

Framing Ward Churchill: The Political Construction of Research Misconduct

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On February 3, 2005, the University of Colorado Board of Regents convened a special meeting to consider recently publicized comments of Professor Ward Churchill of the Department of Ethnic Studies at CU-Boulder. At the meeting, Chancellor DiStefano announced that he had commenced a review of allegations concerning the statements and conduct of Professor Churchill. Chancellor DiStefano further advised that he intended to request the assistance of Dean of the College of Arts and Sciences Todd Gleeson, and Dean of the School of Law David H. Getches, and that at conclusion of the review, he would decide whether to issue a notice of intent to dismiss, take other appropriate action, or take no action. The Board resolved to endorse the Chancellor's conduct of a review. (n. pag.)

Thus begins the *Report on Conclusion of Preliminary Review in the Matter of Professor Ward Churchill*. The "recently publicized comments" referred to are from Churchill's (in)famous essay on 9/11. The chancellor's review concluded that this essay and other political comments made by Professor Churchill were within "the boundaries of a public employee's protected speech" (n. pag.). Nevertheless, the review did not stop there: "During the course of the review the Chancellor received additional allegations, primarily in the area of research misconduct" (n. pag.).

In March of 2005, under the rationale of protecting academic integrity, the University of Colorado at Boulder (UCB or "CU") through its Standing Committee on Research Misconduct (SCRM), to whom these "additional allegations" were referred, began investigating charges of "research misconduct" against Ward Churchill, professor of American Indian and ethnic studies. The outcome of this process was that in May of 2007, Hank Brown, former president of the University of Colorado, recommended to the regents that Professor Churchill be dismissed, although the members of faculty bodies that had deliberated the charges were evenly divided about whether Churchill should be sanctioned in limited ways or fired. And the final faculty

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body of appeal, the University of Colorado Faculty Senate Committee on Privilege and Tenure (P&T) (before which I, along with other experts in the field of American Indian studies and federal Indian law, had testified on Churchill's behalf), recommended 3-2 that Churchill be sanctioned with a one-year suspension without pay and reduction in rank to associate professor rather than fired (*P&T* 76). With one dissenting vote, however, the regents concurred with Brown, and Churchill was dismissed.¹ This essay describes and analyzes the process that culminated in the firing.

By way of getting down to the task at hand, I want to propose that the undermining of academic freedom—of which the Churchill case presents a prime example—does not come only from right-wing forces such as David Horowitz's Center of the Study of Popular Culture or Lynne Cheney's American Council of Trustees and Alumni (ACTA)—of which Hank Brown is one of the founders—but also from neoliberal capitalism that has fostered a thirty-year-old model of university corporatization. According to the latest figures (2005) of the American Association of University Professors (AAUP), the result of these economic policies has been that 65 percent of academic positions nationally are now contingent labor—that is, they do not provide the protection, potential and actual, of tenure: the institution that is the foundation of academic freedom (“Background Facts”). Without the substantial erosion of tenure, a by-product of the corporate model of downsizing and outsourcing, groups such as ACTA and Horowitz's Center would not pose a serious threat. In this case, neo-liberal capitalism is the primary ingredient for right-wing reaction.

I. Overview of the Frame

Following procedure, the SCRM formed an Investigative Committee (IC) to review the charges, decide on their viability, and make recommendations on penalties, if it determined that any or all of the charges were valid. These charges included “falsification of information, plagiarism, and improper authorship practices” (*SCRM* 6), specifically, Churchill's citing of his own ghostwritten material in a few instances without acknowledging his authorship in the essays where this material was cited as third-party support for his positions. According to “rule,” such an Investigative Committee “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” (*SCRM* 6). As I will argue, the formation and composition of this committee violated the very rule of its formation.

As the *IC Report* issued on May 9, 2006, acknowledges, the context of the investigation and the manner in which the charges were brought raise serious questions that from the outset bear on the fairness of the proceedings.

Issues that bear on the Churchill case began receiving national attention in late January and early February 2005. This attention focused on an essay Churchill published on the Internet between September 12 and October 7, 2001, when the United States invaded

Afghanistan, titled, “‘Some People Push Back’: On the Justice of Roosting Chickens.”² The essay served as a polemical analysis of what Churchill terms the “counterattacks” on the World Trade Center (WTC) and the Pentagon on 9/11 by Arab militants. (Of this constituency it was later disclosed that 15 of the 19 operatives were from the U.S. ally Saudi Arabia.) Churchill argues that the attacks were a response to the West’s violent history in the Middle East, beginning with the Crusades and continuing in the present moment with the Israeli occupation of Palestinian homelands. But the focus of Churchill’s polemic is the 1991 U.S. bombing of Iraq’s water and sewage facilities—“‘aerial warfare’ constitut[ing] a Class I Crime Against humanity, entailing myriad gross violations of international law”—and the subsequent ten-year U.S. embargo of Iraq following the first Gulf War, which resulted in the deaths of an estimated 500,000 Iraqi children from the interdiction of food and medicine, deaths that former U.N. Assistant Secretary-General, Denis Halliday, termed a “genocide” (n. pag.).

What public commentary seized on as particularly egregious in Churchill’s essay, and what was duly noted in the chancellor’s review, is his comparison of the “technocratic corps” of business operatives in the WTC, all serving “America’s global financial empire,” to “little Eichmanns” (n. pag.). Concomitantly in this essay, Churchill casts Americans in their passive acceptance of the Iraqi genocide in the role of “good Germans” (n. pag.). The Eichmann comparison undoubtedly offended because at a moment of national and private grief, it took the other side—an outrageous possibility for the media commentators, the Colorado governor, the state legislature, and the university administration—where critical scrutiny turns the innocent into the guilty, the dead and the grieving into the perpetrators of violence. At a time that *demand*ed sympathy for “us,” it displaced that sympathy with a plea for us to understand “them.”

