

**Report and Recommendations of the Standing Committee on Research
Misconduct Concerning Allegations of Research Misconduct
by Professor Ward Churchill**

June 13, 2006

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PURPOSE

This report presents the deliberations of the Standing Committee on Research Misconduct (SCRM) that culminated in recommended sanctions to Professor Ward Churchill as a result of the report and recommendations from the Investigative Committee.

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EXECUTIVE SUMMARY

The Standing Committee on Research Misconduct at the University of Colorado at Boulder has accepted the conclusions of the Investigative Committee that Professor Ward Churchill has committed serious, repeated, and deliberate research misconduct. After reviewing the Investigative Committee's report and Professor Churchill's response, the Standing Committee is recommending to the University's Provost and Dean of Arts and Sciences a set of corrective, disciplinary, and policy changes.

With regard to corrective actions, the Standing Committee is recommending that publishers of the articles, chapters, and books in which falsification, fabrication, or plagiarism were found be informed of the Investigative Committee report. Although there may be no opportunity to publish errata or corrections in most cases, the Standing Committee hopes that the publishers takes appropriate steps to respond to the Investigative Committee's findings.

The Standing Committee did not reach, or seek, consensus with regard to disciplinary actions. Six of the voting members recommended dismissal from the University. Three members recommended suspension without pay; two of these recommended suspension for five years and one recommended suspension for two years.

The Standing Committee also made three key policy recommendations, based on information uncovered in this investigation. One recommendation was aimed at ensuring campus-wide compliance with existing policies and procedures regarding academic standards. A second made similar recommendations with regard to consistency of hiring and promotion practices. The third recommendation called for support by campus administrators for members of the campus community who have been negatively affected by the investigation, and for the key principles of academic freedom and academic integrity.

STANDING COMMITTEE ON RESEARCH MISCONDUCT

Procedures

The Operating Rules and Procedures of the Standing Committee on Research Misconduct (SCRM)¹ state that the SCRM has the responsibility to

- promote exemplary ethical standards of research conduct
- publicize procedures for reporting research misconduct
- receive allegations of misconduct
- ensure thorough, fair and expeditious proceedings for the evaluation of allegations
- recommend possible disciplinary action, policy changes, or other actions to ensure that similar misconduct does not occur in the future.

We are aware that in the current environment there are concerns among faculty and others that the research misconduct investigation process may be misused for political or personal purposes, or that the current case might have a “chilling effect” on other scholars. Because these concerns are core to the SCRM’s mission of promoting ethical standards in research, we wish to comment on them prior to our discussion of the specifics of this case.

UCB’s research misconduct procedures—like those used at other research institutions and by the federal Office of Research Integrity—involve a multi-step approach that begins with receipt of a written complaint of alleged research misconduct. If the allegation(s) appears to fall within the University’s definition of research misconduct, the SCRM is obligated to initiate an inquiry. This involves interviews with the complainant and the respondent to get both parties’ perspectives on the allegations, followed by review and vote of the entire SCRM. This initial inquiry process is intended to quickly dismiss allegations that are frivolous or for which there is insufficient credible evidence to justify a full-fledged investigation. Allegations that are unfounded or mistaken can be—and have been—dismissed at this point; this is a very important safeguard in the system. Indeed, allegations that are without basis and filed with malicious intent may result in recommendations for sanctions against the complainant. Thus this first step in the process is intended to ensure that all complaints receive review, but that those wholly lacking in merit are terminated expeditiously.

¹ http://www.colorado.edu/Academics/research_misconduct_rules.html, Section I

If the SCRM concludes that there is credible evidence in support of the allegations, the next step in the process is to allow the respondent a second opportunity to justify his or her behavior, including an opportunity to review and rebut the report of the Inquiry subcommittee. Failing that, the SCRM then appoints an Investigative Committee composed of individuals with expertise relevant to the specific allegations. The Investigative Committee conducts an entirely independent, and more detailed, exploration of the investigation, with opportunities for the respondent to again provide responses to the allegations and to be present for interviews with witnesses. Only allegations that are supported by a preponderance of the evidence are presented to the SCRM for recommended corrective actions. At this point the respondent again has an opportunity to review and rebut the evidence being presented.

