

The Myth of Academic Freedom: Experiencing the Application of Liberal Principle in a Neoconservative Era

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The University of Colorado was created and is maintained to afford men and women a liberal education in the several branches of literature, arts, sciences, and the professions. These aims can be achieved only in an atmosphere of free inquiry and discussion, which has become a tradition of universities and is called "academic freedom." For this purpose, "academic freedom" is defined 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. Within the bounds of this definition, academic freedom means that members of the faculty must have complete freedom to study, to learn, to do research, and to communicate the results of these pursuits to others. The students likewise must have freedom of study and discussion. The fullest exposure to conflicting opinions is the best insurance against error [. . .]. All members of the academic community have a responsibility to protect the university as a forum for the free expression of ideas.

—Laws of the Regents of the University of Colorado
Article 5, Part D: Principles of Academic Freedom¹

It would be difficult to improve upon the articulation of principle just quoted, especially since the statement goes on in the following subsection to state that, "[f]aculty members have a responsibility to [. . .] exert themselves to the limit of their intellectual capacities in scholarship, research, writing, and speaking" and that, "[w]hile 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."² In sum, "[f]aculty members can

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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 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."³

The elegance with which words are deployed in these passages, as well as the loftiness of institutional posture these words describe, is undeniable. Unmatched by performance, however, such verbiage is at best meaningless. More likely, some active form of subterfuge is involved. As a rule, exploration of the gulf separating rhetoric⁴ from reality stands to shed considerable light upon the actualities—as opposed to the mythologies—of institutional character. The matters addressed below devolve mainly upon how officials at the University of Colorado-Boulder (UCB or “CU”), including most especially the Board of Regents whose “Laws” are quoted above, comported themselves the very first time their willingness to defend the principle of academic freedom was subjected to a serious test, how the situation at UCB fits into a broader pattern of intellectual/scholarly repression currently evident in the United States, and the implications of this situation for the academy as a whole.

Experiencing the Liberal Dimension of the Liberal Arts

On July 2, 2004, I was contacted by Nancy Rabinowitz, director of the Kirkland Project for the Study of Gender, Society and Culture at Hamilton College, in upstate New York, for purposes of arranging my delivery of a public lecture on that campus at some point during the academic year.⁵ After a brief discussion, it was agreed that I would do so on February 3, 2005, in conjunction with Susan Rosenberg, a former political prisoner whose sentence had been commuted by Bill Clinton towards the end of his presidency⁶ (Rosenberg had been contracted by the Project to teach a course on memoir writing during the spring semester).⁷ At the time I entered into the arrangement, although it would not have altered my decision, I was unaware that the Kirkland Project—a conspicuously left-leaning enterprise situated in an especially “conservative” area of upstate New York—had been targeted for elimination by a small circle of reactionary faculty members working in concert with off-campus organizations like David Horowitz’s Scaife/Olin/Bradley-funded Center for the Study of Popular Culture (CSPC, a subpart of which is Students for Academic Freedom) and Lynne Cheney’s American Council of Trustees and Alumni (ACTA).⁸ The latter overlaps heavily with a group of Hamilton graduates called Alumni for Governance Reform (AGR).⁹

In October 2004, a well-coordinated campaign was launched against the Project’s plan to employ Rosenberg. Spearheaded by a group calling itself the Rockland County Patrolmen’s Benevolent Association, spokespersons for the offensive contended that Rosenberg had “no right to teach the youth of our county” because of her supposed record as a “terrorist” and “cop-killer.” Both labels referred

to her alleged “complicity” in a 1981 Brinks truck robbery in Nyack, New York, during which two policemen were shot to death, although she’d never been prosecuted, much less convicted, on any charge related to the incident.¹⁰ The publicity attending the campaign was sufficient to cause Rosenberg, who was still on parole at the time and could thus ill-afford to be saddled with such characterizations, to withdraw from her contract in early December.¹¹

Rabinowitz contacted me during this period, inquiring as to whether I, too, wished to cancel, given the climate prevailing on the Hamilton campus. Infuriated by what had already transpired, I declined unless specifically requested to do so by the Project. We agreed that in addition to my public lecture I would make a joint presentation, along with Natsu Taylor Saito,¹² a Georgia State University law professor, on the theme of ideological repression in the academy.¹³ At that point, I myself was apparently “taken under investigation” by the same clique who’d orchestrated the anti-Rosenberg initiative. By mid-to-late January, a political science professor named Theodore Eismeier had come up with a three-year-old op-ed piece on the Web site of an electronic journal, *Dark Night field notes*, in which I’d described the investment bankers, stock brokers, and other finance technicians killed in the World Trade Center on September 11, 2001, as “little Eichmanns.”¹⁴

The “story” first appeared in the Hamilton student newspaper on January 21, 2005, but was not picked up by the nearby *Syracuse Post-Standard* until the 26th.¹⁵ At that point, the storm broke quickly: On January 28, my analogy was the topic of an editorial in *The Wall Street Journal*¹⁶ and was featured that evening on the FOX News Network’s *The O’Reilly Factor*.¹⁷ For three straight nights, O’Reilly provided Hamilton President Joan Hinde Stewart’s e-mail address to his viewers, suggesting that they “let her know how [they] felt” about my scheduled appearance.¹⁸ That very night, threats on the order of killing me with “a fire ax to the back of the skull” began to pour in (I received well over a hundred within a week, and have no count on the number received by Hamilton).¹⁹ On February 2, O’Reilly was asked by *The New York Times* whether he felt himself to be in any sense responsible for what was happening, and he indignantly denied that he did.²⁰

By then, no less than New York Governor George Pataki had entered the fray, publicly demanding that Hamilton rescind its invitation.²¹ President Stewart responded with a statement to the effect that the college would “never compromise” its commitment to defend the principle of academic freedom.²² Nonetheless, Saito and I were each asked whether we wished to back out, given what appeared to be a steadily increasing potential for violence; we both declined to do so, professing ourselves unprepared to acquiesce in a “heckler’s veto” of our own or anyone else’s First Amendment rights.²³ The campus police thereupon initiated regular contact with me to coordinate security arrangements, and, as of January 31, I was still receiving assurances that everything would go as planned.²⁴

Late the following afternoon, just hours before Saito and I were slated to board our plane, Stewart abruptly pulled the plug, stating that she’d been left with no alternative because the number of

“credible death threats” received by her office indicated that “public safety [could] no longer be ensured.”²⁵ Given what I knew of the situation at the time, I was initially inclined to accept her explanation, even while disagreeing with her decision. That same evening, however, an exultant Bill O’Reilly, who’d been busily promoting the idea that Hamilton alumni should threaten to withhold financial contributions to the college unless my appearance was canceled, used the “Talking Points” segment of his program to offer an alternative scenario.

Hamilton College President Joan Hinde Stewart [says she] [canceled] the event because the college received, in her view, “credible threats of violence.” Were those “threats” the primary reason for the cancellation? Maybe. But Stewart must realize that donations to the college would plummet, and so would her job security. The truth is that Hamilton is home to radical professors, and is a troubled college.²⁶

As punctuation, CSPC head David Horowitz was trotted out to assert—contrary to the views expressed in the preceding segment by Hamilton student Matthew Coppo (whose father was killed in the WTC)—that funders were up in arms because the college functions as a “bastion of radicalism,” lacking “intellectual diversity,” a matter evidenced by the “fact” that “students can identify only one conservative faculty member” on the entire campus.²⁷ Asked how that could be, since he himself had been invited to speak at Hamilton in both 2002 and 2004, Horowitz replied that he’d been brought to campus by otherwise “unrepresented” conservative students. “It’s not like the faculty brought me up there,” he declaimed, apparently forgetting that his own blog recounted how his earlier visit was sponsored by Maurice Isserman, a Hamilton history professor, and that Horowitz had remarked at the time that the college “scores better than your average school in terms of faculty views.”²⁸

Far more convincing support to O’Reilly’s primary thesis would soon be provided by Hamilton’s avowedly liberal president herself, however. On February 2, Rabinowitz and I discussed our options by phone. She inquired whether, under the circumstances, I’d be willing to appear at some later date—“once the smoke [had] cleared a bit”—or, in the alternative, deliver my lecture and engage in Q&A by way of a videoconferencing hook-up. I agreed to do whichever she preferred. It was decided that she would consult with the faculty and students, meanwhile sending my honorarium (standard practice when an institution unilaterally cancels an engagement, especially when the cancellation occurs at the last moment).²⁹ This she did on February 3, and I deposited the check on the 10th. On the 11th, I received an urgent phone call from Rabinowitz, informing me that she’d been removed from her position directing the Kirkland Project—which she’d cofounded—and that Stewart had ordered a stop-payment on my check.³⁰

On February 12, I phoned Stewart seeking an explanation. She dissembled, saying that she “understood [my] position,” and had “no intention of not paying” me, but, because the Project had been “taken under review,” she herself was obliged to “exercise due diligence” in

the matter. No explanation was provided regarding what was meant by the latter term, and Stewart declined to discuss either the circumstances of Rabinowitz's removal³¹ or the disposition of my offer to make the contracted presentation via satellite feed, but she did say she'd "be in touch within thirty days" concerning the status of my check. That was the last I ever heard from Joan Stewart. Not only did she herself never contact me or delegate the task to a subordinate, she remained perpetually "unavailable" to take my calls.

In mid-April, long after even members of AGR had begun to question the ethics underlying Stewart's stop-payment order,³² I retained an attorney to resolve the situation. He was referred to Hamilton's legal counsel, Henry Kaufman, who asserted that I'd "severely embarrassed" the college, with the effect that it had been forced to postpone a major capital campaign until such "damage" had been repaired.³³ Notwithstanding Stewart's previous cant, her posture was now framed by her own attorney as a gesture of appeasement to the reactionary sentiments of potential contributors offended by my views. Kaufman did acknowledge that the legality of her stopping payment on my check was dubious at best, however, and suggested that if I were willing to sign a "confidentiality agreement" on the matter, he would authorize its (re)issuance.³⁴ I flatly rejected the proposition. It was not until September, amidst a court-ordered mediation process, that Stewart finally conceded that Hamilton's obligation to make good on its debt entailed no reciprocal obligation on my part to collaborate in a pretense that it hadn't.³⁵

Meanwhile, the Kirkland Project was placed in receivership and, despite the adoption of a noticeably more conservative signature than its founders intended, has never regained its full operational capacity. Needless to say, no effort has been made to reschedule my appearance, either "live" or on screen, nor has mention been made of rescheduling Saito—whose appearance, after all, was canceled right along with mine—or any other substantive figure on the left. The AGR, openly backed by ACTA, made a serious run at taking over Hamilton's Board of Trustees in late summer 2005, and, although its own nominees were uniformly rebuffed,³⁶ appears to have succeeded in pushing that august body much further to the right. To all appearances, the small clique of genuinely right-wing faculty who were the primary instigators of the "controversy" have prevailed.³⁷ One assumes that the texture of campus life and discourse is now more to their liking.

What of Hamilton's staunchly liberal president? Obviously, she was placed in an exceedingly difficult position by a confluence of circumstances largely beyond her control, and it must be admitted that in all likelihood the expedients to which she has resorted will ensure not only that the college will "survive," but that she herself will remain at the helm for some "respectable" interval. The price paid, however, has been the proverbial bedrock upon which any liberal arts college worthy of the name must stand. The principle of academic freedom, which Stewart claimed at the outset she would never compromise, has ultimately been not so much negotiated as scuttled under her leadership. In its stead, she has substituted a realpolitik wherein neocons waving checkbooks dictate what must, and what cannot, be said on campus. Like the anonymous Army major who

famously explained why he'd ordered the Vietnamese town of Ben Tre to be leveled during the 1968 Tet Offensive, Joan Stewart has proven herself willing "to destroy the [college] in order to save it."³⁸

The Ward Churchill Factor

Bill O'Reilly announced Stewart's cave-in as a personal triumph and, by February 4, with commentators like Sean Hannity, Rush Limbaugh, and Joe Scarborough happily piling on, had taken to exulting that my talks were being "[canceled] on campuses all across the country."³⁹ In actuality, the only cancellations came from the newly minted—and ostensibly First Amendment-oriented—Wayne Morse Center for Law and Politics at the University of Oregon (by which I'd been invited to participate in a panel convened to celebrate its opening),⁴⁰ archetypally liberal Antioch College (where I'd been invited at the request of the students to deliver the 2005 commencement address),⁴¹ and Eastern Washington University (EWU), where President Stephen Jordan followed Stewart's lead, citing "public safety concerns" as a pretext for issuing a decree withdrawing my invitation to speak.⁴² In contrast to Stewart's, however, Jordan's motive turned out to have devolved upon the crassest sort of self-interest rather than worries over his institution's financial future.⁴³ This cancellation, moreover, was not sustained.

Jordan's action prompted a unanimous demand by the faculty senate that he immediately reverse his decision and several large protest demonstrations when he refused to do so.⁴⁴ The EWU Native American Students Association (NASA), which had invited my appearance in the first place, also joined me in seeking a mandatory restraining order against Jordan and the university's board of trustees in federal court.⁴⁵ In the end, NASA, solidly backed by the faculty and a range of other student groups, simply ignored Jordan, brought me to campus as scheduled on April 5, and I delivered the originally contracted lecture as well as a brief speech on the university commons. Both talks were well-attended and -received, and, despite a paucity of police assigned to protect those for whose safety Jordan had professed such great concern, there was not only no violence, but the events were quite orderly (indeed, the only noticeable heckler at the outdoor rally—there were none at the indoor lecture—was an out-of-state import who'd been following me from place to place).⁴⁶

On my own Boulder campus, an ad hoc coalition of student organizations formed in my support and reserved the student center's Glen Miller Ballroom in order that I might deliver an address to the student body on February 8. Barely twenty-four hours before the event, Interim Chancellor Philip DiStefano, like Stewart a purported lifelong liberal, peremptorily "postponed" the event, expressing the standard "concern for public safety."⁴⁷ As would be the case at EWU, the students and I—in this instance joined by community representatives—filed a motion for injunctive relief in federal court.⁴⁸ Thus pressured, DiStefano abruptly reversed himself on the morning of the 8th and my talk was delivered as originally scheduled. This being my first opportunity to speak publicly since the "controversy" began, I provided my own contingent of twenty-five security personnel

from the American Indian Movement of Colorado (Colorado AIM) to augment the twenty-odd university police officers assigned to the event.⁴⁹ Such precautions proved quite unnecessary, however, as there was no hint of violence, or even disruption. Instead, the more than 1,500 people who attended were both orderly and overwhelmingly supportive.⁵⁰

The same turned out to be true, albeit on a smaller scale, at the University of Wisconsin's Whitewater (UWW) campus on March 1. Although O'Reilly mounted a concerted effort to force cancellation of my talk there—first bringing on reactionary state legislator Steve Nass to denounce the “irresponsibility” of the university’s “use of taxpayer dollars” to sponsor a lecture by “a guy who hates America,”⁵¹ then Horowitz (again), and finally Wisconsin’s former Republican governor, Scott McCallum, to “explain” why his Democratic successor, Jim Doyle, had not joined New York’s Pataki and Colorado’s Bill Owens in publicly demanding that I be removed from the academy altogether⁵²—UWW Chancellor Jack Miller held firm.⁵³ The event itself, which occurred as scheduled, proved almost anticlimactic. Although security was tight—twenty-five to thirty police were deployed to control an audience of 450 (and a couple-hundred rather polite protestors gathered outside)—the only actual disturbance was caused by media personnel, several dozen of whom literally swarmed my vehicle as I entered and left the building.⁵⁴

By early March, it was clear that O'Reilly's campaign had backfired from the outset, at least among people inclined to treat the principle of academic freedom as something more than a handy catch-phrase. On February 5—that is, the morning after it was first triumphantly announced on *The O'Reilly Factor* that my lectures were being canceled and, in part, as a direct response to such gloating—I was contacted by faculty members at the University of Hawai'i, who wanted to know if I'd be willing to speak there. Within days, more than a dozen sponsoring units had pooled resources to bring me to campus, where I spoke in conjunction with an appearance by veteran activist Yuri Kochiyama on February 22.⁵⁵ Not only were there no disturbances at the heavily attended/lightly guarded event, but, as a plainly distraught O'Reilly whined the following evening, “The University of Hawaii embraced Churchill [. . .] and the audience [of about a thousand] gave him three standing ovations, while outside just a few demonstrators spoke out against this misguided individual. What is wrong at UH? This is disgraceful.”⁵⁶

In addition to this event, and the already-discussed pair of talks at EWU on April 5, I was invited to speak at University of California, Berkeley on March 28,⁵⁷ at Reed College on April 16,⁵⁸ at Pitzer College on April 25,⁵⁹ and at California State University, Monterey Bay on May 2.⁶⁰ Several other potential engagements were declined due to time constraints. In each case, the initiative to bring me to campus came from students and faculty of color, often with the active involvement/support of white radicals.⁶¹ Only at Whitewater did someone who might be accurately described as a liberal, albeit a black one, refuse to back down in the face of political pressure, although in no case was the vaunted “threat of violence” realized in even a minor way. Hence both the spurious nature of the “public safety issue” and the cynical manner in which liberal educators were

trotting it out to disguise a collective scuttling of their oft-professed “enlightenment ideals” in the face of explicitly anti-intellectual forms of coercion had become transparently obvious by early May.⁶²

Equally apparent was the fact that the constituencies of color and white radicals who had, somewhat paradoxically, coalesced around such liberal values as academic freedom while the liberals themselves capitulated, were quite capable of realizing an agenda ensuring free speech on campus, irrespective of efforts by administrative accommodationists to prevent it.⁶³ Despite his devotion of, by my count, forty-one consecutive nightly segments to me⁶⁴—in the process making himself look so foolish that his program had come to be laughingly referred to as *The Ward Churchill Factor*—O’Reilly had quite spectacularly failed to achieve the exemplary silencing he’d trumpeted as a *fait accompli* in early February. No longer able to crow about how “*The Factor* could influence the national discourse” in this respect,⁶⁵ he was by and large reduced to a role in the media support cast seeking to enhance the University of Colorado’s “internal” drive to oust me from my tenured professorship.

On the Home Front

Attempts by the extreme right to bring about the firing of selected faculty members at the University of Colorado are nothing new. In 1925, when the then-Klan-controlled state legislature issued a threat that the institution would no longer be “subsidized by the taxpayers” unless it rid itself of Jewish and Catholic professors, University President George Norlin flatly refused to comply. The Klan actually did cut off public funding for a year, but the University weathered the confrontation rather well, largely because of support garnered from the clarity of principle embodied in Norlin’s stand.⁶⁶ Things had become much fuzzier by the early ’50s, when the FBI, investigators from Joe McCarthy’s Senate committee, and an ambitious Republican governor named Daniel Thornton all showed up at once. Beginning in 1951, University President Robert Stearns engineered the purge of eleven junior faculty members accused by the Bureau of having “subversive” links.⁶⁷ In 1954, however, with McCarthy himself safely neutralized by the Senate, Stearns suddenly discovered his spine, declining even to notify another junior faculty member that he’d been targeted for elimination by both the FBI and Governor Thornton.⁶⁸

Since then, UCB has gone to great lengths to distance itself from its 1951 “lapse.”⁶⁹ Not only has the glowing affirmation of academic freedom quoted at the outset of this essay been incorporated by the regents into their own “Laws,” but Norlin’s name has been bestowed upon the main campus library in appreciation for his preservation of UCB as a repository of “diverse ideas” during the crisis of 1925.⁷⁰ A yearly award by the alumni to the faculty or staff member whose performance most appropriately reflects Stearns’s 1954 defiance of McCarthyism has also been established, as has an annual “Thomas Jefferson Award” bestowed upon faculty and staff members whose contributions to the civic discourse are deemed especially worthy by the University itself (instructively, I’ve received both).⁷¹ Most ostentatiously, a “free speech area” outside the student union has been

named in honor of Dalton Trumbo, a one-time UCB student *cum* celebrated novelist/screenwriter who successfully resisted blacklisting by McCarthy.⁷²

As recently as 2002, a “lavish ceremony” was conducted during which then-University President Elizabeth Hoffman offered a formal apology to the late Morris Judd, by all accounts one of the brightest stars among the young academics purged in 1951, “creating a scholarship in his name” to mark the transcendence of that “sad era in CU’s history” his story signified.⁷³ As then-Executive Vice Chancellor Phil DiStefano solemnly intoned at the time, it was necessary both to “acknowledge the injustices of the past” and “renew our commitment to the ideals of academic freedom without fear of retribution,” a sentiment seconded by then-Regent Susan Kirk, who vowed that “we shall never again allow such transgressions of academic freedom.”⁷⁴ Come the first real test of these “commitments,” however, both the regents and UCB administrators scurried all but instantaneously in the opposite direction.

Indeed, the administration’s reflexive response to the right-wing media offensive launched on January 27 was to join in, with Interim Chancellor DiStefano immediately issuing a statement denouncing my analysis of 9/11—which he’d apparently not bothered to read—as being “abhorrent,” “repugnant,” and “hurtful to everyone effected” (rather substantial numbers of Arabs, Arab Americans, Muslims more generally, and those who support their rights as human beings were apparently counted as no one at all).⁷⁵ Within twenty-four hours, several members of the UCB Board of Regents had also weighed in, recording their collective “ire” that I had expressed the “truth as [I] see it,” even though that “truth” was predictably less than popular.⁷⁶ At least one of them went on to imply that my tenure should be revoked.⁷⁷

It is important to emphasize that these positions were taken, not in response to substantive pressure from the right, but purely in *anticipation* of it. The interim chancellor’s statement, for example, was released even before Colorado’s arch-reactionary Republican representative, Bob Beauprez, became the first member of Congress to demand my resignation;⁷⁸ three days before Governor Bill Owens, along with a “chorus” of the state’s Republican legislators, joined Beauprez in demanding that I resign;⁷⁹ four days before Owens, seeking no doubt to restore a bit of luster to his “moral” reputation, badly tarnished in the eyes of his “Christian Conservative” constituents by a festering adultery scandal,⁸⁰ made the first of several demands that I be summarily fired;⁸¹ and five days before both chambers of the Colorado legislature, not to be outdone by the executive branch, passed resolutions condemning me and commenced a round of threats about withholding some portion of the university’s annual budget—to which it contributes less than 7 percent of the total—unless I was “removed” posthaste from the faculty.⁸²

Faced with such bluster, the regents convened in an emergency session on February 3 to consider what might be done about a senior professor bold—or naïve—enough to have taken at face value their own black letter guarantee of a strong institutional defense against precisely the sort of thing that was happening.⁸³ Although their huddle

was cast as a “public meeting,” its first order of business was to arrest an undergraduate “disorderly” enough to attempt the reading of a brief statement on behalf of the roughly one hundred students in attendance.⁸⁴ That gesture of regental dedication to “the free exchange of ideas” complete, DiStefano got down to brass tacks, asking that the board defer action for thirty days while he and an ad hoc investigating committee composed of David Getches, the UCB Law School acting dean, and Todd Gleeson, dean of Arts and Sciences (A&S), determined whether I’d given voice to other views that “crossed” some undefined “line,” thereby bolstering the case for firing me on speech grounds alone.⁸⁵

This proposal was quickly accepted,⁸⁶ whereupon the regents proceeded to pass yet another official resolution purporting to apologize to the entire nation for my analysis of 9/11⁸⁷ and pronounced the meeting adjourned.⁸⁸ At that point, Shareef Aleem, a nonstudent Denver resident who’d attended the meeting in order to make a statement, and who’d sat quietly through the proceedings awaiting his opportunity to do so, inquired from the floor as to when, exactly, the board planned to hear public commentary. Several cops immediately converged on him in what they apparently expected would be a replay of the earlier “incident,” but Aleem was having none of it. When the police sought to lay hands on him, a sharp scuffle ensued.⁸⁹ Charged with felony assault on a police officer, Aleem faced up to sixteen years in prison, mainly for displaying the temerity of insisting that exercise of a citizen’s First Amendment right to petition the government is in no sense contingent upon the receipt of official permission to do so.⁹⁰

By and large, the thirty-day grace period obtained by DiStefano on February 3, although sold through the subterfuge of announcing an utterly illegitimate “investigative” predication,⁹¹ seems to have been intended to afford the administration time to work out a “resolution” of the issue without really addressing it. A typically liberal fix was undertaken through back-channel negotiations to buy out my tenure,⁹² an approach to which administrators apparently believed I might be receptive because of the willingness I’d displayed in relinquishing my position as chair of UCB’s Department of Ethnic Studies at the very outset of the “controversy.”⁹³ It undoubtedly came as an unpleasant surprise when they discovered that, while I was willing to consider early retirement in exchange for truly nominal compensation, my *quid pro quo* was that the regents publicly affirm the validity of the standard peer review process by which the quality of my scholarship had been vetted at each stage of my career, and—equally publicly—reaffirm their commitment to the principles of academic freedom articulated in their own laws.

Tellingly, it was the last point that proved to be a deal-breaker. Although a majority of the board were seemingly prepared to ante up even more money than the agreed-to amount, and to have UCB issue a statement confirming the integrity of the peer reviews I’d undergone over the years, they were unwilling to take any public position in defense of academic freedom.⁹⁴ Rather, under strong pressure from Owens and his stable of Republican legislators, they announced their intent to subject the entire system of tenure to a

comprehensive review.⁹⁵ Hence, although they papered things over with the public pretense that concern over a curiously timed accusation that I was guilty of plagiarism caused them to order negotiations broken off on March 11, their actual motives were decidedly different.⁹⁶ At that point, his thirty days having almost expired, no resolution in hand, and having really undertaken no investigation at all, DiStefano was forced to ask for what turned out to be a thirty-day extension in order to see what sort(s) of pretext might be drummed up for proceeding against me.⁹⁷

Meanwhile, on March 3, addressing an emergency session of the Boulder Faculty Assembly, President Hoffman warned that “a new McCarthyism” was afoot, pointing out that there was “no question that there’s a real danger that the group of people [who] went after Churchill now feel empowered.”⁹⁸ Although Hoffman sought to “balance” her warning with the assertion of a suddenly discovered “institutional need” to investigate my academic record on other than speech grounds, few of the faculty were convinced, either locally or nationally. Already, on February 25, nearly two hundred tenured UCB faculty members had taken out a full-page ad in Boulder’s *Daily Camera* “demanding that school officials halt their investigation of Ward Churchill’s work.”⁹⁹ On March 1, Angela Davis, a UC Santa Cruz philosophy professor, spoke on campus, expressing solidarity,¹⁰⁰ and, March 22, a full-page open letter endorsed by hundreds of scholars from across the country appeared in the *Camera* demanding that both the regents’ and the administration’s “gratuitous and inappropriate action[s]” be reversed.¹⁰¹ Still another full-page ad appeared in the *Camera* on March 25, this one sponsored by a group calling itself the “Ad Hoc Coalition in Support of Ward Churchill.”¹⁰²

By then, under heavy fire from the right for her observations on the resurgence of McCarthyism,¹⁰³ and having hardly endeared herself to the left by appearing to collaborate with it, Hoffman had resigned her presidency.¹⁰⁴ Although mine was by no means the only issue on the table—she’d already been rendered vulnerable by multilayered and protracted scandals in both the athletic department and the university foundation¹⁰⁵—her demise was undoubtedly catalyzed by a veritable *blitzkrieg* of hostile coverage of me/my “case” in the local media. Beginning with an extravagantly misleading headline announcing that UCB’s “Students want Churchill out” on January 30,¹⁰⁶ over four hundred such stories appeared in the four major print sources in the Denver metro area—three of them already owned by the same parent corporation, and the fourth acquired since—in barely sixty days.¹⁰⁷ Simultaneously, Clear Channel’s local right-wing talk radio station KHOW initiated a de facto policy described by two of the more egregiously fact-impaired “hosts,” Dan Caplis and Craig Silverman, as “All Churchill, All the Time.”¹⁰⁸

In short order, all manner of academically irrelevant information about me was being published as “news”: my driving record since 1980, the number and types of vehicles I’d purchased over the past decade (along with speculation as to why); my credit history; the fact that I own a house; the opinions of an ex-wife and several former in-laws concerning my character; my family tree back to 1775 (according to

ancestry.com); recollections of my high school classmates and the won-lost record of my 1965 football team; the nature of my military service in Vietnam; a selection of my baby pictures, and so on.¹⁰⁹ For about a week, it was something of a fashion statement to dredge up one or another personal or political adversary to recount how at some point ten or twenty years ago, I'd supposedly phoned them in the dead of night to "intimidate" them with "threats of physical violence."¹¹⁰ Another week or so was devoted to blaring headlines about how I'd supposedly presented false information to the hiring committee in obtaining my faculty position.¹¹¹ There was no pause: the moment the falsity of one theme was exposed, reporters would simply drop it and move to the next.¹¹²

Coupled to this Westbrook Pegler-style smear campaign,¹¹³ the sleaziest aspect of which came down to sheer race-baiting,¹¹⁴ was a concerted effort by the press to find some basis upon which to discredit me in scholarly terms, thereby "assisting" the UCB administration in bringing formal charges of academic misconduct against me.¹¹⁵ The latter charade was begun on February 8 by Paul Campos,¹¹⁶ the decidedly undistinguished UCB law professor who doubles as a *Rocky Mountain News* columnist, when he not only took issue with my ethnic identity, but aired disagreements posted by two even more obscure "scholars" at other universities concerning a total of three conclusions I'd drawn at various points in my work. Campos then observed—falsely—that one of the pair, John LaVelle, a University of New Mexico law professor, had accused me of plagiarism.¹¹⁷ From there, the media's "critical scrutiny" of my scholarship quickly gathered momentum.¹¹⁸

