

Submission of Professor Ward Churchill to the Board of Regents of the University of Colorado

July 12, 2007

University of Colorado (CU) President Hank Brown has recommended that this Board of Regents strip Professor Ward Churchill of tenure and fire him. By asserting “research misconduct” charges as a pretext to dismiss Professor Churchill in retaliation for his First-Amendment protected speech, President Brown joins a long line of CU administrators who have made a charade of the procedures designed to protect academic integrity.

The “research misconduct investigation” was thoroughly tainted by bias against Professor Churchill, as well as consistent and deliberate violations of University rules and policies. The resulting Investigative Report upon which the University relies on to recommend dismissal has been shown to be inaccurate, misleading, and biased.

Furthermore, the charges against Professor Churchill have been grossly overstated. After extensively soliciting allegations and scouring his many books and articles, the University rests its case for dismissal solely on charges that Professor Churchill (a) failed to provide sufficient evidence for three details relating to an 1837 smallpox epidemic; (b) cited to material he had ghostwritten; and (c) was responsible for the failures of the editors of two publications to give proper credit to other authors. *Even if* these charges were accurate, they do not constitute reasonable basis for firing a tenured professor.

When the factual record of this case is examined, it becomes apparent that the University has capitulated to external political and financial pressure in violation of its obligations to protect Academic Freedom.

The actions taken against Professor Churchill by the University of Colorado thus violate

- * the right to free speech, due process, and equal protection guaranteed by the Constitutions of the United States and the State of Colorado,**
- * the principle of Academic Freedom,**
- * the Laws of the Regents, and**
- * the rules and policies of the University of Colorado.**

The following submission summarizes Professor Churchill’s exemplary record of service to the University and how the research misconduct investigation was a direct response to Professor Churchill’s constitutionally protected speech, the investigation was biased and procedurally unfair and the resulting Investigative Report inaccurate and misleading and, therefore, why the recommendation to dismiss is not justified.

It is now up to each member of this Board of Regents to decide whether to consummate or repudiate this process by accepting or rejecting President Hank Brown’s recommendation to fire Professor Churchill.

I. Professor Churchill Has a Record of Exemplary Service to the University

Professor Ward Churchill is a tenured full professor of American Indian Studies and former Chair (2002-05) and Associate Chair (1995-2001) of the Department of Ethnic Studies at the University of Colorado (CU) at Boulder. He has been employed by CU since 1978, and has been a tenured professor since 1991.

During this period, Professor Churchill's work was subjected to all of the applicable scholarly review processes for appointment, tenure, promotion, and merit increases. In each case he received excellent ratings for scholarship, teaching, and service. His classes were consistently oversubscribed and, at the request of his Dean and Associate Dean, he taught 9 overload courses while serving as Department Chair.

Professor Churchill's contributions to the University of Colorado are reflected in the numerous honors and awards he has received, including the following:

- * Herd Award for Outstanding Teaching, University of Colorado Alumni Association, 2005 (voted but withheld).
- * Gustavus Myers Award for Outstanding Books on Human Rights, 2003 (for *On the Justice of Roosting Chickens*), Gustavus Myers Center for Human Rights, University of Arkansas, 2004.
- * Martin Luther King Colloquium of Scholars, King Center, Morehouse University, 2004.
- * Gustavus Myers Award for Outstanding Books on Human Rights, 1996 (for *From a Native Son*), Gustavus Myers Center for Human Rights, University of Arkansas, 1997.
- * Colorado Book Award Finalist in Nonfiction (for *Since Predator Came*), Colorado Society for the Book, Denver, 1995.
- * Gustavus Myers Award for Outstanding Books Human Rights, 1993 (for *Struggle for the Land*), Gustavus Myers Center for Human Rights, University of Arkansas, 1994.
- * Teaching Excellence Award, Boulder Faculty Assembly, CU Boulder, 1994.
- * Gustavus Myers Award for Outstanding Books on the Subject of Intolerance in the United States, 1992 (for *Fantasies of the Master Race*), Gustavus Myers Center for Human Rights, University of Arkansas, 1993.
- * Doctor of Humane Letters, *Honoris Causa*, Alfred University, 1992.
- * Excellence in Social Science Writing Award, College of Arts and Sciences, CU Boulder, 1992.
- * Thomas Jefferson Award for Outstanding Service and Achievement, CU Boulder, 1990.
- * Gustavus Myers Award for Outstanding Books on the Subject of Intolerance in the United States, 1988 (for *Agents of Repression*), Gustavus Myers Center for Human Rights, University of Arkansas, 1989.

- * Annual Umoja Award for Staff Promotion of Cultural Diversity in Higher Education, Minority Student Coalition, CU Boulder, 1989.
- * The Robert L. Stearns Alumni Award, CU Boulder, 1988.
- * President's University Service Award, CU Boulder, 1987.

In 2001, Professor Evelyn Hu-DeHart, then Chair of the Department of Ethnic Studies, determined that Professor Churchill was the most cited scholar in the country in his field of American Indian Studies. This is not surprising, given his prolific publication record, which includes:

- * sole authorship of 10 books, several with expanded and revised editions;
- * co-authorship of 4 books; 3 of which are in second editions;
- * 4 edited books;
- * 3 co-edited books;
- * 51 book chapters;
- * 3 law review articles;
- * 27 refereed scholarly essays; and
- * 23 non-refereed scholarly essays.

Many of these have been reprinted or have appeared in translation. In addition, Professor Churchill has published numerous other articles, book and film reviews, introductions, forewords and prefaces for other books. All told, not counting reprints or translations, Professor Churchill has published well over 4,000 pages of scholarly writing, with over 12,000 footnotes. He has served on numerous editorial boards and has given hundreds of invited lectures at colleges and universities around the U.S. and Canada. (For additional detail, see his curriculum vita, attached hereto as Exhibit A.)