We firmly believe that this process should raise no concerns for faculty whose scholarly work complies with accepted standards of research integrity. We believe equally firmly that this includes all but a very few members of the academy, and that the violations of these standards found in the Investigative Committee's report regarding Professor Churchill represent an extreme anomaly.

The Role of Context and Motivation in Research Misconduct Investigations

When the SCRM investigates allegations of research misconduct, the merit of the allegations is the primary focus of the deliberations. The motivation of the complainant, as well as the context in which the complaint is developed, is not part of the committee's deliberations so long as there is merit to the allegations. In the Churchill case, the SCRM shares the concerns expressed by the Investigative Committee regarding the timing and context in which the allegations against Professor Churchill were raised. However, at each step of the process, the SCRM was careful to restrict its review to the allegations of research misconduct, without consideration of issues that have received widespread attention by others interested in Professor Churchill's work. In particular, the SCRM's deliberations were devoid of any discussions of Professor Churchill's "9/11 essay," or of issues of academic freedom or free speech in general. Rather, our work was specifically and narrowly focused on the findings of the Investigative Committee with regard to research misconduct.

THE WARD CHURCHILL INVESTIGATION

History

On March 29, 2005 the SCRM received a complaint (subsequently amended on June 13, 2005) that Professor Ward Churchill of UCB's Department of Ethnic Studies had committed research misconduct through falsification of information, fabrication of information, plagiarism, and improper authorship practices. The SCRM identified nine specific allegations which were initially explored by an Inquiry subcommittee of SCRM. The Inquiry subcommittee recommended that two of these allegations be dismissed because they did not fall within the definition of research misconduct: (1) an allegation that Professor Churchill had misrepresented his ethnicity in order to gain greater credibility and scholarly "voice", and (2) an allegation that Professor Churchill had violated copyrights in his use of certain articles. The Inquiry subcommittee recommended that the remaining seven allegations be referred to an Investigative Committee that would explore the allegations in more detail.

The SCRM accepted this recommendation and formed an Investigative Committee, which 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, composed of Robert Clinton (Professor of Law and of American Indian Studies at Arizona State University), José Limón (Regents Professor of American and English Literature and Director of the Center for Mexican-American Studies at the University of Texas at Austin), Marjorie McIntosh (Distinguished Professor of History at UCB and Fellow of the Royal Historical Society of Britain), and Michael Radelet (Professor and Chair of Sociology) and chaired by Professor Mimi Wesson of UCB's School of Law met these criteria and performed their work in exemplary fashion.

The Investigative Committee met on six occasions between January and May of 2006, conducted multiple interviews with Professor Churchill and other witnesses, and spent hundreds of hours reviewing documents as well as Professor Churchill's responses. On

May 9, 2006 the Investigative Committee issued its report.² The Investigative Committee concluded, by a preponderance of the evidence, that Professor Churchill had committed research misconduct in the following forms:

- Falsification with regard to his description of the General Allotment Act of 1887, the Indian Arts and Crafts Act of 1990, the 1614-1618 smallpox epidemic in New England, and the smallpox epidemic at Fort Clark in 1837-1840.
- Fabrication with regard to his description of the 1614-1618 smallpox epidemic in New England and the smallpox epidemic at Fort Clark.
- Plagiarism of Professor Fay Cohen and of a pamphlet by the Dam the Dams group
- Failure to comply with established standards regarding author names on publications, as discussed most fully in the Investigative Committee's description of work attributed to Rebecca Robbins but also with regard to his description of the General Allotment Act of 1887, the Indian Arts and Crafts Act of 1990, and the smallpox epidemic at Fort Clark.
- Serious deviation from accepted practices in reporting results from research, as discussed in his account of the smallpox epidemic at Fort Clark.

Moreover, the Investigative Committee concluded that the misconduct was serious, repeated, and deliberate.

On May 15, 2006, the SCRM accepted the report of the Investigative Committee and its findings. We are now completing our final duty: to provide the Provost and the Dean of Arts and Sciences with our recommendations regarding disciplinary actions and policy changes. The recommendations are based on the facts and conclusions in the Investigative Committee's final report [Appendix A] and on the response to the Investigative Committee's report by Professor Churchill [Appendix B]. The rules under which the SCRM operates separate the duties of the Investigative Committee and the SCRM into what might be termed "fact finding" and "disciplinary" roles, respectively. As such, the SCRM accepted the findings of the Investigative Committee and limited the scope of this report to determining appropriate disciplinary and policy recommendations.