I remember thinking at the time how inapt and inept the comparison to Eichmann was as a strict historical comparison—the demonizing force of the figure tends to erase history by collapsing crucial differences rather than articulating them. From a strictly historical standpoint, my take on the comparison hasn’t changed. But five years into the U.S. preemptive attack on Iraq—with its Orwellian justification of the invasion as the center of the so-called “war on terror”; the hundreds of thousands of Iraqi civilians dead and an estimated 5 million-plus displaced, 2.7 million internally and 2.4 million externally (“All the Time He Needs”); with the U.S. use of torture, extraordinary renditions, the building and maintenance of the detention center at Guantánamo Bay (et al.); the abrogation of civil liberties in crucial areas through the PATRIOT and related Acts; the extensive use of surveillance on U.S. citizens; and the massive waste of human and material resources in order to maintain a “culture of death”³—Congress can be seen as essentially condoning such actions and thus making itself complicit in war crimes. With these considerations at hand, I do not think that one can simply dismiss Churchill’s comparison as farfetched, though the comparison begs for such dismissal. Even if it does not work literally, the comparison does gesture toward another America that shadows “the land of the free and the home of the brave,” in which

many of us think we live. To its credit, Churchill's scholarship and criticism has consistently demanded that we acknowledge living in this other America. And this has angered those people who have a stake in the narrative of American exceptionalism.

In an op-ed piece I wrote for *Indian Country Today* on June 9, 2004, at the time when Abu Ghraib first entered U.S. headlines, I noted: "Deadly policy can happen and continue to happen in a democracy precisely because democracy itself can become the alibi for atrocities" (A5). The Indian Removal Act of 1830 passed the House of Representatives by only five votes (102-97) and then only after President Jackson "pressured and bullied" House Democrats into breaking a tie over legislation that "would [have] delay[ed] consideration of removal for a year" (Norgren 84-85). Thus what would materialize as the ethnic cleansing and forced death marches of the Trail of Tears was democratically enacted. But, we might ask, what does it mean for a society to be voting on such a measure in the first place? What does it mean to hold a vote on genocide? Writing against slavery, the Mexican War, and populist democracy, Henry David Thoreau remarks on the limits of the vote as a tool of democratic social action:

All voting is a sort of gaming, like checkers or backgammon, with a slight moral tinge to it, a playing with right and wrong, with moral questions; and betting naturally accompanies it. The character of the voters is not staked. I cast my vote, perchance, as I think right; but I am not vitally concerned that that right should prevail. I am willing to leave it to the majority. Its obligation, therefore, never exceeds that of expediency. Even voting *for the right* is *doing* nothing for it. It is only expressing to men feebly your desire that it should prevail. A wise man will not leave the right to the mercy of chance, nor wish it to prevail through the power of the majority. (391-92; emphasis in original)

I think this passage inhabits the same space as Churchill's 9/11 essay, of his "good Germans" comparison, though it does so with much more precision; and so we, whatever our criticisms of Churchill, might recognize that his essay, however expressed, belongs to a vital American heritage of dissent and carries a message about which we ought to think.

We now know that no Iraqis as individuals nor Iraq as a state were involved on 9/11—depending on one's perspective—in the attack or counterattack. But as Churchill acknowledges in an "Addendum" to his essay, he was not writing in a strictly literal mode (nor apparently was George W. Bush acting in one when he linked Saddam Hussein to 9/11); it was "more a stream-of-consciousness interpretive reaction to the September 11 counterattack than a finished piece on the topic" (in an eerie kind of way Churchill's words here could characterize Bush's war plan, which, however, had and continues to have literally devastating results) (n. pag.). That is, the genocide committed on Iraqi civilians by the U.S. bombing and embargo of Iraq prior to 9/11 is, for Churchill, symbolic of the many genocides committed by the United States throughout its history, beginning with the genocide

against American Indians. However controversial or debated this position of deliberate genocide against American Indians is within American history and American Indian studies, Churchill is far from being alone in holding it, both in his writing and teaching (for which he won a student award at Colorado). I hold this position myself. More importantly, the position that American Indians have been (and in specific ways still are) the victims of genocide, is a position widely held throughout Indian country.

Responding to Churchill's 9/11 essay, at the very beginning of the *Report*, the IC notes that

it is well known that these charges were commenced only after Professor Churchill had published some highly controversial essays dealing with, among other things, the 9/11 tragedy. While not endorsing either the tone or the contents of those essays, the Committee reaffirms, as the University has already acknowledged, that Professor Churchill had a protected right to publish his views. In the Committee's opinion, his right to do so was protected by both the First and Fourteenth Amendment guarantees of free speech. (3)

Further:

The Committee notes that this investigation was only commenced *after*, and perhaps in response to, the public attack on Professor Churchill for his controversial publications. Some of the allegations sent to the Committee related to events that apparently had been well known by scholars in the field, although perhaps not by responsible University personnel, for years before the University took any action whatsoever concerning them, and it did so only after the controversy over Professor Churchill's essays became national news [. . .]. 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 [at that time Philip DiStefano], 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." (3-4; emphasis in original)

Having thus raised serious questions about the investigative process being politically driven in the first place and having noted that the manner in which the charges were filed violated university regulations, the IC nevertheless proceeded with the process under the assumption that it could "keep [. . .] the background and origins of this particular dispute out of our consideration of the particular allegations" (4). In defense or support of its assumed objectivity, and its decoupling of text from context, the IC offered the following metaphor:

To use an analogy, a motorist who is stopped and ticketed for speeding because the police officer was offended by the contents of her bumper sticker, and who otherwise would have been sent away with a warning, is still guilty of speeding, even if the officer's motive for punishing the speeder was the offense taken to the speeder's exercise of her right to free speech. No court would consider the improper motive of the police officer to constitute a defense to speeding, however protected by legal free speech guarantees the contents of the bumper sticker might be. (4)

On May 26, 2006, Albert Ramirez, chair of the Department of Ethnic Studies at Boulder, offered the following thoughts on this analogy:

Using this analogy, the Committee sees itself as the "court" which is investigating whether or not the driver—Ward Churchill—is guilty of the specific charge of speeding—research misconduct—and therefore views the other contextual factors as irrelevant.