As this brief summary indicates, Professor Churchill has not only fulfilled but far exceeded the expectations of a tenured faculty member at the University of Colorado and, until late January 2005, the University consistently recognized his many contributions. This all changed within the space of a week, when a September 2001 op-ed piece Professor Churchill had written for an obscure website was highlighted in the media. Influential politicians and persons seeking to influence the University through their financial contributions demanded that Professor Churchill be fired. In response, for the past two and one-half years, CU administrators have worked diligently (and spent enormous sums of taxpayer dollars) to ensure that Professor Churchill is dismissed, regardless of the facts of his case, the applicable law, or the stated rules and policies of the University of Colorado.

II. The Investigation Was a Direct Response to Professor Churchill's Protected Speech

The series of investigations of Professor Churchill's scholarship now before this Board of Regents began in response to an extensive campaign launched by the local, and subsequently national, media in late January 2005 which highlighted one phrase of an op-ed piece Professor Churchill wrote in response to the events of September 11, 2001. The essay, which was plainly First Amendment-protected speech and never included on his vita, was published on an obscure internet website on September 12, 2001 and barely noticed for more than three years.

The Denver and Boulder media belatedly showcased Professor Churchill's essay primarily in response to his acquittal, along with seven other defendants, in a highly publicized Columbus Day

protest case. Thereupon, numerous right-wing pundits focused upon this “issue” as part of their larger campaign against “liberal bias” in academia.

Almost immediately, two governors, including Colorado’s Bill Owens, publicly demanded Professor Churchill’s firing, while three state legislatures, this Board of Regents and Interim Chancellor DiStefano issued formal denunciations of his views. In the following months, over 400 major stories appeared in the local print media alone, as well as more than a hundred television news spots, and virtually continuous “coverage” on local Clear Channel radio stations. The attacks extended nationally, as Professor Churchill was targeted in the neoconservative *Weekly Standard*, *National Review*, *The New Criterion*, the *Wall Street Journal*, and other such periodicals. Fox News personality Bill O’Reilly dedicated segments of *The O’Reilly Factor*, to criticizing him on more than 40 consecutive nights.

Meanwhile, well-organized e-mail, telephone, and fax campaigns drawing upon groups identifying themselves as “Christian Conservatives” delivered over 8,000 missives to Professor Churchill and the Ethnic Studies Department demanding that he be fired on “patriotic” and/or “moral” grounds. Their objective was to remove Professor Churchill from academia and silence his political speech; it bore no relationship to such lofty goals as “maintaining scholarly standards” or “preserving the integrity of the university.” Many of these communications expressed a racial animus so ugly that it must be read to be believed, yet University administrators, while claiming to be concerned about racism on campus, refused to even acknowledge these attacks on their faculty, staff and students. (See Exhibit B, Open Letter from the Department of Ethnic Studies, receipt of which was never acknowledged by any CU official.)

Despite Professor Churchill’s more than quarter-century record of exemplary service to the University of Colorado, no University official ever offered any statement in his defense or attempted to curb the media frenzy. Rather, the “trial by media” was encouraged by CU’s continuous and highly selective (and therefore prejudicial) violations of its own rules concerning the confidentiality of personnel processes.

The overtly hostile statements and actions of CU officials actively facilitated a microscopic and highly biased media intrusion into every aspect of Professor Churchill’s life. His privacy and physical security, as well as those of his immediate and extended family and colleagues, was rendered all but nonexistent, while anyone who ever had scholarly or personal differences with him was encouraged—in several cases solicited—to advance allegations to the University regarding his work, political positions, and personal life.

As this media frenzy was just beginning, and in complete disregard their own Laws pertaining to Academic Freedom, the Board of Regents convened an “emergency” meeting on February 3, 2005. (At least one Regent, Tom Lucero, had already made televised statements suggesting that Professor Churchill should be fired because of his statement concerning the attacks of September 11, 2001.) At that meeting Interim Chancellor DiStefano publicly denounced Professor Churchill’s views as “repugnant.” He then announced a 30-day investigation (later extended to 45 days), which—despite his explicitly stated bias—he himself would conduct in concert with Law School Dean David Getches and Arts & Sciences Dean Todd Gleeson.

These administrators comprised an “ad hoc committee” whose stated agenda was to examine everything Professor Churchill had publicly stated or published in order to determine whether any of it “crossed the line” or “exceeded the boundaries” of constitutionally protected free speech. The convening of a University body for any such purpose abridged not only the rights of Academic Freedom contractually guaranteed every faculty member under the “Laws” of the

Regents, but also the guarantees of free speech, due process and equal protection contained in the Constitutions of the United States and State of Colorado.

Professor Churchill was never even given the courtesy of official notification of the February 3 Regents' meeting, nor of the "investigation" subsequently conducted by the Interim Chancellor's ad hoc committee. During the ad hoc committee's investigation, he was never confronted with nor provided an opportunity to respond to accusations made against him. In direct and deliberate violation of University rules requiring confidentiality in personnel matters, on March 24, 2005, Interim Chancellor DiStefano convened a press conference to announce the "findings" of his ad hoc committee and to distribute copies of its "Report" to the media. (This and numerous other University statements were and are still publicly posted on the official CU-Boulder website.)

The ad hoc committee concluded that Professor Churchill's writings and statements were all constitutionally-protected political expression. Since this was self-evident from the outset—were it otherwise, the appropriate investigative body would have been the FBI, *not* a university committee—this simply confirmed the fundamental illegitimacy of the inquiry. At that point, an apology not only to Professor Churchill but to the entire faculty—all of whose guarantee of Academic Freedom had been compromised—would have been in order.

No such apology was offered, however. Instead, the ad hoc committee went on to claim that it had received allegations of research misconduct by Professor Churchill and announced that it was forwarding certain of these to the University's Standing Committee on Research Misconduct (SCRM). As the evidence has since established, and contrary to President Brown's assertion, the University did not simply "receive" allegations; rather, they were *solicited* by University administrators. No written complaints had been received from *any* aggrieved party when the research misconduct investigation was commenced. Furthermore, all of the allegations concerned material written by Professor Churchill many years, sometimes decades, earlier. Had there been substantive problems with this work, they would have been investigated much earlier.