Although the allegations thus drummed up were ludicrous,¹¹⁹ and evidence that I was solidly supported by both faculty and students at UCB was overwhelming¹²⁰—a matter confirmed as early as February 17 during an on-campus "town meeting" conducted by Boulder's Democratic state legislator, Ron Tupa¹²¹—DiStefano delivered his report on March 24, holding a press conference to announce that while his ad hoc committee had been forced to conclude that no disciplinary action could be taken against me on the basis of my writing and other "speech activities," it had, during the course of its "investigation," nonetheless "discovered" several instances in which it appeared that I might have transgressed various rules of scholarly comportment. These allegations, he said, would be forwarded to the faculty's Standing Committee on Research Misconduct (SCRM) for purposes of further review.¹²² In the event a SCRM subcommittee determined that a full investigation was warranted vis-à-vis any or all of the allegations, a process would be initiated which could ultimately result in my "termination for cause."¹²³

And although quite predictable, this administrative playing of both ends against the middle accomplished the desired result: Owens and his neoconservative cohorts were freed—at least temporarily—from having to defend the results of their blatantly anticonstitutional posturing in court,¹²⁴ while the self-styled civil libertarian set pitted against them could take themselves conveniently off the hook of their purported principles by pretending that the First Amendment had been duly vindicated.¹²⁵ The latter in particular seemed avid to avoid the glaringly obvious conclusion drawn by columnist Mike Littwin:

OK. Now here's the real outrage. If you read the report—and I've read it three times—you wonder why we ever got this far. Churchill would never have been investigated without the "little Eichmanns" line. And, as the report makes clear, there should never have been an investigation over the "little Eichmanns" line. This should not have been a close call.¹²⁶

As Littwin went on to point out, DiStefano's subterfuge extended even to the claim that he and his ad hoc committee had themselves "discovered" the instances of supposed research misconduct he'd forwarded to the SCRM. In fact, most of them "were known, or should have been known, to the university for years,"¹²⁷ and none had been considered credible from a normal institutional/scholarly standpoint.¹²⁸ In a classic example of "trial by news media," only those matters that had been heavily reported were referred as allegations to the committee.¹²⁹ This, contrary to public assurances offered by the administration in February,¹³⁰ and, despite the fact that I'd been exonerated by the university when faced with the very same allegation—from the very same sources—in 1994,¹³¹ included the charge that I'd engaged in "ethnic fraud" by identifying myself as an American Indian.¹³² For its part, the SCRM—or at least its newly appointed chair¹³³—responded to my complaints about the propriety of such maneuvers with the patent untruth that it was "obliged to investigate all formal written complaints submitted to the university" concerning research misconduct by UCB faculty.¹³⁴

On June 15, after right-wing icon Rudy Giuliani had taken time during a campus appearance to opine that an exemplary firing might still be a good idea,¹³⁵ DiStefano pushed his own travesty further still. Having announced a few days earlier that institutional rules preclude news reportage in and of itself from forming the basis of complaints,¹³⁶ he once again reversed himself entirely, forwarding as "supplemental allegations" under his own name—although he admitted he'd formed no opinion on the validity of the contents, having not so much as bothered to skim the material—some fifty-nine downloaded pages of text accruing from a weeklong series run under the heading of "The Churchill Files" in the *Rocky Mountain News*.¹³⁷

Thus was the university's standard procedure once again subverted—or, more accurately, jettisoned—placing me in the peculiar position of having to defend myself in academic terms against decidedly less-than-scholarly accusations made in the viciously partisan local media.¹³⁸ To ensure that the expected lynching would be carried out smoothly, moreover, the press also undertook to discredit, and thereby to precipitate the removal of, any member of the SCRM suspected of harboring the least doubts that I stood guilty as charged.¹³⁹ On this "fair and balanced" basis, the process entered its next phase, that of having the integrity of my work subjected to "scholarly assessment by my peers."¹⁴⁰

The Charges

In its original form, DiStefano's charge sheet accused me of: (1) having "fabricated an historical incident" by falsely and repeatedly

stating that in 1837 the U.S. Army, having withheld vaccine, had deliberately infected Mandan Indians at Fort Clark, on the upper Missouri River, with smallpox, unleashing a pandemic that claimed the lives of more than 100,000 native people before running its course;¹⁴¹ (2) falsely and repeatedly asserting that a half-blood quantum standard was applied for purposes of identifying Indians during the government's compilation of tribal rolls under provision of the 1887 General Allotment Act;¹⁴² (3) falsely asserting that, under provision of the 1990 Act for the Protection of American Indian Arts and Crafts, a quarter-blood quantum is required of those artists and artisans identifying themselves as being of native descent;¹⁴³ (4) engaging in plagiarism in three separate instances;¹⁴⁴ and (5) identifying myself as being of American Indian descent as a means of enhancing my academic credibility.¹⁴⁵

In the second round, added on June 15, what he was alleging via the *Rocky Mountain News* was deciphered by the SCRM as being that I'd: (1) fabricated a second historical incident by stating that there is "strong circumstantial evidence" that Captain John Smith deliberately infected the Wampanoag Indians with smallpox, causing a massive die-off in the population indigenous to the area that would shortly become known as the Plymouth Colony (or "Plantation");¹⁴⁶ (2) repeatedly engaged in plagiarism by incorporating material into my own work from a 1972 pamphlet produced by Dam the Dams, a Canadian environmental group;¹⁴⁷ and (3) that I had violated the copyrights of three different scholars, two while compiling an anthology, the other while editing a journal.¹⁴⁸

In August, although he'd earlier acknowledged that there was no basis for his doing so,¹⁴⁹ DiStefano sought to add yet another set of charges by forwarding a complaint submitted by the sister of my late wife that I'd committed "academic fraud" by: (1) getting the name of the hospital at which my wife died wrong in a biographical preface I'd written to accompany a posthumously published collection of her writings;¹⁵⁰ (2) getting the name of the residential school attended by her father wrong in the same piece;¹⁵¹ (3) falsely stating that my wife had been diagnosed as suffering Borderline Personality Disorder (a condition typically associated with severe, and usually repetitive, childhood trauma);¹⁵² (4) falsely asserting that the entire family suffers from what is referred to in the clinical literature as "Residential School Syndrome";¹⁵³ and (5) falsely stating that Ojibwes, my wife's people, were traditionally matrilineal in their kinship organization.¹⁵⁴

With fourteen allegations on the table—eighteen, if the subparts are tallied—there can be little question but that the administration was using the time-honored prosecutor's tactic of "shotgunning" me with charges in hopes that something might "stick" (or, in any event, that sufficient doubts would be raised about my scholarly integrity by the sheer number of accusations involved that my reputation and the corresponding credibility of my work would be permanently undermined).¹⁵⁵ DiStefano's attempt to palm off my sister-in-law's accusations as "research issues" proved to be a bit too much even for the SCRM to swallow, however. Although the body had theretofore displayed a rather unseemly willingness to accept the interim chancellor's allegations at face value, they rejected this one on its face.¹⁵⁶ Of the remaining charges, several more—the allegation that

I'd engaged in "ethnic fraud," and all three of the supposed copyright violations—were dismissed as unsustainable when the SCRM subcommittee of inquiry reported its preliminary findings on August 19, 2005.¹⁵⁷

There are serious questions as to why most of the rest were not also simply dropped.¹⁵⁸ Regarding one of the three allegations of plagiarism, for example, it was conceded in the preliminary findings that I myself appeared to have written the material I supposedly plagiarized.¹⁵⁹ As will be shown at a later point in this essay, the remaining pair displayed equal measures of implausibility. Nor is it possible to follow the subcommittee's reasoning in deciding that my single and carefully qualified reference to "circumstantial evidence" concerning the "John Smith smallpox incident"—the source of which I'd cited—might in any defensible sense be cast in terms of "fabricating" it.¹⁶⁰ A comparable situation presents itself with regard to the idea that I'd "falsified" the meaning of the 1990 Arts and Crafts Act by characterizing its identification criteria as requiring a one-quarter quantum of "Indian blood."¹⁶¹

There were only two allegations ambiguous enough to have warranted any further examination: those concerning my interpretations of: (1) the 1837 smallpox pandemic, and (2) the 1887 General Allotment Act. There were, as was later concluded by a review panel drawn from the faculty senate's Committee on Privilege and Tenure (P&T), significant problems with these as well—saliently, the manner in which they originated—but there were at least a few factual issues to look at in each instance, and thus at least a theoretical possibility that *some* form of research misconduct might actually be revealed. Nonetheless, a seven-count "indictment" was returned by the SCRM's subcommittee of inquiry in its August 19 report.¹⁶² On these, DiStefano solemnly announced to the press, it would be necessary to proceed to a full investigation.¹⁶³

About that "Panel of My Peers"

According to the rules governing such procedures in the CU system, the investigation of my work was to be conducted by a small panel of impartial scholars, preferably senior in rank and experience, and endowed with demonstrated—or at least demonstrable—competencies in the topics at issue.¹⁶⁴ From the outset, however, the SCRM held that all two hundred UCB faculty members who'd signed the academic freedom petition in February, having thus expressed "bias in my favor," would be ineligible to participate.¹⁶⁵ In response, I argued that in light of the unprecedented degree of local media involvement in my case—to say nothing of official posturing—*no* University of Colorado faculty members should be considered unbiased, and that the panel therefore be composed entirely of "outside experts."¹⁶⁶

This rather common expedient was quickly rejected by the SCRM, although it was agreed that "some" of the panelists might be drawn from the national pool.¹⁶⁷ I then moved that insofar as UCB faculty members would be appointed to sit on the investigative panel, none—given its relatively small size, combined with the clearly negative roles already played by two of its more influential members, Getches and Campos—should be selected from the law faculty.¹⁶⁸

Additionally, I named several individuals in the College of Arts and Sciences who would not be acceptable, citing hostile statements in each instance. Tellingly, the SCRM replied on neither score.

The reason underlying the committee's silence soon became apparent. Unbeknownst to me, it was even then arranging for a UCB law professor, Marianne Wesson, otherwise known as "Mimi," to not only participate in the investigation, but to head it. Also unbeknownst to me at the time—I wasn't aware of it until some months after the investigation—Wesson had been making some very interesting observations about me in personal correspondence since at least as early as the end of February 2005:

I confess to being somewhat mystified by the variety of people this unpleasant (to say the least) individual has been able to enlist to defend him [. . .]. [T]he rallying around Churchill reminds me unhappily of the rallying around OJ Simpson and Bill Clinton and now Michael Jackson and other charismatic male celebrity wrongdoers (well, okay, I don't really know that Jackson is a wrongdoer).¹⁶⁹

Wesson also remarked on how she "thought that us middle-aged feminists, at least, had learned not to fall into that trap." When confronted with a copy of this missive during the subsequent P&T hearings, SCRM Chairperson Joseph Rosse, who is also a business professor, claimed that he'd not previously seen the e-mail, but admitted that he'd been informed of two others of a similar nature.¹⁷⁰ These, he said, were not in his opinion reflective of bias on Wesson's part and he therefore felt no particular obligation to notify me of their existence.¹⁷¹ Moreover, he went on, it was his assessment that Wesson's background as a former prosecutor who could be counted upon to "make sure that the process [would] run smoothly" outweighed other considerations.¹⁷²

The arrangement was approved by Interim Provost Susan Avery, another of UCB's "middle-aged feminists" and the administrative authority to whom Rosse directly reported.¹⁷³ The next selection was another self-proclaimed feminist, UCB Distinguished University Professor Emeritus Marjory K. McIntosh, an archival researcher specializing in medieval English women's history.¹⁷⁴ Then came Michael Radelet, chair of UCB's Sociology Department and a specialist in the death penalty.¹⁷⁵ To this mix were added a pair of "outsiders": Bruce Johansen, a well-respected professor of journalism and American Indian studies at the University of Nebraska, and Robert A. Williams, Jr., a professor at the University of Arizona and a leading expert on the evolution of Indian law.¹⁷⁶

Although Williams was the only Indian—indeed, the sole person of color—on the panel, it was my sense that his involvement, together with Johansen's, would be sufficient to counteract the near-total ignorance displayed by the three UCB panelists, both of my discipline, American Indian studies (AIS), and the matters addressed in my work. I was therefore prepared to accept the panel as it was then constituted. Wesson and Rosse apparently were not, however, and set about correcting the situation.¹⁷⁷ After Williams in particular stressed

the need for the panel to adopt a clear set of standards by which my material would be assessed, it was placed under what amounted to a gag order.¹⁷⁸ Then, on November 1, 2005, the names of the panelists were released to the press.¹⁷⁹

Within hours, the Clear Channel hacks had gone into overdrive with a continuous blare about the panel being a “fraud” because I’d once blurbed a book by Johansen—at the request of the publisher, not Johansen himself—and Williams had issued a statement asserting my right to academic freedom several months previously. Both men were also pronounced guilty of having occasionally cited my work.¹⁸⁰ Such radio spew was quickly augmented by editorialists at the *Rocky Mountain News*, who, having long since rendered verdicts on all charges and passed sentence, announced in tones of wounded piety that there was “no choice” but to remove both Johansen and Williams from the panel, in view of their “obvious lack of objectivity.”¹⁸¹

Simultaneously, Jim Paine, a Colorado horse-breeder *cum* self-appointed authority on both the integrity of scholarship and the proper use of taxpayer monies, employed his stridently “anti-Churchill” blog, *PirateBallerina*, to launch an outright smear campaign against Johansen, accusing him among other things of being in some sort of *quid pro quo* arrangement with me.¹⁸² The message thus writ largely on the outhouse wall, the university maintaining a silence in the face of the onslaught,¹⁸³ and themselves precluded from mounting a defense by the university’s gag order, both Johansen and Williams resigned from the panel.¹⁸⁴ A gloating Paine thereupon offered his services in vetting their replacements, proclaiming it otherwise unlikely that any “academic out there is now willing to put their professional reputation on the line.”¹⁸⁵

Actually, there were several worthy candidates, including Michael Yellow Bird, an associate professor of Indigenous Nations Studies at the University of Kansas and probably the most knowledgeable scholar in the country with regard to indigenous understandings of the 1837 events at Fort Clark.¹⁸⁶ Another was Richard Delgado, a former UCB law professor and the acknowledged founder of an analytical method known as Critical Race Theory.¹⁸⁷ While both expressed willingness to serve on the panel,¹⁸⁸ they were each passed over on what turned out to be extremely dubious grounds: Yellow Bird, because he was “too junior” in rank;¹⁸⁹ Delgado, because Rosse and Wesson decided his schedule might make it difficult for him to attend all the meetings involved.¹⁹⁰

Rather than Delgado, although the terminal illness of his wife prevented his being present at any but the final meeting of the investigative panel, José Limón, a University of Texas literature professor, was selected.¹⁹¹ Filling out the roster of panelists was Robert N. Clinton, a recognized expert in federal Indian law at Arizona State University who also claimed expertise in American Indian studies on no discernable basis whatsoever.¹⁹² I strongly protested the panel’s new composition—it included no American Indians, only a single person of color, nobody grounded in the relevant areas/methods of history, and nobody with a demonstrated competency in American Indian or even ethnic studies—but Rosse informed me that the matter was “settled.”¹⁹³

Upholding Scholarly Standards?

On October 24, 2005, before the resignations of Williams and Johansen from the investigative panel precipitated a lengthy delay in the proceedings, I wrote to Rosse suggesting that, since the “SCRM rules and procedures [. . .] were designed with the idea that it would be dealing with an allegation or two in any given case, not a shotgun-load, as is the situation here,” it would be more efficient for all parties concerned if the allegations were “grouped into at least three categories—(1) historical interpretation, (2) legal interpretation, [and] (3) citation issues”—to be considered in sequence, and that the panel’s composition be correspondingly subject to alteration as things moved from category to category.¹⁹⁴

I further observed that since the panel was allotted only “120 days from initiation of the investigation”—during which I was entitled to bring witnesses and to prepare written responses *vis-à-vis* each allegation—to report its findings, an extension of the investigative timeline, as provided under the rules, would likely be necessary:¹⁹⁵

[I]n view of the number of allegations, and the relative complexity of several[,] the 120-day timeline for me presenting my “cases” and the panel’s reaching its conclusions might well need to be extended.¹⁹⁶

To this, I received no reply from Rosse. Instead, when the panel finally convened what I understood to be the “initiation of the investigation” with a preliminary meeting on January 28, 2006, I was informed by Wesson that the panel intended to submit its final report “in early May.”¹⁹⁷ Not only was I given a deadline of April 3 for the submission of any written responses I wished to have considered¹⁹⁸—a period rather closer to *sixty* days than 120¹⁹⁹—but I was advised to *not* begin preparing them until further notice, since the panelists were considering the possibility that certain of the allegations should be dismissed out-of-hand.²⁰⁰ Meanwhile, although neither I nor my attorney knew it at the time, Wesson had “started the clock ticking” on January 11, when she had arranged a “confidential” meeting between the panel, Rosse, then-University Counsel Charles Sweet, and then-University Public Relations Director Pauline Hale.²⁰¹

Things went rapidly downhill from there. When, during the first investigative hearing, conducted on February 18, my attorney, David Lane, followed up on unanswered requests, both verbal and written, for clarification of the standards to be applied by the panelists in assessing the validity of the allegations against me,²⁰² he was told in effect that the panel had no idea:

MR. LANE: I understand that, based on the inquiry that you’re all charged with[,] there has to be some digging into the material. What I’m concerned about is echoing what I said [on January 28], and that is: Scopes Monkey Trial. We’re not here to determine The Truth. We are here to determine, did Professor Churchill commit fraud or misconduct in coming up with what he came up with.

And I'm still not certain as to what the standard of proof is [and] who the burden of proof is on. Maybe I'm thinking too much like a lawyer, but I just can't help it.

PROFESSOR WESSON: The rules say that the burden of proof is by a preponderance of the evidence, and the burden of proof is on those who have accused Professor Churchill of misconduct. That much is clear. But if you're asking for something like jury instructions, we're not in a position to tell you that right now. We're struggling with the questions of how to understand our mission and the precise relationship between historical truth, if it's ascertainable at all, and the accusations of research misconduct. We understand that those are not identical. We don't think that they have nothing to do with one another.²⁰³

Lane tried again, explaining that the issue he was raising was what standard of *scholarly* evidence was to be deployed:

MR. LANE: I mean, if he's reckless in putting out figures or, you know, making sweeping statements with just the smallest amount of support, is that okay? Is that research misconduct? Is that academic fraud? I mean, I don't know the answers to these questions.

PROFESSOR WESSON: We don't know the answers either, and we continue to discuss them, and [. . .] *when we reach the point of coming to our conclusions and documenting them, we will be as transparent as we can be about the standards we're applying to this question.* (emphasis added)²⁰⁴

I then protested that it would be virtually impossible for me to know how to frame my responses, since "I don't know where the bar is set [. . .] or what would be a satisfactory response [. . .]. That will be determined after the fact."²⁰⁵ Wesson's response was that while she "recognize[d] that your position is difficult because you don't know exactly what you have to defend yourself against," I should simply accept the proposition that the panel was "operating under a presumption of good faith," and "put before us [. . .] whatever you feel is necessary to defend yourself against these accusations," apparently in every conceivable manner.²⁰⁶ Ignoring the fact that the time constraints imposed by the panel itself precluded my attempting anything nearly so comprehensive, she summed up with a decidedly prosecutorial flourish:

I think you're in the same position as someone who's accused in a court of law—I mean, I'm talking like a lawyer because I find it hard to avoid doing that—who really can't know in advance whether the finder of fact and the tribunal are going to be persuaded by his case. I understand that you have to make some guesses about that, you and Mr. Lane, and I know Mr. Lane is used to that.²⁰⁷

Setting aside the most obvious problem with Wesson's analogy—that, in sharp contrast to judicial prosecutions, the university's rules specify that such investigations are to be *nonadversarial* proceedings²⁰⁸—a person “accused in court of law” typically knows whether the court is federal, state, or local, and in which state or local jurisdiction. The codifications of law and standards of evidence obtaining in federal court are no more generally interchangeable with those of courts at the state level than are those in the state courts of New York, California, and Texas. Irrespective of the jurisdiction in which a person may be accused, however, s/he is endowed with the right of knowing from the outset precisely how his/her alleged offense is defined therein, and the evidentiary standards by which her/his culpability will be assessed.

Things work much the same way in academia, at least inasmuch as there are noticeable differences in the definitions and standards employed by professional organizations like the American Historical Association (AHA) and the American Sociological Association (ASA).²⁰⁹ Others, like the American Philosophical Association (APA), have articulated no formal set of standards at all,²¹⁰ and only those of the Association of American Law Schools (AALS) conform precisely to those embodied in the American Association of University Professors' (AAUP's) statement on professional ethics.²¹¹ This reality is acknowledged in the University of Colorado's own framing of research, which simply adopts those set forth by the Public Health Service (PHS) and the National Science Foundation (NSF).²¹² The latter defines research misconduct as being “a significant departure from *accepted practices of the relevant research community*” (emphasis added).²¹³

It was thus unquestionably the responsibility of both the SCRM and the investigative panel to inform me at the outset exactly *which* “research community”—or communities, since all parties agreed that my work has always been decidedly interdisciplinary—they would be considering “relevant.” Neither ever did so. McIntosh came closest when she suggested during the February 18 session that using the AHA standards would be appropriate.²¹⁴ I rejected the idea on the grounds that I was neither an academic historian nor ever claimed to be, that two of the allegations centered in legal interpretation rather than history, and that, in any case, the AHA had a record of enforcing its purported standards in a highly selective manner.²¹⁵

In the alternative, I indicated that the practices accepted by scholars working within my own field of American Indian studies—or at least in ethnic studies—should be used as the standard of assessment.²¹⁶ At that point, the absence of anyone on the panel grounded in AIS was exposed in stark relief when Wesson inquired as to whether I'd be calling “a witness or witnesses who will direct themselves at [the] question about the proper standards by which your scholarship and scholarship like yours should be judged?”²¹⁷ McIntosh, for her part, had already asked that I provide her with “a reading” that might serve to bring her up to speed on the matter.²¹⁸

That to impart anything approaching genuine familiarity with the culture and methods of AIS was impossible in the time available should be obvious,²¹⁹ but I was obliged under the circumstances to

do what I could.²²⁰ This, in turn, encumbered a not inconsiderable portion of the already severely compressed period within which I was supposed to address the allegations. Exacerbating the situation still further, Wesson added an allegation midway through the process—this one concerning the propriety of my citing material I'd ghostwritten—but refused to extend the deadline for my responses.²²¹ Then, amidst the final phase of my increasingly desperate effort to finish my written responses, Rosse abruptly informed me that “new” allegations had been received—actually, he'd held them in reserve for nearly a year—and that my immediate response was required.²²²

Tellingly, this last was dropped virtually the moment the investigative panel's report (*Report of the Investigative Committee*, hereinafter referred to as *IC Report*) was submitted on May 9, and the administration was thereby assured that the “right” conclusions had in fact been reached.²²³ The SCRM thereupon formally approved the panel's report,²²⁴ a press conference featuring Wesson was convened on May 16 to rehearse the findings,²²⁵ the panel's entire 125-page screed—absent any of the otherwise publicly inaccessible material referenced therein—was then ostentatiously posted on the university's Web site as a “scholarly work product,”²²⁶ and DiStefano topped off the institutional dog-and-pony show on June 26 by delivering unto the press corps his long-awaited recommendation that I be fired.²²⁷

With that, the jubilation of the Colorado right was duly unleashed on the editorial pages of the *Rocky Mountain News* and its counterparts,²²⁸ while Democratic Congressman Mark Udall, a liberal Democrat, quickly joined forces with Bill Owens and other Republicans clamoring for my “immediate discharge,”²²⁹ publicly opining that since I'd been shown to have “failed on all accounts” to maintain UCB's lofty ideals of “academic integrity, ethics, and professionalism,” I should resign.²³⁰ To this was added the performance of panelist Michael Radelet, nationally acclaimed liberal opponent of the death penalty, who polled the crowd gathered for his department's spring graduation party as to “how many of us wouldn't secretly like to gas Ward Churchill?”²³¹

Assessing the Verdict

The investigative panel never *did* meet its obligation to cite the “clearly established standards” it claimed I violated. In its report, it says only that it used “the ‘Statement on Standards of Professional Conduct’ prepared by the American Historical Association as a general point of reference,” but that they had “made no decisions based solely upon it.”²³² What else the panelists might have relied upon was left unstated, although it was later demonstrated that they'd misrepresented what is said even in the university's own general formulation of standards.²³³ It was also claimed that I'd “concurred” in this nebulous approach,²³⁴ a matter easily disproven during lengthy P&T hearings conducted in January 2007 to review the investigative findings.²³⁵

The university retained Donald McCabe,²³⁶ a self-styled “specialist on academic ethics” and Rutgers University professor of business management, to try and make the case that the standards invoked by the investigative panel not only exist but were appropriately and equitably applied. Under cross-examination by David Lane and me,

however, McCabe was unable to point to *any* clear articulation of standards pertaining to authorial practices which Wesson's panel, citing nothing to support its assertion, had claimed were condemned by "an overwhelming consensus" of academics.²³⁷ Indeed, McCabe was unable to show that mine were not practices meeting the NSF standard of being "accepted [within] the relevant research community" or communities.²³⁸

Unlike the investigative process, during which I was not allowed to examine even my own witnesses directly—everything had to be filtered through Wesson—the P&T review procedure afforded me and my attorney an opportunity to question anyone who gave testimony.²³⁹ The P&T proceedings were far less rushed than those of its predecessor, moreover, with twice the number of days allotted to hearing witnesses and the reviewers allowing themselves a further ninety days in which to weigh the evidence and arrive at their conclusions.²⁴⁰ While the sheer mass of information to be sifted, given the number of issues involved, still took its toll, the result was an appreciably different set of findings than those produced by the investigative panel concerning my interpretations of law and historical events.

On the main points in both of these substantive areas, the P&T reviewers concluded that the investigative panel had failed to meet the burden of proof necessary to sustain its "verdict" that I'd engaged in either falsification or, less still, "fabrication" in my depictions.²⁴¹ As concerns several secondary points of my analysis of the 1837 smallpox pandemic, however, they blinked clear evidence to arrive at the opposite conclusion. By and large, they also turned a blind eye to the implications attending equally clear evidence that, to make its case, Wesson's panel had engaged rather massively in the very sorts of fraudulent scholarship of which I'd been accused.²⁴²

While limitations on the length of the present essay preclude detailed discussion of the merits and demerits of the P&T reviewers' findings—in-depth analyses will be presented elsewhere—it seems appropriate to offer relatively brief summaries.

On Matters of Legal Interpretation

Regarding my contentions that both the 1887 General Allotment Act and the 1990 Indian Arts and Crafts Act define "Indians" in terms of blood quantum requirements, the P&T reviewers held that, at worst, I'd conflated the Acts with the manner in which they were implemented, and that "failure to be precise about this distinction [does not fall] below minimum standards of professional integrity."²⁴³ In fact, the reviewers implicitly questioned whether research misconduct charges on such points should have been pursued in the first place, observing that "academic debate seems a more appropriate method for deciding the question than disciplinary proceedings."²⁴⁴

In stopping there, the reviewers were exceedingly protective of their investigative colleagues, especially Clinton, who wrote both sections of the earlier panel's report at issue here (although the section on the 1990 Act was misleadingly attributed to Limón).²⁴⁵ There was no mention, for example, of the fact that, during his testimony, Robert Williams in effect accused Clinton of knowingly advancing a spurious argument based on the 1846 *Rogers* case as a means of

discrediting my analysis of the Allotment Act,²⁴⁶ or that a second expert on federal Indian law, Cornell Professor Eric Cheyfitz,²⁴⁷ had been equally dismissive of Clinton's framing of *Rogers*.²⁴⁸

Similarly, no mention is made of Cheyfitz having essentially accused Clinton of fabrication when he asserted, in the *IC Report*, that "there was *never* a half-blood requirement for eligibility for allotment under the Act" (emphasis in original)²⁴⁹ Nor was there a hint that a repetition of such fabrication in Clinton's section of the report had been revealed,²⁵⁰ that his active misrepresentation of sources—including several of my own works—had been demonstrated,²⁵¹ or that he appeared to have engaged in extensive plagiarism (as the term has been explained by historian Peter Charles Hoffer, a member of the AHA's Professional Division and acknowledged authority on the topic).²⁵²

On Matters of Historical Interpretation

With respect to the investigative panel's findings that I was guilty of falsification or fabrication by contending that there is circumstantial evidence indicating that John Smith may have deliberately infected the Wampanoags with smallpox at some point shortly before the landing of the Plymouth colonists in 1620; that the U.S. Army deliberately infected the Mandans and other peoples of the upper Missouri in 1837; and that vaccine was available but withheld from the Indians once the latter outbreak was underway, the P&T reviewers once again concluded that there was no "clear and convincing evidence for the conduct alleged."²⁵³ Indeed, the panelists found that in her zeal to *disprove* my contentions, McIntosh, who wrote both sections of the *IC Report* at issue here, had repeatedly "exceeded [her] charge."²⁵⁴

On the other hand, they concurred with McIntosh's findings that I was guilty of fabrication in stating that the items with which the infection was spread were taken from a smallpox infirmary in St. Louis,²⁵⁵ and that "post surgeons" subsequently instructed Indians who'd been exposed to the pox to "scatter," thereby infecting healthy communities.²⁵⁶ The reviewers also concurred that I'd misrepresented the work of UCLA anthropologist Russell Thornton by once observing that he'd suggested that the resulting death toll "might have" run as high as 400,000.²⁵⁷ There are, to be sure, significant problems with each of these findings, summaries of which once again seem in order.