Continuing further with this analogy—we would hope that the judicial system in which the particular case of the speeder is embedded would at some point look at the broader issues of equal justice for all motorists. Are the scales of justice balanced or are they tilted in favor of certain individuals and against other persons who might not display the correct bumper sticker? What if the police officer only stops speeders who display this particular bumper sticker, and does not stop or give tickets to other speeders who either do not display this particular bumper sticker, or who display a bumper sticker in concert with the police officer's own values and ideas? What if other drivers going twenty miles beyond the legal speed limit are not stopped and ticketed, while drivers with the incorrect bumper sticker are stopped when they are driving only five miles above the legal speed limit? What if this bias extends beyond one police officer, and is a system-wide bias among police officers in general [sic]. What if persons who otherwise might express their freedom of speech through their bumper stickers are cognizant of this system-wide bias, and are therefore intimidated and reluctant to express their opinions through the use of bumper stickers or through any other means, thus surrendering their right of free speech? (n. pag.)

In the first instance, Ramirez raises the question of selective enforcement of the laws, which is a constitutional question: one of equal protection.⁴ But more importantly, Ramirez can only raise this question because context can never be separated from text; the two are inseparably intertwined, a precept of which, one would suppose, a group of scholars ought to be aware. The IC's justificatory analogy, then, fails to justify. But the question of equal protection is not the only constitutional question to raise in this case; there is also the question of double jeopardy. That is, Churchill's work placed under investigation is largely work that was presumably vetted by a jury of his peers, as is standard procedure, when he was hired as an associate professor with tenure in 1991 and promoted to full professor in 1997. As the *IC Report* makes explicit, the IC was well aware of this situation:

“Many of Professor Churchill’s publications predate his employment as a tenured Associate Professor at the University of Colorado at Boulder in fall 1991 and his promotion to (full) Professor in fall 1997. Our Committee therefore believes that at the time he was hired, the University was aware of the type of writing and speaking he does” (8). Near the end of its report the IC returns briefly to this issue to suggest that the university may not have done its job in this vetting process: “For us, the indignation now exhibited by some University actors about Professor Churchill’s work appears disingenuous, as they and their predecessors are the ones who decided to hire him” (100). Nevertheless, like all of the other contextual problems it raises, the IC does not let this one interfere with its “objective” judgment about Churchill.

More explicitly than the *IC Report*, the *SCRM Report* that followed it takes up the process by which Churchill was hired with tenure and subsequently promoted:

Many have asked how Professor Churchill received a tenured Associate Professor position, and subsequent promotion to Full Professor, apparently without going through normal review processes. We share that question, but have no answers since it was not directly germane to our investigation. Rather, we note that the University has recently received reports from a task force on tenure-related processes and suggest that the recommendations in that report may be relevant to some of the issues that underlie our investigation. We appreciate the task force’s conclusion that the basic procedures for tenure, promotion, and post-tenure review are sound, and we would like to believe that deviations that may have occurred in the case of Professor Churchill would not be repeated with current procedures. (19)

The implied charge here is that Professor Churchill did not go through the “normal review processes” for tenure and promotion. But all the *SCRM Report* can do is insinuate such abnormality. The modifier “apparently” and the highly speculative “deviations [. . .] *may have occurred*” (emphasis added) prove nothing, but only serve to cast aspersions in lieu of proof. The alibi for this displacement of fact by innuendo is that finding “answers” to this question of process “was not directly germane to our investigation.” But of course, the question of whether or not Churchill’s work was properly vetted when he was tenured and then promoted *six years later* (plenty of time in which to right any procedural wrongs, if indeed there were any) is entirely germane. If the work wasn’t properly reviewed, why wasn’t it? And if it was, *why is it being reviewed again?* If the “task force’s conclusion [is] that the basic procedures for tenure, promotion, and post-tenure review [a process Churchill also went through without incident] are sound,” then why weren’t they “sound” in the fourteen-year-span within which Churchill underwent them? Or, might we assume, that in spite of the SCRM’s innuendo and in lieu of the absence of proof to the contrary, the procedures were sound in Churchill’s case as well and the questions being raised about them now have nothing to do with Churchill’s scholarship and *everything to do with his politics?*

In November of 2006, after Interim Chancellor DiStefano, acting in the role of both prosecutor, jury, and judge, recommended Churchill's dismissal, even though the SCRM and the IC had been divided about the kind of penalty to impose, the Boulder chapter of the AAUP noted: "The problems that beset the Churchill inquiry, especially its highly politicized origin and context, bring into question both the objectivity of the inquiry and the proportionality of the recommended penalty" (*Statement n. pag.*).

In sum, within the highly charged political context in which the research misconduct charges were filed and investigated—a context within which then-Republican Governor of Colorado Bill Owens in February of 2005 publicly called for Churchill's resignation and the state legislature passed a resolution condemning Churchill for his statements on 9/11—it is not surprising that the investigation of Ward Churchill on charges of research misconduct could be interpreted as the pursuit of a specific political agenda by other means. That is, having found that Churchill's views on 9/11 were protected free speech, yet under intense pressure from both state government and alumni (a crucial source of funding), the university constructed its case for research misconduct as a way of sanctioning Churchill's politics.

Intensifying the questions of context and procedure, issues of the origin and composition of the IC raise further questions about the integrity of the process.⁵ The *P&T Report* calls attention to the fact that the "allegations that form the base of these proceedings" (6) were primarily generated by two people who knew each other through their professional affiliations in federal Indian law: David Getches, dean of the UCB Law School; and John LaVelle, professor of law at the University of New Mexico. According to the report:

- The allegations submitted by Professor LaVelle had been previously published, but no action had previously been taken in response to them, either in the University or, so far as we know, elsewhere.
- Shortly after the announcement of the Ad Hoc Committee [the Committee formed to investigate Churchill's 9/11 essay], Professor LaVelle called Dean Getches, with whom he was previously acquainted, and reminded him of those earlier allegations.
- During those conversations, Professor LaVelle also made Dean Getches aware of a potential allegation by Professor Fay G. Cohen.
- Allegations provided by Professor Thomas Brown appeared on a [W]eb site in December 2004, according to Professor Churchill, but were apparently not brought to the University's attention until shortly after the public furor and the creation of the Ad Hoc Committee. (6)⁶

Subsequently:

[. . .] Dean Getches received a phone call from Professor Cohen, who said that Professor LaVelle had suggested she call him. On a subsequent call, she explained the nature of her plagiarism allegation.