By that point Professor Churchill had published more than 4,000 pages and 12,000 footnotes, exclusive of reprints and translations. After an unprecedented effort to scour this body of work and to solicit allegations from all possible sources, including known political adversaries and former in-laws, approximately five pages of text and a half dozen footnotes were referred to the SCRM for investigation. The questions referred were of the sort that could be raised with respect to the work of any prolific scholar, but clearly such investigations have never been the norm, either at CU or any other U.S. university.

Although several of the allegations were dismissed after being refuted by Professor Churchill, the SCRM forwarded seven charges to an Investigative Committee. (Problems with the composition of that Committee, its process, and its findings are summarized below.) The pretextual nature of the investigation, as well as its consistent violations of established personnel policies and basic notions of due process and fundamental fairness is illustrated by the fact that well after the investigation was underway, then-Interim Chancellor DiStefano forwarded another 59 pages of material downloaded from the *Rocky Mountain News* website to the SCRM, with instructions to Professor Churchill to answer any "new allegations" contained therein.

Predictably, the SCRM Investigative Committee—in a Report that is itself now the subject of two separate sets of research misconduct charges—concluded that Professor Churchill had committed research misconduct with respect to certain of the charges. Although only one of its five members actually advocated dismissal, a majority of the SCRM and then-Interim Chancellor DiStefano—who, having served as "complainant," now became sentencing judge—disregarded the Committee's recommendations and advocated the harshest possible sanctions.

A formal appeal by Professor Churchill to a panel of the Faculty Senate Privilege and Tenure (P&T) Committee resulted in a finding that the University had not met its burden of proof on several of the charges brought by the SCRM Investigative Committee. The P&T Appeal Panel did uphold the Investigative Committee's findings on a handful of technical charges enumerated below. A majority of the P&T Panel recommended a one-year suspension and demotion, *not* dismissal. This recommendation, like that of the SCRM Investigative Committee, was disregarded, this time by CU President Hank Brown who recommended that the Regents fire Professor Churchill.

Throughout this process, the University's determination to find some justification to fire Professor Churchill for his constitutionally protected but politically contentious speech has been illustrated not only by the pretextual and malicious nature of the allegations, but by the University's deliberate and repeated violations of its own rules and Professor Churchill's right to due process and equal protection; its persistent and highly selective violations of his right to confidentiality; its refusal to process his long-overdue sabbatical request; its attempt to prevent him from "unbanking" courses for which he was owed release time, its allowing the Alumni Association to withhold a teaching award voted him by the students, despite the fact that his teaching was not under investigation; its refusal to comply with its published rules for compensation of Professor Churchill's attorney; and the numerous other retaliatory measures it employed to penalize him; and its refusal to hear his grievances on these matters until *after* the damage had been incurred. (See Exhibits __, grievances filed by Professor Churchill during this process.)

It is difficult to catalogue all of the abuses of the internal procedures to which Professor Churchill has been subjected over the past two and one-half years, procedures which are supposed to protect the exercise of Academic Freedom and to ensure that faculty members accused of scholarly malfeasance receive due process. Nonetheless, when viewed as a whole, it is clear that the University's "investigations" of his scholarship were not undertaken out of any concern for academic integrity. Rather, as explained below, academic integrity has been sacrificed for the sake of retaliating against Professor Churchill for exercising his constitutional and contractual rights in a manner which challenges the political status quo and mainstream historical orthodoxy.

III. The Investigative Committee Was Biased and Its Process Unfair

President Brown's recommendation to fire Professor Churchill rests on the Investigative Report issued by the Investigative Committee on May 9, 2006, and subsequently adopted by the SCRM as a whole.

As the background briefly summarized above illustrates, and the P&T Appeal Panel has affirmed, the investigation would not have occurred at all *but for* the controversy over Professor Churchill's protected speech. The facts of the case, the soliciting and bringing of charges by CU administrators, and the prejudicial manner in which the University violated its rules on confidentiality, all illustrate that the investigation was a pretextual means of penalizing Professor Churchill for exercising his First Amendment rights. As such, the entire process should be dismissed as illegitimate and illegal.

Nonetheless, even if considered on its own terms, the investigative process was highly irregular and permeated by bias against Professor Churchill. The resulting Report is 124-pages long. Because it is so long and complex, many have assumed that the Committee must have done a thorough job, and that its conclusions must be justified. However, a close examination of the

document reveals that the opposite is true. When one peels away the layers of purported explanations and obfuscations, the appearance of substance evaporates. In fact, the Report is so substantively flawed, inaccurate, and misleading that fifteen professors and two attorneys have filed two sets of research misconduct charges against the Investigative Committee for *their* falsifications and fabrications of evidence in the Report.

Under the rules and policies of the University of Colorado, the Committee's mandate was to conduct a *nonadversarial*, fact-finding investigation of the charges. Instead the Committee acted as an inquisitorial body, taking upon itself the role of both prosecutor and judge.

Given the intensely negative slant of the extensive Denver/Boulder media coverage of this case, and the hostile climate at the University of Colorado—including, but not limited to the fact that the Interim Chancellor was serving as “complainant” in the case—Professor Churchill requested that the Investigative Committee be composed of objective, outside experts in his field of American Indian Studies. In light of the bias already exhibited against him by law dean David Getches, Professor Churchill specifically asked for the exclusion of law school faculty.

Instead, the SCRM appointed a 5-person committee dominated by CU insiders and chaired by CU law professor and former prosecutor Mimi Wesson. SCRM Chair Joseph Rosse knew that, over a year earlier, Professor Wesson had denounced Professor Churchill, likening him to “charismatic male celebrity wrongdoers” like O.J. Simpson, Bill Clinton, and Michael Jackson. In the same e-mail, she advanced her flawed “traffic stop” analogy ultimately used in the Investigative Report to justify the pretextual origins of the investigation.