Range of Disciplinary Sanctions

The Operating Rules of the SCRM³ are not explicit regarding potential disciplinary actions in the case of research misconduct. The University of Colorado Administrative Policy Statement on Misconduct in Research and Authorship indicates that,

² Available at <http://www.colorado.edu/news/reports/churchill/download/WardChurchillReport.pdf> and in Appendix A

responsible faculty, staff, students or administrators may be faced with a range of appropriate sanctions, from warning to dismissal. Disciplinary action will be taken only in accordance with applicable University rules and procedures. The sanction(s) must correspond to the severity of the confirmed deviation.⁴

In order to determine the “applicable University rules and procedures,” we consulted the Laws of the Regents:⁵

- Article 5.C.1, dealing with dismissal for cause, states that “the grounds for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of *nolo contendere*, or sexual harassment or other conduct which falls below minimum standards of professional integrity.”
- Article 5.D.2.B, dealing with academic freedom and faculty responsibility, states that personnel decisions “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.”

The committee also looked to other sources for principles regarding disciplinary decisions. In its *Recommended Institutional Regulations on Academic Freedom and Tenure*, the American Association of University Professors (AAUP) recommended that termination of a tenured faculty member should only be effected for “adequate cause....Adequate cause for a dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers. Dismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.”⁶ The Commission on Academic Tenure in Higher Education recommended that “adequate cause” be defined in terms of “(a) demonstrated incompetence and dishonesty in teaching and research, (b) substantial and manifest neglect of duty, and (c) personal conduct which substantially impairs the individual’s fulfillment of institutional responsibilities.”⁷

³ http://www.colorado.edu/Academics/research_misconduct_rules.html

⁴ <http://www.cusys.edu/policies/Academic/misconduct.html>

⁵ <http://www.cu.edu/regents/Laws/Article5.html>

⁶ <http://www.aaup.org/statements/Redbook/Rbrir.htm>

⁷ Keast, W.R. and J.W. Macy, Jr. (1973). *Faculty tenure: A Report And Recommendations by the Commission on Academic Tenure in Higher Education*. San Francisco: Jossey-Bass.

In an article entitled, "Faculty Misconduct and Discipline," AAUP staff counsel Donna Euben and Professor Barbara Lee of Rutgers University describe a set of sanctions that an AAUP committee outlined for cases in which dismissal was determined not to be desirable.⁸ These include (1) oral reprimand, (2) written reprimand, (3) recorded reprimand, (4) restitution (i.e., payment for damages), (5) loss of "prospective benefits" (e.g., suspension of salary or promotion eligibility), (6) a fine, (7) reduction in salary for a stated period, and (8) suspension. In addition, they described other sanctions including public censure, departmental reassignment, demotion in rank, modified teaching assignments, class monitoring, and mandatory counseling.

We also sought information regarding how other cases of research misconduct have been treated. A search of records at the University of Colorado at Boulder found no cases that have resulted in a finding of research misconduct. One case was located in which an individual charged with plagiarism resigned from the university, apparently as part of a negotiated settlement, but this case pre-dated current rules on research misconduct and the formation of the SCRM.

Next we sought information about how instances of research misconduct have been handled at other institutions. Because disciplinary actions are necessarily case-specific, we did not attempt a comprehensive review of all research misconduct disciplinary actions, nor did we consider the information we found to be definitive. With those caveats, we found two summary documents useful to our deliberations. One was a summary of investigations into misconduct allegations involving Public Health Service funding between 1994 and 2003.⁹ While indicating that data on institutional corrective actions are incomplete because such actions are not required to be reported, the authors indicated that the most common disciplinary action was termination of employment; other actions included reprimands, training in research ethics, rescission of degree, formal apology, suspension with pay, community service, notifying a new employer, probation, and withholding pay. A second summary report involved an analysis of institutional policies regarding research misconduct