In her later submissions to the Investigative Committee, Professor Cohen made clear that she interpreted this as a

solicitation from the University, stating “[c]ontact with the University of Colorado was initiated in February 2005 by Dean David Getches, through John LaVelle. In late February, I was contacted by University Counsel Louise Romero.” (9)

On the connections between Getches, LaVelle, and Cohen, the *P&T Report* notes only: “This chain could reasonably be interpreted as a solicitation, but it is not clear to us that it *necessarily* was. Whether Dean Getches was specifically motivated by the opportunity to solicit another allegation, as opposed to something else is not clear to us from the evidence we have” (9; emphasis in original). Judging it a solicitation would have put it in violation of university procedure. The *P&T Report* makes no comment that one of the members of the IC and its only expert in federal Indian law, Robert Clinton, also knew LaVelle and Getches, himself an expert in federal Indian law. In and of itself this may be of no significance. But one can’t help but notice the very limited and closed circuit of individuals generating the allegations, when Churchill’s work was widely circulated and exceptionally well-known by scholars in the fields of American Indian studies, ethnic studies, and beyond.

Only one member of this five-member committee, Clinton, could be said to have any expertise in the field of American Indian studies. Clinton is listed on the cover of the *IC Report* as “Foundation Professor of Law, Sandra Day O’Connor College of Law, Arizona State University.” Specifically, though the *IC Report* claims that he has “had much experience in ethnic studies” (5), the list of publications on his Web site shows no publications in this field. His field is federal Indian law, a field in which (along with Native studies, per se) I teach and publish (indeed a section of my work on the Navajo-Hopi Land Dispute appears in a casebook edited by Clinton and others [1093-94]). But questions have been raised by both Churchill and, implicitly, the Boulder chapter of the AAUP, among others, about Clinton’s competency in the larger field of American Indian studies.⁷ Some have therefore argued that the IC contained no members competent in Churchill’s field. While Clinton’s professional identity can be debated, the other four members of the IC clearly were far outside the field. The chair of the IC was Marianne Wesson, a professor of law at UCB, whose expertise is in the area of criminal law. Prior to her selection to chair the committee, Professor Wesson was known to have a bias against Churchill. The *P&T Report* notes the circumstances of this bias:

Professor Wesson sent an email to acquaintances before she was approached to be Chair of the Investigative Committee. This email said, among other things, that Professor Churchill was “unpleasant (to say the least)” and added “But the rallying around Churchill reminds me unhappily of the rallying around O.J. Simpson and Bill Clinton and now Michael Jackson and other charismatic celebrity male wrongdoers (well, okay, I don’t really know that Jackson is a wrongdoer).” (20)

The P&T Committee notes that Professor Churchill says he did not at the time of the formation of the IC know of this e-mail, which prejudices Churchill as a “wrongdoer [. . .]”; and thus “he never had a chance to argue before the committee that Wesson’s email should have disqualified her” (21). Neither this fact nor the prejudgment appears to bother the P&T Committee, which with no sense of irony (not to mention shame) offers testimony from the other members of the committee as to Professor Wesson’s fairness (21-22).

The other IC members were Marjorie K. McIntosh, a professor of English history at UCB; Michael L. Radelet, a sociology professor at UCB; and José Limón, a professor of English at the University of Texas at Austin, whose specialty is Chicano/a studies.

The composition of the IC, then, violates the standards, noted previously, that the SCRM is intended to follow in establishing such a committee, which is supposed to be made up of scholars “who have expertise relevant to the allegations being investigated” (SCRM 6). In the case of the four charges alleging falsification and fabrication of information, all are centrally involved in American Indian history: the General Allotment, or Dawes Act, of 1887; the Indian Arts and Crafts Act of 1990; Captain John Smith and the question of spreading smallpox in New England between 1614 and 1616; and the smallpox epidemic on the upper Missouri River in 1837. While Clinton can claim expertise in the first two subjects, which include matters of federal Indian law, he has, by dint of field, no particular expertise in the last two, as they have to do with Indian-European conflict and the demographics and politics of disease. Further, these four subjects can be grouped under two topics central to American Indian studies and exceptionally controversial: identity and genocide. Both the Allotment Act and the Indian Arts and Crafts Act involve questions about the political construction of Indianness, while one of the core debates in American Indian studies involves questions about the relation of European diseases to the conquest of the Americas. Simply put: Was the spread of these diseases intentional in one way or another or inadvertent? While Churchill has published extensively on these two topics, a bibliographic search does not turn up any books or articles by Clinton on either. In fact, Clinton’s online curriculum vitae lists no articles beyond the field of federal Indian law; and save for one three-page review in the *Journal of American Ethnic History* and an encyclopedia entry of the same length, contains no publications beyond law reviews (the vast majority) and, in a couple of cases, journal articles of legal history and legal education.⁸ What appears to be the *IC Report’s* skepticism about scholars who work outside their credentialed fields (5) seems to be put on hold in the case of Clinton and the other members of the committee.

Clearly, the other four members of the IC have no expertise whatsoever in these matters, which necessarily left them entirely dependent on Clinton’s “expertise” and judgment. The IC, then, could not generate any serious debate about these controversial issues or Churchill’s position on them. Further, in the complete absence of competency in American Indian studies in four of the committee members, one necessarily concludes that Clinton must have been responsible for that section of the Report, 82 out of 124 pages, dealing with the four issues of historical falsification and fabrication (see endnote 6).

Does it, then, constitute research misconduct for the IC as a body to claim, as it does, authorship of the whole report? Given what must have been Clinton's central part in generating the report and his ties to Getches and LaVelle, one is entitled to raise questions about the limits of the point of view of the report itself.