The Committee included no American Indians and no experts in the field of American Indian Studies. The closest was an expert in federal Indian law—a very distinct field—whose ideological views were known to be adverse to Professor Churchill's. Two scholars who are experts in the field, one an American Indian, had initially been appointed, but both withdrew when they came under attack in the local media and University officials failed to make any defense of its selection process. (One, Professor Robert A. Williams, Jr., has testified to the P&T Appeal Panel that the Committee appeared biased and that he does not consider its Report credible.) Although eminently qualified American Indian scholars were available and willing to serve in their stead, they were ignored.

The inquisitorial nature of the proceeding and its inherent lack of procedural fairness is evident in the fact that neither the allegations nor the standards by which they were judged were ever clearly identified to Professor Churchill. He was expected to present a defense without even knowing which allegations were at issue and, during the investigation, the committee expanded the scope of certain allegations without giving him notice or adequate opportunity to respond.

Despite numerous requests, Professor Churchill was never informed of the standards being applied. In fact, even during the P&T Appeal Process, long after their Report had been issued, Committee members were unable to clarify what standards they had used.

The Report claims that American Historical Association (AHA) protocols and other unspecified standards were utilized. It falsely states that Professor Churchill agreed to AHA standards and never reveals which other standards were used. In some instances these appear to have been the standards used in legal publications; in other cases they seem more akin to “gut” reactions. The result was the retroactive application of an apparently randomly selected set of “standards” which have never been applied to any other member of the CU faculty.

The Committee also artificially restricted Professor Churchill's ability to respond to the charges. He was prevented from speaking directly to expert witnesses, even his own, and was required to e-mail his questions across the room to the committee chair. This caused considerable confusion and allowed Professor Wesson to "interpret" what he was asking, sometimes fundamentally changing his meaning; and generally impairing his ability to elicit information.

The rules for research misconduct investigations were designed for relatively straightforward cases, usually involving one or two charges, not for a complex array of disparate and shifting allegations. Although the rules allow for extensions of time, the Committee denied Professor Churchill's repeated requests for an additional 30 days in which to complete his responses, rigidly insisting on a 120-day time frame. He was forced to spend much of this period trying to determine which charges and standards were at issue, and even more on an apparently futile attempt to introduce committee members to the foundational concepts of American Indian Studies and, more generally, the discipline of Ethnic Studies. E-mails from Professor Wesson have since revealed that she insisted on this constricted time frame because of outside pressure on the University to resolve the matter.

That the Committee was both biased and politically motivated is reflected in several statements made in its Report. For example, *all* of Professor Churchill's witnesses were American Indians and each confirmed that his interpretation of the smallpox epidemics at issue conformed to their peoples' oral traditions. Yet the Committee, composed entirely of non-Indians gratuitously accused Professor Churchill of "disrespecting" American Indian oral history.

In another example, the Committee exceeded its mandate to function as fact-finding body first by recommending sanctions, and then by attempting to justify its harsh recommendations by referencing Professor Churchill's "attitude." In other words, he was given the "Catch-22" option of apologizing for things he did not do or being condemned for being insufficiently contrite.

Finally, the political motivations and bias of the Investigative Committee can be seen in the fact that its first move, upon completion of its Report in this "confidential" personnel matter, was to hold a press conference and publicly disseminate the Report. It still remains prominently featured on the University's website where, tellingly, *none* of Professor Churchill's responses, even those identified as exhibits to the Report, are available.

The record contains numerous other examples of how the investigative committee abandoned its mandate to serve as a nonadversarial information-seeking body, in the process denying Professor Churchill his rights to due process and equal protection. In light of the many problems evident in the composition and procedures of the Committee, it is not surprising that it proceeded to do exactly what it accuses Professor Churchill of doing: it tailored its Report to fit its conclusions.

As explained in the following section, the Investigative Report contains numerous false statements, misrepresentations of fact, and internal contradictions; it suppresses evidence and employs faulty logic to conclude that Professor Churchill engaged in research misconduct. Because President Brown bases his recommendation to fire Professor Churchill on this Report—despite being notified by numerous outside parties about its flaws—this Board of Regents must seriously consider the procedural and substantive flaws in the investigative process and resulting Report briefly summarized below and documented in the attached exhibits and record of this case.

IV. The Investigative Report is Inaccurate and Misleading

A. The Investigative Committee Abandoned Its Nonadversarial, Fact-Finding Mission

The SCRM Investigative Committee abandoned its responsibility to serve as a nonadversarial fact-finding body, instead retroactively imposing its views as to what and how Professor Churchill should have cited to support his historical analysis, condemning his “attitude” rather than his scholarship, and tailoring the Report to justify its conclusions.

Many of the substantive flaws in the Report can be traced back to the fact that the Committee, which was charged with determining whether Professor Churchill’s scholarship complied with the accepted practices in his discipline, included no experts in American Indian Studies.

American Indian Studies and Ethnic Studies programs were introduced into universities precisely because the standard practices of mainstream disciplines (history, sociology, anthropology, etc.) had failed to incorporate historical and contemporary knowledge they found inconvenient, thereby producing inaccurate and misleading “academic truth.” To rectify this, these disciplines are grounded in the perspectives of diverse communities, employing their own sets of research practices and methodologies. Thus, Professor Churchill’s job is to bring a critical indigenous understanding to his teaching and scholarship.

The Committee’s mandate was not to determine the “truth” of disputed historical matters. Yet the bulk of its Report, written by persons without expertise in the subject matter, is devoted to its analysis of the history at issue. Having concluded, in most cases, that Professor Churchill was substantively accurate, the Committee resorted to a detailed critique of his use of sources and the nature of his footnotes.