⁸ Euben, Donna R. and Lee, Barbara. (2005). Faculty misconduct and discipline. Paper presented at the National Conference on Law and Higher Education, Stetson University College of Law, February 20-22. (www.aaup.org/Legal/info%20outlines/05legmiscon.htm)

⁹ Rhoades, Lawrence J. (2004). *ORI Closed Investigations into Misconduct Allegations Involving Research Supported by the Public Health Service: 1994-2003*. Office of Research Integrity, Office of Public Health and Science, Department of Health and Human Services. Available for download at <http://ori.dhhs.gov/research/intra/documents/Investigations1994-2003-2.pdf>

at 156 US universities.¹⁰ Sanctions stipulated in these policies included termination/expulsion (63% of institutions), reprimand (40%), probation (33%), restrictions on future activities (32%), suspension (31%), removal from project (29%), reduction in salary/rank (27%), and correction/retraction of literature or proposals (25%).

In sum, based on our review of University of Colorado system and Boulder campus policies, professional association recommendations, and the policies and actions of other universities we considered a continuum of sanctions, ranging from censure or reprimand through loss of various privileges to dismissal.

Factors Considered in Recommending Disciplinary Action

Given the range of options available, the SCRM considered a number of factors in determining the sanction most appropriate to this case. The analysis of institutional disciplinary policies mentioned above¹¹ describes three factors institutions considered in their choice of discipline: Seriousness of the misconduct, deliberateness of the misconduct, and impact of the misconduct. To this list, the standing committee added a consideration of Professor Churchill's willingness to acknowledge and correct his misconduct, a factor noted by the Investigative Committee in its report.

Seriousness. The SCRM fully concurs with the Investigative Committee's conclusion that the pattern of violations documented in its report represents serious misconduct. The SCRM acknowledges that any scholar can make an occasional mistake, particularly when producing the volume of writing that Professor Churchill claims; indeed, most definitions of research misconduct (including UCB's) specifically exclude honest error. But the Investigative Committee convincingly demonstrated a pattern of intentional errors. We are forced to conclude, as did the Investigative Committee, that this is not a case of "ordinary error," but a pattern of repeated, intentional misrepresentation.

The SCRM strongly disagrees with critics of the Investigative Committee report who have suggested that Professor Churchill's violations were isolated, mundane, or trivial. To the contrary, we conclude that the violations are extreme examples of research misconduct, particularly in this area of study. Providing misleading or incorrect citations, bending accounts to fit one's desired interpretation, or simply making up information all strike at the

¹⁰ Analysis of Institutional Policies for Responding to Allegations of Scientific Misconduct. Final Report from CHPS Consulting, submitted to Office of Research Integrity. Available for download at http://ori.dhhs.gov/documents/institutional_policies.pdf

¹¹ Ibid.

foundation of scholarly historical work. Scholars rely upon the accuracy of each others' work to create a cumulative and incremental basis for extending our understanding of events. When that foundation turns out to be based on intentionally fallacious and misleading information, the usefulness of subsequent information is called into question and the work of many scholars may be compromised. The SCRM also was persuaded that making unfounded accusations and fabricating support for them, such as, for example, that the US Army intentionally collected smallpox-infected blankets from an Army infirmary to spread the disease to native populations, is serious by any standard. It not only distorts an already tragic history, but creates a social harm by spreading misinformation under the guise of scholarly research, injures the very cause being promoted, and casts doubt on other scholarship in the area.

Impact. We discussed under the heading of "Seriousness" the impact of research misconduct on scholarly research in general. It is obvious to even a casual observer that this investigation has attracted considerable national attention. Some members of the public seem to have concluded that Professor Churchill's behavior is symptomatic of the academy at large; indeed, Professor Churchill's own comments may have bolstered this belief.¹² As the Investigative Committee noted, these doubts and accusations have particularly challenged other, legitimate scholars in the fields of ethnic and Indian studies. As a committee charged with encouraging the highest ethical standards of research, we regret—and condemn as inaccurate and misleading--this erosion of public trust. We wish to remind all parties that this investigation had to do with one individual, and that his conduct should not be generalized to others. We consider the harm that his behavior has done to his field and to the academy more generally to be an aggravating factor in our determination of an appropriate sanction.