It should also be noted that there were no Native scholars on the IC and yet the committee took it upon itself to note Churchill's disrespect for Indian oral traditions (68), even in the face of outspoken support in these proceedings for Churchill's work by prominent Native scholars and activists. Speaking for the "Other" who is not present to speak for him/herself is, of course, at the very heart of the structure of colonialism. Indeed, the lack of expertise on the IC raises questions about UCB's lack of respect for the field of American Indian studies itself. The *IC Report* offers a brief section of generalities about the field of ethnic studies (with which only one member of the IC, Limón, can claim any formal affiliation). And it offers only one sentence within that section (5) on American Indian studies. When American Indian studies is housed within departments of ethnic studies, as it is at UCB, this affiliation presents conceptual and political problems. In this respect, the *IC Report* terms "American Indian Studies a branch of ethnic studies" (6). However, Indians do not typically consider themselves either an "ethnic" or a "minority" group, nor are they considered as such in key cases of federal Indian law (see, for example, *Morton v. Mancari* 554), but rather as members of sovereign nations, preexisting the European invasion of the Americas. In this crucial sense, the term "Indian" is political, not ethnic or racial.⁹ Because of the historical treaty relationship of the tribes with the federal government, an ongoing government-to-government relationship, the category "Indian" has been legally determined to be a *political category* at the level of the tribe or nation and *sometimes a racial category* at the level of the individual. This complex relationship of Indians to the United States—they are at once citizens of two nations (and their citizenship in the U.S. was not chosen but imposed by statute in 1924)—makes subordinating the field of American Indian studies to ethnic studies an historical misunderstanding at best. Such a misunderstanding, however, did not seem to concern the IC, or the committee, perhaps, was unaware of it.

Finally, there is the issue of the charges themselves, which raises serious questions about the integrity and competence of the IC's research methods (see endnote 6). Along these lines, in April of 2007, a group of senior faculty from the Boulder campus, along with myself and Michael Yellow Bird, filed a critique of the Investigative Committee's research asking that its report be rescinded, and asserted that if this was not done, we would then consider filing research misconduct charges against the IC (which we ultimately did).¹⁰ As stated in the letter of May 10, 2007 (see Works Cited), in which filing the charges incorporates and revises the April document, this critique that "found that the Report contains serious violations of standard scholarly practice," was based on "careful investigation guided by two recognized experts in the field of American Indian studies—Eric Cheyfitz, Ernest I. White Professor of American Studies and Humane Letters at Cornell University, and Michael Yellow Bird, Associate Professor, Center for Indigenous Nations Studies at Kansas University"

("A Filing of Research" n. pag.). Simultaneously with our April critique, the Executive Committee of the American Association of University Professors' Colorado Conference wrote a letter dated April 24, 2007, to Hank Brown, stating that it found our group's evidence "compelling" and noting that "the flaws in the Report are so serious that no legitimate action can be taken on the basis of the information contained therein." Additionally, the AAUP noted:

If the Report is not rescinded, it is incumbent upon the University of Colorado to ensure the Cheyfitz evidence is thoroughly examined for its validity and its impact on the original Report. The integrity of scholarly practice and the procedures governing reviews, due process, academic freedom and faculty governance at CU require that this examination be done by an independent, qualified, and unbiased panel, not by the investigating committee that made the apparent mistakes in the first place. ("Letter from the President" n. pag.)

The university did not rescind the *IC Report* nor announce that it would form an independent panel and, as noted, our group filed research misconduct charges in early May of 2007. These charges were joined and expanded on May 28 by another group of concerned scholars and professionals, Native and non-Native ("May 28, 2007 Research Misconduct Complaint"). The university refused to entertain all charges on the grounds that the *IC Report* did not constitute research, but was only an "administrative investigation,"¹¹ a politically veiled description that must strike one as merely a semantic alibi.

II. The Construction of the Charges

In its letter of November 7, 2006, previously cited, the AAUP chapter at UCB noted the extraordinarily limited sample of Churchill's work on which the allegations of the IC were based:

From a record of more than twenty books and hundreds of articles, chapters, speeches, and electronic communications, the committee investigating Churchill's work isolated six pages, in which they claimed to find examples of plagiarism and one example of fabrication. If these charges are justified, they certainly show that Professor Churchill sometimes failed to adhere to the most rigorous standards of scholarship, but they seem relatively small in light of Churchill's vast opus. All scholars have points of view, and even distinguished scholars make occasional mistakes; however, it is highly unusual for the discovery of such errors to end in dismissal. (*Statement* n. pag.)

As point-of-fact, the *IC Report* uses the term "fabrication" more than once in its first four allegations (A, B, C, and D) to characterize what it terms Churchill's "misrepresentations" of the historical record (see endnote 6). It also uses the term "falsification," though I have a hard time differentiating the usage of these two terms. The last three allegations (E, F, and G) are of plagiarism, though the IC dropped the second of these charges, and substituted for it the charge of "failure to comply

with established practices concerning author names on publications" (90) when Professor Churchill acknowledged that he had written the essay published under the name of Rebecca Robbins.

In any event, the *IC Report* acknowledges the very small sample of Churchill's work it used to generate these seven allegations, but rationalizes this selectivity as somehow representative (8-9), without, however, offering any evidence that the IC acquainted itself with the bulk of Churchill's work so that it could make the claim that the tiny sample used is "characteristic." Thus, given the size of the sample, to claim as the IC does that Churchill's work "deliberately" engaged in research misconduct lacks credibility, based as it is in claims to notice a "pattern" of such misconduct. Further, when one reads in the *P&T Report* that "Professor Churchill has repeatedly plagiarized, as well as fabricated and falsified information to support his views on American Indian history" (iii; emphasis added), one can only read "repeatedly" as a rhetorical strategy that belies the opposite—particularly, as the *P&T Report* found no actionable falsification or fabrication of historical materials in the first three allegations. Thus the charges contradict the *IC Report*; and the *IC Report* itself finds that in the matter of the fourth allegation, the smallpox epidemic among the Mandan in 1837, Churchill's claim that the disease was spread by the U.S. military's distribution of infected blankets remains credible in terms of Native oral history (see endnote 6).