Much of Professor Churchill’s work takes the form of synthesis; in other words, he strives to “connect the dots” with respect to a broad range of information. By definition, one cannot delve into minute detail with respect to each piece or the big picture will be lost. Yet this is precisely what the Committee condemns him for. (See, for example, the 44 pages of the Report devoted to analyzing the two paragraphs Professor Churchill wrote on the 1837 smallpox pandemic originating in or around Fort Clark.) If this standard were to be uniformly applied, no scholar could engage in analysis which brings together apparently disparate information to illustrate fundamental problems with the status quo.

Finally, it must be noted that the Investigative Committee exceeded its charge of conducting a nonadversarial, fact-finding inquiry not only by functioning as a prosecutorial body and drawing its own conclusions concerning the “truth” of the historical matters in question, but by asserting a prerogative to recommend sanctions. Rather than simply presenting its factual determinations, it tailored its presentation to support its advocacy of penalties entirely disproportionate even to its own findings.

B. The Report Distorts, Falsifies and Suppresses Evidence

Numerous instances of falsification, distortion and suppression of evidence in the Investigative Committee’s Report are documented in Professor Churchill’s testimony and submissions to the Investigative Committee and to the P&T Appeal Panel, and in the testimony of his witnesses to both bodies. Inaccuracies and misrepresentations in the Report have been noted by numerous other scholars as well. In fact, the errors in the Report are so egregious that independent *research misconduct complaints have been filed against the Investigative Committee for falsifications, fabrications, and suppression of evidence in their Report.*

Two sets of such complaints have been filed with the SCRM by nine CU professors, seven professors from outside the University, and two attorneys. The research misconduct complaint filed against the Investigative Committee by 11 professors on May 10, 2007 (Exhibit C) documents five major instances of serious violations of standard scholarly practice – i.e., that the Committee relied on a biased and flawed source for major arguments; improperly excluded reputable independent sources that contradict the Report’s argument; suppressed text from a cited source that contradicts the Report’s argument; excluded valid scholarly interpretations at variance with the Reports claims; and rhetorically exaggerated the strength of the case against Professor Churchill.

On the “plagiarism” charges, these professors state:

One of these charges is quickly dismissed, but immediately (and improperly) resurfaces as an ad hoc misconduct charge proscribing the practice of ghost writing. The other two plagiarism charges involve persons or organizations that once worked collaboratively with Professor Churchill. None of the authors supposedly plagiarized by Churchill ever filed a formal charge, and administrators at the University of Colorado were aware of these issues for over a decade without taking action. The plagiarisms attributed to Professor Churchill involve only a tiny fraction of his work and must be deemed insubstantial or even trivial, especially in light of other elite universities' repeated refusal to sanction truly egregious plagiarisms by eminent faculty members. Professor Churchill's actions could only be regarded as punishable misconduct for someone already defined as a political pariah and by an investigating body that had adopted an adversarial stance towards him.

They conclude:

Our concerns transcend the Churchill case altogether. The violations of standard scholarly practice within the Report compromise not only its own scholarly integrity but also the integrity of the protocols and principles that protect Academic Freedom. Allowing any faculty member to be fired on the basis of an investigative document so fundamentally compromised dangerously lowers the bar of due process and puts any professor at risk of arbitrary dismissal.

The second set of charges, filed by a predominantly Indigenous group of seven scholars and attorneys on May 28, 2007 (Exhibit D), affirms the validity of the allegations filed on May 10, and adds five additional charges. Its authors state:

[The] Report is long and obfuscatory, making it difficult to identify all of the many instances of fraud, fabrication, plagiarism and/or serious deviation from accepted scholarly practices contained therein. . . .

We focus on these [five] as specific examples of how the Committee, which included no American Indian/Indigenous scholars, attempted to suppress legitimate interpretations of Indigenous history with respect to smallpox epidemics by itself engaging in fabrication, falsification, and suppression of evidence. Each of these instances is significant in its own terms. Furthermore, when considered together with the allegations filed on May 10, 2007, we believe they demonstrate a consistent pattern of deliberate misrepresentation intended to discredit Professor Churchill’s larger body of scholarship which has been recognized by numerous American Indian/Indigenous studies programs and scholars across the United States and Canada as articulating Indigenous perspectives.

Because the problems noted in these complaints undermine the credibility of the Investigative Report, these two groups of professors called on the University to retract it. In addition, the Board of Governors of the Colorado Conference of AAUP Chapters requested that no disciplinary action be taken against Professor Churchill until the complaints have been thoroughly investigated. (See Exhibit E).

Additional charges of research misconduct against members of the Investigative Committee for false and misleading statements made in the Report are documented by Professor Churchill in Exhibits F and G. And, finally, CU Professor Thomas Mayer has examined and debunked the so-called plagiarism charges against Professor Churchill. After analyzing each charge, Professor Mayer concludes that the “plagiarism charges against Professor Churchill are superannuated, unproven, substantially inconsequential, and either wrongheaded or misdirected.” (See Exhibit H).

Although a few of the errors pointed out in the research misconduct complaints against the Committee have been acknowledged by Investigative Committee Chair Mimi Wesson, she has done nothing to correct the public record. The SCRM has referred both research misconduct complaints for initial investigation, but University officials have not acknowledged the challenge they pose to the legitimacy of the recommendation to dismiss Professor Churchill. Again, this illustrates that the University’s motivation in this matter has nothing to do with concerns about academic integrity, and everything to do with finding a pretext to fire Professor Churchill.

C. The Charges Have Been Grossly Exaggerated

Most of the charges against Professor Churchill have ultimately been dismissed. Those that remain are narrow claims about contested historical facts or unspecified standards of author attribution. The University has characterized them as “plagiarism” or “falsification/ fabrication of evidence” but, in fact, those labels are inappropriate and intentionally misleading.

1. SCRM Investigative Committee’s Findings

* The first two allegations addressed in the Investigative Report concern Professor Churchill’s summaries of the impact on native peoples of two federal laws, the Allotment Act and the Indian Arts and Crafts Act. In its 20-page analysis, the Committee acknowledged that his conclusions may be correct, but criticized the nature of his citations and faulted him for having failed to publish a response to a particular critic. On the Allotment Act the Committee again acknowledged that Professor Churchill was essentially correct and his accuser generally incorrect. However, the Report accuses him of getting the details wrong, despite the fact that he wrote only a few paragraphs on the subject and, thus, did not address any details. For this he is charged with falsification.