Deliberateness and Remedial Potential. The SCRM also was influenced in its deliberations by the Investigative Committee's conclusion that the misconduct they identified was deliberate. The pattern and the nature of the violations suggest that Professor Churchill's behavior was motivated not simply by a lack of awareness of academic standards, but in willful disregard of those standards. As one example, it is apparent that he is familiar with standards for citing references, and by his own statements (as noted by the Investigative Committee) about the importance of doing so—yet he repeatedly violated

¹² As one example, Professor Churchill stated in his response to the Investigative Committee that "I doubt that any even marginally prolific scholar's publications could withstand the type of scrutiny to which mine has been subjected."

those standards. In the case of putting others' names on publications he wrote (and then citing these publications as support for statements he made in subsequent publications), we find incredible his claim that this is standard and accepted practice. His conduct and claims indicate deliberate misconduct, which we believe merits serious sanction.

As further evidence that the violations were deliberate, we note not only the Investigative Committees' comments in this regard, but also Professor Churchill's responses to the various committees exploring his work. Professor Churchill has consistently failed to respond to critiques of his work—whether they occurred in the form of published essays, the Inquiry subcommittee's questions, or the Investigative Committee's questions and report—with any acknowledgement that his practices violate standard norms. We are drawn to the irresistible conclusion that Professor Churchill is unable, or at least unwilling, to acknowledge legitimate critique. If he is unwilling to acknowledge the critiques, we are pessimistic that he is likely to change his behavior.

We also considered some “contextual” factors that were raised in the Investigative Committee's report, or in Professor Churchill's response to the report. These include Professor Churchill's concern about having enough time to respond to the allegations, the possibility that the University had failed to provide corrective actions based on earlier reports of misconduct, and questions about the timing and motivation of the allegations,. It is not clear that these necessarily represent “extenuating” or “mitigating” factors that should affect our determination of sanctions, but since they were raised either by Professor Churchill or by the Investigative Committee we felt it appropriate to discuss them.

Allowing Sufficient Time for Response by Professor Churchill

In his response to the Investigative Committee report, Professor Churchill expresses a concern that he was not provided sufficient time to respond to the allegations, thus potentially compromising his defense. In response, we note that the SCRM rules include deadlines for most steps in the process of conducting a research misconduct investigation. The Inquiry subcommittee, the Investigative Committee and the SCRM were conscious both of these deadlines and of the importance of providing Professor Churchill with reasonable opportunities to provide responses. In fact, in a number of cases these deadlines were extended, in some cases specifically in response to Professor Churchill's request for additional time. The Investigative Committee provided Professor Churchill and his attorney with advance notice of meetings and of deadlines for providing responses, and accepted some of his responses even when they were turned in subsequent to these deadlines.

Overall, Professor Churchill had numerous opportunities to respond and did so, often in voluminous form. The SCRM believes that Professor Churchill has had an adequate opportunity to make his case.

Prior Allegations

On pages 3-4 of its report, the Investigative Committee alludes to at least two situations in which the University may have failed to act with regard to complaints about Professor Churchill:

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. For example, Professor John LaVelle had first published the claims that form the basis for Allegation A discussed below in a book review in 1996....At least one other claim was brought to the attention of responsible university officials a decade ago, but the University, after preliminary investigation, decided to take no further action.

The question of prior information about allegations may be important for two reasons. One is the possibility that the current allegations were motivated only by the controversy surrounding Professor Churchill; this issue will be considered shortly. The other reason is that if the university tacitly approved behavior at an earlier point, this might suggest that corrective actions at this point might more appropriately emphasize education or warning rather than more serious sanctions.

The first claim in the quoted passage appears to pertain to Professor John LaVelle's article that challenges the veracity of Professor Churchill's writings, particularly concerning the General Allotment Act and the Indian Arts and Crafts Act. The Investigative Committee noted that this critique was first published in 1996 and then elaborated upon in 1999. However, the SCRM has been unable to find any documentation that Professor LaVelle presented this critique to the University as a complaint regarding research misconduct prior to 2005. The Committee posed this question directly to Professor LaVelle,¹³ who responded by saying that he had not filed any complaint with the University. He indicated that he had sent reprints of the article to Professor (now Dean) David Getches and possibly to other faculty at the University at the time of its publication, but as part of a mailing of reprints to scholars interested in Native American issues, not as a complaint. Dean Getches provided

¹³ Telephone conversation between Professor Rosse and Professor LaVelle, May 17, 2006.

a similar account, adding that Professor LaVelle had mentioned to him his article at a professional conference they both attended in South Dakota in the late 1990s.¹⁴ Professor Getches (who at the time was not dean), reports that he does not recall reading the article at the time and that he thought it referred simply to a typical academic disagreement, not as a complaint regarding possible research misconduct.

