws in order to convict Churchill, and Regents’ and lawmakers’ threats to end tenure all manipulated the hearing process. This confluence of factors suggests that the IC was influenced by considerations outside of the hearing itself.

Chancellor DiStefano held a press conference to announce the preliminary investigation into whether Churchill’s opinions were protected by the First Amendment or whether they could constitute grounds for firing him. Chancellor DiStefano later held a press conference announcing that Churchill’s opinions were protected but that during the course of the investigation the committee had become aware of serious allegations, which he would refer to the SCRM for further investigation. Chancellor DiStefano also held a press conference, prominently featuring Chair Marianne Wesson, to announce and discuss the findings of the SCRM Investigative Committee.

The University of Colorado’s mockery of this AAUP standard should require no further discussion.

7. Violations of standards contained in the “Publicity” section:

Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case by either the faculty member or administrative officers should be avoided so far as possible until the proceedings have been completed.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

As noted throughout this report, CU violated this standard consistently. It can only be concluded that the University did this deliberately to build a case against Churchill in the media. It may have felt that this was necessary to appease the governor, legislators, Regents, and donors to its programs. In violating normal privacy practices and by manipulating the investigative process, CU officials distorted and ultimately created a false public perception of Churchill's academic record.

Conclusion

“Our nation is deeply committed to safe-guarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”

*Supreme Court, in Keyishian v. Board of Regents, 385 U.S. 589 (1957)
as quoted in AAUP Policy Documents and Reports, 10th ed., p.5.*

“A college or university is a marketplace of ideas, and it cannot fulfill its purposes of transmitting, evaluating, and extending knowledge if it requires conformity with any orthodoxy of content and method. In the words of the United States Supreme Court, ‘Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.’”

AAUP Policy Documents and Reports, 10th ed., p22.

“No matter how cynical you are, it’s not enough.”

Joan Rivers

The University of Colorado’s prosecution of Ward Churchill represents a betrayal of society on numerous levels. The failures of those who demanded the prosecution—the press, who gained ratings for condemning Churchill’s opinions, and the politicians, who gained votes for demanding that Churchill be fired—are obvious. We do not mean to suggest that there was anything inauthentic about their outrage over Churchill’s opinions. Perhaps, for many in the press as well as the politicians who threatened the University if they did not fire Churchill, their outrage was the most authentic thing about them. Perhaps we should not expect that they would understand the function of a university.

The failure of the Board of Regents was equally predictable. It is a body of elected officials. Few appear to have much knowledge about the University other than what they glean from the newspapers, are told by the administration, or hear from their constituents back home. This, along with their passions, is most of what they bring to the table when exercising their authority over the University. We do not doubt the high seriousness with which the Regents engaged their responsibilities in the prosecution of Ward Churchill, but, although many may have hoped for better, few who follow developments in higher education can have been surprised by their behavior.

Similarly, there is little about the actions of the CU administration that does not speak for itself. Spearheaded by Chancellor Phil DiStefano, the University apologized to the nation for Ward Churchill’s “repugnant” opinions and then conducted an investigation to ascertain whether Churchill’s comment about “little Eichmanns” was protected by the

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

First Amendment. When they found that it was protected, they conducted an investigation into all of Churchill's publications, actively seeking other grounds on which to fire him. They then put him on trial for academic fraud and convicted him of offenses that he did not commit, as this report demonstrates. The University of Colorado's ultimate triumph over academic freedom, however, may prove to be the argument that the University's lawyers successfully advanced in District Court: that the University's Board of Regents is the equivalent of a judicial authority and thus enjoys legal immunity when it fires a tenured faculty member because it does not like his opinions.