* The third charge concerned Professor Churchill’s statement that there is “strong circumstantial evidence” that John Smith introduced smallpox among the Wampanoags in the early 1600s. The committee took it upon itself to decide that this was an “implausible” conclusion and that, therefore, he had not cited to enough circumstantial evidence. This is characterized as both falsification and fabrication.

* Professor Churchill’s two paragraph statement that in 1837 the army deliberately spread smallpox among the Mandans at Fort Clark generated 44 pages of analysis on the fourth allegation. While basically affirming his conclusions, the Committee expressed displeasure with the nature, thoroughness and, in some cases, the sources of his citations. Although numerous

scholars have made the same general point without any citation, Professor Churchill was charged with falsification, fabrication, and deviation from accepted reporting practices.

* The fifth charge involved the use of material from a pamphlet circulated by a long-defunct environmental group called Dam the Dams, whose representative stated he was happy to have the article used. In his initial use, Professor Churchill gave Dam the Dams co-authorship credit and presented uncontested evidence that this credit was removed by the magazine's publisher. In all subsequent use of the material, he credited Dam the Dams in his footnotes. For this he was charged with plagiarism.

* The sixth allegation asserted that Professor Churchill plagiarized an article he had ghostwritten for Rebecca Robbins. The Committee concluded that he had not plagiarized it, but that having allowed a junior scholar to take credit for the original piece was a failure to comply with established standards of authorship attribution. It reached this conclusion despite the fact that ghostwriting is common practice and the committee could point to no rule or standard that had actually been violated.

* Finally, with respect to the seventh allegation, the Committee concluded that Professor Churchill had committed plagiarism by not preventing portions of an essay written by Fay Cohen to be published under the name of an Institute of which he was a co-founder, in a volume edited by a third person. The fact that his role consisted only of copy-editing the volume, that Professor Cohen never complained to the publisher, and that she acknowledged having been solicited by CU's law dean David Getches to make this complaint were deemed irrelevant. Neither Professor Cohen nor the Dalhousie University report on the matter has ever accused Professor Churchill of plagiarism; the closest that report came to doing so was its statement the Professor Churchill has "some" involvement in the process. Thus, the claim that Professor Churchill plagiarized Fay Cohen's material is simply not supported by the record.

After having gone through thousands of pages of Professor Churchill's writings and actively solicited research misconduct complaints, these seven charges were all that remained as the basis for the Investigative Committee's findings of research misconduct and then-Interim Chancellor DiStefano (acting as both complainant and sentencing judge) to recommendation that Professor Churchill be fired.

2. P&T Appeal Panel's Findings

The Investigative Committee's findings were subjected to scrutiny by a P&T Appeal Panel. The Panel again included no American Indians or American Indian Studies experts, and it did not consider new evidence on the contested facts. Nonetheless, this Appeal Panel significantly narrowed the grounds upon which the University could consider sanctioning Professor Churchill.

First, the Panel concluded that but for Professor Churchill's constitutionally protected speech, the research misconduct investigation and recommendation to dismiss would not have occurred. Despite recognizing the illegitimate origins of the investigation, however, the Panel proceeded to make its own assessment of its results.

The Appeal Panel acknowledged that the standards by which Professor Churchill's work were to be judged were not made explicit while he was engaging in the scholarship, nor even during the investigation. It found *no* evidence that ghostwriting is explicitly prohibited by *any* standards in any discipline. It concluded that "mistakes" were or may have been made in the SCRM's failure to abide by its rules on confidentiality, in its failure to inform Professor Churchill about bias

exhibited by Investigative Committee chair Mimi Wesson, and its refusal to grant Professor Churchill an extension of time to respond to new allegations.

The Panel *rejected* the Investigative Committee’s conclusions that Professor Churchill “fabricated or falsified evidence” concerning (i) the General Allotment Act, (ii) the Indian Arts and Crafts Act, (iii) John Smith’s role in spreading smallpox among the Wampanoags, (iv) the Army’s intentional spreading of smallpox at Fort Clark, and (v) the Army’s storing, rather than distributing, of smallpox vaccine. It also determined that the Investigative Committee “exceeded its charge” in two instances.

Yet three members of the Panel recommended that Professor Churchill be demoted and suspended without pay for one year, and two that he be dismissed, based solely on their findings that Professor Churchill:

- (1) failed to provide evidence sufficient to convince them that
 - (a) the place from which smallpox blankets were obtained was an *infirmary*;
 - (b) *an Army doctor or post surgeon* was the one who told the Mandans to scatter; and
 - (c) *400,000*, as opposed to possibly 300,000, people ultimately died as a result of the 1837 epidemic in question;
- (2) cited to material he has consistently acknowledged to have ghostwritten;
- (3) published an article in *Z Magazine* in which the editors deleted his insertion of “Dam the Dams” as a co-author; and
- (4) copy edited a piece (in a book edited by a third party) which, unbeknownst to him, plagiarized Fay Cohen.

These charges—characterized as falsification and fabrication of evidence, failure to meet established standards of author attribution, and plagiarism, i.e., conduct falling below minimum standards of professional integrity—are the only remaining basis upon which the University’s demand that Professor Churchill be fired rest.

V. President Brown’s Recommendation Is Not Justified by the Findings

As noted above, even the minimal findings of wrongdoing resulting from this investigative process have been thoroughly discredited by numerous scholars with actual expertise in the field of American Indian Studies. However, even *if* they were true, they simply do not constitute adequate basis for the dismissal of a tenured full professor.