More broadly, the Investigative Committee's statement could be construed as suggesting that the University somehow should have known about Professor LaVelle's critique even without a formal complaint being filed. The SCRM—by rule and for practical reasons—responds only to written allegations of misconduct that are presented to it. The SCRM cannot be responsible for monitoring all the publications of University faculty, nor does it believe such a role would be appropriate even if it was practical. However, the Committee is sympathetic to the construction that others in the University—particularly those involved in Professor Churchill's discipline and in his annual and promotion reviews—should have been aware of Professor LaVelle's critique and have brought it to the attention of responsible University officials and the SCRM. We do not know, and cannot speculate, on why this did not occur, because it is outside the purview of the SCRM's charge. As we will discuss in more detail in a later section, we believe this is something that the Provost and Dean should explore further as a possible change in policy or procedures. For our purposes in this case, however, we note that the SCRM did not receive any allegations prior to the current investigation.

The Investigative Committee refers to an "other claim" brought to the attention of responsible university officials over a decade ago. Some have suggested that this refers to the plagiarism charge made by Professor Fay Cohen, a charge that was initially reviewed by counsel at her institution (Dalhousie University) in 1997. However, we dismiss this suggestion on the basis of our review of her written response to questions posed by the Investigative Committee. In those responses she makes it clear that she has never filed a complaint with the University of Colorado, and that she only informed UCB of the Dalhousie University review of plagiarism when asked to do so by the Chancellor's ad hoc committee in early 2005. A review of the records available to the SCRM indicate that Dalhousie University Counsel wrote to a Canadian funding agency regarding the plagiarism, but there is no indication that Professor Cohen or Dalhousie University informed the University of Colorado of the alleged plagiarism prior to 2005. Rather, it appears that this reference in the

¹⁴ Telephone conversation between Professor Rosse and Dean Getches, June 5, 2006

Investigative Committee report is to a complaint filed with the University in 1994 alleging that Professor Churchill misrepresented his ethnicity in his employment application with the University. This matter is described in the report of the Chancellor's Ad Hoc committee;¹⁵ since it was determined by the Inquiry subcommittee to be unrelated to research misconduct, it is not germane to this report.

Timing and Motivation of the Allegations

In his response to the Investigative Committee's report, and in other communications with the SCRM, Professor Churchill has maintained that this investigation has been motivated by a desire to censure him for his controversial expressions of political positions. He has noted, accurately, that the allegations sent to the SCRM were the result of a review of his scholarly work by an administrative committee appointed by the Chancellor, and that this review occurred in response to a public outcry following public awareness of his so-called "9/11 essay."¹⁶

Our position—which we believe is consistent with that of the Investigative Committee—is that while this context is important, it should not distract us from the critical points that (1) complaints of research misconduct were lodged; (2) these complaints required a response by the SCRM; (3) the investigation process proceeded as specified by University policies and procedures, and (4) the resulting findings and recommendations for sanctions were based solely on a review of the facts as determined by a panel of Professor Churchill's peers. While acknowledging the larger context in which their work was done, both the Investigative Committee and the SCRM have been scrupulous about limiting their analyses to the facts as uncovered by the Investigative Committee. As such, we believe we have complied with Article 5D of the Regents Laws, which stipulates that disciplinary recommendations should not be "influenced by such extrinsic considerations as political, social, or religious views, or views concerning departmental or university operation or administration." Considerations of academic freedom and what Professor Churchill alleges to be "punishment for constitutionally protected speech" have not entered into our deliberations, except to the extent that we state our strong support for the former and our rejection of the latter.