- On the question of whether items were collected from a military infirmary in St. Louis, I acknowledge that I probably erred—additional evidence has now convinced me that the items were more likely brought from Maryland²⁵⁸—but find the proposition that I "fabricated" the St. Louis idea rather strained, given that one of McIntosh's own expert witnesses, Michael Timbrook, testified that he, too, has always suspected—and is still "digging into" the prospect—that the source of the infection was the army infirmary at the Jefferson Barracks, in St. Louis.²⁵⁹

- The issue of my using the term "post surgeon" was/is mainly semantic—I, along with many others, consider it entirely appropriate

when referring to medical personnel assigned to facilities designated “Forts”²⁶⁰—and, in any case, the crux of McIntosh’s argument was that she’d found “no evidence of [. . .] *anyone* with medical training [. . .] at Fort Union or Fort Clark (emphasis added).”²⁶¹ Yet, at least two of the sources she claims to have consulted in preparing her forty-three-page (single-spaced) rebuttal of my passing mentions of the “Fort Clark episode”—the longest such “exposition” being two paragraphs in length²⁶²—state quite clearly that Edwin Denig, an employee at Fort Union, had medical training and thus “understood some little surgery.”²⁶³ Indeed, Denig is indexed as a “surgeon” in the more contemporaneous of the pair.²⁶⁴

- As to infected Indians being told to scatter, there are multiple accounts in literature referenced by McIntosh in the *IC Report*. These concern Charles Larpenteur, a fur company employee who filled in as post surgeon at Fort Union while Denig was recovering from a very mild case of the pox.²⁶⁵ In his memoirs, Larpenteur describes how he exposed a group of forty Assiniboins camped outside the fort to a child in the most highly contagious stage of the disease, then told them to flee back to their home village(s).²⁶⁶ From there, according to another source cited by McIntosh:

[T]he pestilence [. . .] first spread among the Assiniboines [*sic*], who were the Indians that had come to the fort, and it raged among them until winter. [Fur company employee Jacob] Halsey, who left Union in October, says that it was ‘raging with the greatest destructiveness imaginable—at least ten out of twelve die of it.’”²⁶⁷

It should also be mentioned that Francis Chardon, commander of Fort Clark—and who, holding his own medical proficiency in rather high regard, also served as that post’s “surgeon”²⁶⁸—is recorded in the literature cited by McIntosh as having dispatched Toussaint Charbonneau, a veteran trader, and his infected Hidatsa wife to visit her relatives in a village near Fort Clark, which had until then managed to avoid the epidemic by quarantining itself.²⁶⁹ The Hidatsas were thereafter decimated by the pox, suffering a mortality rate second only to that of the Mandans (who were, by all accounts, virtually annihilated).²⁷⁰

- The claim that I misrepresented Thornton’s material—whether advanced by the interim chancellor’s ad hoc committee, the SCRM investigators, or Thornton himself²⁷¹—is simply false. While Thornton for the most part correlates no estimated numbers of fatalities to his list of peoples ravaged by the pandemic, he *does* provide a handy reference for readers interested in such things: “[. . .] Stearn and Stearn, 1945: 94).”²⁷² Turning to page 94 of the Stearns’s seminal study, as McIntosh claims she did,²⁷³ *all* one finds is a chart offering very much the same list of peoples as Thornton, but also providing estimated death tolls. For north-central California alone, the estimates given by the source to which Thornton refers his readers run as high as 300,000 dead; for the upper Missouri peoples, 25,000; for the “Prairie Tribes,” 22,000; for the Choctaws, 500; for Alaska, 4,000.²⁷⁴

No estimates are provided in the Stearns chart for the Chickasaw, Winnebago, Cayuse, or Indians of New Mexico and Canada, all of whom appear on Thornton's list. Even without estimates for these peoples, however, the total exceeds 350,000. Adding the standard estimate for western Canada brings it to over 370,000.²⁷⁵ Including the other "missing" peoples produces a figure well within range of the 400,000 I said Thornton offered as a "maybe."²⁷⁶

With the exception of a single reference, *all* of the information deployed in the preceding four bullet-points was in the record available to the P&T reviewers when they began their deliberations on January 21, 2007. It was, moreover, fully recapped in my detailed and comprehensive "closing argument," submitted on February 9.²⁷⁷ There is thus little excuse, notwithstanding the sheer scale of the record, for the reviewers to have missed the obvious in these matters. Of course, it's always possible that, to borrow a phrase from their report, "something more than just sloppy research" was involved.²⁷⁸ Unfortunately, their performance with regard to the issue of "accepted practices" in authorial attribution lends at least some credence to such suspicions.

From the start, several members of the body displayed a palpable hostility to the idea that the question should even be considered, with the panel's chair, Professor Philip Langer, ruling consistently that evidence on how things are done in various disciplines was irrelevant to the matters at hand.²⁷⁹ Thus, for example, while the investigators held that I'd violated "clearly established practices of author attribution" in certain of my writings on law, that two of the five investigative panelists—including the chair—were law professors, and that one of the pair had written the finding specifically at issue, Langer ruled testimony about authorship practices common in legal scholarship out of bounds.²⁸⁰

The reviewers were, he declared, going to "stick to evidence about practices accepted in A&S."²⁸¹ When questions concerning the prevalence of ghostwriting in political science became uncomfortable, however, he declared that irrelevant as well.²⁸² So, too, history,²⁸³ and then communications—the discipline in which I myself was trained at both the undergraduate and graduate levels—when it was shown that ghostwriting is actually considered a professional competency by ranking communications scholars, and that courses designed to impart the necessary craft proficiency have been offered at Penn State and other universities for decades.²⁸⁴

In the end, although somewhat more qualified in their assertions, the P&T reviewers joined their investigative predecessors in masking the realities of how authorship is *commonly* attributed in academia behind a vacuous assertion that ghostwriting and similar practices are condemned by "an overwhelming consensus" of scholars.²⁸⁵ It may go without saying that while such posturing may be useful in fostering the institutionally preferred image of "academic integrity" in the public perception, it had no place in the sort of assessment the P&T panel was charged with undertaking. Since it plainly was present, however, it is unsurprising that the earlier verdict that I'd "failed to comply with established standards on the use of author names on publications" was upheld on three counts (two on plagiarism, one on ghostwriting).²⁸⁶

Plagiarism

The first finding on plagiarism concerned the 1972 *Dam the Dams* pamphlet, which all parties agreed I'd been asked by a purported representative of the group to rework for publication in 1987.²⁸⁷ All parties also agreed that when I included the resulting essay in an edited volume a year later, it was done with appropriate credit to *Dam the Dams*,²⁸⁸ and, grudgingly, that when still another version of the material was published as a *Z Magazine* article in 1991, an editorial decision was made to remove the group's coauthorial credit from the byline without my knowledge (albeit contact information was provided at the end of the article).²⁸⁹ None of this, including the last fiasco, was deemed by either the investigative panelists or their P&T successors to constitute plagiarism.²⁹⁰

Where my supposed plagiarism comes in is that when I incorporated material from *Dam the Dams* into a pair of subsequent essays, I cited the 1988 book chapter rather than the original pamphlet.²⁹¹ It was also argued that I should have cited *Dam the Dams* at the end of each sentence in which its material was paraphrased rather than at the end of paragraphs in which such paraphrases appeared.²⁹² Most conclusive, according to the P&T reviewers, was the fact that while I claim to have disavowed the *Z Magazine* article because of its inaccurate attribution of authorship, I "continued to cite" it in the later essays.²⁹³

The problem with the last assertion—which the P&T reviewers appear simply to have parroted from the *IC Report* without bothering to check for themselves—is that it is false.²⁹⁴ I have *never* cited the *Z* article, *only* the 1988 book chapter.²⁹⁵ While I perhaps should have indicated in my annotation that the book chapter derived from the 1972 pamphlet, the relationship between the two is stated in the chapter itself, wherein a list naming every member of *Dam the Dams* who participated in producing the pamphlet is provided.²⁹⁶ In any case, citing the pamphlet *rather than* the book chapter, as both panels seem to suggest I should have done,²⁹⁷ would have been absurd, given that the pamphlet had long been inaccessible to readers by the time I might ever have cited it.²⁹⁸

As to whether I should have cited *Dam the Dams* at the end of every sentence rather than the end of every paragraph in which the group's material is paraphrased, it may once again be true that I was in some sense "obliged" to do so. If my failure to adhere quite *that* strictly to certain conventions of scholarly citation constitutes plagiarism, however, then academia is truly littered with comparable offenders (e.g., historian Jon Weiner, in a book devoted in no small part to the nuances of academic plagiarism, would be guilty of plagiarizing historian Peter Novick in a chapter rehearsing the charges of research fraud maliciously leveled against historian David Abraham during the 1980s).²⁹⁹ To be sure, no one—including Novick himself—has suggested that Weiner's close paraphrasing/loose citation of Novick's earlier work adds up to plagiarism, and rightly so.³⁰⁰

This is because, as was recently observed by Marc Cogan, chair of the AAUP Committee on Professional Ethics, "the whole point of plagiarism is to pretend that you wrote something somebody else

wrote.³⁰¹ It follows that, “As a general rule, if the sources are given, and given clearly enough so they can be seen, so [that readers] can go back and spot it, then plagiarism doesn’t come in [. . .] because clearly there was no intent to hide” the fact that use has been made of someone else’s material.³⁰² Imperfect though my citational practices may have been in this instance, they nonetheless comport with this “general rule” describing those accepted—and routinely employed—by the academic community.

Plagiarism (Round 2)

The second plagiarism finding upheld by the P&T reviewers concerned the incorporation of material written by Dalhousie University Professor Fay Cohen into an essay attributed to the Institute for Natural Progress (INP), included in *The State of Native America*, a 1992 book edited by my ex-wife, M. Annette Jaimes, now a member of the Women Studies faculty at San Francisco State University.³⁰³ While I readily acknowledged having performed copyediting/rewrite functions on the INP piece at Jaimes’s request,³⁰⁴ and that I’d suggested crediting the essay to the INP as a way of keeping her name from “showing up too many times” in the book,³⁰⁵ the evidence was uncontradicted that the manuscript I’d “tuned up” had actually been written by Jaimes and others.³⁰⁶

While the reviewers asserted in their report that the “Legal Counsel at Dalhousie University has provided a ‘well-documented conclusion’ that Professor Churchill plagiarized Professor Cohen,”³⁰⁷ this is a gross misrepresentation of what is said in the Dalhousie document; it concludes only that Cohen’s material was plagiarized, *not* that I plagiarized it.³⁰⁸ The reviewers, moreover, failed to address the obvious question of why, assuming Dalhousie’s legal counsel had actually concluded that I was the guilty party, the University of Colorado was not notified for nearly a decade.³⁰⁹ Still more problematically, they avoided all mention of the fact that Cohen herself has never contended that I was responsible for the plagiarism of her material, declining even an open invitation to do so during the investigative process.³¹⁰

While Cohen’s answers to the investigative panel’s and my interrogatories did nothing to prove my supposed plagiarism, they were highly revealing in other respects. In response to a question about how contact between Cohen and UCB was initiated, for instance, she stated that, “Contact with the University of Colorado was initiated in February 2005 by Dean David Getches, through John LaVelle.”³¹¹ LaVelle, it will be recalled, is the University of New Mexico law professor to whom accusations of plagiarism against me were first and falsely attributed by Paul Campos, a UCB law professor, in the *Rocky Mountain News*.³¹² He was also the supposed complainant—actually, he filed no complaint³¹³—regarding my depictions of the 1887 and 1990 Acts (discussed above).

It was further established during the P&T hearings that Getches, acting in his capacity as a member of DiStefano’s ad hoc committee, had in effect solicited LaVelle—whom Getches conceded was plainly motivated by personal/political animus—to serve as a “complainant.”³¹⁴

LaVelle then functioned as a go-between in the solicitation of additional “complaints,” including Cohen’s (whether Getches directly recruited LaVelle to serve in this capacity is unclear).³¹⁵ The capstone to the whole charade was an e-mail exchange between Cohen and Getches in which she informed him that she was “planning to prepare her own submission in a timely manner,” only to be told by Getches that “[t]his will be handled” by DiStefano’s ad hoc committee.³¹⁶

Notwithstanding the magnitude of such factual and procedural problems, the P&T reviewers plunged ahead, ultimately advancing the rather oxymoronic proposition that they’d found “clear and convincing evidence” of my being “somehow [. . .] involved” in plagiarizing Cohen—as in, “we don’t know what it was you did, but we can prove you did it”—and affirmed the investigative panel’s no less vacuous finding that I was “at least an accomplice.”³¹⁷ The most—indeed, the *only*—substantive bit of evidence wielded by either panel was that the offending essay was listed in my annual report of professional activities for 1991.³¹⁸ Although I explained that I’d always left it to my assistants to fill out such forms,³¹⁹ both panels contended that my signing of the 1991 report conclusively demonstrated my culpability.³²⁰

This conclusion framed what, for me, was one of the most delightful episodes of the P&T review. It began with my pointing out to Clinton that in the “summary biography” included in Appendix A of the *IC Report*, he is credited as being a “co-author” of “*The Handbook of Federal Indian Law* (1982 ed.),”³²¹ although the book’s title is actually *Felix S. Cohen’s Handbook of Federal Indian Law*. It was, as its real title indicates, solo-authored by Felix Cohen and originally published in 1941—several years before Clinton was born—and thus, far from being in any legitimate sense a “co-author,” he was merely one among a number of writers who’d contributed updates to Cohen’s material.³²²

Thereby confronted with what I suggested might be construed as evidence of his own “failure to comply with established standards regarding author names on publications” by “misappropriating the work of another”—to borrow the investigative panel’s own verbiage—a red-faced Clinton blurted out, “I didn’t draft that[!] I’m not even sure I ever saw it [. . .]. I wouldn’t have cited it that way. That’s not the way it’s cited in my CV [. . .]. Somebody took that off my Web site [. . .].”³²³ Later, after observing that I “recall[ed] somebody else having [described] the same sort of circumstances and being convicted of plagiarism as a result,” I asked whether Clinton had signed off on the *IC Report*.³²⁴ His one-word answer was, “Yes.”³²⁵

Ghostwriting

The P&T reviewers followed the investigative panel in absolving me of allegations that I’d plagiarized portions of an essay attributed to former Arizona State University Professor Rebecca Robbins—and, as a subtext, several essays attributed to Annette Jaimes—in accordance with the time-honored dictum that “one cannot plagiarize oneself,” i.e., I’d ghostwritten *all* of the material at issue.³²⁶ That accomplished, the reviewers turned to the question of ghostwriting and, once again echoing the *IC Report*, asserted that my engagement in it constituted

another of my supposed failures to comply with established standards regarding author names on publications, and thereby to “conduct fall[ing] below minimum standards of professional integrity.”³²⁷

The basis upon which the reviewers reached such conclusions, or felt they might ultimately be defended against judicial challenge, is a bit mysterious since, to a far greater degree than the investigative panel, they openly “acknowledge[d] the difficulty in finding specific guidelines related to ghostwriting” (which is to say, they could find none at all).³²⁸ Further, unlike their investigative panelists, who claimed a clear violation,³²⁹ the P&T reviewers observed only that the “practice may (or may not) violate an already stated University policy” (this in itself was a stretch, since they had already admitted that the “University ‘Research Misconduct Rules’ [. . .] are silent on this issue”).³³⁰

Moreover, as the reviewers were informed, three noted experts on the question—the AAUP’s Marc Cogan, CUNY ethicist Stephen Cahn, and then-National Ethnic Studies Association President Larry Estrada—are all on record in connection with my case as describing the treatment of ghostwriting as a violation of ethical standards to be a “curveball” for which they are aware of no precedent.³³¹ Nor could the university’s own expert witness, Donald McCabe, provide an example in which ghostwriting—as opposed to taking credit for ghost-written material—has been construed as research misconduct.³³²

One might suspect, under these the circumstances, that the P&T reviewers had succumbed to a certain terminological confusion, meaning “accepted practices” when they wrote “established standards.” In that case, it would be reasonable to expect that, in order to demonstrate significant deviation on my part, the panel would have cited considerable evidence that the practice of ghostwriting is *not* accepted—that is, not commonly undertaken without incurring either censure or penalty—in the various research communities relevant to an interdisciplinary scholar such as me. Indeed, to uphold a “guilty” verdict, they were ethically/legally obliged to do so.

However, apart from a bald assertion that “no credible evidence [has been] provided that [ghostwriting] is an accepted practice for academic research in Communications and/or Ethnic Studies Departments”³³³—a claim which no doubt insulted several witnesses who testified to the contrary,³³⁴ and which shifted the evidentiary burden from the university onto me (thereby inverting the P&T’s own rules)³³⁵—the reviewers made no effort to establish that ghostwriting violates accepted practices. Quite the contrary, while neglecting to mention evidence introduced with respect to the practice of ghostwriting among academic historians³³⁶ and fudging the issue with regard to political scientists,³³⁷ they admitted that the practice is apparently “acceptable [. . .] in some law schools,”³³⁸ and, far more broadly, accepted by “other communities.”³³⁹ Since the investigative panel’s claim that ghostwriting is a practice proscribed by an “overwhelming consensus” among academics could not be substantiated,³⁴⁰ it was impossible for me to have “departed from accepted practices” in this regard.

Self-Citation of Ghostwritten Material

At issue here is the question of whether my citation of what the investigative panel described in their report as “two *apparently independent third-party sources*” (emphasis in original)—i.e., material I myself had ghostwritten—constitutes a “form of evidentiary fabrication” which was “part of a deliberate research stratagem to create the appearance of independent verifiable claims that could not be supported through existing primary and secondary sources.”³⁴¹ Elsewhere in the report, the panelists elaborated further, claiming that such citations allowed me “to create the false appearance that [certain of my] claims are supported by other scholars when, in fact, [I am] the only source for such claims” as were involved in my interpretations of the General Allotment Act and the Indian Arts and Crafts Act.³⁴²

While the P&T reviewers addressed this matter only collaterally, observing that it “contributed” to the supposed failure to comply with established standards regarding author names on publications involved in my ghostwriting of the Robbins and Jaimes essays, they did state that my practice in this regard “seems inherently deceptive” and at odds with “what we *take to be* accepted standards by *large components* of the *academic world*” (emphasis added).³⁴³ Once again, the conflation of “established standards”—which, as was shown in the preceding section, do not exist—with “accepted practices” is obvious. So, too, the sheer vacuity of the phrase “what we take to be,”³⁴⁴ used as it was to define such practices, accepted by equally nebulous, but nonetheless “large,” “components” of the “academic world” as I am alleged to have deliberately transgressed.³⁴⁵

I will perhaps be excused for suggesting that something a bit less subjective is necessary to justify a finding of research misconduct. This seems all the more true when the nature of the alleged offense has been fundamentally misrepresented. In the present instance, a gross distortion is readily apparent in the investigative panel’s above-quoted assertion that no “independent third parties” were at issue when I cited material I’d ghostwritten.³⁴⁶ To make this rather peculiar proposition seem at least superficially plausible, it was necessary for the panelists to deliberately blur the distinction separating ghostwritten material from that published under pseudonyms, to the point of coining a new term—“pseudo-authorship”—in furtherance of their pretense that the two types of material are rightly viewed as interchangeable.³⁴⁷

This is sheer nonsense, of course. While it is true that no third parties exist when a writer publishes under pseudonyms—that is, when s/he adopts one or more “pen names”—the exact opposite pertains to ghostwriting, where material is, by definition, written *for* a third party. And, unless s/he is somehow coerced into accepting attribution of authorship for something s/he didn’t write, the third party is *always* independent, i.e., inherently empowered to revise or specify revisions to anything in the text incompatible with her/his own thinking, or to simply reject the material.³⁴⁸ In effect, as the matter is put by Craig R. Smith, a speech communications professor at California State University, Long Beach, the task of a ghostwriter is to “give voice to the arguments” of third parties, “and help [them] present their ideas” effectively.³⁴⁹

Professor Smith also observes that, once ghostwritten material is published under the name of the third party for whom it was ghostwritten, s/he “takes responsibility for it” (i.e., s/he embraces the ideas/information set forth therein by publicly “owning” them).³⁵⁰ Smith is by no means alone in this view:

If a man [or woman] speaks words which convey his [or her] principles and policies and ideas and [s/]he’s willing to stand behind them and take whatever blame or credit go with them, it’s his [or hers].³⁵¹

It follows that ghostwriters are under no obligation, ethical or otherwise, to attribute authorship to *themselves* when quoting/citing material they’ve ghostwritten in their own subsequent scholarship. Were it otherwise, the acclaimed Harvard historian Arthur M. Schlesinger, Jr., would have been guilty of exactly my own supposed offense every time he referred to John F. Kennedy’s inaugural address—ghostwritten in part by Schlesinger—as being “Kennedy’s.”³⁵² The same would be true of Francis H. Heller, the political science professor at the University of Kansas recommended by his chancellor to ghostwrite the memoirs of President Harry S. Truman.³⁵³ So, too, Barbara Feinman Todd, professor and associate dean of the Journalism Program at Georgetown, who ghostwrote both of Hillary Clinton’s books,³⁵⁴ as well as Elena Kagan, dean of the Harvard Law School, who is believed to have ghostwritten substantial portions of Laurence Tribe’s magisterial *American Constitutional Law*.³⁵⁵ There are literally hundreds of similar examples.³⁵⁶

Relatedly, scholars routinely attribute authorship to those for whom they know it was ghostwritten, and often by whom. It has long been common knowledge, for instance, that Rex Collier, Courtney Ryley Cooper, William Sullivan, and other ghostwriters produced virtually everything contained in J. Edgar Hoover’s extensive bibliography; nonetheless, the material is invariably attributed to Hoover.³⁵⁷ Similarly, it’s hardly a secret that Barry Goldwater’s *Conscience of a Conservative* was written in its entirety by L. Brent Bozell, yet one will search in vain for an instance in which authorship is attributed to Bozell.³⁵⁸ And, while the identities of the ghostwriters are well-known in each case, which scholar is it who attributes Truman’s memoirs to Frank Heller, Kennedy’s *Profiles in Courage* to Ted Sorenson,³⁵⁹ or Hillary Clinton’s *It Takes a Village* and/or *Living History* to Barbara Feinman Todd? Once again, a list of comparable examples would be all but endless.

This is so because, once the person for whom material is ghostwritten “takes responsibility for it” by publishing it under her/his own name, the material’s “authorship is wholly unimportant.”³⁶⁰ “What is important is what is said” therein.³⁶¹ Hence, when asked during the P&T review hearings whether he viewed the fact that I’d ghostwritten the essay by Rebecca Robbins I cited when interpreting the General Allotment Act as diminishing the integrity of my scholarship, Robert Williams replied, “Absolutely not. I mean, it says what it says [and] it’s absolutely true, and it doesn’t matter if Mickey Mouse wrote it.”³⁶² Or, to quote Eric Cheyfitz during the same proceeding:

[W]e have a couple of ghostwritten essays [Churchill] cited as third-party evidence [and] indeed it is third-party evidence, because two reputable scholars signed off on it and lent their names to it. So we are getting not just [Churchill's] opinion backing [him] up, but [also] the opinion of Rebecca Robbins and M. Annette Jaimes. Unless they step forward and say [he] held a gun to their head or twisted their arm or bribed them or performed some [other] act of malfeasance, they signed off [and must therefore be presumed] to agree with these opinions.³⁶³

Consequently, the investigative panel's assertion that my "self-citation" of material I'd ghostwritten "creat[ed] the false appearance that my claims are supported by other scholars" was itself false. So too its pretense that I was ever "the only source for such claims." As was thoroughly demonstrated during the P&T hearings, a number of other scholars have arrived quite independently—i.e., citing neither the Robbins/Jaimes material nor work published under my own name—at conclusions virtually identical to mine.³⁶⁴ Accordingly, the P&T reviewers overturned the investigative panel's findings that I'd engaged in "falsification" with regard to both the 1887 Allotment Act and 1990 Arts and Crafts Act (see the section titled "On Matters of Legal Interpretation," above).

That *should* have been the end of it. Just to ice the proverbial cake, however, since he advertises himself as having "co-authored" the 1982 edition of *Cohen's Handbook of Federal Indian Law*,³⁶⁵ I queried Clinton during his appearance before the reviewers as to where the material he'd written might be located therein. He responded that "there was a very deliberate decision by the [. . .] board of editors to not take individual authorship of individual pieces, but to [simply] indicate who-all contributed." I then asked whether, "theoretically, at least, any time you cite the 1982 *Cohen*, you would be citing yourself?"³⁶⁶ Visibly startled by the question, Clinton was forced to concede the point, before undertaking a feeble attempt to neutralize its implications:

I think that is correct, theoretically, though it depends on what sections. And because of the agreement, it was impossible to actually note [who wrote what]. But as it turns out, quite by accident, because I know which sections I wrote, strangely enough, I don't write in the sections I wrote, and therefore, I have *almost no* occasion to cite myself. (emphasis added)³⁶⁷

At that point Langer abruptly halted my interrogation of the witness,³⁶⁸ but the situation was already clear: A member of the investigative panel itself had published material under conditions of authorial attribution so deliberately ambiguous as to be tantamount to ghostwriting and, although he professed to have had "*almost no occasion*" to cite the material at issue—as opposed to the handful of occasions in the several thousand pages of my published scholarship where I cited essays I'd ghostwritten—the reviewers were left with only his word that this was so (emphasis added). Nonetheless, while expressing the

opinion that my practices in this regard fall below some unarticulated set of “established standards,” the reviewers maintained a stony silence in their report concerning Clinton’s—to say nothing of the nineteen other scholars involved in “coauthoring” the 1982 *Cohen Handbook*³⁶⁹—demonstrated engagement in essentially the same “unacceptable” practices I was being charged with.

Little Matters of Citational Convention

Although the P&T reviewers failed to address the matter one way or the other, the investigative panelists also found that what they termed the “unconventional referencing style frequently employed by Professor Churchill”³⁷⁰—i.e., providing reference signals like “Overall, see [. . .]” or “See generally [. . .]” when citing sources “*in their entirety*” (emphasis in original)³⁷¹—constituted a “form of research misconduct.”³⁷² Specifically, they held that such “referencing of a lengthy source without pinpoint page or chapter citation [. . .] creates the appearance of support without providing a reader the tools to rapidly check [my] authority,” and is thus “part of a pattern and consistent research stratagem to cloak extreme, unsupportable, propaganda-like claims of fact that support [my] legal and political claims with an aura of authentic scholarly research by referencing apparently (but not actually) supportive third-party sources.”³⁷³

This astonishing rhetorical barrage set the stage for yet another illuminating exchange during the review hearings. In this instance, there were actually a whole series of exchanges, beginning on January 9, when a reviewer asked Clinton, who had written the purplish prose just quoted, whether he was “aware that the style manual of the American Psychological Association does not provide for the listing of page numbers when citing whole books unless a direct quotation is involved,” and, since “hundreds of thousands of social scientists use that style manual, wouldn’t that render Professor Churchill’s failure to provide page numbers just common practice?”³⁷⁴

Clinton replied, “No. I think not,” and thereupon launched into a lecture on why the APA conventions were inapplicable because psychology—and presumably the rest of the social sciences, which, as the reviewer had pointed out, use the same manual—has become increasingly experimental, making reference to “the literature [ever] less significant.” “In history, by contrast, and in law,” he continued, “pinpoint citations are critical [whenever] you’re making a pinpoint point.”³⁷⁵ In thus “clarifying” the situation in a manner directly linking the conventions of citation employed by legal scholars to those of historians, Clinton apparently forgot that only a few minutes earlier he’d defended the citational practices of a colleague, Judith Royster, on the basis that she “is a law professor, not a historian. You’re applying the history standards to a law professor.”³⁷⁶

The parade of ever-shifting standards and conventions continued. The following morning, after she’d gone on at considerable length about the supposed problems with my footnotes, I had a chance to ask McIntosh how it was that if my referencing style was really so unconventional, she herself had cited entire books on 92 occasions and entire articles or book chapters no fewer than 388 times in her *Working Women in English Society*.³⁷⁷ Her initial answer was that:

With respect to citing articles or essays [. . .] unless it's a direct quotation, one is not expected to give the particular page reference. I gave them in the earlier draft, and the press asked me to take them out just to save space because, as you have probably seen, the book is very heavily annotated.³⁷⁸

I might have pointed out that Marjorie McIntosh, the distinguished historian, had just invoked the very APA convention rejected by Clinton as being inappropriate for purposes of assessing historical scholarship, rather than the AHA conventions she'd been applying to my citations all morning. As well, I might have remarked upon how improbable it seemed that an academic publisher like Cambridge University Press might have asked for the page numbers to be deleted from pinpoint citations simply to shave the length of a scholarly text. Instead, I simply followed McIntosh's lead, observing that since those of my citations to which she'd objected were not tied to direct quotes, I was confused as to what she found problematic about them.³⁷⁹

Realizing, perhaps, that she'd begun to box herself in, she shifted back to the AHA conventions, replying that page references are also necessary whenever a source is cited in support of an argument or recitation of data so that those wishing to verify the accuracy of an author's interpretation/usage will not have to read the entire source to do so.³⁸⁰ Handing McIntosh a copy of *Working Women*, I then asked her to read aloud one of numerous notes I'd marked. After much dissembling, she finally did so, running through a lengthy array of statistical data on female creditors in medieval England. In support, she cited two sources, providing page references in neither.³⁸¹ The obvious followed:

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

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

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

A: It is precise information, yes. And yes, if another historian wished to check [. . .] they would have to go back to the article I cited, which is based on primary evidence, primary sources, to check that [. . .]. Are we done with this now?³⁸²

As I later summed up the exchange to my daughter, it was a classic example of the "rules for thee but not for me syndrome," which was a defining feature of the process from start to finish. Given the overall circumstances described herein, the P&T reviewers' finding that the university had not "engaged in selective enforcement of its rules concerning Research Misconduct" in my case was a travesty, pure and simple.³⁸³ No less so their conclusion—despite their straightforward acknowledgement that "but for his exercise of his First Amendment rights, Professor Churchill would not have been subjected to the

Research Misconduct and Enforcement Process or received [Di-Stefano's] Notice to Dismiss"³⁸⁴—that the process had not been “so fundamentally flawed as to deny [my] right to Due Process.”³⁸⁵ Such are the liberal “protections” accorded radical scholars and scholarship in the face of reactionary aggression.