The investigation of Professor Churchill’s scholarship was initiated directly in response to external pressures resulting from his constitutionally protected speech. All of the allegations investigated were solicited by University administrators. The investigation was conducted by a committee which was not only biased but unfamiliar with the subject area. Rather than investigating whether Professor Churchill’s work comported with accepted practices in his discipline, the Committee retroactively applied an apparently random—and in some instances invented—set of “standards” to which no other member of the CU faculty has ever been held.

After subjecting Professor Churchill to more than two years of defending himself against a barrage of allegations, four highly contested and very technical charges are all that remain. Except in blatantly discriminatory cases, such charges have never been considered adequate grounds for termination of a tenured faculty member at any institution of higher education in this country. To say that a prolific scholar can be dismissed, demoted or suspended for minor factual

disagreements between an investigative Panel and an author, for citing to admittedly ghostwritten material, and for the errors of other editors—especially in a “research misconduct” investigation that is acknowledged to have only occurred as a result of the scholar’s First Amendment-protected speech, and in which confidentiality rules were deliberately violated—completely eviscerates the principle of Academic Freedom and the Constitution’s guarantees of equal protection and due process.

In this case, a majority of both investigative bodies recommended *against* dismissal. Yet former Interim Chancellor DiStefano, who served as complainant, administrative overseer, and judge, recommended dismissal based upon the Investigative Committee’s Report. President Hank Brown has similarly overridden the recommendations of the P&T Appeal Panel to recommend dismissal.

President Brown’s recommendations to this Board of Regents reflects the failures to comport with established procedures and fundamental fairness that have characterized this entire process. Without any expertise in the field, he simply rejects certain of the conclusions reached by the P&T Appeal Panel, reiterates the findings of the SCRM Investigative Committee, overlooks the criticisms of the Investigative Report presented by the P&T Appeal Panel and four pending sets of research misconduct charges, completely disregards all of the substantive and procedural deficiencies found in the record, and proceeds to recommend the most severe sanctions available. This recommendation is not justified, even by the most charitable interpretation of the results of a biased internal process. His recommendation to dismiss is simply the culmination of a deliberate campaign to fire Professor Churchill in response to political and financial pressure, and retaliation for his protected speech.

VI. The University Has Capitulated to Political and Financial Pressure

The efforts of University officials to obscure the political nature of this campaign to discredit and terminate Professor Churchill by engaging in a protracted “research misconduct investigation” have resulted, predictably, in a complex paper trail of accusations and rebuttals. They hope, no doubt, to have generated enough smoke to convince this Board of Regents, as well as the general public, that there must be an underlying fire. Nonetheless, despite the best efforts of CU administrators and the local media, academics, scholarly and activist organizations, and concerned individuals nationally and internationally have seen through this charade.

The question remains, however: why would the administrators of the University of Colorado go to such extraordinary lengths not only to sanction Professor Churchill for his views, but to ensure maximum publicity – e.g., by announcing press conferences and releasing their “reports” at each step of the process? By taking this route, University officials have not only risked liability for violating their legal obligations but have squandered hundreds of thousands of dollars of public funds and brought CU into academic disrepute among hundreds of the country’s most renowned scholars (see Exhibits I, J, and K), and generated protest from hundreds of CU students (see Exhibit L).

Across the country, there have been many cases in which a professor’s work or statement has become the subject of political controversy. Almost without exception, when university administrators have taken a clear but firm position supporting Academic Freedom, the furor has died down within a few days, or perhaps weeks. Yet CU officials did exactly the opposite, fueling the publicity by continuously catering to the media. What prompted this course of action?

Clearly, it was not concern for “academic integrity.” The fine-tooth combing of Professor Churchill’s work yielded only a few flimsy charges of research misconduct which have been

misleadingly labeled as “plagiarism” or “falsification/ fabrication of evidence.” Similar, if not more egregious, charges could be brought against virtually any CU faculty members who has published regularly if their work were subjected to similar scrutiny. Yet the University has not embarked on such a quest in the name of maintaining scholarly standards.

It has now been established that CU administrators did *not* independently receive allegations against Professor Churchill but, instead, actively solicited them. What prompted them to go to such extreme efforts to find a justification for his dismissal? The only reasonable explanation appears to be external political and financial pressure on the University, pressures which appear to have led CU officials to directly violate this Board of Regents’ stated Laws on Academic Freedom.

The Laws of this Board of Regents, Article 5, Part D.1(B), define Academic Freedom as

the freedom to inquire, discover, publish and teach truth as the faculty member sees it, *subject to no control or authority save the control and authority of the rational methods by which truth is established. . . .*

Article 5.D.2 states:

(A) Faculty members have the responsibility to maintain competence, exert themselves to the limit of their intellectual capacities in scholarship, research, writing, and speaking; and to act on and off the campus with integrity and in accordance with the highest standards of their profession. *While they fulfill this responsibility, their 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.*

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

In March 2005, representatives of the University of Colorado approached Professor Churchill about the possibility of a settlement in exchange for his voluntary retirement. At that time, Professor Churchill responded that he would be willing to retire for a very nominal sum, but only if the Regents would unequivocally reaffirm their own laws on Academic Freedom. This condition was flatly rejected and soon thereafter the University announced that, rather than work out a settlement, it would commence its “research misconduct” investigation.

University officials have been understandably reluctant to divulge their real motivations for this seemingly irrational course of conduct. However, it is apparent that the University has come under considerable political and financial pressure to fire Professor Churchill, regardless of the costs entailed. It is also clear that the University has done everything *except* fulfill its mandate under the Regents’ Laws to “resist to the utmost such pressures or interference.”

As noted above, beginning in early February 2005, the University came under intense political pressure from then-Governor Bill Owens, as well as from members of the state legislature, to fire Professor Churchill. Colorado legislators considered making CU funding contingent on the University’s response to this case. Then-Congressman Bob Beauprez (whom many assumed would be the next governor), boasted about having discussed the Churchill matter with President

George W. Bush aboard Air Force One. Rightwing politicians across the nation, including former New York Mayor Rudy Giuliani, joined in the condemnation of Professor Churchill and his views.