¹⁵ *Report on Conclusion of Preliminary Review in the Matter of Professor Ward Churchill*, available at <http://www.colorado.edu/news/reports/churchill/report.html>

¹⁶ *Ibid.* See also the discussion of this context in Part I of the Investigative Committee's report, *op. cit.*

Conclusion and Recommendations

After reviewing carefully the report of the Investigative Committee and Professor Churchill's response, the members of the SCRM were unanimous in concluding that the severity of the infractions, their repeated and deliberate nature, their impact on the scholarly enterprise, and the apparent unwillingness of Professor Churchill to acknowledge the violations combine to exhibit "conduct which falls below minimum standards of professional integrity," as specified in the Laws of the Regents.

In deliberating about appropriate sanctions, SCRM was not unanimous in its recommendations, nor did it feel any obligation to reach a consensus. The SCRM's rules do not require a consensus; moreover, since the committee's role is to provide recommendations to the ultimate decision makers, we believe that representing the range of perspectives of the committee members will be most useful to those decision makers. With that in mind, six of the voting members of the committee recommended dismissal, two recommended suspension without pay for a five-year term, and one recommended suspension without pay for a two-year term. (Our recommendations were the result of a secret ballot. As with the Investigative Committee, we agreed among ourselves not to disclose to anyone our individual votes.)

We also considered steps that would allow the correction of the research record. We concluded that the national attention this case has garnered, in conjunction with the public release of the Investigative Committee's report, has largely accomplished this objective. The passage of time makes it impractical to suggest more standard remedies such as requesting journals to publish errata to correct the papers in which the problematic materials appear; indeed, that nearly all were published in books makes such a strategy particularly impractical. We do note, however, that some of the books remain available, and are occasionally reprinted. As a result, we recommend that a copy of the Investigative Committee Report be sent to those book publishers whose works were implicated, so that we can be sure that they are aware of the concerns that have been raised.

The circle of blame for not apprehending such violations among our peers potentially includes us faculty as peer reviewers of conference papers, journal articles, promotion files and tenure materials. We recommend that academic departments address this issue, perhaps using the Investigative Committee report as one potential case study. To maximize learning from this situation (albeit rare and anomalous), we suggest that this issue be placed on department faculty meeting agendas for discussion in the new academic

year and form part of Research Misconduct discussions in the orientation programs for new graduate students at this university.

RECOMMENDED CHANGES IN POLICIES AND PROCEDURES

SCRM's Operating Rules indicate that in addition to making recommendations regarding sanctions, we are also charged with making recommendations regarding policy changes as a result of the investigation. While the focus of the investigation and the recommended sanctions has been on a particular individual, the committee has also identified a number of systemic issues that deserve attention by University administrators and faculty. Addressing these issues may help avoid the kinds of misconduct identified in this case or facilitate their resolution at an earlier point.

Ensuring Conformance with Academic Standards

As we have already described, a cloud has hung over this investigation from its inception due to questions about the timing of the allegations. Many, including Professor Churchill himself, have asked why the charges were not investigated years ago. The simple answer on which the SCRM has proceeded is that the research misconduct investigation process has to be initiated by a written complaint, and no such complaint had been received by the committee until March of 2005. Had Professors Brown, Cohen, or LaVelle presented the information (that they provided to the Chancellor's ad hoc committee in March of 2005) to the SCRM at some earlier point, the same sort of investigation would have ensued years earlier.

Although comfortable with this understanding, the SCRM also contemplated changes to procedures or policies that might reduce this reliance on written complaints from individuals who may not be aware of the SCRM, much less of the procedures for reporting a complaint¹⁷. One route is to ensure that internal mechanisms—ranging from complaints from faculty colleagues to regular performance reviews—provide a means for identifying violations of accepted practices. Faculty already undergo a performance review process every year, and tenured faculty also receive a more comprehensive post-tenure review every five years. This is in addition to the extremely intense reviews required for promotion and tenure decisions. Each of these review processes provides an opportunity to identify

¹⁷ The SCRM intends to review procedures for publicizing procedures for reporting research misconduct to ensure that standards and procedures are as broadly known as is possible.

potential misconduct, but in some cases these opportunities may be overlooked. This may in part be due to a natural tendency—well-grounded, in most cases—to assume that colleagues are not engaged in misconduct, and instead to focus on the positive indicators of performance, such as publication of books or articles by respected publishers or journals. If reviewers explicitly considered the unpleasant possibility that even publications in respected outlets *might* be plagiarized, fabricated, or falsified, they would be more likely to notice violations of these kinds. Simply put, you're not likely to see things you're not looking for, especially if they occur in a context in which you're not expecting them.