Aftermath

The P&T reviewers submitted their final report to Hank Brown, a former Republican senator and ACTA cofounder brought in to replace Elizabeth Hoffman as president of the university,³⁸⁶ on May 8, 2007. On May 25, Brown submitted a letter to the Board of Regents in which, although he has no discernable competence in matters of federal Indian law, he overruled not only the reviewers but the expert witnesses, reinstating the investigative panel's findings that I had misrepresented both the 1887 and 1990 Acts, and recommending that the board vote to revoke my tenure and fire me for cause on the earliest practical date.³⁸⁷ This was done by an 8-1 count at a meeting already scheduled for July 24.³⁸⁸ David Lane filed suit on my behalf the following morning.³⁸⁹

In truth, the counterattack had begun well before Brown received the *P&T Report*. By late March, Cheyfitz and others had begun to go public with their comments about the myriad misrepresentations of fact littering the *IC Report*.³⁹⁰ In early April, apparently unnerved by news that Cheyfitz would shortly be the featured speaker at a colloquium titled “Re-Examining the Academic Case Against Ward Churchill,” cosponsored by the UCB English Department and the campus AAUP chapter,³⁹¹ Wesson attempted a preemptive strike of sorts, publishing an open letter in the university's *Silver & Gold Record* on April 12, admitting that the panel had “misunderstood” what was said in one of the sources I'd cited and consequently “erred” with regard to certain “facts” presented in their finding on the John Smith/smallpox question:³⁹²

In our report we addressed Professor Churchill's reference to a book by Neal Salisbury, *Manitou and Providence: Indians, Europeans, and the Making of New England, 1500-1643* (citing pages 96-101) in support of his claim that “strong circumstantial evidence” pointed to the conclusion that Captain John Smith intentionally introduced smallpox among the Wampanoag people of New England and thus caused an epidemic of the disease. We wrote (on page 34 of the report): “The pages referenced in the Salisbury book do not contain the words [‘Wampanoag’ or] ‘Wampanoags’ and have no discussion of any disease or epidemic.” In this assertion we were incorrect. There is, beginning at page 101 of Salisbury's work, a discussion of a disease epidemic that began in 1616 among the native peoples of New England. There is also at page 102 (beyond the page range of Professor Churchill's citation, but still part of the same discussion) a reference to the “Pokanoket” as one of the peoples who suffered greatly from this epidemic. Professor Cheyfitz has reportedly said that the Pokanoket are (or are a branch of) the Wampanoag. Thus our

statement was literally incorrect concerning the absence of any mention of a disease, and (if Professor Cheyfitz is correct) it did not take account of the possibility that the people mentioned in the ensuing section were part of the Wampanoag tribe.

Wesson ended her missive with the claim that panel would “soon take steps to ensure that the error is corrected for the scholarly record.” Eighteen months later, no such corrections have been made: i.e., no revisions have been made to the *IC Report*, which remains posted on the university Web site under the guise of a “scholarly work product,” while neither Wesson nor any other panelist has said another word on the matter (plainly suggesting that, in the wake of her initial—and undoubtedly unsanctioned—foray into the realm of public “truth-telling,” she/they were quickly muzzled by the administration). Even if the panel had followed up immediately, it was already far too late for such obviously self-serving gestures to have the desired effect.

As was noted during the April 20 colloquium, the gloss Wesson sought to apply in her final sentence was rather transparent, given that on the first of only three pages of my work at issue in connection with the John Smith/smallpox allegation—all of which the panelists professed to have parsed in near-microscopic detail—I’d recounted how in 1602, “an exploratory probe [by the English] of the area around Cape Cod resulted in hostilities with local Wampanoags (Pokanokets).”³⁹³ Moreover, Salisbury himself refers to “the Pokanokets (or Wampanoags)” at page 21 of *Manitou and Providence*.³⁹⁴ Hence, to paraphrase the panelists themselves, either they did not actually read the sources they cited—including my material—or they engaged in a gross misrepresentation of the contents to support their pre-fabricated conclusions. Either constitutes misconduct.³⁹⁵

By then, similar misrepresentations of fact had been detected on virtually every page of the *IC Report*, and more were cropping up every day. On April 23, seven members of the UCB faculty, joined by Cheyfitz and Yellow Bird, published an open letter citing “a pattern of violations [. . .] of standard scholarly practice so serious that [they were] considering the additional step of filing charges of research misconduct” against the panelists, observing that the report was so deeply flawed that it “cannot be salvaged by individual corrections,” and therefore demanding that the report be retracted.³⁹⁶ When Michael Poliakoff—an ACTA veteran hired as Brown’s assistant in early 2006—refused their demand, the group, joined by two additional members of the Boulder faculty, filed a formal complaint with the SCRM.³⁹⁷

This was followed, on May 13, with a statement placed by the Boulder and Denver Faculty Ad Hoc Committee to Defend Academic Freedom in Boulder’s *Daily Camera* denouncing ACTA’s subversion of the investigative process by “enlist[ing] trustees (regents), alumni, governor and legislature to bring political and financial pressure” to bear on the university. On May 28, a second research misconduct complaint against the investigative panelists, this one signed by two attorneys and four professors at other universities, was filed with the SCRM.³⁹⁸

I followed up by filing a pair of complaints, the first naming Radelet as the primary offender and detailing at considerable length the panel's falsification of evidence to support its finding on the John Smith/smallpox allegation, the second naming McIntosh as the primary offender and demonstrating through the deployment of numerous side-by-side quotations the extensive plagiarism of both Thomas Brown and unpublished material provided by an independent researcher named Joseph Wenzel.³⁹⁹ Wenzel himself subsequently filed yet another research misconduct complaint with the SCRM, citing not only McIntosh's appropriation of his material, but with regard to what he described as systematic misrepresentations of "fact and law" in the sections of the *IC Report* dealing with the 1887 and 1990 Acts.⁴⁰⁰

Meanwhile, on July 10, a P&T panel convened to consider a collateral grievance I'd filed *nearly two years* previously,⁴⁰¹ finally returned its verdict, finding that the administration had clearly and repeatedly violated my right to confidentiality, as specified in the university rules pertaining to personnel matters, and that such violations had had "a prejudicial or detrimental effect on [my] reputation".⁴⁰²

Interim Chancellor DiStefano[s] actions, in this Panel's judgment, were inappropriate and likely prejudicial. For example [. . .] there was DiStefano's request to the SCRM to extend its work to investigate additional allegations, all of which were specified in a June 15[, 2005] press release. These actions would appear to be in direct violation of Section VI.B.2.e [. . .]. The press release and press conference of May 16, 2006, were made prior to the release of the SCRM report to [me] for [my] review and response. Therefore, the SCRM report should not have been considered "final." The University did not inform Churchill or Lane that they were going to release the SCRM report publicly, as required in [the] SCRM rules Sections VII.A.1-2 and VII.B [. . .]. *Releasing the SCRM report before Churchill had a chance to respond was likely detrimental to his reputation. DiStefano's comments [on] June 15, 2005 were also likely damaging to his reputation.* (emphasis in original)⁴⁰³

The grievance panel also concluded that while the lengthy "delay to hear [my] grievance compounded the damage to [my] reputation given the continuous media coverage," the source of the delay was the P&T Committee itself—i.e., the faculty senate—rather than the administration.⁴⁰⁴ Nonetheless, it recommended that there be "a public statement (i.e., press release and/or Web site posting acknowledging the breaches of the SCRM rules by the University against Professor Churchill)".⁴⁰⁵ Unsurprisingly, the recommendation was rejected by G.P. "Bud" Peterson,⁴⁰⁶ yet another ACTA notable "brought aboard" by Brown, in this case to replace DiStefano as chancellor of the Boulder campus.⁴⁰⁷

Then, on July 18, I received a letter from Rosse, informing me that the SCRM would "not be reviewing [my] allegations regarding the report of the investigating committee, nor any future allegations regarding the report."⁴⁰⁸ The reasons, as reported in the *Silver & Gold Record* a few days later, were that:

To avoid a possible conflict of interest, the [complaints were] submitted to the Committee on Research Ethics (CRE) at the [University of Colorado] Health Sciences Center, according to the letter, a copy of which Churchill provided to S&GR. But Rosse wrote that the CRE chair notified him on July 18 that “complaints of scientific misconduct lodged against the committee which investigated Professor Churchill do not fall within the purview of the Standing Committee because the activities of [the investigative panel] did not constitute research[;] rather, they were an administrative investigation and are therefore not scientific misconduct.”⁴⁰⁹

This rather surprising contention, which originated with University Counsel Patrick O’Rourke during the P&T review hearings in January, rather than the CRE chair seven months later,⁴¹⁰ completely reversed the university’s many public representations of the *IC Report* as a scholarly document resulting from research undertaken by a select group of senior professors.⁴¹¹ Such was certainly claimed by the panelists themselves, both by way of direct statements made in the report itself⁴¹² and through the trappings of scholarship with which they’d larded it.⁴¹³ So, too, Wesson’s earlier-quoted depiction of the report as forming part of the “scholarly record” on April 12,⁴¹⁴ and, not least, the panelists’ insistence that their report would pass muster under the same standards they’d applied to me.⁴¹⁵

While the SCRM’s defensive ploy was clearly intended to immunize the panelists against the consequences of their fraud, this was by no means the only implication. As I explained at the time, “President Brown claims that I should be fired to preserve ‘academic integrity.’ Yet he relies on a report which the University refuses to investigate against credible and well-documented charges of falsifications, fabrications and plagiarism. The University cannot have it both ways. If the investigative [panel’s] report is scholarship, it must be held to the same standards to which it claims to be holding me accountable. If not, President Brown’s recommendation is based on no credible evidence at all” (or at least none that could withstand scholarly scrutiny).⁴¹⁶

The great bulk of the information set forth in this section had been provided to the regents prior to their meeting on July 24.⁴¹⁷ That the motive underlying their vote had little, if anything, to do with academic concerns is evidenced, should further proof be needed, by the fact that Brown had already prepared a missive to donors and alumni—posted to a university listserv the moment the results were official—informing them of my firing and that they should therefore proceed with whatever financial contributions they’d been withholding.⁴¹⁸ Over the next week, he worked overtime, publishing justifications of the university’s actions—and effectively soliciting funds from ACTA-aligned donors—in venues ranging from the local press to *The Wall Street Journal*.⁴¹⁹ To all appearances, his efforts cemented a record-breaking influx of contributions to the university foundation.⁴²⁰

Mission accomplished, Brown announced his retirement, effective as soon as a “suitable replacement” could be hired. Here, the wages of liberal accommodation to the reactionary right were finally visited,

full-force, on the CU faculty. Brown's choice, and the *only* name presented to the regents, was Bruce Benson, a man whose "qualifications" include a BA in geology, a career spent as an oil company executive, and considerable experience as a Republican activist, including the founding of a 527 organization called the "Trailhead Group" (à la the "Swift Boat Veterans for Truth").⁴²¹ Despite much ineffectual hand-wringing by the "campus left,"⁴²² Benson became the twenty-second president of the University of Colorado by a 6-3 party-line vote of the regents on February 20, 2008.⁴²³ His first major initiative was to establish an endowed professorship of "conservative political philosophy."⁴²⁴

In the interim, the university attempted, unsuccessfully, to have my lawsuit dismissed.⁴²⁵ The case is currently scheduled for trial on March 9, 2009. While one can never predict the outcome of such proceedings, it can be said with certainty that the rules will be very different from those prevailing in the university's twisted version of "due process." Perhaps the extent to which I've deserved such flattery as being designated the "worst professor in America" by the *Weekly Standard*,⁴²⁶ among the "most dangerous" by David Horowitz,⁴²⁷ and the benchmark by which academic subversion should be measured by ACTA, will be clarified in the judicial arena.⁴²⁸ At any rate, as David Lane has observed, it's surely "going to be fun." Be that as it may, having taken their best shot with my conscience still uncut by compromise, I will continue to do as I've always done, speaking the truth as I see it, not to power but in its very teeth.⁴²⁹ After all, as one who actually believes in freedom, academic and otherwise, it seems the very least I can do.

Notes

¹ The language quoted accrues from the Laws of the Regents of the University of Colorado as amended on 10/10/02, at 5.D.1. I have deleted the original formatting for reasons of space and readability.

² Laws of the Regents of the University of Colorado at 5.D.2.

³ *Ibid.*

⁴ It is somewhat misleading to describe the language at issue merely as "rhetoric." Contracts in the University of Colorado system specify that rights and responsibilities of faculty members are defined by the regental "laws" quoted herein. The university's obligation to protect the academic freedom of its faculty in the manner described in the relevant passages is therefore legally enforceable.

⁵ This was in a sense a return engagement. In October 1996, at the invitation of Rabinowitz's husband Peter, also a professor at Hamilton, I delivered a very well-received lecture relating the U.S. nuclear bombings of Hiroshima and Nagasaki to the ongoing genocide of American Indians.

⁶ Both the conditions under which Rosenberg was held—she was confined for an extended period in the notorious women's experimental unit in Lexington, Kentucky—and the extraordinarily disproportionate punishment imposed upon her—she was initially sentenced to serve fifty-eight years for merely possessing dynamite while, by contrast, abortion clinic bomber Dennis Malvesi, convicted of actually using the explosives he possessed, was sentenced to only seven years—figured in Clinton's decision to order her release. On Lexington, see Mary O'Melveny, "Portrait of a U.S. Political Prison: The Lexington High Security Unit for Women," in *Cages of*

Steel: The Politics of Imprisonment in the United States, ed. Ward Churchill and J.J. Vander Wall (Washington, D.C.: Mazonneuve Press, 1992), pp. 112-22. On the disproportionality of her sentence, see Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Dissent in the United States* (Cambridge, MA: South End Press, [Classics ed.] 2002), pp. 309-10, 412n30.

⁷ During her nearly twenty years in prison, Rosenberg developed into a fine autobiographical writer and poet. For a sample of the former, see her "Reflections on Being Buried Alive," in Churchill and Vander Wall, *Cages of Steel*, pp. 128-30. For poetry, see, e.g., Tim Blunk and Raymond Luc Levasseur, eds., *Hauling Up the Morning: Writings and Art by Political Prisoners and Prisoners of War* (Trenton, NJ: Red Sea Press, 1990), pp. 282-88. It should be noted that authors sharing backgrounds similar to Rosenberg's have made significant contributions to American letters and intellectual life over the years. See H. Bruce Franklin, *Prison Literature in America* (Westport, CT: Lawrence Hill, 1978); Joy James, ed., *Imprisoned Intellectuals: America's Political Prisoners Write on Life, Liberation, and Rebellion* (Lanham, MD: Rowman & Littlefield, 2003).

⁸ The lead at Hamilton seems to have been taken by an art history professor named Steve Goldberg. On the Horowitz operation, see Scott Sherman, "David Horowitz's Long March," *The Nation*, July 2000; Media Transparency, "Center for the Study of Popular Culture" (available at <http://www.media.transparency.org/allinoneresearchresults.php?searchString=Center+for+the+Study+of+Popular+Culture>). On Cheney and ACTA, see Annette Fuentes, "Trustees of the Right's Agenda: Conservative Appointees Holding Increasing Sway Over Public Higher Education," *The Nation*, Oct. 5, 1998; Bill Berkowitz, "Lynne Cheney's Campus Crusade: Second Lady's ACTA launches campaign against 'Blame America First' academics," Nov. 19, 2001 (available at <http://www.workingforchange.com/article.cfm?itemId=12355>) (Ed. note: As of 21 Dec. 2008, the preceding URL no longer pointed to this article).

⁹ On Hamilton's ACTA clone, see Scott Jaschik, "Alumni Challengers Lose Vote at Hamilton," *Inside Higher Ed*, Aug. 18, 2005 (available at <http://www.insidehighered.com/news/2005/08/18/Hamilton>).

¹⁰ For details concerning the October 20, 1981, incident and Rosenberg's ostensible background role in it, see John Castelluci, *The Big Dance: The Untold Story of Kathy Boudin and the Terrorist Family that Committed the Brinks Robbery Murders* (New York: Dodd, Mead, 1986). It should be noted that no less than former New York Mayor Rudy Giuliani, then U.S. Attorney for the District of New York, declined to prosecute Rosenberg on these allegations. Also worth noting is the fact that she's been neither convicted nor even tried on any charge related to the harm of another person. See Susan Rosenberg, "Biography: Susan Rosenberg," in Marilyn Buck, Linda Evans, Susan Rosenberg, and Laura Whitehorn, *Conspiracy of Voices: Poetry, Writings and Art by the Women of the Resistance Conspiracy Case* (Washington, D.C.: Emergency Committee to Defend the Human and Legal Rights of Political Prisoners, 1990), pp. 71-72; *Can't Jail the Spirit: Political Prisoners in the U.S.* (Chicago: Editorial El Coquí, [3rd ed.] 1992), pp. 188-89.

¹¹ Cecilia Le, "Ex-Radical Declines Position: Rosenberg Won't Teach at Hamilton," *Utica Observer-Dispatch*, Dec. 9, 2004; Sapna Kollali, "'60s Radical Won't Teach Course at Hamilton: College Worried About Bad Publicity," *Syracuse Post-Standard*, Dec. 9, 2004.

¹² Saito was on leave from Georgia State at the time, having accepted a tenured position with the Department of Ethnic Studies at the University of Colorado at Boulder. She returned to her position at GSU in 2006. Candor requires that I disclose the fact that we were married in July 2005.

¹³ As my appearance at the college became increasingly "controversial" during late January, Hamilton President Joan Hinde Stewart prevailed upon Prof. Rabinowitz to add a third speaker—an avowedly pacifist resident philosophy professor named Richard Werner—to my and Saito's "panel,"

and to change the focus of our collective presentation to “The Limits of Dissent.” See Charlie Brennan, “‘Other voices’ to join Churchill on N.Y. panel,” *Rocky Mountain News*, Jan. 27, 2005; Alaina Potrikus, “Speaker Added to Panel at Hamilton: Angry Reaction to Scheduling of Activist Ward Churchill Prompts College’s Decision,” *Syracuse Post-Standard*, Jan. 31, 2005; Bruce Shapiro, “Ward Churchill: Scholar,” *The Nation*, Mar. 7, 2005. Although less than thrilled by the arrangement, Saito and I agreed to the alterations.

¹⁴ My op-ed, titled “‘Some People Push Back’: On the Justice of Roosting Chickens,” was written during the afternoon and evening of 9-1-1, and posted on the *Dark Night* Web site on Sept. 12, 2001. The virulence of the response it has evoked is in some ways peculiar, given that my “Nazi analogy” follows closely upon Hannah Arendt’s reasoning in her *Eichmann in Jerusalem: A Report on the Banality of Evil*, 2nd ed. (New York: Viking, 1964). Similar metaphors have been employed many times by activists like David Dellinger, as well as Noam Chomsky and other dissident scholars; on Dellinger, see his *More Power Than We Know* (New York: Anchor Press/Doubleday, 1975), p. 51; for examples from Chomsky (occasionally quoting other scholars), see his *American Power and the New Mandarins* (New York: Pantheon, 1967), pp. 8-9, 14-15, 165-69, 213n37, 308, 323-24, 337, 363n64; *For Reasons of State* (New York: Vintage, 1973), pp. 228-30; *The Culture of Terrorism* (Boston: South End Press, 1988), pp. 255-56; *Deterring Democracy* (New York: Hill & Wang, [2nd ed.] 1992), pp. 1, 376; *Rogue States: The Rule of Force in International Affairs* (Cambridge, MA: South End Press, 2000), pp. 45, 85, 162-64; *Hegemony or Survival: America’s Quest for Global Dominance* (New York: Metropolitan Books, 2003), pp. 13, 68-69, 189, 191. Even such mainstreamer politicians as former South Dakota Senator—and 1972 Democratic presidential candidate—George McGovern and, most recently, Illinois Senator Dick Durbin have made such comparisons; McGovern quoted in Fred Turner, *Echoes of Combat: The Vietnam War in American Memory* (New York: Anchor Books, 1996), p. 50; on Durbin, see Eric Zorn, “What Dick Durbin Should Have Said,” *Chicago Tribune*, June 23, 2005. Nor were other aspects of my argument especially unique. They have been presented quite forcefully by, among many others, Chalmers Johnson, in his *Blowback: The Costs and Consequences of American Empire* (New York: Henry Holt, 2000), and Michael Scheuer, in his *Imperial Hubris: Why the West Is Losing the War on Terror* (Washington, D.C.: Potomac Books, 2004).

¹⁵ Ian Mandel, “Controversial speaker to visit Hill,” *The Spectator* (Hamilton College), Jan. 21, 2005; Alaina Potrikus, “Controversy Festers on Hamilton Campus Again,” *Syracuse Post-Standard*, Jan. 26, 2005; John Ensslin, “CU prof’s essay sparks dispute: Ward Churchill says 9/11 victims were not innocent people,” *Rocky Mountain News*, Jan. 27, 2005; Charlie Brennan, “Churchill a lightning rod: CU prof at center of 9/11 dispute has been there before,” *Rocky Mountain News*, Jan. 27, 2005.

¹⁶ “Review and Outlook: There They Go Again,” *The Wall Street Journal*, Jan. 28, 2005.

¹⁷ Before O’Reilly’s obsession with me had run its course, cynics had begun referring to his program as *The Ward Churchill Factor*, and even his most loyal viewers were demanding that he give the “topic” a rest. O’Reilly’s behavior in this connection should be in contrast to his oft-repeated complaint—he voiced it on 18 different occasions during the year beginning in May 2004—that *The New York Times* and other “liberal media sources” were giving “excessive coverage to the Abu Ghraib torture scandal.” Brian Montopoli, “Spin Buster: Of Agendas, Fetishes and Crusades,” *CJR Daily*, May 23, 2005. Also see Scott Smallwood, “Inside a Free-Speech Firestorm: How a Professor’s 3-year-old essay sparked a national controversy,” *The Chronicle of Higher Education*, Feb. 18, 2005.

¹⁸ Shapiro, “Churchill.”

¹⁹ The passage quoted was also posted on <http://littlegreenfootballs.com/weblog/>, a popular right-wing Web site.

²⁰ The following night, O'Reilly launched into a similar tirade against *Washington Post* columnist Richard Cohen for having suggested that *The Factor* was being used as a bully pulpit from which to create an "issue" where there really was none. See Montopoli, "Spin Buster."

²¹ "The decision to disinvite Mr. Churchill from Hamilton came hours after New York Gov. George E. Pataki, a Republican, said he was 'appalled' that the college had invited the professor"; Valerie Richardson, "Professor is disinvited to speak: College cites death threats," *Washington Times*, Feb. 2, 2005. Also see Errol A. Cockfield, Jr., "Controversial speaker raises Pataki's wrath," *New York Newsday*, Feb. 1, 2005.

²² As Stewart put it in a press release on January 30: "However repugnant one might find Mr. Churchill's remarks, were the college to withdraw the invitation simply on the grounds that he has said offensive things, we would be abandoning a principle on which this college and indeed this republic was founded"; quoted in Potrikus, "Speaker Added to Panel."

²³ For those unfamiliar with the term, a "heckler's veto" consists of threats of violence and/or other "consequences" sufficient to compel cancellation of speech activities guaranteed protection under the First Amendment (as well as the Doctrine of Academic Freedom). As the Supreme Court observed in its seminal opinion, *Terminiello v. Chicago* (U.S. 1, 4 [1949]), the provocation of "public outrage" in no sense legitimates the exercise of such a "veto" because the right to free speech may "best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." The principle was strongly reaffirmed by the high court as recently as 1997; see *Reno v. ACLU* (U.S. 844, 880). Relatedly, see *Forsyth County v. Nationalist Movement* (505 U.S. 123, 134 [1993]).

²⁴ It was related to me by the head of campus security that, as a "pre-cautionary measure," consultants from the New York State Police counter-terrorism unit had become involved. While I was not privy to the details, given Pataki's stance on the matter (see note 21), the nature of their "advice" can be readily imagined.

²⁵ Richardson, "Professor disinvited." Also see Elizabeth Mattern Clark, "Churchill's N.Y. talk canceled: Death threats made against professor, Hamilton president," *Boulder Daily Camera* (Colorado), Feb. 2, 2005; Howard Pankratz, "N.Y. college cancels talk: Embattled CU prof was to be part of panel; threats cited," *Denver Post*, Feb. 2, 2005; "How to quell a controversy: Death threats," *Syracuse Post-Standard*, Feb. 3, 2005.

²⁶ "Talking Points: Hamilton College Folds," *O'Reilly Factor Flash*, Feb. 1, 2005, (available at <http://www.billoreilly.com/show?action=viewTVShow&showID=117>). It should be noted that O'Reilly was hardly alone. *The Wall Street Journal* had also "urged people to boycott [Hamilton's] \$175 million capital campaign"; Michelle York, "Remark on 9/11 Sparks Storm at College," *The New York Times*, Jan. 31, 2005.

²⁷ *O'Reilly Factor Flash*, Feb. 1, 2005 (transcript available at <http://www.billoreilly.com/show?action=viewTVShow&showID=117#1>).

²⁸ Quoted in Shapiro, "Churchill." On the CSPC director's visit, see Emily Lemanczyk, "David Horowitz Presents Controversial Lecture," Apr. 28, 2004, (available at http://www.hamilton.edu/news/more_news/display.cfm?ID=7934).

²⁹ Although I've usually declined it, payment has been routinely offered even for appearances canceled because of inclement weather. In my view, Stewart's decision to withhold payment after her preemptory decision to cancel my appearance—the Kirkland Project, like me, was not informed until after the fact—was a purely punitive gesture. This, of course, raises the question as to what I was being punished for.

³⁰ Rabinowitz and then-Hamilton President Eugene Tobin founded the Kirkland Project in 1996. She has since served not only as its director, but its primary fundraiser. One of the most successful efforts of its type in the country, the Project has been described by right-wing alumni as “a huge undersea creature with tentacles everywhere in the school,” while Rabinowitz herself has been likened to “having Jesse Jackson on the faculty.” See *Hamilton College Alumni for Governance Reform Bulletin* (hereinafter, *AGR Bulletin*), Mar. 14, 2005, <http://hcagr.squarespace.com/>. On Rabinowitz’s “resignation under duress,” see the story from *Newsday*, Feb. 11, 2005, reprinted in the “Censorship Update” of *Newsletter on Intellectual Freedom*, Vol. LIV, No. 3 (May 2005) (available at <https://members.ala.org/nif/v54n3/datetime.html>). Also see Charlie Brennan, “N.Y. college official quits post over speaking flap: Hamilton program director resigns job ‘under duress,’” *Rocky Mountain News*, Feb. 12, 2005; Marshand Boone, “College to review Kirkland Project: Change in leadership, not speakers, cited,” *Utica Observer-Dispatch*, Jan. 29, 2005. For the hard-right view, see David Horowitz, “Reforming Hamilton U. in the Wake of Ward Churchill,” *FrontPage Magazine*, Feb. 14, 2005 (available at <http://www.frontpagemag.com>).

³¹ The attacks on Nancy Rabinowitz have quickly entered the realm of the truly sublime. On March 20, 2005, for example, an AGR member named Eugene Paul Wilson not only accused her, accurately enough, of being the sister of “the original writer of the left-wing [TV] series ‘West Wing,’” but her husband, Peter, of “go[ing] around the country lecturing—can you believe this?—about the dangers of high voltage power lines, in an attempt to stymie the power industry.” As was pointed out three days later by another alum, Penny Watras Dana, Wilson got the: “Wrong Peter Rabinowitz: The HamCol Peter Rabinowitz is a literature professor.” The individual who lectures on the effects of high voltage power lines teaches at Yale. Having thus muffed his smear rather badly, Wilson appears to have altogether missed the fact that Hamilton’s Peter Rabinowitz is the son—and Nancy therefore the daughter-in-law—of acclaimed leftist attorney Victor Rabinowitz. Such is the quality of “scholarship” typically exhibited by the chorus of right-wing ideologues currently demanding “strict enforcement of scholarly standards” against those with whom they disagree. On Victor Rabinowitz, see his *Unrepentant Radical: A Lawyer’s Memoir* (Urbana: University of Illinois Press, 1996).

³² “If Rabinowitz had the authority to issue a check [which she clearly did], how can the College in good faith place a stop payment on the check?” See “Did Rabinowitz exceed authority by paying Churchill?” *AGR Bulletin*, Feb. 17, 2005, reposted on Aug. 17, 2005.

³³ This is consistent with Stewart’s earlier contention, articulated in February, that the Kirkland Project had “embarrassed” the college by way of the “negative publicity” generated in connection with Rosenberg and myself. No mention was made of the several reactionary faculty members who’d made an issue of our speaking on campus, of the alumni who’d joined in, or even of Bill O’Reilly. In other words, exercising the right to free speech and/or the guarantee of academic freedom is an “embarrassment;” suppressing either or both is not. See generally, Nancy S. Rabinowitz, “Dear Friends of the Kirkland Project,” Feb. 2005 (available at http://www.lambdacc.org/pipermail/members_lambdacc.org/2005-February/000091.html).

³⁴ ¶ 5. Churchill hereby agrees that he will keep the fact and source and amount of the settlement payment strictly confidential and that such confidentiality is a material element of the Agreement. Should this provision be breached by Churchill, the settlement payment shall be refunded.” Henry R. Kaufman, draft proposal dated June 2, 2005 (copy on file).

³⁵ Kaufman’s check on behalf of Hamilton was issued on Oct. 11, 2005.

³⁶ Jaschik, “Alumni Challengers Lose.”