The initial burst of public attention was intensified and dramatically prolonged by the manner in which CU officials continuously fed the media. This, in turn, fueled various organizations to pressure the University into dismissing Professor Churchill. In response to requests filed under Colorado's Open Records Act, the University has produced tens of thousands of pages of e-mail and other correspondence. Many of these were clearly part of campaigns orchestrated through churches and workplaces.

A large percentage of the communications urging the University to fire Professor Churchill include threats to withhold donations "until" he has been removed. While many others urge the University to drop its investigation of Professor Churchill and uphold the principles of Academic Freedom and the First Amendment, these almost never include threats of financial retaliation should he be fired. During this time, the *Denver Post* reported that the Daniels Fund was "withholding" a \$400,000 grant to CU pending resolution of various issues. At that time, Hank Brown (now President of CU) was on the board of the Fund. Various other threats from large donors, or potential donors, have been documented. It is clear that CU's strategy of continually publicizing the status of the various "investigations" into Professor Churchill's work was designed, at least in part, to assuage select sectors of its perceived "constituency."

In turn, the heightened publicity—*none* of which was initiated by Professor Churchill—propelled this case into the national spotlight, where it became symbolic of the struggle over who controls higher education. Various neoconservative organizations—many of them linked through funding from a network of rightwing foundations such as Bradley, Olin, Scaife, and Castle Rock (Coors)—used this case to further their campaigns against the "liberal bias" of universities and, particularly, to eliminate ethnic, gender, and peace studies programs, as well as affirmative action and diversity more generally.

A conspicuous player in this network is the American Council of Trustees and Alumni (ACTA), founded by Lynne Cheney, and allied with groups such as the Federalist Society, the Cato Institute, and David Horowitz' Center for the Study of Popular Culture. As stated on its website and in its publications, ACTA's strategy is to enlist trustees (regents) and alumni to bring political and financial pressure to bear on universities and the "best way to reach trustees is through the governors and state leaders."

In May 2006, with the SCRM Investigative Report on the Churchill case forthcoming, ACTA published a study entitled "How Many Ward Churchills?" Pointing to courses and departments which focus on "race, class, gender, sexuality, . . . globalization, capitalism, . . . and the destruction of the environment," the report concludes that "Ward Churchill is everywhere."

ACTA has a strong base in Colorado and, particularly, at CU. Former Governor Bill Owens was a leader of ACTA's Governors Project and hosted an ACTA conference for all trustees in Colorado. Regent Tom Lucero is known as a strong ACTA supporter, and current ACTA chair Jerry Martin was formerly chair of the CU-Boulder Philosophy Department. Although current CU President Hank Brown was a founding member and continuing associate of ACTA, he refused to recuse himself from making a decision in this case. Recently, President Brown appointed Michael Poliakoff as Vice President for Academic Affairs and Research. Mr. Poliakoff, who comes to CU from Hillsdale College, authored an influential ACTA report and is described as one of ACTA's "friends in high places."

While the extent of political and financial pressure brought to bear on the University to fire Professor Churchill may never be fully exposed, it is clear that CU administrators have been subjected to a great deal and, in response, have chosen to sacrifice both Academic Freedom and Professor Churchill's rights.

VII. The Regents Should Reinstate Professor Churchill

As noted above, in February 2005, this Board of Regents issued a public "apology" for Professor Churchill's statements concerning possible ties between U.S. policy and the attacks of September 11, 2001, and authorized the initial inquiry into *all* of Professor Churchill's public writings and speeches. Realizing that Professor Churchill could not be fired for constitutionally protected speech, that inquiry was quickly transformed into the "research misconduct" investigation which, quite predictably, led to the recommendation to dismiss currently before this Board.

Given this Board's direct involvement in initiating this process in response to speech acknowledged by all to have been protected by the First Amendment, as well as early public statements made by certain members of this Board, as a preliminary matter Professor Churchill requests that the Regents of the University of Colorado collectively recuse themselves from making this decision and, instead, provide for the appointment of a neutral body of qualified external experts to assess the evidence. Should that be request be denied, Professor Churchill requests that each member of the Board of Regents who has been biased against him during this process, who has created the appearance of bias by virtue of his or her statements or actions, or who is affiliated with ACTA, recuse him/herself from this vote.

Section II provided a brief summary of a record which has been made unnecessarily complicated by the University's attempt to disguise a politically motivated termination as an inquiry into Professor Churchill's scholarship. Nonetheless, the facts demonstrate that the actions taken against Professor Churchill by the University of Colorado violate not only the U.S. and Colorado Constitutions, but also the principle of Academic Freedom, the Laws of the Regents, and the rules and policies of the University of Colorado. For all of the reasons stated herein, the Regents should reject CU President Hank Brown's recommendation to fire Professor Churchill.

The actions of CU administrators in this case have done grave harm to Professor Churchill, to this University and the educational principles it purports to uphold, and to the taxpayers of the State of Colorado. The responsibility for these actions now rests with this Board of Regents. The Regents, too, can yield to the political and financial pressures to fire Professor Churchill in the name of transparently pretextual "research misconduct" charges, or they can reverse this process and begin to restore the University's commitment to its true educational mission.

Exhibits

- A. Curriculum Vita of Professor Churchill
- B. Open Letter from Department of Ethnic Studies
- C. May 10, 2007 Research Misconduct Complaint against Investigative Committee
- D. May 28, 2007 Research Misconduct Complaint against Investigative Committee
- E. Letter from Colorado Conference of AAUP Chapters to President Hank Brown
- F. Research Misconduct Complaint against Professor Michael Radelet and Investigative Committee
- G. Research Misconduct Complaint against Professor Marjorie McIntosh and Investigative Committee
- H. Professor Thomas Mayer, "The Plagiarism Charges Against Ward Churchill"
- I. Open Letter from Concerned Academics [NYRB]
- J. Petition of Teachers for a Democratic Society
- K. Select Letters, Statements and Resolutions from Scholars
- L. Petition from CU Students