A critical question is whether even a careful and skeptical reviewer would be likely to identify indicators of research misconduct. In most cases, even blatant plagiarism becomes evident only if you happen to be aware of the original source that has been plagiarized. Fabrication or falsification of data—particularly if it involves raw data to which only the researcher has ready access—is even more difficult to spot. Improper use of citations may be easier in concept to identify, but in reality would require either substantial familiarity with the literature being cited or a tremendous investment of time and effort to follow up all citations. It therefore seems evident that review above the level of the primary unit (e.g., by deans or by the Vice Chancellor's Advisory Committee) has a vanishingly small probability of detecting most research misconduct, no matter how well those reviews are done. If there is hope of identifying misconduct *sans* a complaint, it lies in the unit level review conducted by peers of the individual. To be successful at this level, the reviews must be serious rather than cursory, must involve individuals with as much expertise as possible in the reviewed individual's area of inquiry, and most importantly should involve a careful *reading* of the individual's work, rather than a simple count of articles, chapters or books.

We recommend that the Provost make recommendations along these lines to all academic units, not only to those involved in this investigation. At the same time, though, we recognize that an intense level of review may not be a good use of the time of faculty and chairs, who already are stretched by many competing demands. If, as we believe, the overall incidence of research misconduct is extremely low, and the probability of identifying it through regular review processes also is low, it would take an entirely disproportionate investment of time and effort to show even a marginal increase in the detection of misconduct. We recommend that a review of the implementation of performance evaluation procedures be conducted to ensure that all units are meeting at least reasonable standards (or "best practices"). Intervention with units that are lagging to bring them up to these standards is likely to have the best cost-benefit ratio, especially since it will likely lead to

better assessment of “normal” performance as well as enhanced identification of misconduct.

Ensuring Consistency in Hiring and Promotion Review

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.¹⁸ 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. One key seems to be ensuring consistent application of these procedures to all individuals in all units. Another might be explicit attention to potential misconduct during not only tenure and promotion reviews, but also in the hiring process itself. Where external references or reviewers are included in the review processes, they could be asked explicitly if they are aware of any information that might suggest possible misconduct. As noted above, careful reading of the faculty members’ materials can also help identify potential problems.

Protection of Individuals Affected by Investigation of Misconduct

The SCRM is charged with making recommendations “regarding steps to be taken to prevent retaliation against the complainant or other persons providing information in the investigation and to restore the positions and reputations of persons who have made allegations in good faith.”¹⁹ At this time, we do not believe that any such protections are necessary for the complainant or any of the witnesses in this case. However, we do believe that the Provost and Chancellor should take steps to ensure that the reputations of some of those indirectly affected by the investigation and related events are restored. Our specific

¹⁸ Available at <http://www.cusys.edu/tenurereview/docs/Report-Final.pdf>

¹⁹ Available at http://www.colorado.edu/Academics/research_misconduct_rules.html

concern is for faculty and staff in the Department of Ethnic Studies at UCB who have suffered from the fallout of this investigation. We have taken pains in this report to explain that the findings apply only to Professor Churchill, and should not be casually generalized to others in his department or field of study. We recommend that the Chancellor consider means to ensure that the reputation of other faculty and staff in the Department of Ethnic Studies is restored and maintained appropriately.

More broadly, we recommend and ask the Chancellor to address the concern among many faculty that the University strongly uphold the importance of academic freedom. As a faculty committee, we have described how the research misconduct review process includes safeguards to ensure that investigations are limited to credible allegations, that they protect to the maximum extent possible the rights of both complainants and respondents, and that they proceed untainted by pressure from any external constituencies. We believe the faculty would welcome a comparable statement from University administration, particularly one that highlights academic integrity and academic freedom as the dual cornerstones of scholarly life.

Appendix A. Report of the Investigative Committee

Appendix B. Response by Professor Churchill to the Investigative Committee Report