³⁷ There is evidence that at least one of the faculty members in question may have attempted to subvert even the AGR into a greater degree of conformity with their agenda. Witness the bizarre interchange on the AGR blog, beginning on March 15, 2005, when “Emmy Beale,” a purported Hamilton alumnus, complained that 31 faculty members “sit on the KP [Kirkland Project] Council” and that “another fifty support it openly,” likening the result to “having a faculty run SDS on campus.” “Ms. Beale” went on to grouse that, “If you criticize the KP you are called ‘a hostile right-winger.’ Does this sound like diversity to you?” From there, “Emmy” proceeded to emit a stream of ever lengthier and more vituperative tirades, “taking umbrage at the fact that the 31 faculty members that comprise the KP council thought it a good idea to hire an ex-felon/terrorist to teach students” and how it “has been a true disappointment to me how closely related the Kirkland Project has been to the National Lawyers Guild” (Mar. 22, 2005) and ultimately challenging the Project’s very existence: “Why is Hamilton the only undergraduate, liberal arts, secular college that operates an organization committed to social justice? [. . .] This activity should be left to the student body” (Mar. 24, 2005). It was about this time that George O’Neill, a bona fide alumnus of the college, detected something amiss and posed an obvious question to the mysterious correspondent: “When exactly DID you go to Hamilton?” (Mar. 22, 2005). While “Emmy” didn’t answer the query, “she” continued for several days to inject “her” spew, prompting other alumni to finally catch on. “It’s interesting that Emmy Beale didn’t respond to the question of who she really is. Her name does not show up on the alumni list. Is it possible that she is some disgruntled Hamilton faculty member pretending to be an alum?” (Susan Clearwater, Mar. 24, 2005). As O’Neil concluded on Apr. 1, “No answer from Emmy Beale??? I guess that means [she] really IS a sham! This seems to me to defeat the whole idea of an open exchange of ideas.”

³⁸ “The mad logic [of the Vietnam War] seemed to be epitomized by the remark of an American major to Peter Arnett after much of Ben Tre had been turned into broken bricks and cinders: ‘It became necessary to destroy the town in order to save it’”; Neil Sheehan, *A Bright Shining Lie: John Paul Vann and America in Vietnam* (New York: Random House, 1988), p. 719. It should be noted that the “mad logic” involved was primarily liberal in origin. The war, after all, was initiated by Pres. John F. Kennedy and escalated to the level of sheer insanity by his successor, Lyndon B. Johnson. Both Ben Tre and My Lai occurred on Johnson’s watch. For further insight into the liberal calculus at issue, see Robert S. McNamara, *In Retrospect: The Tragedy and Lessons of Vietnam* (New York: Vintage, 1995). McNamara, of course, served as Secretary of Defense under both Kennedy and Johnson.

³⁹ O’Reilly made essentially the same claim on at least seven occasions, Hannity twice, Scarborough twice, and Limbaugh god knows how many times. The same was stated repeatedly in both of Colorado’s major newspapers, the *Denver Post* and the *Rocky Mountain News*. As it became clear that the opposite was true, all simply fell silent on the matter. None elected to report the fact that, while a handful of schools had canceled, a significantly larger number had added me to their list of spring speakers (or tried to).

⁴⁰ In its glowing self-promotion, the Center extols its namesake’s “deep legacy of commitment to democratic representation, the rule of law, and intellectual independence”; Wayne Morse Center for Law and Politics, “About Wayne Morse” (available at <http://www.morsechair.uoregon.edu/aboutwayne.html>). Among its very first acts, however, was to engage in the political censorship of disinviting me from its opening ceremonies, in which, ironically enough, I’d agreed to participate only as a favor to a colleague.

⁴¹ Antioch, which once displayed sufficient fiber to host SDS President Carl Oglesby as scholar in residence, canceled its invitation the moment the

“Ward Churchill Controversy” became national “news.” Unlike Hamilton’s Stewart, however, Antioch administrators sought not to compound this less than principled move by making it seem punitive, i.e., they neither sought to blame me for what O’Reilly, et al., were doing—indeed, they solicited my understanding of the awkward position in which the media offensive had placed them—nor attempted to withhold my honorarium. See Jim Tomlinson, “Ward Churchill not wanted at Antioch commencement,” *Yellow Springs News* (Ohio), Feb. 17, 2005.

⁴² Berny Morson, “3rd Churchill talk canceled,” *Rocky Mountain News*, Feb. 5, 2005; Troy Kirby, Kelsey Howard, and Thomas Coughlin, “EWU cancels speaker, citing safety risks,” *The Easterner* (EWU), Feb. 9-15, 2005. This regal comportment seems to have been typical. “Jordan has been a controversial figure at EWU. He canceled volunteer faculty contracts last year, so outraging faculty that they formed a rare union”; “Wanted: A few good presidents,” *Denver Post*, Apr. 4, 2005. Also see Armando Manzanares, Nic Garcia, and Clayton Woullard, “MSCD candidate discusses tenure as EWU president,” *The Easterner*, Mar. 30, 2005.

⁴³ Jordan, it seems, was already a finalist for the presidency of Metropolitan State College, in Denver. To secure the position, it was essential that he remain in the good graces of Governor Bill Owens—who, as will be discussed below, had already demanded my firing by the University of Colorado—and the rest of the state’s Republican establishment. The stance Jordan adopted at EWU, from which he never deviated despite the resulting damage to that institution, accomplished the desired result. See Arthur Kane, “Metro State hires Wash. academic for top job: Stephen Jordan, president of Eastern Washington University, is unanimously selected to lead the school,” *Denver Post*, Apr. 7, 2005.

⁴⁴ Jonathan Brunt, “Faculty leaders want Churchill to speak: Professors say cancellation of lecture endangers free speech,” *Spokesman-Review* (Spokane, Washington), Feb. 11, 2005. The vote of EWU’s faculty senate—unanimous, other than a single abstention—was brought out by EWU Faculty Senate President Patricia Chantrill during an interview on *The O’Reilly Factor* on Feb. 17; Thomas Coughlin, “FOX News O’Reilly interviews Chantrill over Senate vote,” *The Easterner*, Mar. 1, 2005. When Jordan still refused to alter his position, demonstrations organized by the Native American Student Association, with which I’d originally contracted to appear, commenced; Troy Kirby, “Staff union adopts resolution supporting faculty senate,” *The Easterner*, Mar. 1, 2005; Thomas Coughlin, “Churchill still set to speak, says Almeida: Provost Levin-Stankevich worries about consequences of violence at the April 5 lecture,” *The Easterner*, March 2, 2005; Berny Morson, “Prof vows to speak at college: Despite cancellation, Churchill says he’ll be in Washington,” *Rocky Mountain News*, Mar. 4, 2005; Thomas Coughlin, “All eyes on Churchill rally March 10,” *The Easterner*, Mar. 9, 2005; Troy Kirby and Van Carter, “Churchill rally posters removed by administration,” *Diversity* (EWU), Mar. 9, 2005; Robert McDonald, “EWU students to bring Churchill: Groups protest president’s decision,” *Spokesman-Review*, Mar. 11, 2005; Thomas Coughlin, “Rally draws hundreds for Ward Churchill,” *The Easterner*, Mar. 30, 2005; Berny Morson, “Students push for Churchill,” *Rocky Mountain News*, Apr. 5, 2005.

⁴⁵ *Ward Churchill, et al., v. Eastern Washington Board of Trustees, et al.* (U.S. Dist. Ct., Eastern Dist. Washington, Case N. CV-05-98-RHW [filed Apr. 4, 2005]). District Judge Robert H. Whaley held that although there was indication that Jordan had engaged in “unconstitutional prior restraint” of both my right to speak and the public’s right to hear what I had to say, issues of timeliness precluded his entering a mandatory restraining order against EWU; Order of Dismissal, CV-05-98-RHW (Apr. 5, 2005). For typical Denver-style spin on the outcome, see Berny Morson, “Churchill speaks after suit flops: Judge refuses bid to be reinstated as keynote in Spokane,” *Rocky Mountain News*, Apr. 6, 2005.

⁴⁶ Thomas Coughlin, "Churchill finally has his say," *The Easterner*, Apr. 5, 2005. It should be noted that Jordan opted to be absent from campus—reportedly in San Diego—on the day he'd predicted that my presence would precipitate a "public safety crisis" at EWU.

⁴⁷ Charlie Brennan, "CU postpones prof's talk: Security concerns cited as reason for sudden decision," *Rocky Mountain News*, Feb. 8, 2005. At about the same time DiStefano's decision was announced, University Police Lt. Tim McGraw was informing reporters that he was "confident that security for the speech can be handled smoothly"; Charlie Brennan, "'I do not work for taxpayers,' prof says: Professor's supporters use speech as rally point," *Rocky Mountain News*, Feb. 9, 2005.

⁴⁸ Joseph Thomas, "Safety vs. Free Speech: Churchill supporters take cancellation order to court," *Colorado Daily* (Boulder), Feb. 8, 2005.

⁴⁹ Brian D. Crecente, "Event features tight security: American Indian Movement members guard Churchill," *Rocky Mountain News*, Feb. 9, 2005.

⁵⁰ Brennan, "'I do not work for taxpayers'"; Howard Pankratz and George Merritt, "Prof: Never back down," *Denver Post*, Feb. 9, 2005; Elizabeth Mattern Clark, "Churchill defends essay: Cheers, jeers from crowd for professor," *Daily Camera* (Boulder), Feb. 9, 2005; Joseph Thomas, Erin Wiggins, and Katherine Crowell, "Churchill's side: Professor speaks out on campus; few or no problems in packed house," *Colorado Daily*, Feb. 9, 2005; Pierrette J. Shields, "Churchill fires back: CU professor says 9/11 words weren't referring to bystanders, firefighters," *Longmont Times-Call* (Colo.), Feb. 9, 2005. The speech was repeatedly run on C-Span over the next two months. For a good overview of where I felt things stood at that point, see Pamela White, "The Man in the Maelstrom: Ward Churchill speaks out on his controversial essay, the media frenzy and what the U.S. can do if it really wants to halt terrorism," *Boulder Weekly*, Feb. 10, 2005.

⁵¹ Nass, a Whitewater alumnus and enthusiastic member of ACTA, had just introduced a resolution in the Wisconsin legislature—it passed a week later by a vote of 67-31—to condemn the university for failing to cancel my "anti-American hate speech." By the day of my talk, the university had also "received more than 1,000 e-mails, about three-quarters of them" hostile, and several involving death threats. See generally, Charlie Brennan and Laura Frank, "Controversial prof set to make speech at Wisconsin school," *Rocky Mountain News*, Feb. 11, 2005; (AP), "Lawmakers urge cancellation of talk," *Rocky Mountain News*, Feb. 23, 2005; Ronen Zulberman (AP), "Churchill speech puts Whitewater in Spotlight," *Capital Times* (Madison, WI.), Feb. 28, 2005.

⁵² Nass appeared on *The O'Reilly Factor* on Feb. 11, Horowitz on Feb. 16, and McCallum on Feb. 18. On Feb. 9, he'd also queried a former Navy prosecutor, Greg Noone, as to whether there were grounds for my being prosecuted for sedition and registered visible dismay when Noone replied that there weren't. Owens appeared on the Feb. 8 installment of *The Factor*. See Montopoli, "Spin Buster." On Pataki, see note 21.

⁵³ Miller estimates that his refusal to cancel may have cost the university "about \$7,000" in contributions over the short run, but, while some donors stopped giving, others are likely to be attracted because of the school's principled stand. In any event, "no major contributors have withdrawn their support." On balance, Miller assesses his decision not to follow Stewart's example to have been correct; Aaron Nathans, "Chancellor Reviews Lecture Controversy," *Capital Times*, Mar. 26, 2005. Also see JR Ross (AP), "Churchill speech in Wis. On schedule," *Daily Camera*, Feb. 28, 2005; Charlie Brennan, "Wisconsin university prepares for Churchill: Mixed greetings await controversial ethnic-studies prof," *Rocky Mountain News*, Mar. 1, 2005.

⁵⁴ The university had credentialed a total of 112 journalists and other media personnel; Samara Kalk Derby, "450 Grab Tickets: 200 Put on 'Free

Speech Festival," *Capital Times*, Mar. 2, 2005. Also see Todd Richmond (AP), "Churchill speech draws protesters, supporters: CU professor still insists U.S. policy to blame for 9/11," *Daily Camera*, Mar. 2, 2005; Charlie Brennan, "Churchill says U.S. a fascist state: Hundreds turn out to hear professor speak in Wisconsin," *Rocky Mountain News*, Mar. 2, 2005.

⁵⁵ Jeanette J. Lee (AP), "Prof draws crowd for Hawaiian speech: Dozens couldn't get seats at Ward Churchill's appearance; About 20 students protested it," *Denver Post*, Feb. 23, 2005. The sponsors included the departments of American Studies, English, Ethnic Studies, History, Political Science, Sociology, and Women's Studies, as well as the Center for Pacific Island Studies and the College of Social Sciences Social Policy Center, the campus Diversity and Equity Initiative, the Matsunaga Peace Institute, the International Cultural Studies Certificate Program, and the Students Equity, Excellence and Diversity Program. Those unfamiliar with her may wish to consult Diane C. Fujino's fine biography, *Heartbeat of Struggle: The Revolutionary Life of Yuri Kochiyama* (Minneapolis: University of Minnesota Press, 2005).

⁵⁶ Quoted in "Hawaiian Professors Defy the Witch Hunt: Ward Churchill Speaks at the University of Hawaii," *Revolutionary Worker*, Mar. 13, 2005. O'Reilly also used his air-time to denounce one of the organizers, Dr. Ruth Hsu; as a result she began receiving the same sort of hate mail and death threats as I.

⁵⁷ The Berkeley event is covered in Matt Labash, "The Ward Churchill Notoriety Tour: The worst professor in America meets his adoring public," *Weekly Standard*, Apr. 25, 2005. Although I've elected herein to mention only on-campus events, Labash also covers my talk at the Women's Building in San Francisco on the evening of March 26 (repeatedly aired on C-Span over the next month), and a keynote address at the annual Anarchist Book Fair, also in San Francisco, the following afternoon. Several other invited lectures, including one to the Colorado Humanist Society, were also made off-campus during this period. For the record, I now list the *Weekly's* "worst professor" designation in my vita under "Honors."

⁵⁸ Shelby Oppel Wood, "Criticized professor speaks at Reed: Organizers invited Ward Churchill, whose essay on 9/11 attacks enraged many, as stand against 'blacklisting,'" *Sunday Oregonian* (Portland), Apr. 17, 2005.

⁵⁹ Jason Newell, "Prof. Churchill defends controversial Sept. 11 statements in Claremont," *DailyBulletin.com*, Apr. 26, 2005 (available at <http://www.lexisnexis.com>).

⁶⁰ Sukhjit Purewal, "CSUMB speaker draws GOP fire: Ward Churchill's views on terror attacks gain national notoriety," *Monterey County Herald* (California), Apr. 28, 2005; Victor Calderon, "Churchill draws crowd: Protestors, both pro and con, greet speaker," *The Californian* (Salinas, CA), May 3, 2005; Clarissa Aljentera and Joe Livernois, "Speaker's 9/11 opinions draw emotional crowd," *Monterey County Herald*, May 3, 2005.

⁶¹ The Berkeley event was organized by the Ethnic Studies Department (esp. professors Ling-Chi Wang and Carlos Muñoz), the event at Monterey Bay by MEChA, the Chicano student organization. As was mentioned earlier, the EWU Native American Student Association (NASA) took the lead on that campus, as its counterpart did at Whitewater. The coalitions formed at CU Boulder, U Hawai'i, and Pitzer were broader, although the roles played by individuals/ organizations of color were decisive in each.

⁶² Such has always been something of an existential norm in the U.S., a circumstance in some respects described quite well in Richard Hofstadter's *Anti-Intellectualism in American Life* (New York: Alfred A. Knopf, 1962). For a trenchant critique, suggesting that none of this should be surprising since the liberal outlook was never what it was cracked up to be, see Anthony Arblaster, *The Rise and Decline of Western Liberalism* (Oxford, UK: Basil Blackwell, 1984).

⁶³ Charlie Brennan, "Controversy fuels interest in Churchill: Speakers bureau, book distributor seeing more queries," *Rocky Mountain News*, Feb. 10, 2005. It would be well to remember that it was precisely this sort of dynamic, manifested most powerfully at Berkeley during the mid-'60s, that led to the inculcation of a far more radical consciousness among appreciable sectors of the U.S. population by the end of the decade. See David Lance Goines, *The Free Speech Movement: Coming of Age in the 1960s* (Berkeley: Ten Speed Press, 1993); W.J. Rorabaugh, *Berkeley at War: The 1960s* (New York: Oxford University Press, 1989).

⁶⁴ On May 23, 2005, the *Columbia Journalism Review*, citing only 25 of the 41 segments, compared O'Reilly's obsessive focus on me—covering my case "as though it were the Watergate hearings"—to his chronic gripe that *The New York Times* and "the liberal media" more generally were giving "excessive coverage" to reports that the U.S. military had engaged in the systematic torture of captives at the Abu Ghraib prison in Iraq. The writer, Brian Montopoli, points out that while on 19 separate occasions O'Reilly registered complaints that "the *Times* is allowing ideology to dictate its coverage," insisting that news stories should not be "used by the media to advance an agenda," his own "Churchill fetish is, of course, a classic example of agenda-driven journalism." By mid-2007, the "number of episodes of *The O'Reilly Factor* in which [my] name had been mentioned at least four times" had risen to 79; John Gravois, "Ward Churchill, by the Numbers," *The Chronicle of Higher Education News Blog*, July 26, 2007 (available at <http://chronicle.com/news/article/2753/ward-churchill-by-the-numbers>). This did not include a segment featuring "comedian" Dennis Miller, aired a day earlier, in which Miller referred to me as a "tenured Tonto"; "Rush Transcript from *The O'Reilly Factor*, July 25, 2007," July 26, 2007 (available at <http://www.FOXNews.com/story/0,2933,290919,00.html>).

⁶⁵ Bill O'Reilly, "Talking Points," Feb. 2, 2005; quoted in Montopoli, "Spin Buster."

⁶⁶ Susan Deans, "The role of free speech at CU," *Daily Camera*, Feb. 6, 2005; Barry Poulson, "From George Norlin to Ward Churchill: The University of Colorado, then and now," *Daily Camera*, Mar. 13, 2005. On the power of the Klan in Colorado during the 1920s, see Kenneth T. Jackson, *The Ku Klux Klan in the City, 1915-1930* (New York: Oxford University Press, 1967), pp. 215-31.

⁶⁷ Clint Talbot, "Target: tenure; During the Red Scare, an ambitious governor helped a renegade FBI director persecute suspected 'subversive' teachers and professors," *Daily Camera*, Feb. 13, 2005; Diane Carmen, "Churchill brouhaha echoes previous dissent at CU," *Denver Post*, Feb. 3, 2005.

⁶⁸ Talbot, "Target: tenure."

⁶⁹ This is not to say that the university's record has been exactly clean in the interim, however, especially as regards regental actions. In 1973, for example, after the UCB English Department voted to hire H. Bruce Franklin—one of the country's preeminent Melville scholars, who also happened to be an avowed Maoist recently fired from his tenured position at Stanford because of a speech he'd made during a student rally—the regents refused to approve the appointment. See *H. Bruce Franklin v. Dale M. Atkins, et al., Regents of the University of Colorado* (562 F.2d 1188 [10th Cir., 1977]). For analysis, see Paul M. Levitt, "The Trials of H. Bruce Franklin," *Change* 9, No. 8 (August 1977), pp. 21-24; Philip J. Meranto, Oneida J. Meranto, and Matthew R. Lippman, *Guarding the Ivory Tower: Repression and Rebellion in Higher Education* (Denver: Lucha, 1985), pp. 91-92. On Franklin's experience at Stanford, see his *Back Where You Came From: One Life in the Death of the Empire* (New York: Harper's, 1975), pp. 4-36.

⁷⁰ For familial insights on how Norlin might feel about the stance on academic freedom adopted by current UCB administrators, see David Norlin, "George Norlin Is Watching Us," *Daily Camera*, Mar. 4, 2005.

⁷¹ I received the Stearns Award in 1988, the Thomas Jefferson Award in 1990. For the record, I also received the President's University Service Award in 1987, the UCB College of Arts and Sciences annual award for best essay-length writing in the social sciences in 1993, and the Boulder Faculty Assembly's Excellence in Teaching Award in 1994.

⁷² See Bronson Hilliard, "Trumbo's son to speak today: Fountain namesake Dalton Trumbo's son Chris to talk free speech, blacklist," *Colorado Daily*, Apr. 15, 2005. Bruce Cook, *Dalton Trumbo: A Biography of the Oscar-winning Screenwriter Who Broke the Hollywood Blacklist* (New York: Scribner's, 1977).

⁷³ T.R. Reid, "Professor Under Fire for 9/11 Comments: Free Speech Furor Roils Over Remarks," *Washington Post*, Feb. 5, 2005. Also see Julie Greene, "Is Colorado in America?" *OAH Newsletter*, May 2005. On Judd, see David Cate, *The Great Fear: The Anti-Communist Purge Under Truman and Eisenhower* (New York: Simon and Schuster, 1978), p. 410; Ellen W. Schrecker, *No Ivory Tower: McCarthyism and the Universities* (New York: Oxford University Press, 1986), pp. 249-50.

⁷⁴ Both quoted in Carmen, "Churchill brouhaha."

⁷⁵ "Churchill's 9/11 views not CU's, officials say: Professor's comments draw fire from congressmen," *Daily Camera*, Jan. 28, 2005. On the long-standing imposition of "invisibility" upon those mentioned parenthetically—which, after all, was a major theme of my article—see Edward W. Said, *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World* (New York: Pantheon, 1981).

⁷⁶ Todd Neff, "Churchill raises some regents' ire: Regents will likely discuss professor at upcoming meeting," *Daily Camera*, Jan. 29, 2005.

⁷⁷ On February 1, regent Tom Lucero appeared on MSNBC's *Scarborough Country* to explain that he'd drafted a resolution that, while it did "not directly call for dismissal," was designed to "strike directly at the heart of what tenure should protect," something he described as "scholarly work." From there, Lucero, who evidences no discernable scholarly competence in the subject matter at issue, went on to explain that "Professor Churchill's essay is anything but scholarly. It's propaganda. It's rhetorical gibberish." *Ipsa facto*, I am subject to revocation of tenure and dismissal (transcript available at <http://www.msnbc.msn.com/id/6901837/>).

⁷⁸ "Churchill's 9/11 views not CU's."

⁷⁹ See the banner headline on the front page of the *Rocky Mountain News* on Feb. 2: "Gov. to Prof: Quit." Also see Ryan Morgan, "Lawmakers condemn professor's remarks," *Daily Camera*, Feb. 1, 2005; "Regents should show Churchill the door," *Rocky Mountain News*, Feb. 2, 2005; Lynn Bartels, "Lawmakers urge firing of professor," *Rocky Mountain News*, Feb. 10, 2005; Jim Spencer, "By Gov. Owens' standard, even Gandhi a troublemaker," *Denver Post*, Feb. 28, 2005. Also see "Dear Friends" letter dated Feb. 1, 2005, disseminated over Gov. Owens's signature on State of Colorado stationery, calling upon me to "resign [my] position on the faculty of the University of Colorado," <http://www.colorado.gov/governor/press/february05/Churchill.pdf>.

(Ed. note: File no longer accessible. As of 21 Dec. 2008, the Governor's Press Office archive included statements from November 2006 to present).

⁸⁰ On Owens's abrupt separation from his wife, widely rumored to have been precipitated her discovery that he'd engaged in one or more extramarital affairs and possibly fathered a "love child," see Julia C. Martinez, "Owens, wife of 28 years separate," *Denver Post*, Sept. 6, 2003; Michael Roberts, "Fooling Around," *Westword* (Denver), Apr. 1, 2005. For assessment of the resulting decline in Owens's political fortunes, see *Colorado Pols*, Apr. 21, 2005.

⁸¹ Charlie Brennan, "Owens: Prof must go: Governor weighs in on controversy over tenured professor," *Rocky Mountain News*, Feb. 2, 2005; Peggy Lowe, "Uproar at state Capitol: Legislators, Owens denounce professor; pass 9/11 resolution," *Rocky Mountain News*, Feb. 3, 2005; "Prof denounced as

'inflammatory': State Senate condemns professor's 9/11 remarks," *Colorado Daily*, Feb. 4, 2005; Dave Curtin and Howard Pankratz, "Governor renews call for CU regents to dismiss Churchill," *Denver Post*, Feb. 10, 2005; Elizabeth Mattern Clark, "Owens renews call to fire Churchill: CU professor's scholarly work under scrutiny," *Daily Camera*, Feb. 10, 2005; J. Stephan Edwards, "Churchill's critics may be worse than Churchill," *Colorado Daily*, Feb. 18, 2005.

⁸² Lowe, "Uproar at State Capitol." On percentage of state ante, see Brennan, "I do not work for taxpayers." On the eventual fate of this maneuver, see Jim Hughes, "Effort to oust CU prof rejected: Lawmaker tries to alter funding," *Denver Post*, Mar. 10, 2005; Marianne Goodland, "House debates Long Bill amendment: Staff pay raises, Churchill issue targeted again," *Silver & Gold Record (UCB)*, Apr. 14, 2005.

⁸³ Jefferson Dodge, "Faculty defend free-speech rights of UCB prof amid public outcry: Regents to respond to Churchill's essay at meeting today," *Silver & Gold Record*, Feb. 3, 2005.

⁸⁴ Vanessa Miller, "Churchill confrontation: Two arrested after students, police clash," *Daily Camera*, Feb. 4, 2005.

⁸⁵ Jim Hughes and Dave Curtin, "Regents won't fire Churchill: Despite repeated calls, they say CU professor is entitled to due process," *Denver Post*, Feb. 3, 2005; Elizabeth Mattern Clark, "CU to study professor's work, consider firing," *Daily Camera*, Feb. 4, 2005; Ryan Morgan, "GOP applauds CU actions on Churchill: One lawmaker calls for broader look at tenure system," *Daily Camera*, Feb. 4, 2005. For my response, see Elizabeth Mattern Clark, "Churchill fires back at critics: 'No line' speech can't cross," *Daily Camera*, Mar. 4, 2005. Also see note 403 regarding DiStefano's violation of university procedures concerning the confidentiality of personnel matters by not requesting that the regents meet in executive session, instead announcing his ad hoc investigation to the media.

⁸⁶ A major reason even the earlier-mentioned Tom Lucero (note 74) was willing to go along is explained in Arthur Kane, "Costly choices for CU regents: If they fire Churchill and are sued, they could be personally liable," *Denver Post*, Mar. 6, 2005.

⁸⁷ Hughes and Curtin, "Regents won't fire Churchill"; Arthur Kane, "Prof faces CU review: Regents apologize to nation," *Denver Post*, Feb. 4, 2005; Pierrette J. Shields, "Regents apologize: administrators rev up investigation of prof," *Longmont Times-Call*, Feb. 4, 2005; Charlie Brennan, "Churchill defiant in face of outcry: Beleaguered prof won't take back his statements," *Rocky Mountain News*, Feb. 5, 2005; Jefferson Dodge, "Regents endorse review of Churchill's scholarly record, issue apology to the U.S.," *Silver & Gold Record*, Feb. 10, 2005; Jefferson Dodge, "Churchill calls CU's review 'a hunting expedition,'" *Silver & Gold Record*, Feb. 10, 2005.

⁸⁸ Miller, "Churchill confrontation."

⁸⁹ Erin Wiggins, "CU meeting uproar: Regents' meeting ends in chaos; CU decides to examine Churchill for 30 days before making decision on his fate," *Colorado Daily*, Feb. 4, 1976.

⁹⁰ Aleem was tried twice and acquitted on both occasions. See Felix Delagosa, Jr., "Activist acquitted of assault," *Rocky Mountain News*, Feb. 7, 2007; Tim McAvoy, "Churchill supporter acquitted of assault charges: DA respects decision; video played key role in defense," *Campus Press (UCB)*, Feb. 15, 2007.

⁹¹ Under the existing laws of the regents, as well as a considerable body of case law, the only speech grounds upon which revocation of tenure/dismissal might be considered legally sustainable would involve my being found to have engaged in "seditious utterances" or some related felony. In that event, however, the basis for revocation/dismissal would not actually be speech, per se, but rather the felony conviction. The appropriate investigative

body in sedition cases, moreover, would be the FBI, *not* an ad hoc committee assembled by the UCB Interim Chancellor. See Karen Abbott, "Experts: Professor safe; Lawyers say his writings protected, even if unpopular," *Rocky Mountain News*, Feb. 5, 2005; "ACLU: Constitution protects Churchill," *Daily Camera*, Feb. 6, 2005. For doctrinal backdrop, see Thomas I. Emerson, *The System of Free Expression* (New York: Random House, 1970), esp. pp. 593-626.

⁹² Dave Curtin and Arthur Kane, "CU weighs buyout for firebrand prof," *Denver Post*, Feb. 27, 2005; Dan Elliot (AP), "Mulling a Buyout of Churchill? Carrigan says CU would be 'foolish' to rule out settlement," *Colorado Daily*, Mar. 1, 2005; "Time for Churchill to exit stage left," *Denver Post*, Mar. 8, 2005.