As this report also demonstrates, the investigation into the charges against Ward Churchill played out in part as a clash of scholarly methodologies. Some of the members of the IC, in promoting their own methods in the face of competing, equally valid, methods, presumably understood that the opposing view was not represented on their side of the table. That should not have been the case, nor was it originally the case. Two distinguished faculty from outside the University were appointed to the IC but resigned from the Committee in the wake of repeated personal attacks upon their integrity in the press. One of these professors, Robert Williams, a legal expert and distinguished scholar in American Indian Studies at the University of Arizona, wrote a letter of resignation to the University arguing that CU should have taken measures to protect his reputation, as well as those of others on the IC. We agree that the University should have taken measures to protect his reputation, but we also see his resignation from the IC as a failure. If his perspective had been represented on the IC, one imagines that the outcome might have been much different. With Williams, they likely would not have produced such an intellectually dishonest report.

In our introduction, we mentioned that John Dewey, the most prominent of the founders of the AAUP in the early twentieth century, believed that the greatest threat to academic freedom came from forces outside our colleges and universities (such as the press or politicians) or from the trustees of our universities who were responding to political pressure. Dewey advanced the philosophy known as pragmatism, considered to be America's contribution to the discipline of philosophy. According to Dewey and other pragmatists, ideas are instruments, or strategies, that people use in order to solve their problems.

One of America's enduring problems involves the balancing of rights: How can we construct a more humane and sane world, one in which individuals can achieve their dreams without destroying each other? People may have profoundly different ideas on how to achieve those ends, but the more ideas to which we have access, the better our chances of solving our problems. A society that is denied, or denies itself, access to ideas for solving problems, is not a society that is likely to survive. The purpose of all scholarship is the survival of society. Thus, in the 20th century, behind the protections of tenure as advanced by the AAUP, universities became our best incubatories for the nurturing of ideas.

Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

If Dewey felt that the need for academic freedom was better understood by the professoriate than by political forces outside the university, or by trustees or administrators who may be influenced by political or economic forces, he might have been surprised by the behavior of the IC. These are, after all, faculty, who would presumably have some familiarity with the contours of academic debate, or some awareness of, or intellectual curiosity about, methodological trends in fields that lie outside their own specialties. Nor can their behavior be dismissed as the inevitable outcome of a disciplinary process that applies legal standards (the preponderance of evidence) to academic disputes (rational methods). At every step of the process, the IC presumed Churchill either guilty as charged or a liar.

As we demonstrate in this report, two of the charges for which the IC found Churchill guilty required the IC to disregard, judge as irrational, or simply appear ignorant of a normative practice of historical and statutory interpretation. One of the convictions was based on obvious errors claimed to be fact by the IC; another required the IC to pretend to an expertise they did not possess in disqualifying Churchill's sources (considered reputable within his field); some of the charges the IC found particularly offensive because, as they claimed, Churchill cited essays he had written himself to give the false appearance of third-party substantiation for unsupportable claims, when Churchill's claims were widely accepted in the field. When they could not convict Churchill of the charges, they created new charges and found Churchill in violation of rules that were clearly designed to protect scholars in Churchill's position. In another instance, they found Churchill guilty of plagiarism for an essay on which his name does not appear as author. And so on.

The University of Colorado's prosecution of Ward Churchill represents a failure of the CU faculty to protect with vigilance the marketplace of ideas. If faculty will not respect such principles, we cannot expect anyone else to. The price that society will pay for our cowardice is a steep one. And so it is the failure of the IC to produce an honest decision regarding Ward Churchill that should be most troubling to anyone who is interested in the importance of academic freedom to a vital society.

Human nature being what it is, an administration almost always finds faculty who are compliant with its wishes, even if that complicity requires violation of bedrock principles such as academic freedom. It is perplexing why there are so many compliant faculty. Perhaps it is the child in some who seek approval of a parent figure such as an administrator. Perhaps it is the belief that a "greater good" (such as continued donations) only can be accomplished through inappropriate means. Perhaps most of us are simply unable to withstand the pressure to conform. Most charitably, perhaps the compliant faculty member operates in good faith but does not have the expertise to make rigorous, academically valid decisions. In any event, academia as a whole will fail our society if it does not give more emphasis to academic freedom as a principle in the training and education of the next generation of scholars and researchers.

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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Colorado Conference of the AAUP
Report on the Dismissal of Ward Churchill

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