Out of the four historical allegations made in the *IC Report*, the *P&T Report* upholds only the claim that Churchill, while having credible support for his overall claim about the Mandan epidemic, "deliberately [. . .] fabricated" three details of his account of the epidemic: the infected blankets came from an infirmary in St. Louis; Army doctors or the post surgeon advised the Indians to scatter after smallpox broke out among them; the number of Indians that died in the pandemic that followed the Fort Clark situation (sections 5.5.4-5.5.7). If one understands, as I do, that fabrication cannot occur without intent and that intent cannot be proven in this case given the size of the sample, then what we have here is not research misconduct, but rather a few questions about the accuracy of Churchill's narrative that deserve answers: the kinds of questions that scholars raise all the time about each other's work in the normal course of scholarly debate. But even if one insists that deliberate fabrication took place in these four details, one would also have to admit that having dismissed the four major charges of historical falsification, the *P&T Report* has pretty thoroughly shredded the *IC Report* in this area, which leaves only the charge of "failure to comply with established practices concerning author names on publications" (ghostwriting) and the two charges of plagiarism.

Professor Tom Mayer of the Department of Sociology of UCB has thoroughly deconstructed these remaining charges and I am indebted to him in particular for his analysis of the plagiarism charges ("The Plagiarism Charges"). In general, following Mayer, I find all these charges frivolous. When I testified before the P&T Committee in January of 2007, I said in effect that though Churchill's practice of ghostwriting and using the ghostwritten material as third-party evidence

“is ‘not my cup of tea,’” I did not find it to be “a significant problem” (18). Simply put, I do not find it actionable, nor do I know of any academic code that prohibits it. I also remarked that I could make an argument for it being legitimate third-party evidence because in affixing their names to the work, reputable scholars became coauthors of it in the sense that they authorized it, that is to say, they assumed responsibility for its content. Finally, I noted that there is no concept of the author in traditional Native narrative practice: what matters is not who said what, *but what is said* (18).

As Mayer points out, at the time of his analysis (2007), the “plagiarism charges refer to publications that are now fourteen or more years old” and “no action was taken against Churchill until he became a political pariah (through the exercise of free speech)” (1). Even then, no formal complaints were lodged with the university by either of the authors of the essays in question. Quite the contrary, as Mayer notes, “John Hummel, who is Churchill’s contact with the Dam the Dams Campaign [the group that published a pamphlet in 1972 which Churchill is accused of plagiarizing], has praised his contribution to the water transfer protest. Calling this plagiarism [. . .] is an exercise in malicious hyperbole” (2).

Churchill used material from this pamphlet in four essays, the first of which, published in 1989, cited the pamphlet as coauthor. While the *IC Report* recognizes this (83, 86), it chooses to dwell on the subsequent three publications. The first of these was an article in *Z Magazine* (April 1991), “The Water Plot: Hydrological Rape in Northern Canada,” of which Mayer writes:

This article is less academic than the first paper in the series and contains no footnotes. Churchill gave Dam the Dams Campaign co-authorship of this article, however, the organization’s name was omitted by *Z Magazine’s* editor without Churchill’s knowledge and against his wishes. Information about Dam the Dams Campaign was, however, included at the end of this article. Professor Churchill has made a point of never citing the 1991 *Z Magazine* article from which the name of Dam the Dams Campaign was omitted. (2)

Mayer continues:

The third and fourth articles in the series appear respectively in the 1993 and 2002 editions of Churchill’s book, *Struggle for the Land: Native North American Resistance to Genocide, Ecocide and Colonization* (a book which won the Gustavus Myers Award for Literature on Human Rights). Each of these articles is longer, more detailed, and more intensely footnoted than either the 1972 pamphlet or the 1989 article. For example, the 2002 article is several times as long as the 1972 pamphlet and contains 140 footnotes, most of which refer to material that appeared after 1972. The 1989 article, of which Dam the Dams Campaign is first author, is cited in five different footnotes, and Churchill is certainly not denying the organization credit for its role in discovering and alerting the public to the water transfer scheme. (2)

To say the least, I find the sequence elaborated here, along with Hummel's comments, exculpating (indeed, this looks like collaboration to me, not plagiarism). But the IC committee sees things differently. Not surprisingly, the *IC Report* manages to interpret Hummel's relationship with Churchill in a negative light (86). It does not, for example, include any mention of the comments paraphrased by Mayer in which Hummel criticizes the plagiarism charge. Nor does it ask an obvious question: Why would Churchill plagiarize from a pamphlet that he cited in the first article he wrote about these water issues? And why would he refer to this pamphlet at all in subsequent essays? If the IC has an answer to these questions, it seems to be that "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" (83). No, he is apparently a slick plagiarist who covers his tracks by, in the mode of the "Purloined Letter," leaving his sources in plain view.

The second charge of plagiarism that the IC brought against Churchill concerns the matter of an essay, "Implementing Indian Treaty Fishing Rights: Conflict and Cooperation," by Fay G. Cohen, a professor at Dalhousie University. Once again there is a collaborative link in this case as there was with Dam the Dams because Churchill originally published this essay in a volume he edited, *Critical Issues in Native North America, Vol. II* (1991). However, here the collaborative link is fraught because Cohen withdrew the submission from *The State of Native America: Genocide, Colonization, and Resistance* (1992), the volume in which the plagiarized version, "In Usual and Accustomed Places: Contemporary American Indian Fishing Rights Struggles," appears.