⁹³ There were a little over three months remaining of my chairmanship, into which I'd been unwillingly "drafted" in the first place, when I resigned on January 31. My reasoning was three-fold: (1) It was an essentially cost-free bone to allow UCB administrators to throw the right, in an effort to defuse the situation; (2) The department deserved someone able to focus primarily on meeting its needs, which I would be unable to do in the likely event the situation was not defused; (3) Correspondingly, I needed my time/attention free of other obligations in order to most effectively fight the fight looming before me. For media coverage, see Howard Pankratz, "Prof quits chair over 9/11," *Denver Post*, Feb. 1, 2005; Matthew Beaudin, "Churchill quits chairmanship: CU professor will continue tenured teaching position," *Daily Camera*, Feb. 1, 2005; Charlie Brennan, "Prof steps aside: Churchill resigns chairmanship at CU amid 9/11 dispute," *Rocky Mountain News*, Feb. 1, 2005; Erin Wiggins, "Churchill steps down: On the eve of protests, professor resigns as chair of ethnic studies, defends his 9/11 essay," *Colorado Daily*, Feb. 1, 2005.

⁹⁴ Scuttlebutt had it that the regents were prepared to okay a settlement amount running as high as \$1 million. See John C. Ensslin, "Prof's attorney: Buyout would have to be large," *Rocky Mountain News*, Feb. 28, 2005; Elizabeth Mattern Clark, "Churchill not worried about examination: Lawyers in retirement negotiations," *Daily Camera*, Mar. 10, 2005; Dave Curtin, "Churchill buyout near [. . .] Sources: Prof, CU reach OK on money—not on aftermath," *Denver Post*, Mar. 11, 2005; Charlie Brennan, "CU, Churchill near agreement: Settlement would end professor's tenure, lawyer says," *Rocky Mountain News*, Mar. 11, 2005. For the record, I was willing to accept a lump sum of \$350,000 against anticipated earnings exceeding \$1 million over the next ten years in exchange for the "aftermath" conditions the regents refused.

⁹⁵ See note 75. Also see Elizabeth Mattern Clark, "CU tenure attacked after spat: Professor's essay sparks calls to end protective system," *Daily Camera*, Feb. 6, 2005; Colleen Slevin, "It's baaaaack: Academic freedom bill has provision on tenure," *Colorado Daily*, Feb. 11, 2005; Kevin Simpson, "Treasured tenure getting tarnished," *Denver Post*, Mar. 13, 2005; John C. Ensslin, "Regents to mull tenure plan: Details of proposal coming, CU leader tells GOP senators," *Rocky Mountain News*, Mar. 23, 2005; Colleen Slevin, "Tenure changes could be on way: Regents may reveal new policy this week," *Colorado Daily*, Mar. 23, 2005; (AP), "Hoffman hints at changes in university's tenure policy: CU to announce decision on status of Churchill Monday," *Daily Camera*, Mar. 23, 2005; John C. Ensslin, "CU tenure review ordered: Regents to create panel to thoroughly scrutinize system," *Rocky Mountain News*, Mar. 25, 2005; Elizabeth Mattern Clark, "CU launches tenure probe: Review has \$250K budget and could take up to a year," *Daily Camera*, Mar. 25, 2005; Matt Williams, "Tenure to be examined: Regents approve formation of system-wide review panel," *Colorado Daily*, Mar. 25, 2005; Lynn Bartles and John Ensslin, "Senate kills proposal to investigate

tenure: Party-line vote nixes lawmaker's idea of bipartisan panel," *Rocky Mountain News*, Apr. 13, 2005; Ron Fitz, "UCCS faculty, regent have lively discussion of tenure," *Silver & Gold Record*, Apr. 14, 2005; Elizabeth Mattern Clark, "Tenure group wants ex-general as leader," *Daily Camera*, Apr. 19, 2005; Berny Morson, "CU panel issues questions to guide tenure inquiry," *Rocky Mountain News*, June 10, 2005; with regard to me, specifically, see Victor Davis Hanson, "The case against university tenure," *Daily Camera*, May 14, 2005.

⁹⁶ Laura Frank, "Prof accused of plagiarism: Nova Scotia school sends CU a report on Churchill essay," *Rocky Mountain News*, Mar. 11, 2005; Stuart Steers and Charlie Brennan with Todd Hartman, Berny Morson, and Laura Frank, "Talks hit snag: Claims of plagiarism, threat stall Churchill buyout negotiations," *Rocky Mountain News*, Mar. 12, 2005; Arthur Kane and Dave Curtin, "Regents balk at Churchill deal: Plagiarism allegation stalls buyout proposal," *Denver Post*, March 13, 2005; John C. Ensslin, "Churchill buyout appears to be DOA: Survey of regents finds most cold toward settlement," *Rocky Mountain News*, Mar. 14, 2005; Matt Williams, "Churchill report delayed again: Regents balk at buyout," *Colorado Daily*, Mar. 15, 2005; Laura Frank, "Churchill denies sole authorship: 'It won't be pretty' wasn't threat, lawyer says," *Rocky Mountain News*, Mar. 14, 2005; (AP), "Churchill denies plagiarism or threatening physical harm," *Denver Post*, Mar. 17, 2005.

⁹⁷ Dreams die hard. In the aftermath, the administration made a forlorn attempt to assemble the necessary funds from private donors, thereby avoiding the necessity of obtaining regental approval of the expenditure. Since they could not deliver my *quid pro quo* on this basis, however, the effort was pointless. See generally, Dave Curtin, "CU delays Churchill review: Buyout offer in the works?" *Denver Post*, Mar. 9, 2005; Charlie Brennan, "No ruling on professor: CU interim chancellor still leading investigation of controversial figure," *Rocky Mountain News*, Mar. 9, 2005; Joseph Thomas, "Finding funding for a buy-out: Options abound for a payoff of controversial prof, officials say," *Colorado Daily*, Mar. 10, 2005; Dave Curtin, "Churchill buyout revisited: Private funding may be in the works as CU panel delays probe of prof," *Denver Post*, Mar. 14, 2005; Charlie Brennan, "No ruling on professor: CU interim chancellor still leading investigation of controversial figure," *Rocky Mountain News*, Mar. 9, 2005; Bronson R. Hilliard, "Ward must wait: CU says Churchill review unlikely before March 14," *Colorado Daily*, Mar. 9, 2005; Elizabeth Mattern Clark, "Churchill study pushed back: Panel will present findings March 28, almost a month late," *Daily Camera*, Mar. 15, 2005; Matt Williams, "Churchill report delayed again." For my assessment of the situation by this point, see Jim Page, "Targeted: Ward Churchill on free speech, technocracy, and denying the holocaust," *Real Change* (Seattle), Mar. 23, 2005.

⁹⁸ Quoted in John C. Ensslin, "Hoffman warns CU faculty of 'new McCarthyism': But president notes obligation to probe Churchill's record," *Rocky Mountain News*, Mar. 4, 2005. Also see Brittany Anas, "Academic freedom on trial: Hoffman tells faculty group she supports their rights," *Daily Camera*, Mar. 4, 2005; Jefferson Dodge, "Hoffman speaks candidly to BFA on controversies: University is 'in dangerous times,' president says," *Silver & Gold Record*, Mar. 10, 2005.

⁹⁹ Elizabeth Mattern Clark, "Ad demands halt to review: 200 faculty members call for halt to investigation," *Daily Camera*, Feb. 26, 2005. Also see George Merritt, "Faculty ad protests CU probe: About 200 call for end to 'frightening' investigation," *Denver Post*, Feb. 28, 2005; "Professors unite against CU probe: Attacks on prof 'new McCarthyism,'" *Daily Camera*, Mar. 5, 2005.

¹⁰⁰ Desiree Belmarez, "Activist empathizes with Churchill: Former Black Panther Angela Davis speaks at CU," *Daily Camera*, Mar. 2, 2005. The Young Republicans had led off by bringing David Horowitz to campus a few days after my speech in the ballroom (see note 50), although virtually no one

outside their own ranks showed up to listen; Bronson R. Hilliard, "Speakers galore: Students continue Churchill debate with free speech forum today and David Horowitz on Monday," *Colorado Daily*, Feb. 11, 2005; Felisa Cardona, "Activist blasts CU faculty liberals," *Denver Post*, Feb. 15, 2005.

¹⁰¹ "Defend Dissent and Critical Thinking on Campus: An Open Letter from 400 Concerned Academics," *Daily Camera*, Mar. 22, 2005. Also see Brittany Anas, "375 Churchill supporters sign letter: Academics say investigation threatens freedom," *Daily Camera*, Mar. 19, 2005.

¹⁰² "Some Questions We Should Be Asking About the Attacks on Ward Churchill," *Daily Camera*, Mar. 25, 2005.

¹⁰³ The pressure on Hoffman was applied both politically, by Republicans like the now-discredited Colorado House minority leader, Joe Stengel, and editorially. On the political pressure, see Elizabeth Mattern Clark, "Hoffman called on to resign: Regents Steinhauer and Bosley voice support for CU president," *Daily Camera*, Mar. 5, 2005. For editorials, see, as examples, "The sky-is-falling rhetoric at CU," *Denver Post*, Mar. 1, 2005; "Phony fears of McCarthyism," *Rocky Mountain News*, Mar. 5, 2005; Jessica Peck Corry, "CU regents must ask 'does race matter?'" *Colorado Daily*, Mar. 10, 2005; Mike Rosen, "The McCarthy Gambit," *Rocky Mountain News*, Mar. 11, 2005.

¹⁰⁴ Kirk Johnson, "University President Resigns at Colorado Amid Turmoil: Football and Professor's 9/11 Essay Cited," *The New York Times*, Mar. 8, 2005; John C. Ensslin and Julie Poppen, "Hoffman resigns from CU presidency: Several factors led to decision to quit," *Rocky Mountain News*, Mar. 8, 2005; James B. Meadow, "Celebrated by peers, broken by controversy: Amid bright tenure, Hoffman faced harsh realities of leadership," *Rocky Mountain News*, Mar. 8, 2005; Bronson Hilliard, "Hoffman Resignation: 'Job on the table'; CU insiders and observers both say CU's future is on the line with the search for her successor," *Colorado Daily*, Mar. 8, 2005; "'Think about your future': CU prez's interview with the Daily," *Colorado Daily*, Mar. 8, 2005; Richard Valenty, "Hoffman's decision makes ripples: President's decision and media attention impacts city, labs, business community," *Colorado Daily*, Mar. 8, 2005; Arthur Kane, "A horrific week proved final straw for Hoffman," *Denver Post*, Mar. 9, 2005.

¹⁰⁵ Both matters were subjects of grand jury investigations. See Lynn Bartels, "Owens seeks open records: CU foundation has 'anonymous nature,'" *Rocky Mountain News*, Nov. 18, 2004; "Grand jury looking into Colo. Foundation, football camp," *USA Today*, Aug. 5, 2004; Erin Wiggins, "'Grand' summer for U Colorado," *Colorado Daily*, Aug. 16, 2004; (AP), "Grand Jury: Colorado officials are 'unqualified,'" Aug. 31, 2004; Kevin Bowler, "New direction to point the finger," *Colorado Daily*, Feb. 11, 2005; Steven Paulson (AP), "AG awaits CU evidence," *Longmont Times-Call*, Mar. 3, 2005; John Temple, "Small actions tell large stories," *Rocky Mountain News*, Mar. 12, 2005.

¹⁰⁶ The story thus boldly captioned was derived exclusively from interviews with a half-dozen members of UCB's tiny chapter of Young Republicans; Brittany Anas and the *Rocky Mountain News* Staff, "Students want Churchill out: CU Republicans protesting professor who defended 9/11," *Daily Camera*, Jan. 30, 2005. Note the joint credit between a reporter from Boulder's "liberal" daily and those of its openly reactionary Denver counterpart. Both papers are owned by Scripps-Howard, as is Denver's "liberal alternative," the *Post*. Boulder's "fiercely independent" *Colorado Daily* was also acquired by the chain in September; "E.W. Scripps Buys Daily in Boulder," *Associated Press*, Sept. 27, 2005.

¹⁰⁷ By early March, the saturation had become so extreme—and so transparently political in its motivation—that protests were appearing even in the *News*. See, e.g., Jason Salzman, "No excuse for Churchill frenzy: Not even serious issues justify nonstop coverage by *News*, *KHOW* and others," *Rocky Mountain News*, Mar. 5, 2005. For further background, see Dave Kopel,

"Media uneven in Churchill rumpus: Westword first, but News, KHOW best as blogs, others play catchup," *Rocky Mountain News*, Feb. 12, 2005.

¹⁰⁸ Mike Littwin, "Now it's all Ward Churchill, all the time," *Rocky Mountain News*, Feb. 10, 2005. Caplis and Silverman actually went to the length of buying—presumably out of their own pockets—a full-page ad attempting to counter those referenced in notes 96, 98, and 99. See "Professor Ward Churchill Should Be Fired," *Daily Camera*, Mar. 2, 2005. It is worth noting that questions were being raised by the Colorado Independent Media Center as early as Feb. 5, as to whether Dan Caplis had received funding from a "faith-based think tank" to pursue his personal campaign against me. See "The Next Armstrong Williams: Caplis accepted 'payola' to attack Ward Churchill" (available at <http://colorado.indymedia.org/feature/display/10164/index.php>) (Ed. note: Original link disabled as of 21 Dec. 2008—alternatively, see http://duckdaotsu.blogspot.com/2005_02_06_archive.html).

¹⁰⁹ Stuart Steers, "Churchill, the man, an enigma: Even his background is a topic of debate among backers, foes," *Rocky Mountain News*, Feb. 2, 2005; Charlie Brennan, "Churchill defiant in face of outcry: Beleaguered prof won't take back statements," *Rocky Mountain News*, Feb. 5, 2005; Clay Evans, "Churchill's real sin: ego," *Daily Camera*, Feb. 6, 2005; David Curtin, Howard Pankratz, and Arthur Kane, "Questions stoke Churchill's firebrand past: Since Vietnam, a radical voice that inspires some, repels others and raises many questions," *Denver Post*, Feb. 13-14, 2005. Dave Curtin, "Churchill faces army of foes: 'Maybe this is the chickens coming home to roost,' ex-wife says," *Denver Post*, Mar. 16, 2005; Charlie Brennan, "Ward Churchill: A contentious life," *Rocky Mountain News*, Mar. 26, 2005. For an assessment of my own attitude in the face of all this, see Elizabeth Mattern Clark, "Churchill not worried about examination: Professor denies allegations that he 'teaches terrorism,'" *Daily Camera*, Mar. 10, 2005.

¹¹⁰ Frank, "Prof accused"; Ensslin, "Churchill buyout"; Frank, "Churchill denies sole authorship"; "Churchill denies plagiarism," *Associated Press*; "Churchill faces heat over other issues," *Daily Camera*, Feb. 18, 2005; Brittany Anas, "American Indian activist criticized CU's Churchill: Tape from 1992 sent to panel that is investigating tenured professor," *Daily Camera*, Mar. 17, 2005.

¹¹¹ Kate Larson, "Churchill's resume says Cherokee: Churchill claimed native descent on CU application," *Daily Camera*, Feb. 12, 2005; Berny Morson and Charlie Brennan, "Churchill tenure questioned: Prof was granted job security without usual review process," *Rocky Mountain News*, Feb. 16, 2005; Berny Morson, "Prof took giant leap to tenure: CU was anxious to add minorities, former officials say," *Rocky Mountain News*, Feb. 18, 2005; Matt Williams, "Road to professorship: Churchill path unusual, but not remarkable, CU insiders say," *Colorado Daily*, Feb. 18, 2005; Stuart Steers and Berny Morson, "Two departments at CU rejected Churchill: Sociology and political science turned down prof in 1991," *Rocky Mountain News*, Feb. 19, 2005; Bernie Morson, "School can't locate Churchill's thesis: U of Illinois officials not sure if master's paper was required," *Rocky Mountain News*, Feb. 23, 2005.

¹¹² E.g., it was argued for several days, especially in the *Rocky Mountain News*, that I'd "invented" job offers from other institutions in order to convince UCB that it should hire me with tenure in 1991. When the untruth of this contention was conclusively demonstrated, the *News* failed to report it, opting instead to move on to the next "issue" without another word on the matter. The fact that I did indeed have other offers was reported in only one Denver area paper, and even there under a less than prominent headline. See Elizabeth Mattern Clark, "Ex-official says school had wooed Churchill," *Daily Camera*, Mar. 10, 2005.

¹¹³ Pegler, a reporter (of sorts) once referred to by Oswald Garrison as being a major outlet for "the sewer system of American journalism," worked

hand-in-glove with McCarthy to destroy the reputations of selected targets. See *Drew Pearson v. Joseph R. McCarthy, et al.* (Civ. No. 897-51, deposition of Westbrook Pegler [Washington, D.C. ; July 2, 1953]). Villard is quoted in Roger Daniels, *Concentration Camps USA: Japanese Americans in World War II* (Hinsdale, IL: Dryden Press, 1971), p. 33.

¹¹⁴ Larson, "Churchill's resume"; Curtin, Pankratz, and Kane, "Churchill's firebrand past"; Brennan, "Contentious life"; Steers, "Churchill...enigma"; Evans, "Churchill's real sin"; Erin Graves, "AIM leader disavows CU prof: Vernon Bellecourt questions Churchill's ethnicity," *Colorado Daily*, Feb. 3, 2005; Stuart Steers, "Prof's Indian roots disputed: Keetoowah Tribe says Churchill not a member," *Rocky Mountain News*, Feb. 4, 2005; Kevin Flynn, "Heritage, writings split Indian activists," *Rocky Mountain News*, Feb. 12, 2005; Howard Pankratz, "CU prof affirms his Indian heritage: Tribe says he's not a full member," *Denver Post*, Feb. 13, 2005; Kevin Flynn, "Churchill defiant in face of outcry: Prof's genealogy is sketchy; he offers little clarification," *Rocky Mountain News*, Feb. 15, 2005; Elizabeth Mattern Clark, "Churchill gets support at forum: Former boss questions actions," *Daily Camera*, Feb. 18, 2005; "Churchill probe exposes CU policy," *Denver Post*, Mar. 16, 2005; Amy Herdy and Arthur Kane, "Churchill claims proof he's Indian: 11-year-old video shows tribal board discussing CU professor's heritage," *Denver Post*, May 18, 2005; Charlie Brennan, "Tribe snubs prof: Cherokee band says Churchill's claim of membership a fraud," *Rocky Mountain News*, May 18, 2005; Amy Herdy, "Tribe says prof's membership rescinded in '94," *Denver Post*, May 19, 2005; Elizabeth Mattern Clark, "Keetoowah Band says Churchill is honorary: Indian tribe states membership not recognized," *Daily Camera*, May 20, 2005; Matt Williams, "A question of identity: Churchill refutes Oklahoma tribe's claim that he is not a member," *Colorado Daily*, May 19, 2005; Charlie Brennan, "Tribe, Churchill locked in standoff," *Rocky Mountain News*, May 19, 2005; Amy Herdy, "Tribe shifts stand, acknowledges Churchill's alleged Cherokee ancestry," *Denver Post*, May 20, 2005. Excerpts from the video of the council meeting are available at <http://www.wardchurchill.net>.

¹¹⁵ For a broad sample of the editorial cant, see Hanson, "Case against tenure"; Mike Rosen, "Just the tip of the iceberg," *Rocky Mountain News*, Feb. 11, 2005; Andrew Cohen, "Churchill's work needs close look," *Denver Post*, Feb. 13, 2005; Scott Heiser, "What about Churchill's honor code?" *Colorado Daily*, Feb. 17, 2005; Rick O'Donnell, "State right to hold CU accountable," *Rocky Mountain News*, Feb. 18, 2005; Rabbi Hillel Goldberg, "Absence of rigor: Opinions seem to hold sway today, and students suffer," *Rocky Mountain News*, Feb. 26, 2005; Mike Rosen, "CU is worth fighting for," *Rocky Mountain News*, Mar. 4, 2005; "Tirades have no place in class," *Denver Post*, Mar. 21, 2005; "Academic freedom demands faculty accountability," *Colorado Daily*, May 13, 2005; "Author, author: Churchill's 'Water Plot' highlights need for probe," *Daily Camera*, June 6, 2005; "And the verdict: He's got to go," *Rocky Mountain News*, June 10, 2005; "Escort Churchill to the door," *Denver Post*, July 1, 2005.

¹¹⁶ As of May 1, 2005, Campos's professional CV listed no scholarly publications at all since 1999 (copy on file). Apart from his regular columns in the *Rocky Mountain News*, the only thing he appears to have published over the preceding half-dozen years had been a book titled *The Obesity Myth: Why Americans' Obsession with Weight is Hazardous to Your Health* (New York: Gotham Books, 2004). For his official UCB Faculty Profile, see <http://lawweb.colorado.edu/profiles/faculty.jsp?id=10>.

¹¹⁷ Paul Campos, "Truth tricky for Churchill," *Rocky Mountain News*, Feb. 8, 2005. What LaVelle actually said was that, "Churchill's distinctive anti-tribal ideology, permeates many of the essays...purportedly authored by others [. . .]. Indeed, so interchangeable are the ideology, rhetoric, and writing style [in these essays] with essays that have appeared under Churchill's name

[. . .] that whole passages from essays by authors other than Churchill can be found in near-verbatim form in Churchill's other writings [making it appear that] Churchill may have [a] hand in drafting" these other authors' material. In other words, he does *not* accuse me of plagiarism. Rather, he suggests that I wrote material for which others have taken credit. See John P. LaVelle, "The General Allotment Act 'Eligibility' Hoax: Distortions of Law, Policy, and the Derogation of American Indian Tribes," *Wicazo Sa Review* (Spring 1999), pp. 251-52.

¹¹⁸ See Frank, "Prof accused"; Frank, "Churchill denies"; Elizabeth Mattern Clark, "Family of deceased wife disputes Churchill biography," *Daily Camera*, Feb. 8, 2005; David Curtin and Howard Pankratz, "CU prof's writings doubted: Two scholars say Churchill's work strayed from facts on two issues," *Denver Post*, Feb. 10, 2005; Berny Morson, "Scholarship under scrutiny: Churchill's essays lack originality says N.M. law professor," *Rocky Mountain News*, Feb. 11, 2005; Elizabeth Mattern Clark and Ryan Morgan, "Churchill's accuracy challenged: Scholars say phrases used out of context," *Daily Camera*, Feb. 11, 2005; Brittany Anas, "Parts of Churchill essay seem unoriginal: Portions of CU professor's writing mirror Canadian scholar's," *Daily Camera*, Mar. 13, 2005; (AP), "Allegations concerning professor date back to '90s," *Denver Post*, Mar. 25, 2005

¹¹⁹ This was/remains a sensitive matter for the administration. See Elizabeth Mattern Clark, "DiStefano: Churchill claims 'not frivolous,'" *Daily Camera*, Apr. 29, 2005.

¹²⁰ On faculty support, see notes 97, 100. Also see Matt Williams, "Department defends Churchill," *Colorado Daily*, Feb. 2, 2005; Joseph Thomas, "Academic freedom under attack? Some say free speech at CU at stake in Regents meeting today," *Colorado Daily*, Feb. 3, 2005; Michelle Waller, "Free speech supporters rally at CU for Churchill," *Daily Camera*, Feb. 12, 2005; Emma Perez, "A Neocon Test Case for Academic Purges: The Attacks on Ward Churchill," *CounterPunch*, Feb. 28, 2005; Rodney Muth, "Protecting Churchill protects us all," *Rocky Mountain News*, Mar. 11, 2005; Tom Mayer, "Anti-Churchill crusade is appalling," *Daily Camera*, June 14, 2005. On student support, see notes 47-50. Also see Matt Williams, "Students take sides: Protestors—some supporting embattled CU ethnic studies professor, others jeering him—face off," *Colorado Daily*, Feb. 2, 2005; Elizabeth Mattern Clark, "Professor is no stranger to controversy: Churchill finds support from his students at CU," *Daily Camera*, Feb. 2, 2005; Eric Schmidt, "Churchill draws ire, support: Supporters say critics are waging an assault on the First Amendment," *Daily Camera*, Feb. 2, 2005; Erin Feese, "Warn, don't fire: CU-Boulder students say ethnic studies prof off-base, but most say he should be kept," *Colorado Daily*, Feb. 3, 2005; Todd Noff, "Churchill's foreign policy ideas are largely ignored," *Daily Camera*, Feb. 6, 2005; Brittany Anas, "Churchill supporters lash out at media," *Daily Camera*, Feb. 9, 2005; Stephanie Olson, "'Ending the third witch hunt': Churchill to speak at rally on campus today," *Colorado Daily*, Mar. 3, 2005; Aimee Heckel and Ryan Morgan, "CU group: Attacks McCarthy-like; Students decry witch-hunt attitude in controversy," *Daily Camera*, Mar. 6, 2005; Felix Delagosa, Jr., "Churchill addresses marchers in Boulder," *Rocky Mountain News*, Apr. 27, 2005; Brittany Anas, "Supporting Churchill: Students, colleagues speak at evening rally on CU campus," *Daily Camera*, Apr. 27, 2005; Erin Feese, "Four Directions March tonight: Students, community to show support for Churchill, academic freedom and the fight against racism," *Colorado Daily*, Apr. 26, 2005; Oakland L. Childers, "A four-way convergence: At four directions march and rally, Churchill says CU campus center of free speech debate," *Colorado Daily*, Apr. 27, 2005.

¹²¹ Bronson Hilliard, "What's the word? Tupa plans campus forum to gauge CU, Boulder opinion on free speech, academic freedom," *Colorado Daily*,

Feb. 14, 2005; Brittany Anas, "Churchill gets support at forum: Legislature should 'stay out of it,'" *Daily Camera*, Feb. 18, 2005; Matt Williams, "Forum: Keep Churchill; Vote in senate resolution to fire embattled prof could come as early as today, Tupa says," *Colorado Daily*, Feb. 18, 2005; Berny Morson, "Forum accord: It's not legislators' concern; Resolution to fire embattled Churchill finds little support," *Rocky Mountain News*, Feb. 18, 2005; Arthur Kane, "Legislature panned for action on Churchill," *Denver Post*, Feb. 18, 2005.

¹²² Philip DiStefano, "Report on Conclusion of Preliminary Review in the Matter of Professor Ward Churchill" (available at <http://www.colorado.edu/news/reports/churchill/report.html>). Also see Elizabeth Mattern Clark, "Essay is protected: Claims of fraud against Churchill will be investigated," *Daily Camera*, Mar. 25, 2005; Matt Williams, "Churchill up for further review: 'Research misconduct' allegations go to committee," *Colorado Daily*, Mar. 25, 2005; Arthur Kane, "Churchill keeps his job, but 2nd probe looms: Faculty will weigh charges of plagiarism, fabrication," *Denver Post*, Mar. 25, 2005; Stuart Steers, "Faculty inquiry up next: Chancellor decides allegations merit probe by CU panel," *Rocky Mountain News*, Mar. 25, 2005. Also see note 403 regarding DiStefano's violation of university procedures concerning the confidentiality of personnel matters by releasing the specifics of the allegations to the media.

¹²³ On the nature of the process, see Dave Curtin, "Churchill likely to be at CU for years: Any proceedings begun against the fiery professor would be protracted," *Denver Post*, Mar. 15, 2005. Also see Kevin Flynn, "A glance inside panel's work: Rules shed light on inquiry done mostly in secret," *Rocky Mountain News*, June 4, 2005.

¹²⁴ Kane, "Choices costly for regents"; Mike Littwin, "Guv may have played into prof's hands," *Rocky Mountain News*, Feb. 12, 2005; Jim Hughes, "Reprovals could aid Churchill: Calls for firing Churchill are giving prof ammo for suit," *Denver Post*, Feb. 23, 2005; Steven K. Paulson, "CU chief cautions legislature: Hasty action on Churchill could backfire on school," *Rocky Mountain News*, Feb. 23, 2005; Bill Johnson, "Hoffman gave lawmakers sound advice," *Rocky Mountain News*, Feb. 25, 2005.

¹²⁵ Kevin Simpson, "Findings bring relief, rancor: Conferees in Chicago getting wind of news from CU are comforted by affirmation of free speech but chilled by ongoing probe," *Denver Post*, Mar. 25, 2005; George Merritt, "A campus weary of brouhaha hopes probe won't drag on," *Denver Post*, Mar. 25, 2005; Clint Talbot, "Free speech ratified, Churchill isn't," *Daily Camera*, Mar. 25, 2005.

¹²⁶ Mike Littwin, "In CU report, a little outrage for everyone," *Rocky Mountain News*, Mar. 25, 2005. Littwin's viewpoint is highly atypical of the Denver media environment. His own paper's normative editorial posture is better illustrated by "Churchill panel merits a B minus," *Rocky Mountain News*, Mar. 25, 2005. Also see David Harsanyi, "Artful dodger: CU chancellor passes the buck," *Denver Post*, Mar. 25, 2005.

¹²⁷ Littwin, "CU report."

¹²⁸ On the contrary, I was approved for a major increase in my base salary in 2001 because of overall quality of scholarly work and consequent "stature in [my] field." This was followed, in 2004, with a smaller "special merit increase" requested by Dean Todd Gleeson, a member of the "interim chancellor's ad hoc investigating committee," and provided by none other than then-provost Phil DiStefano. I was also assigned the highest possible ratings in my 1999 post-tenure review, approved by both DiStefano and the Board of Regents (documents on file).

¹²⁹ See the entry on "Trial by news media" in *Black's Law Dictionary*, 6th ed. (St. Paul: West, 1990), p. 1505. Also see "Churchill tried in the media," *Critical Mass*, June 4, 2005.

¹³⁰Vanessa Miller, "CU says ethnicity not part of probe: Churchill's writings, speeches only thing being investigated," *Daily Camera*, Feb. 8, 2005.

¹³¹Following a six-month investigation ordered by then-Chancellor James Corbridge, the charges were dismissed as "scurrilous." See Prof. Evelyn Hu-Dehart, Dir., Ctr. for Studies of Ethnicity and Race in America (CSERA), "Report on Prof. Churchill to Dean Charles Middleton, Arts and Sciences," Oct. 10, 1994; Charles R. Middleton, Dean, to Prof. Evelyn Hu-Dehart, Director, CSERA, Nov. 29, 1994 (copies on file). CSERA subsequently became the Department of Ethnic Studies, of which Hu-Dehart was chair until 2002.