Churchill does not deny that there was plagiarism nor does Mayer in his analysis. The problem arises when one considers the question of who authored the plagiarism. The author of the essay in *The State of Native America* is given as The Institute for Natural Progress [INP], which we are informed in the list of contributors "is a collective research organization founded by Ward Churchill and Winona LaDuke in 1982" (446). Moreover, this entry notes that "Churchill assumed the lead role in preparing the INP contribution to this volume" (446). As regards this potential ambiguity, the *IC Report* says the following:

Professor Churchill said (in his Submission E) that whatever plagiarism might be found in the INP essay, he was not responsible for it. He claimed that he did not write the "About the Contributors" entry in which he is given credit for the INP essay, and 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 [editor] 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 with this 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.

Professor Churchill's claim that he does not know who was responsible for the misappropriation of Professor Cohen's work is not, however, convincing. Contrary to his claim that he did only light copyediting work on it, the essay in question, "In Usual and Accustomed Places," is listed as a work written (not edited) by him in his Faculty Report of Professional Activity for the year 1991, followed by the parenthetical notation "for the Institute for Natural Progress" [. . .]. In conversation with the Committee, Professor Churchill claimed that he did not personally prepare his Faculty Report of Professional Activity that year, and that some assistant, or possibly Professor Jaimes, prepared it and erroneously included the essay. The Committee is not sure it finds this claim credible, but in any event, Professor Churchill signed the document and is responsible for its contents. His representation that he did not recognize large portions of the original Cohen article in "In Usual and Accustomed Places" strains credulity. He had been the editor of the volume in which Professor Cohen's original article appeared, only one year earlier. (92)

The *IC Report* notes that footnotes in the INP essay refer to the Cohen essay (91). Given that and Churchill's connection to the Cohen essay as its publisher, we seem to have another case of imputed plagiarism that calls attention to its source, not, I would argue, the usual way that plagiarists work, though the *IC* uses it as evidence to the contrary (93). Mayer argues against plagiarism on stylistic grounds: "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" (6; emphasis added). The *IC Report* does not comment on any stylistic differences between this and Churchill's essays where he is alleged to have plagiarized from *Dam the Dams*, perhaps because their view of Churchill as a sophisticated plagiarist is contradicted by the plagiarisms in the former, which as both the *IC Report* and Mayer note contains large amounts of original material as well.

In his analysis, Mayer also notes that on which the *IC Report* fails to comment:

In her written statement to the investigating committee, Fay Cohen says that she did not complain to the University of Colorado at any time. Contact with her was initiated by the dean of the CU Law School through John LaVelle who, as mentioned above, is rabidly antagonistic towards Churchill. Professor Cohen firmly believes that her own article was plagiarized, but neither she nor the Dalhousie University legal counsel, who investigated the matter and concurs with her opinion, accuse Ward Churchill of being the plagiarizer. (6)

Mayer concludes:

The *Report* 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 edit, and whose text clearly diverges from significant features of his published work. At the very least, this judgment violates the criminal court standard of establishing guilt beyond reasonable doubt. The authors of the *Report* will respond, of course, that the rules governing the investigation do not require establishing guilt beyond reasonable doubt. The rules only required being “non-adversarial” and substantiating allegations by “a preponderance of evidence.” This is a much lower standard of evidence, but I doubt that most fair minded people who study this case will think it has been satisfied. (6)

However, even the *IC Report* expresses doubts about whether or not this constitutes a case of plagiarism: “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” (93).

In *The Little Book of Plagiarism*, Judge Richard A. Posner remarks: “The plagiarist by plagiarizing improves his work relative to that of his competitors and so increases his sales and his fame relative to theirs” (32). And as Mayer notes, rightly: “None of the papers accused of plagiarism were written for the purpose of building an academic career. This is important because the norms of authorship within the social movement context differ substantially from those within the academic domain” (1). Further, Posner stipulates:

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. More precisely, he has to care enough that had he known he would have acted differently. There are innumerable intellectual deceits that do little or no harm because they engender little or no reliance. They arouse not even tepid moral indignation, and so they escape the plagiarism label. (20; emphasis in original)

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*. Both of these cases clearly fail this test for plagiarism. Indeed, in light of the plagiarisms committed by the likes of Doris Kearns Goodwin, Laurence Tribe, Charles Ogletree, and Alan Dershowitz,¹² without apparent sanctions, it is a *reductio ad absurdum* to bring charges of research misconduct against Churchill based on these two instances in his enormous oeuvre.

At the very least, there is such a discrepancy between the Mayer analysis of alleged plagiarism and the *IC Report* that one is prompted to set the plagiarism charges aside if only because of the strong

suggestion that they could not under any circumstances command a scholarly consensus. As noted, this is what the *P&T Report* did with the four major allegations of historical misrepresentation, after hearing scholarly testimony from myself and others calling these allegations into question. Why it did not do so with the plagiarism and ghost-writing allegations—those which are equally questionable (if not downright absurd)—suggests that if it had done so, its report would have completely subverted the research misconduct charges against Ward Churchill. It thus seems evident, from the beginning of the Churchill proceedings to the end, that exoneration was never a part of the script crafted by the CU administration.

Notes

I would like to thank Brett de Bary, Timothy Murray, and the Society of the Humanities at Cornell University for providing a forum where the ideas expressed in this essay were first aired. I am also indebted to Daniel Kim for his efforts to involve me in this case, and for those faculty at the University of Colorado at Boulder, committed to social justice and academic freedom, who welcomed my involvement. Additionally, I want to thank Grant Farred who read an earlier version of this essay and suggested some salient changes.

¹ Beyond the Preliminary Review, the three faculty bodies that deliberated the charges against Churchill and filed reports were the Investigative Committee of the Standing Committee on Research Misconduct at the University of Colorado at Boulder, which on May 9, 2006, published the report that made the case for research misconduct against Churchill (see 102 for the division of the committee on penalties); the Standing Committee on Research Misconduct at Boulder, which published its report on June 13, 2006 (see 16 for the division of the committee on penalties); and the University Of Colorado Faculty Senate Committee on Privilege and Tenure, which published its report on April 11, 2007 (see 76 for the division of the committee on penalties). Throughout this essay, I refer to these committees and their reports with the following abbreviations: IC (*IC*), SCRUM (*SCRUM*), and P&T (*P&T*), respectively. (Ed. note: Each report is listed in the Works Cited as follows: *Report of the Investigative Committee* [*IC*]; *Report and Recommendations of the Standing Committee* [*SCRUM*] and; *University of Colorado Faculty Senate Committee on Privilege and Tenure* [*P&T*].)

² I refer here to the online reproduction of Churchill's essay listed in my Works Cited. For a discussion of the book that came out of the essay—Churchill, *On the Justice of Roosting Chickens*—see Delgado, "Shooting the Messenger."

³ I incorporate the phrase from Vizenor (19), where it is used to characterize European and (by extension) U.S. imperialism. As one of the characters in the novel remarks, "The Old World celebrated death" (99):

Columbus and his civilization would discover no salvation in the New World. The missions, exploitations, racial vengeance, and colonization ended the praise of deliverance; the conquistadors buried the tribal leaders and their stories in the blood.

The consciousness of nurturance was in their tribal cultures, but the West has "tried for five centuries to resist the simple truth," wrote [Kirkpatrick] Sale. "We resist it further only at risk of the imperilment—worse, the likely destruction—of the earth." (184-85)

⁴ For a discussion of the legal ramifications of selective enforcement, see Delgado, "Of Cops."

⁵ See Issues Related to the Selection of the Investigative Committee, *P&T Report*, section 4.2.3.

⁶ Though he never filed a formal complaint with the university, the allegations made by John LaVelle were made in two essays: a review of Churchill's book *Indians Are Us?*, which appeared in *American Indian Quarterly* in the winter of 1996; and an essay on the General Allotment Act, which appeared in *Wicazo Sa Review* in the spring of 1999. The charges were that Churchill had misrepresented both the Allotment Act of 1887 and the Indian Arts and Crafts Act of 1990 by stating that both acts entailed blood quantum requirements. In fact, while neither act explicitly states a blood quantum requirement, *both acts imply* blood quantum requirements. Indeed, even the *IC Report* while supporting LaVelle's charges against Churchill in the matter of Allotment, acknowledged that Churchill's claims about blood quantum were closer to the historical truth than LaVelle's (22). A group of scholars, guided by myself and Michael Yellow Bird, refuted these and other charges and pointed to significant errors in both LaVelle's essays and the *IC Report* (see "A Filing of Research Misconduct Charges Against the Churchill Investigating Committee"). Because the documents appended to our filing contain a detailed analysis of the errors in the charges and because, as I discuss later in this essay, the *P&T Report* substantially dismissed both the LaVelle charges and one of the other two remaining charges of historical misrepresentation against Churchill (the one having to do with the question of John Smith spreading smallpox in colonial Virginia; the *IC Report* itself substantially dismissed the fourth, having to do with the smallpox epidemic at Fort Clark in 1837), I do not analyze the charges in this essay (though I refer to them later). I also discuss later in this essay the complaint of plagiarism by Fay Cohen, who, like LaVelle, never formally filed with UCB. The only other party to complain about Churchill's scholarship as noted in the *P&T Report*, was Professor Thomas Brown. In an e-mail response to a query of mine (March 16, 2008), Churchill stated: "Thomas Brown did eventually file a misconduct complaint, but not until September 2005, a full five months after the ad hoc committee's 'charge sheet' was submitted to the SCRM, under the chancellor's signature (technically, this made the chancellor the sole complainant)." See also Brown, "Assessing Ward Churchill's Version." Brown asserts that Churchill "radically misrepresented the sources he cites in support of his genocide charges, sources which say essentially the opposite of what Churchill attributes to them" (n. pag.) (Author note: On August 1, 2006, I found the essay at <http://hal.lamar.edu/~browntf/Churchill1.htm>. As of April 4, 2008, I could no longer access this URL). In fact, the principal source is Russell Thornton, who includes in his discussion of the epidemic a speech by the Mandan leader Four Bears, wherein he does indeed charge the whites with deliberately spreading smallpox (though it does not name the army specifically) (98-99). While Brown mentions this speech, he omits entirely that Thornton includes it in his discussion, perhaps because it contradicts his claim about Churchill's sources, thereby stating the opposite of what he attributes to them. Indeed, Thornton himself, as quoted by Brown, seems to have forgotten his inclusion of the Four Bears speech.

⁷ See *Statement of the AAUP* n. pag.:

The absence of peer investigators is also troubling. Professor Churchill is a specialist in Native American scholarship and has focused on historical issues regarding relationships between Native peoples and European-Americans. However, the final investigative committee included no scholars from Native American Studies. Thus, there was no expertise present in Professor Churchill's specific areas of study.

⁸ Thanks to Brigitte Fielder for helping me with this research.

⁹ See Cheyfitz, "What Is An Indian?"

¹⁰ The UCB signers were: Elisa Facio, Associate Professor, Department of Ethnic Studies; Vijay Gupta, Professor, Civil, Environmental and Architectural Engineering Fellow, Cooperative Institute for Research in Environmental Sciences (CIRES); Margaret LeCompte, Professor, School of Education; Paul Levitt, Professor, Department of English; Tom Mayer, Professor, Department of Sociology; Emma Perez, Associate Professor, Department of Ethnic Studies; and Martin Walter, Professor, Department of Mathematics.

¹¹ See Grievance. I am quoting here from a grievance filed by eight members of the UCB faculty on 13 Aug. 2007

against the Committee on Research Ethics at the University of Colorado Denver/Health Sciences Center and the Standing Committee on Research Misconduct for their arbitrary refusal to investigate the charges of research misconduct filed on May 10, 2007 and May 28, 2007, against the members of the specially appointed Investigative Committee charged with assessing allegations of research misconduct and plagiarism against Ward Churchill. (1)

The notion that the *IC Report* was not research but "an administrative investigation" comes from the Committee on Research Ethics. But as the grievance points out, this Committee, based as it is in Health Sciences, was "operating under entirely different disciplinary definitions of research [which were] inappropriate at best and cynical at least, and apparently ensured that the charges would not be given serious consideration." To the best of my knowledge, the Grievance letter has not been published.

¹² See Posner 6.

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