¹³²Kevin Flynn, "Churchill's 'Indian' claim to be probed: Assertion is at heart of academic career," *Rocky Mountain News*, Mar. 25, 2005; Jim Hughes, "Critics glad to hear fraud allegations still on table," *Denver Post*, Mar. 25, 2005; Amy Herdy, "Churchill assails call to defend heritage: CU administrators urged to drop investigation of tenured professor's work and ethnicity claims," *Denver Post*, Apr. 5, 2005; Jefferson Dodge, "Churchill will respond in writing to allegations: Professor received request from UCB on 4/22," *Silver & Gold Record*, Apr. 28, 2005; Jefferson Dodge, "Churchill submits first part of response to committee: Allegations refuted 'point by point' professor says," *Silver & Gold Record*, May 19, 2005. It should be noted that I had no alternative but to participate in the proceedings, given the legal requirement that I "exhaust [the] internal remedies" ostensibly available to me prior to filing suit.

¹³³The new chair, Professor of Business Joseph G. Rosse, directs the UCB Office of Research Integrity. In that capacity, he reports not to the faculty, but to the provost. See generally, "Churchill review committee has first meeting: Rosse replaces Pinkow on committee," *Colorado Daily*, Mar. 30, 2005; Jefferson Dodge, "Prof. says he will respond to research committee: Group has 'no authority' to verify ethnicity," *Silver & Gold Record*, Apr. 14, 2005. Also see Rosse's testimony during a formal review of my case conducted in early 2007 by the Faculty Senate's Committee on Privilege and Tenure (P&T); Transcript, *IN RE: Dismissal for Cause Hearing for Professor Ward Churchill* (Jan. 20, 2007), p. 1967. This document is hereinafter cited as *P&T Transcript*.

¹³⁴Among the two-dozen-odd written complaints *not* acted upon in any way was a little-reported 30-page epic submitted by a local Chicano activist Ernesto Vigil. Another was a formal written complaint I filed against myself in late June, based upon a vacuous assertion appearing in that month's issue of *Anarchy* magazine that I've failed to give proper credit to the graduate assistants who've tracked down my footnotes for me (I argued that my never having had a graduate assistant should not deter the SCRM from investigating since, after all, the allegation had appeared in print). See Casey Freeman, "Ex-ethnic studies researcher questions Churchill: Chicano author Ernesto Vigil calls ethnic studies prof 'a fake,'" *Colorado Daily*, Apr. 26, 2005; Dan Elliot (AP), "Colorado professor spoofs detractors," *Charlotte Observer* (North Carolina), July 1, 2005. On Vigil, see Juan Haro, *The Ultimate Betrayal* (Denver: J. Haro, Inc., [3rd ed.] 1998).

¹³⁵Casey Freeman, "Giuliani speaks to CU: Former NYC mayor talks about Churchill, leadership," *Colorado Daily*, April 4, 2005; John C. Ensslin, "Giuliani rips Ward Churchill," *Rocky Mountain News*, Apr. 4, 2005; George Merritt, "Giuliani weighs in about CU: Former NYC mayor says school can overcome controversies," *Denver Post*, Apr. 4, 2005.

¹³⁶"A news story, in and of itself, does not constitute a new complaint"; UCB spokesperson Pauline Hale, quoted in Charlie Brennan and Kevin Vaughan, "For now, focus of Churchill probe set: At this stage, panel isn't allowed to consider new questions about professor," *Rocky Mountain News*, June 10, 2005.

¹³⁷Charlie Brennan, "CU expanding inquiry: Evidence uncovered by News to be included," *Rocky Mountain News*, June 16, 2005. The News had

apparently assigned five reporters more-or-less fulltime for two months to work up its “Churchill Files” series, which was published immediately prior to the anticipated completion of the SCRM’s preliminary findings. See “The Churchill files: A News investigation of the charges before a CU panel reveals strong evidence of possible misconduct by professor,” *Rocky Mountain News*, June 4, 2005 (two full tabloid pages in the A section). The series itself began on June 6 and ran for four consecutive days, each devoted to “exploring” a particular “charge” through a pair of stories. On the 6th, the charge was “Fabrication,” and the stories—“Did Ward Churchill falsely accuse the U.S. Army in smallpox epidemic? Our findings: His claim isn’t supported by the sources he has cited” and “Shifting facts amid a tide of contention: Sources cited don’t back other smallpox claims by Churchill”—written by Kevin Vaughan, took up four solid pages in tabloid format. On the 7th, the charge of “Plagiarism” was treated by Laura Frank—“Did Ward Churchill publish the work of others as his own? Our findings: An essay he ‘prepared’ was from Canadian scholar”—took up three tabloid pages. On the 8th, Berny Morson handled the charge of “Mischaracterization”—“Did Ward Churchill portray two federal Indian laws incorrectly? Our findings: His claims about Dawes, Indian Arts acts are wrong” and “Racist plot also seen in Arts and Crafts Act: Churchill: 1990 law an effort to eliminate Indians as a legal entity”—in another three-page spread. On June 9, the charge of “Misrepresentation” capped off the series with three-and-a-half pages from Kevin Flynn—“Are Ward Churchill’s claims of Indian ancestry valid? Our findings: Genealogical records, DNA don’t support assertions”—and a two-page centerfold by Charlie Brennan concerning allegations by my late-wife’s family of inaccuracies in a biographical essay I’d written to preface a posthumously-published collection of her essays (“Family: Errors riddle passage on late wife”). Hence, a grand total of 17.5 A-Section pages were expended by the *News* in a single week in a concerted drive to both predetermine the SCRM’s “verdict” on the allegations already before it, and to add new allegations to the pile.

¹³⁸ Amy Herdy, “CU prof plans tough defense: Cites ‘nakedly hostile’ critics,” *Denver Post*, Mar. 31, 2005. Also see note 403 regarding DiStefano’s violation of university procedures concerning the confidentiality of personnel matters by releasing the specifics of the allegations to the media.

¹³⁹ See Arthur Kane, “Bias seen in next Churchill inquiry: ‘Inmates are in charge of the asylum,’” *Denver Post*, Mar. 27, 2005; “CU review must be untainted,” *Denver Post*, Mar. 29, 2005. To their credit, the SCRM members themselves refused to follow the administration’s craven example by allowing the press to dictate the terms of its own “acceptability.” See Elizabeth Mattern Clark, “Churchill panel mulls biases: Potential conflicts of interest to be resolved later,” *Daily Camera*, Mar. 30, 2005.

¹⁴⁰ Those appointed to the SCRM Subcommittee of Inquiry were professors Cort Pierpont (biochemistry), Russell Moore (physiology), and Bella Mody (journalism). There was also a graduate student. *None* of these individuals professed—or exhibited—the least professional familiarity with my own or related fields. An even more pronounced overrepresentation of the hard sciences vis-à-vis the liberal arts prevailed within the SCRM as a whole. Rosse later acknowledged that this lack of disciplinary heterogeneity may have been problematic in terms of affording me a fair hearing at the inquiry stage; *P&T Transcript* (January 20, 2007), pp. 1880, 1967-68.

¹⁴¹ Philip P. DiStefano to Prof. Joe Rosse, “Referral to the Standing Committee on Research Misconduct, University of Colorado at Boulder; Professor Ward Churchill,” Mar. 29, 2005, p. 3 (copy on file). This document is hereinafter cited as *DiStefano Referral*. The references are to “Bringing the Law Back Home: Application of the Genocide Convention to the United States,” in my *Indians Are Us? Culture and Genocide in Native North America* (Monroe, ME: Common Courage Press, 1993), pp. 11, 35; and my *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 through the*

Present (San Francisco: City Lights, 1997), pp. 155-56.

¹⁴² *DiStefano Referral*, pp. 1-2. The references are to the essay "Perversions of Justice: Examining the Doctrine of U.S. Rights to Occupancy in North America," in my *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide and Expropriation in Contemporary North America* (Monroe, ME: Common Courage Press, 1993), p. 49; and "Like Sand in the Wind: The Making of an American Indian Diaspora in the United States," in the revised and expanded 2nd ed. of the same book, *Struggle for the Land: Native North American Resistance to Genocide, Ecocide and Colonization* (San Francisco: City Lights, 2002), p. 341.

¹⁴³ *DiStefano Referral*, p. 2. The reference is to the essay "Nobody's Pet Poodle: Jimmie Durham, An Artist for Native North America," in my *Indians Are Us?*, pp. 89, 92.

¹⁴⁴ *DiStefano Referral*, p. 4. The first such allegation is to language appearing from an article published under the by-line of Rebecca L. Robbins which is incorporated verbatim and without attribution into my essay "Perversions of Justice" (see note 139), p. 93; and again in the same essay as it appears in my *Perversions of Justice: Indigenous Peoples and Angloamerican Law* (San Francisco: City Lights, 2003), p. 14. The second allegation concerns language duplicating with partial or insufficient attribution that contained in an article by Fay G. Cohen included in one of my anthologies. Curiously, the apparent plagiarism occurs in an essay which was not authored by me; see Institute for Natural Progress, "In Usual and Accustomed Places: Contemporary American Indian Fishing Rights Struggles" in M. Annette Jaimes, ed., *The State of Native America: Genocide, Colonization, and Resistance* (Boston: South End Press, 1992), pp. 217-40. For the first piece supposedly plagiarized, see Rebecca L. Robbins, "Self-Determination and Subordination: The Past, Present, and Future of American Indian Governance," in Jaimes, *State of Native America*, p. 93. For the second, see Fay G. Cohen, "Implementing Indian Treaty Fishing Rights: Conflict and Cooperation," in Ward Churchill, ed., *Critical Issues in Native North America, Vol. II* (Copenhagen: IWGIA Doc. 68, 1991), pp. 154-73.

¹⁴⁵ "The question of Professor Churchill's Indian status with respect to research misconduct is whether he attempted to gain a scholarly voice, credibility, and an audience for his scholarship by wrongfully asserting that he is an American Indian [. . .]. The committee should inquire as to whether Professor Churchill can assert a reasonable basis for clarifying such identity"; *DiStefano Referral*, p. 5.

¹⁴⁶ Vaughan, "Shifting Facts." The reference is to p. 54 of my essay, "An American Holocaust?" (cited/quoted in note 160).

¹⁴⁷ Laura Frank, "'The Water Plot' thickens: Essays listing professor as author mirror 1972 work by Canadian dams group," *Rocky Mountain News*, June 3, 2005. Her references are to Dam the Dams and Institute for Natural Progress, "The Water Plot: Hydrological Rape in Northern Canada," in Ward Churchill, ed., *Critical Issues in Native North America* (Copenhagen: IWGIA Doc. 62, Dec. 1988/Jan. 1989), pp. 137-51; and a greatly expanded essay published under the same title—and my own name—in the 2002 ed. of my *Struggle for the Land* (cited in note 142), pp. 292-329.

¹⁴⁸ Laura Frank, "Experts: Professor broke copyright law," *Rocky Mountain News*, June 3, 2005. Her references are, in the first instance, to Robert T. Coulter, "Present and Future Status of American Indian Nations and Tribes," and Rudolph C. Ryser, "Who Will Govern Indian Country?," both in *Indian Self-Governance: Perspectives on the Political Status of Indian Nations in the United States of America*, ed. Carol J. Minugh, Glenn T. Morris, and Rudolph C. Ryser (Kenmore, WA: Center for World Indigenous Studies, 1989), pp. 37-48, 91-104. Both essays were included in my *Critical Issues, Vol. II*; Coulter at pp. 2-12, Ryser at pp. 13-24. In the second instance, the

reference is to a five-paragraph book review by Elizabeth Cook-Lynn published in Vol. XIII, Nos. 3&4 (Summer-Fall 1988) of *Issues in Radical Therapy*, a journal I then edited.

¹⁴⁹ “DiStefano announced on March 24 that the Kellys’ complaints were not being forwarded to CU’s standing committee on research misconduct, saying officials were unable to obtain independent verification on the contested points.” Charlie Brennan, “Family urges probe on Churchill book,” *Rocky Mountain News*, June 18, 2005. On his reversal of position, see Charlie Brennan, “Complaints by family sent to Churchill panel,” *Rocky Mountain News*, Aug. 27, 2005.

¹⁵⁰ I referred to the hospital as “St. Joseph’s”; it is actually St. Anthony’s. See my biographical preface, “Kizhiibaabinesik: A Bright Star Burning Briefly,” in Leah Renae Kelly, *In My Own Voice: Explorations in the Sociopolitical Context of Art and Cinema* (Winnipeg: Arbitrator Ring, 2001), p. 49.

¹⁵¹ I stated that both of my wife’s parents attended residential schools; *ibid.*, p. 27. In actuality, while the facility she attended accommodated residential students—and was thus a residential school—my former mother-in-law was a day student there. It was further asserted that I erred about the name of the school attended by my late father-in-law, although I took the information directly from his CV (copy on file).

¹⁵² A few months before her death, my wife—a severe alcoholic—was diagnosed by Centennial Peaks clinicians as suffering from Borderline Personality Disorder (paperwork on file). On the ugly and intractable nature of this malady, see Judith Herman, *Trauma and Recovery: The Aftermath of Violence—from Domestic Abuse to Political Terror* (New York: Basic Books, [2nd ed.] 1997), esp. pp. 123-26, 136-39, 147.

¹⁵³ My late father-in-law openly acknowledged that his own acute alcoholism derived from his residential school experience and that his resulting behavior traumatized all six of his children, of whom my late wife was the youngest. Apart from the consistency of this backdrop with my wife’s psychological condition, it should be noted that one of her brothers has suffered acute alcoholism and other symptoms of childhood trauma for well over a decade; a second brother recently suffered the break-up of his family as a result of his own losing battle with alcohol, while the third brother and a sister—both in their 40s—live what amounts to lives devoid of romantic relationships while continuing to reside in their mother’s basement. The eldest sister, who raised the complaint against me, spent years attending Adult Children of Alcoholics meetings while getting her own drinking problem under control, and remains one of the most empathy-impaired people I’ve ever encountered. These patterns are directly indicative of “Residential School Syndrome,” as is—in some ways even more prominently—a pathological compulsion to deny that the patterns exist. See Herman, *Trauma and Recovery*, pp. 1-2, 9, 28-29, 87, 101, 180-81; Donald L. Nathanson, “Denial, Projection and the Empathic Wall,” and Michael H. Stone, “Denial in Borderlines,” both in E.L. Edelstein, Donald L. Nathanson, and Andrew M. Stone, eds., *Denial: A Clarification of Concepts and Research* (New York: Plenum Press, 1989), at pp. 37-60, 203-18, respectively; William H. Crisman, *The Opposite of Everything is True: Reflections on Denial in Alcoholic Families* (New York: Quill, 1991). Regarding the Residential School Syndrome itself, see *Assembly of First Nations, Breaking the Silence: An Interpretive Study of Residential School Impact and Healing as Illustrated by the Stories of First Nations Individuals* (Ottawa: Assembly of First Nations, 1994); and my *Kill the Indian, Save the Man: The Genocidal Impact of American Indian Residential Schools* (San Francisco: City Lights, 2004), pp. 68-76.

¹⁵⁴ This was mentioned in a single sentence in one of 257 footnotes. I don’t dispute the error. It’s worth mentioning, however, that Rhonda Kelly, who raised the issue, very much considers her own children to be Ojibwe—as do the rest of the family—despite the fact that their father is a “full-blood” Croat. This is hardly suggestive of adherence to a patrilineal tradition.

¹⁵⁵ This very point was made by Clear Channel host—and former prosecutor—Craig Silverman on August 20, 2005.

¹⁵⁶ “I have concluded that these allegations, even if true, do not represent research misconduct”; letter, Rosse to DiStefano, Aug. 30, 2005 (copy on file). Also see (AP), “3 allegations about Churchill not misconduct: CU panel tells DiStefano it is not committee’s job to judge inaccuracies,” *Daily Camera*, Sept. 8, 2005.

¹⁵⁷ “Report to the Standing Committee on Research Misconduct from the Inquiry Subcommittee Appointed to Consider Allegations of Research Misconduct Against Professor Ward Churchill,” Aug. 19, 2005 (copy on file; hereinafter referenced as *Inquiry Report*). Also see Jennifer Brown, “Tentative ‘victory’ for prof: Churchill report supports dropping of ethnicity issue,” *Denver Post*, Aug. 23, 2005; Amy Herdy, “CU panel drops three allegations against Churchill,” *Denver Post*, Sept. 7, 2005.

¹⁵⁸ “Churchill asks CU panel to discontinue its inquiry,” *Denver Post*, Sept. 2, 2005; P. Solomon Banda (AP), “Churchill investigation moving forward: New committee to research seven allegations,” *Daily Camera*, Sept. 10, 2005; Arthur Kane, “Prof decries CU statement: Churchill accuses CU of ‘shoddy’ handling of case,” *Denver Post*, Sept. 13, 2005.

¹⁵⁹ As the subcommittee put it at p. 10 of the *Inquiry Report*, “A comparison shows that Ward Churchill’s style and the writing style of the so-called ‘Robbins’ chapter are similar, leading us to believe that Ward Churchill’s claim that he wrote the chapter and gave Robbins authorship may have merit [. . .]. [T]here has been complete silence from Robbins in the face of Churchill’s supposed misuse over the last dozen years, lending credence to Churchill’s account.” Also see Jim Hughes and Amy Herdy, “Churchill says he’s ghost-writer: CU prof denies plagiarism,” *Denver Post*, May 26, 2005; Beryn Morson, “1993 essay also raises questions: Churchill says pieces credited to others are actually his work,” *Rocky Mountain News*, June 7, 2005.

¹⁶⁰ This allegation was based entirely upon a single sentence in the edited transcription of a public lecture I delivered at the Brecht Center in 1998, published under the title “An American Holocaust? The Structure of Denial” in *Socialism and Democracy* 17, No. 2 (Winter-Spring 2003), pp. 25-75. Appearing on p. 54, it reads: “There’s some pretty strong circumstantial evidence that Smith introduced smallpox among the Wampanoags as a means of clearing the way for the invaders.” In support, I cited Neal Salisbury’s *Manitou and Providence: Indians, Europeans, and the Making of New England, 1500-1643* (New York: Oxford University Press, 1982), pp. 96-101. I should probably have extended the page-span through p. 109. I could also have cited additional sources. Such points are mooted by the fact that Salisbury refers to the Wampanoags as “Pokanokets,” and it appears that none of the subcommittee members—not one of whom were trained in a relevant discipline (indeed, all but one are tenured in the hard sciences)—were equipped to realize that both names refer to the same people.

¹⁶¹ What the Act literally requires is enrollment in a federally or state-recognized “tribe.” My initial reaction to this when the Act was passed in 1990, was that this was “the same as” requiring a quarter-blood quantum because, as I documented for the subcommittee, of 161 such entities, 131 posited a blood quantum of *at least* one-quarter as a qualification for enrollment (semantics, anyone?). It was also pointed out that I was hardly alone in interpreting as I did, that my “offending” article was originally written as a polemic for a nonacademic audience (and before I ever joined the UCB faculty), that the book in which the article was collected had been out of print since 1995, that I’d subsequently published a far more extensive and considered critique of the Act in a book currently in print and far better distributed than its predecessor (thereby correcting my by-then fifteen-year-old “error” before the broadest possible readership). The article, “Nobody’s Pet Poodle,” was originally published in the November 1990 edition of *Crazy*

Horse Spirit, then reprinted in *Z Magazine*, Vol. 5, No. 2 (Feb. 1992), before being collected in my *Indians Are Us?* (see note 141). For the documentation presented to the subcommittee, see C. Matthew Snipp, "Federally Recognized American Indian Tribes and Approximate Enrollments, by Blood Quantum Requirements," *American Indians: The First of This Land* (New York: Russell Sage Foundation, 1989), pp. 362-65. For an example of others interpreting the 1990 Act as I did—and without citing me in the process—see Scott B. Vickers, *Native American Identities: From Stereotype to Archetype in Art and Literature* (Albuquerque: University of New Mexico Press, 1998), pp. 163-64. For my subsequent treatment of the Act, see "The Nullification of Native America? An Analysis of the 1990 American Indian Arts and Crafts Act," in my *Acts of Rebellion: The Ward Churchill Reader* (New York: Routledge, 2003), pp. 23-42.

¹⁶² These consisted of (1) my alleged misrepresentation of the 1887 Act, (2) similar misrepresentation of the 1990 Act, (3) my supposed fabrication of the John Smith/smallpox connection, circa 1614, (4) a similar fabrication of the U.S. Army/smallpox connection in 1837, (5) plagiarizing Dam the Dams, (6) plagiarizing Fay Cohen, and (7) plagiarizing Rebecca Robbins, an independent scholar; *Inquiry Report* (*passim*).

¹⁶³ Kevin Flynn, "Churchill inquiry sent to higher level: Panel recommends further investigation on seven complaints," *Rocky Mountain News*, Aug. 23, 2005; Charlie Brennan, "Churchill faces full CU inquiry: Panel zeroes in on seven allegations against professor," *Rocky Mountain News*, Sept. 10, 2005; P. Solomon Banda, "Full investigation recommended: University panel green-lights query on seven allegations," *Colorado Daily*, Sept. 12, 2005.

¹⁶⁴ University of Colorado at Boulder, *Operating Rules and Procedures of the Standing Committee on Research Misconduct*, Sec. VI(A): Appointment of Investigative Committee (hereinafter cited as *SCRM Rules*; available at http://www.colorado.edu/Academics/research_misconduct_rules.html).

¹⁶⁵ E-mail, Churchill to Rosse, Oct. 12, 2005, Subject: RE: exclusions; quoting e-mail dated Oct. 11, Rosse to Churchill, on the same topic (copy on file). During the subsequent P&T review, Rosse claimed that the SCRM later abandoned this criterion for disqualification. He was unable to produce a memo or other corroborating evidence, however, and was unable to recall when this decision was supposedly made.

¹⁶⁶ E-mail, Churchill to Rosse, Oct. 12, 2005. Also see e-mail, Churchill to Rosse, Oct. 8, 2005, Subject: Re: Possible members of the SCRM Investigative Committee (copy on file).

¹⁶⁷ Testimony of Joseph G. Rosse; *P&T Transcript* (Jan. 20, 2007), pp. 1886-87.

¹⁶⁸ "I must express strong concern regarding the inclusion of anyone from the law faculty, given the poisonous atmosphere instigated there by David Getches, Paul Campos, and several others over the past few months"; e-mail, Churchill to Rosse, Oct. 8, 2005.

¹⁶⁹ E-mail, Marianne (Mimi) Wesson to [name withheld at the request of the recipient], Feb. 28, 2005, Subject: SUSPECT: Re: [SALT] Letter Supporting Ward Churchill (copy on file). The missive was sent from Wesson's university address. The acronym "SALT" refers to the Society of American Law Teachers.

¹⁷⁰ *P&T Transcript* (Jan. 20, 2007), pp. 1899-1900, 1937-42, 1962. Rosse later claimed to be unable to locate copies of the additional Wesson e-mails; letter, Patrick O'Rourke to Churchill, Jan. 31, 2007, Subject: RE: Written statements/Transcripts. O'Rourke currently serves as University Counsel. It should be noted that Wesson herself acknowledges having written "a large number of e-mails that pertained to Professor Churchill"; *P&T Transcript* (Jan. 8, 2007), p. 154.

¹⁷¹ Wesson testified that she turned copies of all offending e-mails over to Rosse, in his capacity as chair of the SCRM, with the expectation that he, in turn, would provide copies to me, and professed "surprise" that he'd not done so; *P&T Transcript* (Jan. 8, 2007), pp. 147-48, 154-55. Rosse, for his part, stated repeatedly that he did not recall her doing so; *P&T Transcript*

(Jan. 20, 2007), pp. 1938-40. In any case, copies have never been divulged by the university, despite its obligation under the Colorado Open Records Act to do so upon request.

¹⁷² *P&T Transcript* (Jan. 20, 2007), p. 1997.

¹⁷³ The timing of Avery's approval is unclear since, according to Wesson, she made her agreement to serve on the investigative panel contingent upon being appointed to serve as its chair; *P&T Transcript* (Jan. 8, 2007), pp. 52, 130-31. The testimony is also contradictory as to whether Rosse or Avery was responsible for soliciting the participation of individual panelists. It appears that the SCRM chair and the acting provost were functioning interchangeably.

¹⁷⁴ McIntosh also professed competence in both oral history and African history, although her doctorate is in early modern English history. Her CV indicates that her last training in African history was in 1963, however, and that she has no training at all in oral historiography. As is also reflected in her CV, from 1976 until 2000, all of her research grants and resulting publications were devoted to medieval England. The closest she comes to scholarly credentials in either African or oral history is a stint in academic year 2002-03 as a guest lecturer in Women and Gender Studies at Uganda's Makerere University (McIntosh CV [2006], on file). On McIntosh's claims, see Marianne Wesson, Robert N. Clinton, José E. Limón, Marjorie K. McIntosh, and Michael L. Radelet, *Report of the Investigative Committee of the Standing Committee on Research Misconduct at the University of Colorado at Boulder concerning Allegations of Academic Misconduct against Professor Ward Churchill* (May 9, 2006), pp. 104-05 (hereinafter cited as *IC Report*; available at <http://www.colorado.edu/news/reports/churchill/churchillreport051606.html>).

¹⁷⁵ Radelet's CV is available at <http://ibs.colorado.edu/directory/profiles/?people=radeletm>.

¹⁷⁶ Williams holds a joint appointment in the law school and the American Indian Studies program at Arizona. He also serves as a tribal judge for both the Pascua Yaqui and Tohono O'odam, as well as a legal consultant for the Navajo Nation; *P&T Transcript* (Jan. 11, 2007), pp. 1298-99.

¹⁷⁷ When asked at a subsequent hearing whether, during his brief stint on the investigative panel, he'd perceived that the UCB administrators involved "had an agenda to get Churchill," Williams replied, "I was not comfortable with my conversations with Professor Wesson [. . .]. I got the sense that she would be perfectly happy to see me go away; that I was a loose cannon, and that she didn't know quite what to do with me"; *P&T Transcript* (Jan. 11, 2007), p. 1393.

¹⁷⁸ "I consistently asked Rosse what standards were going to be used. I did not want to step into a process that was standardless. And he, quite frankly, had no answer. He mumbled something, as well as Wesson, about using some sort of standards that were included with either [PHS] or NSF grants; that they really didn't have any standards. I said I would like that nailed down before we proceed. Because [. . .] as an American Indian Studies scholar, [. . .] I was very reluctant to get into a process which I felt would impose standards on American Indian Studies that [. . .] would have a Euro-centric bias that would be insensitive to the culture of American Indian Studies scholarship and that would be essentially impossible to work under"; testimony of Robert A. Williams, Jr., *P&T Transcript* (Jan. 11, 2007), pp. 1309-10.

¹⁷⁹ Jim Kirksey, "CU names five investigating Churchill," *Denver Post*, Nov. 2, 2005; (AP), "Churchill panel members named: CU identifies committee members," *Colorado Daily*, Nov. 3, 2005. The press release itself is dated Nov. 1, 2005. As Williams later explained, "[Q]uite frankly, in my initial conversation with Rosse, I thought [. . .] that this was to be similar to many sorts of tenure and academic review processes, where they're not necessarily

totally adversarial [. . .]. I thought it was going to be in the nature of a faculty-driven process that would investigate [Churchill's] work. I had no idea that my name would be released [and] I was quite upset [. . .]. I had no confidence at that point that anything I was saying had any level of confidentiality, even though I understood this was to be a personnel matter"; *P&T Transcript* (Jan. 11, 2007), pp. 1305-06.

¹⁸⁰ See, e.g., Caplis and Silverman, "Is the Churchill review committee compromised?" (audio archive available at http://www.khow.com/pages/shows-caplis_silverman.html).

¹⁸¹ "Churchill inquiry hits another wall," *Rocky Mountain News*, Nov. 5, 2005. For lead-in, see Todd Hartman, "Objectivity comes into question: Misconduct panel member reportedly praised Churchill," *Rocky Mountain News*, Nov. 3, 2005; Charlie Brennan, "Churchill panelist criticized: Professor claims he's not predisposed to a not-guilty verdict," *Rocky Mountain News*, Nov. 5, 2005.

¹⁸² Jim Paine, "A Closer Look at the Five Stooges," *PirateBallerina*, (available at <http://www.pirateballerina.com/blog/entry.Php?id=230>). On Paine, see "Drunkablog interview: Pirate Ballerina's Jim Paine," April 19, 2005 (available at <http://thedrunkablog.blogspot.com/2005/04/drunkablog-interview-pirateballerinas.html>). Johansen recounts his experience with Paine and the Denver media in his *Silenced: Academic Freedom, Scientific Inquiry, and the First Amendment Under Siege in America* (Westport, CT: Praeger, 2007), xi-xiii; for Williams's recollections, see *P&T Transcript* (Jan. 11, 2007), pp. 1304-09.

¹⁸³ According to Williams, he requested from Rosse an assessment by university counsel of any possible conflict of interest imbedded in our virtually nonexistent "relationship," but never received it. For her part, Wesson offered a "pretended sort of amazement at the incompetence [with which] this had been handled, at the inability to get on top of this, to explain why Johansen and I had been selected" to serve on the panel. "I have never seen a process so mismanaged. It was becoming an absolute fiasco [. . .]. [S]o I said, you know, you've already destroyed Ward's reputation by the sloppy way you've run this. I'm not going to let you destroy [mine]"; *P&T Transcript* (Jan. 11, 2007), pp. 1306-08.

¹⁸⁴ UCB Office of News Services, "Statement Regarding the Churchill Investigative Committee," Nov. 11, 2005 (available at <http://www.colorado.edu/news/releases/2005/431.html>). Also see John C. Ensslin, "Nebraska prof quits panel investigating Churchill," *Rocky Mountain News*, Nov. 10, 2005; "Scholar quits committee reviewing Churchill's work," *Denver Post*, Nov. 11, 2005; Angi Sada, "Professor resigns from controversial Churchill Panel," *Gateway*, Nov. 11, 2005 (available at <http://media.www.unogateway.com/media/storage/paper968/news/2005/11/11/News/Professor.Resigns.From.Controversial.Churchill.Panel-2549679.shtml>). Jennifer Brown, "2nd professor resigns from Churchill panel," *Denver Post*, Nov. 11, 2005; Todd Hartman, "2nd person quits CU panel: Group looking into Churchill charges," *Rocky Mountain News*, Nov. 12, 2005.

¹⁸⁵ "Hmmm, maybe we should offer our services to CU in determining how 'pirateballerina' their next choices are [. . .] [and] we wonder what academic out there is now willing to put their professional reputation on the line"; Jim Paine, *PirateBallerina*, Nov. 12, 2005 (available at <http://www.pirateballerina.com/index.php>). Johansen replied on an opposing blog; see "Our Edward R. Murrow to Jim Paine's Joseph McCarthy," *Try-Works*, Nov. 14, 2005 (available at <http://tryworks.blogspot.com>).

¹⁸⁶ Apart from his academic standing, Yellow Bird is a chief among his father's Sahnish (Arikara) people. His mother is Hidatsa. These are two of the Three Affiliated Tribes sharing the Fort Berthold Reservation—the other being the Mandan, with whom he is also intimately connected—who were concentrated around Fort Clark in 1837. His knowledge of their traditional understandings of how the smallpox pandemic originated is obviously quite substantial; *P&T Transcript* (Jan. 11, 2007), pp. 1257-60.

¹⁸⁷ On Delgado's scholarly background, see *P&T Transcript* (Jan. 12, 2007), pp. 1722-25.

¹⁸⁸ On Yellow Bird, see *P&T Transcript* (Jan. 11, 2007), pp. 1262-63; on Delgado, see *P&T Transcript* (Jan. 12, 2007), pp. 1726-27.

¹⁸⁹ Rosse testimony, *P&T Transcript* (Jan. 20, 2007), p. 1893.

¹⁹⁰ *Ibid.*, pp. 1893-94. It should be noted that Rosse never bothered to inform either Delgado or Yellow Bird that their services would not be needed. On Delgado, see *P&T Transcript* (Jan. 12, 2007), p. 1727; on Yellow Bird, see *P&T Transcript* (Jan. 11, 2007), p. 1262.

¹⁹¹ Much like McIntosh (see note 183, above), Limón claims proficiency in "oral history" although his training is in English and anthropology, not history, and his research/publications have been devoted entirely to literary analysis and "folklore." Similarly, although he bills himself—and was billed by the SCRM—as a "Chicano Studies scholar," his only experience in the discipline appears to have been an appointment by the University of Texas administration to preside over the dismantlement of the previously vibrant Chicano Studies program on that institution's Austin campus. For Limón's profile as promoted by UCB, see *IC Report*, p. 104. His professional CV is available at <http://www.utexas.edu/cola/depts/english/faculty/profiles/limon-jose-e.html>. Also see Jordan Smith, "Closing the Books: UT editor says Mexican-American imprint was shuttered as whistle-blower retaliation," *Austin Chronicle*, Sept. 12, 2003 (available at <http://www.austinchronicle.com/gyrobase/Issue/story?oid=oid%3A177189>).

¹⁹² "I know [. . .] people on the committee who pretend [to be] Indian Studies scholars. They are not. Their works are not cited in Indian Studies journals. Their [. . .] books are not reviewed there. Their articles and books are not used in AIS classes. They do not design curriculum. They do not design programs [. . .]. The people on that committee did not know the discipline, were totally unqualified. Robert Clinton is probably one of the top two or three legal scholars of federal Indian law, but would I rely on him for Indian Studies? Absolutely not"; testimony of Robert A. Williams, Jr., *P&T Transcript* (Jan. 11, 2007), p. 1321. In perfect consistency with Williams's assessment, two former members of the AIS faculty at Arizona State, Clinton's home institution, have shared with me that they not only never met the man during their tenure there, they had no idea who he was.

¹⁹³ E-mail, Churchill to Rosse, Dec. 21, 2005, Subject: RE: committee (copy on file).

¹⁹⁴ E-mail, Churchill to Rosse, Oct. 24, 2005, Subject: RE: SCRM Committee (copy on file).

¹⁹⁵ The rules provide that the investigative panel will submit its report "upon its completion, no later than 120 days from initiation of the investigation. If unable to meet this time requirement, [it can] submit to the Office of Research Integrity [i.e., Rosse] a request for extension. The request must include an explanation for the delay, an interim report on progress to date, and an estimated date of completion"; *SCRM Rules*, Sec. IV D(10): The Full Investigation and Responsibilities of the Investigative Committee.

¹⁹⁶ E-mail, Churchill to Rosse, Oct. 24, 2005. In an e-mail to Rosse on Dec. 28, captioned "committee/timetable," I revisited the point: "To suggest that all this will fit within an actual 120-day timeframe (designed as it was to accommodate an allegation or two, not a shotgun load of allegations), [is] obviously a stretch" (copy on file).

¹⁹⁷ Transcript, *Standing Committee on Research Misconduct Investigative Committee, Ward Churchill Case*, Feb. 18, 2006, p. 241 (copy on file). This document will be hereinafter cited as *SCRM Transcript*. Also see Matt Williams, "Breaking silence: Committee investigating Churchill sets May 9 due date," *Colorado Daily*, Feb. 24, 2006.

¹⁹⁸ "It is the [panel's] desire to consider any information that Professor Churchill deems important to his case. However, [it] needs time to review

carefully that information, and must do so within the time constraints placed upon it by the Rules [. . .]. Accordingly, please inform Professor Churchill that any written submissions that he intends to submit must be in the hands of the [panel] no later than April 3, 2006" (emphasis in original); letter, Elliff to Lane, Mar. 22, 2006 (copy on file).

¹⁹⁹ It should be mentioned that in my Dec. 28, 2005, e-mail to Rosse (see note 196), I'd already indicated that the "idea that [everything could be fit] into a de facto 60-day interval [. . .] is ridiculous." Rosse acknowledged that "the operating rules do allow for an extension of the 120 day period if warranted" (copy on file).

²⁰⁰ The statement was made by Prof. Radelet and concurred by the other panelists. No transcript of this meeting was made by the university, although I was provided copies of the audio tapes (on file).

²⁰¹ *IC Report*, pp. 113-14. As is observed on p. 113, Wesson, McIntosh, and Radelet had previously met with Rosse and "representatives of the Office of University Counsel" on Nov. 11, 2005, although independent counsel—Eric Elliff, of the law firm Morris & Foster—had been retained to act in the panel's behalf. Were these meetings with the University Counsel benign—i.e., intended simply to iron out procedural issues and the like—my attorney and I should, and no doubt would, have been invited to participate. Instead, we were not even informed of them. So much for the "nonadversarial" nature of both the panel and the broader process of which it was a component.

²⁰² "The standard to which a mathematics professor is held to prove an equation are different than those applied to an English professor 'proving' what Shakespeare intended in a particular passage. Clearly it would be a violation of due process to expect Professor Churchill to present evidence rebutting the charges against him, but not inform him of the standards by which such evidence will be judged until after the fact. What standards does the [panel] intend to use in judging Professor Churchill and his work? Please provide copies of all rules or standards, articulated by the University of Colorado or by any other entity, against which you will be assessing Professor Churchill's performance"; letter, David Lane to Marianne Wesson, Jan. 25, 2006 (copy on file).

²⁰³ *SCRM Transcript* (Feb. 18, 2006), pp. 72-73.

²⁰⁴ *Ibid.*, pp. 74-75. Any such procedure, of course, constitutes precisely the clear "violation of due process" described by Lane in his January 25 letter to Wesson (see note 202).

²⁰⁵ *SCRM Transcript* (Feb. 18, 2006), p. 76.

²⁰⁶ *Ibid.*, pp. 80, 77.

²⁰⁷ *Ibid.*, pp. 76-77.

²⁰⁸ "The investigation is an information-seeking, non-adversarial proceeding"; *SCRM Rules*, Sec. IV: Investigation Phase.

²⁰⁹ See American Historical Association, *Statement on Standards of Professional Conduct* (available at <http://www.historians.org/pubs/Free/ProfessionalStandards.cfm?pv=y>); American Sociological Association, *Code of Ethics Standards* (available at http://www.asanet.org/cs/root/leftnav/ethics/code_of_ethics_standards).

²¹⁰ Per conversation with James Sterba, then-president of the APA, Apr. 2008.

²¹¹ American Association of University Professors, *Statement on Professional Ethics*, in *AAUP Policy Documents and Reports* (Baltimore: Johns Hopkins University Press, 2006), pp. 171-72; referencing the AAUP's 1940 *Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments* (3-11); Association of American Law Schools, "Executive Committee Regulations: Sec. 4.16, Definition of Academic Freedom," *AALS Handbook* (available at http://www.aals.org/about_handbook_regulations.php).

²¹² University of Colorado, *Misconduct in Research and Authorship: Definition of Misconduct* (available at <http://www.cu.edu/policies/Academic/misconduct.html>).

²¹³ Codified at 45 CFR § 689.1 (available at <http://www.nsf.gov/oig/resmisreg.pdf>).

²¹⁴ McIntosh first proposed the AHA standards during my initial meeting with the investigative panel on Jan. 28, 2006 (tape on file). Her recommendation was then reiterated in a fax from the panel's counsel, Eric Elliff, to my attorney, David Lane, on Feb. 13 (copy on file). Lane responded by letter the same day, objecting to the panel's "unilateral imposition of disciplinary standards," and observing that "Professor Churchill's field is Ethnic Studies, not history [. . .]. Ethnic Studies is an interdisciplinary field; this means that it has its own standards, not that those of an undetermined number of disciplines can be imposed upon its scholars at will" (copy on file).

²¹⁵ *SCRM Transcript* (Feb. 18, 2006), pp. 84, 86.

²¹⁶ As I explained at the time, "I'm an Ethnic Studies scholar. I always have been, and while it's not [entirely] divorced from AHA standards and considerations, I have a dimension of responsibility, if you will, in my scholarship which is clearly absent" from the AHA's scheme of things. "That's one reason Ethnic Studies came into [being], because you had people who were challenging what was called Consensus History by trying to introduce the history coming from these communities that were basically excluded" from sharing in the white supremacist triumphalism of the consensus narrative; *SCRM Transcript* (Feb. 18, 2006), pp. 84-85. For a useful discussion of the issues involved, see the chapter titled "The Myth of Consensus History" in Ellen Fitzpatrick, *History's Memory: Writing America's Past, 1880-1980* (Cambridge, MA: Harvard University Press, 2002), pp. 188-238.

²¹⁷ *SCRM Transcript* (Feb. 18, 2006), p. 85.

²¹⁸ I provided McIntosh with a copy of Linda Tuhiwai Smith's *Decolonizing Methodologies: Research and Indigenous Peoples* (London/Dunedin: Zed Books/University of Otago Press, 1999); see our subsequent exchange on the matter; *P&T Transcript* (Jan. 10, 2007), pp. 965-73. In a written submission, I also quoted published statements concerning standards by other scholars in AIS and related areas. In response, the panel announced that it "disagreed" with such articulations (and therefore apparently ignored them); *IC Report*, p. 45-46n98; citing my written response and David Henige, *Numbers from Nowhere: The American Indian Contact Population Debate* (Norman: University of Oklahoma Press, 1998), p. 8.

²¹⁹ During the subsequent faculty review of the investigative panel's findings, I queried Williams whether it was his view as a senior AIS scholar that, given that none of the panelists were in the least knowledgeable about the discipline, "it would have been insufficient in the period of time available to make them conversant" with it during the investigative process itself. He replied, "Thank you [. . .]. This is why you go to the Newberry. The [faculty review] committee should go to the Newberry Library [. . .] and look at the program for teachers of American Indian Studies [. . .]. I've taught there and we spend intensive weeks, three to four hours a day in each session, trying to teach these new teachers what AIS is about. And it *takes* a lot of time, because it's about so many things" (emphasis added); *P&T Transcript* (Jan. 11, 2007), p. 1320.

²²⁰ I did in fact call two witnesses, Prof. Michael Yellow Bird and Prof. George Tinker of the Iliff School of Theology, whose testimonies bore in part upon this topic. Both witnesses subsequently testified about the experience during the P&T review of the investigative findings; Tinker testimony, *P&T Transcript* (Jan. 11, 2007), pp. 1120-1254; Yellow Bird testimony, *P&T Transcript* (Jan. 12, 2007), pp. 1437-1537.

²²¹ In a letter to both Wesson and Elliff on Mar. 24, 2006, David Lane expressed "both some concerns and objections to various aspects of the ongoing investigation [. . .]. To the extent that the [panel] is exercising its

prerogative to broaden the scope of the investigation by adding new charges, Professor Churchill must be given adequate time to respond. We believe that when a new allegation is raised, Professor Churchill should be given at least one month to respond. It is simply unfair for the [panel] to add new charges yet insist upon compliance with previously imposed deadlines" (copy on file). Wesson nonetheless declined to alter the schedule. During the P&T review, it was demonstrated that the *SCRM Rules* did not "require" that the *IC Report* be completed by May 9—as she apparently told the other panelists—and that her sense of urgency in fact resulted from financial pressure exerted by potential donors to the UCB law school (which was then raising funds to build a new facility); e-mail, Wesson to Clinton, Mar. 1, 2006; attaching e-mail, Greg W. Bean to Wesson, Feb. 28, 2006, Subject: Churchill. Bean, who claimed to have "2 children @ CU Boulder," expressed his "disgust" at seeing "the University to continue to drag out the Churchill process" since there were so "many clear violations that newspapers, etc. have clearly documented," and doubt that his "last child will be allowed to attend CU Boulder." Wesson explains to Clinton that Bean's e-mail accounts for her "growing sense of panic" about wrapping up the investigative process as rapidly as possible, because "the University and all who care about it have their eyes on us." In his appearance before the P&T reviewers, Clinton acknowledged receiving Wesson's "hurry-up" missive, but nonetheless contended that "Mimi's statements to the [panel] were always about [. . .] the deadlines imposed by the structure of the rules," and admitted that Wesson had never informed the panelists that space had been scheduled for investigative purposes—i.e., hearing witnesses, etc.—"right on through the end of May or into early June"; *P&T Transcript* (Jan. 9, 2007), p. 597. McIntosh testified that the understanding she'd been given—presumably by Wesson—was that "the reason [the] deadline could not be extended" was that "according to the University's rules," the panel had only "a certain number of days" to complete its work; *P&T Transcript* (Jan. 10, 2007), p. 931. For Wesson's testimony on these matters, which includes her admission that she was aware all along that it was within the panel's prerogatives to extend the deadline into the fall semester, if need be, see *P&T Transcript* (Jan. 8, 2007), pp. 272-90. Also see notes 196, 199.

²²² "I am writing to advise you of additional allegations of research misconduct that have been received by the Standing Committee on Research Misconduct. These allegations were actually received last May and deferred [. . .]. According to the Committee's operating rules, your written response must be provided within 14 days of receipt of this letter"; letter, Rosse to Churchill, Apr. 13, 2006 (copy on file). An example of the sort of "misconduct" the SCRM suddenly found such an urgent need to investigate was that I had quoted a source in which it is recounted how a company of U.S.-equipped Salvadoran troops perpetrated a massacre, using "60 machine guns." Since, based on my own military experience, I know that even the best-armed U.S. infantry company would be lugging nowhere near that number of machine guns, I corrected text to read "M-60 machine guns" (often referred to by soldiers as "60s"). Since I neglected to put brackets around "M-," the implication was that I'd "misrepresented my source." Also see Sara Burnett, "CU reviewing new charges against Churchill," *Rocky Mountain News*, May 11, 2006. Also see note 134.

²²³ "As the attached letter indicates, the Inquiry Subcommittee recommended an investigation into certain of the allegations, but the Standing Committee voted not to proceed to an investigation due to sanctions it [had] already recommended against Professor Churchill"; e-mail, Rosse to Avery and Gleeson, June 14, 2006 (copy on file). It should be mentioned that this outcome is quite consistent with an observation offered to a reporter in mid-May by acting PR director Barry Hartman—a former *Daily Camera* editor retained to fill in until a replacement for Pauline Hale, who retired in early 2006, could be

hired—that, “We may not need this one.” Why the university might feel the “need” for the filing of research allegations against a member of its faculty is the sort of question that tends to answer itself rather loudly.

²²⁴ University of Colorado at Boulder, Office of Research Integrity, *Report and Recommendations of the Standing Committee on Research Misconduct Concerning Allegations of Research Misconduct by Professor Ward Churchill*, June 13, 2006 (copy on file). This document is hereinafter cited as *SCRM Report*. Also see Sara Burnett, “Faculty panel: Fire Churchill,” *Rocky Mountain News*, June 14, 2006; Arthur Kane, “Churchill pink slip moves a step closer: Fire prof panel says,” *Denver Post*, June 14, 2006; Brittany Anas, “Faculty panel: Fire Churchill,” *Daily Camera*, June 14, 2006.

²²⁵ Sara Burnett and Kevin Vaughan, “CU committee blasts Churchill: Panel alleges prof plagiarized, violated research standards,” *Rocky Mountain News*, May 17, 2006; Jennifer Brown, “Panel on Churchill: Fire or Suspend Him,” *Denver Post*, May 17, 2006; Brittany Anas, “‘Deliberate misconduct’: All 7 academic misconduct allegations substantiated,” *Daily Camera*, May 17, 2006; Casey Freeman, “Ward’s research shoddy: CU committee finds professor guilty of plagiarism, falsification, and misrepresentation, but don’t agree on punishment,” *Colorado Daily*, May 17, 2006.

²²⁶ See Pamela White, “A dangerous precedent: The investigation into Professor Ward Churchill draws fire from faculty and activists,” *Boulder Weekly*, May 18, 2007. Also see note 403 and attendant text regarding the administration’s violation of the university rules governing the confidentiality of personnel matters by releasing the *IC Report* at this point.

²²⁷ Letter, DiStefano to Churchill, Re: Notice of Intent to Dismiss, June 26, 2006 (copy on file). For press coverage, see Sara Burnett, “Churchill on the Bubble: Prof should be fired, CU prepared for suit, campus chief says,” *Rocky Mountain News*, June 27, 2006; Brittany Anas, “Chancellor: Fire Churchill,” *Daily Camera*, June 27, 2006.

²²⁸ See, as examples, “Churchill unmasked: Damning report should surprise no one,” *Daily Camera*, May 17, 2006; “Time for Churchill to give up CU post,” *Denver Post*, May 18, 2006; “There’s the door, Ward: Committee underscores gravity of offense,” *Daily Camera*, June 14, 2006; “Just deserts [sic] for Churchill,” *Rocky Mountain News*, June 27, 2006; “It’s about misconduct: Churchill facing music because of ethics, not views,” *Daily Camera*, June 28, 2006.

²²⁹ See Burnett, “Churchill on the Bubble”; Lynn Bartles, “Owens to prof: Quit,” *Rocky Mountain News*, May 17, 2006 “Reaction to the report: Gov. Bill Owens,” *Daily Camera*, May 17, 2006.

²³⁰ “Udall urges Churchill to leave CU,” *Rocky Mountain News*, May 18, 2006.

²³¹ The comment, undertaken in Radelet’s capacity as chair of the UCB Sociology Department, was digitally recorded by an attendee who, offended by what was said, shared it with me. Radelet has since attempted to pass the whole thing off as a joke, but, if that’s the case, it would appear that he inherited his sense of humor from another noted liberal intellectual, the late Hermann Göring.

²³² *IC Report*, p. 10.

²³³ It is, for example, argued at p. 89 of the *IC Report* that “the publication of one’s own scholarly work (as distinct from creative work or fiction) under another name” constitutes a “failure to comply with established standards regarding author names on publications” under both the *SCRM Rules* and the CU system’s “Statement on Misconduct in Research and Authorship.” Neither formulation contains language exempting “creative work and fiction” published by faculty members, however. This in all likelihood is due to the fact that—as several one-time SCRM members have pointed out—the rules were never intended to proscribe the practices at issue in my case. Rather, they were written to prohibit faculty members from engaging in the widespread practice of appropriating the work of/denying authorial credit to

student research assistants. On the scope of the latter problem, see generally, Bill L. Williamson, "(Ab)Using Students: The Ethics of Faculty Use of a Student's Work Product," *Arizona State Law Journal*, No. 26 (Winter 1994): 1029-73; Lisa G. Lerman, "Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship," *South Texas Law Review*, No. 42 (Spring 2001), pp. 467-92.

²³⁴ *IC Report*, p. 10.

²³⁵ University of Colorado, Faculty Senate Committee on Privilege and Tenure, *Panel Report Regarding Dismissal for Cause of Ward Churchill and the Issue of Selective Enforcement*, April 11, 2007, p. 13. This document is hereinafter cited as *P&T Report* (available at <http://www.wardchurchill.net>). One reason this was so is that the panel had committed to writing its unequivocal rejection of formulations I'd offered in response to Wesson's question about "the proper standards by which [my] scholarship and scholarship like [mine] should be judged" (see notes 95-98 and attendant text).

²³⁶ McCabe—whose undergraduate degree is in chemistry, and whose advanced degrees are in marketing and business management—underwent neither particularized training in academic ethics nor the broader domain of philosophical ethics from which the subset ostensibly arose. By his own testimony, it seems he simply became interested in "issues of academic integrity [about] 16 or 17 years" ago, has subsequently "focused [his] scholarship" on the topic, and established the Hewlett Foundation-funded Center for Academic Integrity, now located at Clemson University. He testified for UCB as a paid consultant; *P&T Transcript* (Jan. 8, 2007), pp. 338-40. McCabe's CV is available at <http://business.rutgers.edu/download.aspx?id=134>.

²³⁷ "Q: [by university counsel]: [I]s writing under a pseudonym or ghost-writing permissible? A: [by McCabe] It's permissible if you note that it was a pseudonym. You don't necessarily, obviously, have to say who the writer was, but that it was a pseudonym. Q: And where can we find these standards? Where can we find these standards? A: Those are harder to find. Certainly, the American Sociological Association has provided some information that is very helpful here about authorship. And, also [. . .] the American Studies Association, a document they created for authorship questions regarding graduate students I think is also helpful"; *P&T Transcript* (Jan. 8, 2007), p. 351. It may be obvious that "information that is helpful," at least in McCabe's estimation, does not constitute "clearly established standards." The reason the latter are "harder to find" is, of course, that they do not exist.

²³⁸ See the cross-examination of McCabe by Lane and myself; *P&T Transcript* (Jan. 8, 2007), pp. 357-95. Particular attention should be paid to the repeated objections by the university counsel and consequent rulings by Prof. Philip Langer, who chaired the hearing panel, that the attributional practices prevailing among legal scholars, political scientists, and historians were "not relevant" in determining what is "accepted by [my] research community."

²³⁹ I repeatedly objected to the investigative panel's procedure in this regard; see, as examples, *SCRM Transcript* (Apr. 1, 2006), p. 2; *SCRM Transcript* (Apr. 15, 2006), p. 55; *SCRM Transcript*, (Apr. 16, 2006), p. 31. Two of the witnesses who testified before the investigative panel, Michael Yellow Bird and George Tinker, subsequently testified during the P&T proceedings that the arrangement impaired both their ability to give an adequate response to questions as well as my ability to follow up; *P&T Transcript* (Jan. 11, 2007), pp. 1262-70, 1144-47; *P&T Transcript* (Jan. 12, 2007), pp. 1501-03.

²⁴⁰ The P&T hearings encumbered seven full days—extended from the five originally scheduled—ending on Jan. 21, 2007. The panel's report was submitted on April 11.

²⁴¹ Interestingly, the *SCRM Rules* provide that a "preponderance of the evidence" is sufficient to establish "guilt," while the P&T requires that evidence be "clear and convincing." It is the latter standard that the investigative panel failed to meet.

²⁴² The implications are obvious: Since the investigative panel's research was shown to be not simply erroneous, but *fraudulent* in significant respects, it should have been subject *on the whole* to much stricter scrutiny by the P&T reviewers than might otherwise have been the case. As is apparent throughout their report, the P&T reviewers consistently failed to fulfill their responsibilities in this regard, thereby rendering themselves complicit in the fraud.

²⁴³ *P&T Report*, pp. 38, 42.

²⁴⁴ *Ibid.*, p. 42.

²⁴⁵ With respect to Limón being the “go-to” member of the investigative panel in terms of the 1990 Act, Wesson testimony, *P&T Transcript* (Jan. 8, 2007), pp. 203-04. Only Clinton was questioned on the Act by university counsel, however, while no questions on the matter were posed to Limón; *P&T Transcript* (Jan. 11, 2007), pp. 449-57.

²⁴⁶ As Robert A. Williams put it, during an exchange concerning my contention that the 1887 Act established a “eugenics code” for purposes of identifying Indians, “Let me get rid of this *Rogers* issue right away. *Rogers* was a Supreme Court case. It wasn't a code. So this implication of Professor Clinton[s] [. . .] which says, Well, you're wrong because it was recognized in *Rogers*, there is a dramatic—and Clinton knows it—there is a dramatic difference between a decision based on federal common law by the Supreme Court and an entire legislative apparatus which was constructed under the Allotment Act”; *P&T Transcript* (Jan. 11, 2007), pp. 1337-38. The case in question is *U.S. v. Rogers* (45 U.S. (4 How.) [1846]). For Clinton's handling of it, see *IC Report*, pp. 18-19, 22.

²⁴⁷ Cheyfitz is the Ernest I. White Professor of American Studies and Humane Letters at Cornell, teaching in the AIS Program—which he now directs—as well as American studies, English, and law. He has published extensively on federal Indian law and identity issues; *P&T Transcript* (Jan. 12, 2007), pp. 1540-41.

²⁴⁸ “[T]he interpretation of Robert Clinton [of] *U.S. v. Rogers* is wrong. Blood quantum does not begin with *U.S. v. Rogers* [. . .]. *U.S. v. Rogers* deals with the racialization of the term ‘Indian,’ but [. . .] there's no mention of blood quantum in *U.S. v. Rogers* because it had not been developed yet as a formal paradigm. It does not get developed as a formal paradigm until the late 19th/early 20th century, during the time of allotment [. . .]. This does not begin with *U.S. v. Rogers*, 1846”; *P&T Transcript* (Jan. 12, 2007), pp. 1550-51; also see pp. 1575, 1578, 1585.

²⁴⁹ “I have not seen either [Clinton] or LaVelle or McDonnell or any of the folks who have written on it, actually talk about how those rolls [of Indians eligible for allotment] were drawn up, except that it seems clear enough that blood quantum was one of the criteria, all right? So it seems to me that the [investigative panelists] have accused [Churchill] of something for which they do not have proof and about which [he] may well be right. It may very well be that a half-blood quantum was used to hand out those allotments [. . .]. We don't know yet. But it [also] seems to me that if you're going to make charges against somebody for falsifying historical information, you'd better have that historical information yourself”; *P&T Transcript* (Jan. 12, 2007), pp. 1568-69.

²⁵⁰ On p. 22 of the *IC Report*, Clinton claims that “to label [blood quantum] a federal ‘eugenics code’—as I have on numerous occasions—‘falsely implies enforced legal segregation, such as prohibitions on miscegenation or residential segregation by race.’” He cites nothing to support his assertion, which is directly contradicted by the standard literature on eugenics (i.e., the “science” of human breeding). What Clinton describes is a subset referred to as “negative eugenics.” There is also a subset referred to as “positive eugenics,” which “implies” exactly the opposite policies, given that it encompasses the attainment of “superior” racial admixtures; see, e.g., Allen Chase, *The Legacy of Malthus: The Social Costs of the New Scientific Racism* (Urbana: University

of Illinois Press, 1980), pp. 116, 132, 345-46, 374. As pertains more specifically to the relationship between eugenics and the federal imposition of blood quantum identification criteria upon American Indians during the late 19th century, see Snipp, *American Indians*, pp. 32, 34. For my exchange with Clinton on this topic, see *P&T Transcript* (Jan. 9, 2007), pp. 678-81.

²⁵¹ On p. 26 of the *IC Report*, Clinton asserts that his “review of the Otis book demonstrates that it [does not support] Professor Churchill’s claim” that the federal Indian Office employed a half-blood quantum standard for purposes of determining who was/wasn’t an American Indian—and thus eligible to receive an allotment of land—pursuant to the 1887 Act. In his “detailed and fully documented account of the [Allotment] Act of 1887 and its consequences up to 1900,” Otis twice describes the classifications of identity recognized by the Office identified during the period as going no lower than “half-breed.” No lesser fractionation is mentioned in the book. See D.S. Otis, *The Dawes Act and the Allotment of Indian Lands* (Norman: University of Oklahoma Press, 1973), pp. 45, 95. Again, at p. 31 of the *IC Report*, Clinton states that I’d “willfully distorted” the meaning of a passage explaining the effects of blood quantum standards from historian Patricia Nelson Limerick’s *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W.W. Norton, 1987), p. 338. When queried on the matter during the P&T proceedings, Clinton claimed that I’d quoted the passage in connection with the 1990 Arts and Crafts Act, while Limerick had been discussing another matter entirely. Even the most cursory reading of my material reveals, however, that Limerick is quoted in a discussion of the general effects of blood quantum standards, not the Arts and Crafts Act itself. As Cheyfitz summed things up to the P&T panelists, “Churchill gets [it] right” with regard to Limerick. See my “Nobody’s Pet Poodle,” pp. 92-93; Clinton testimony, *P&T Transcript* (Jan. 9, 2007), pp. 455-56, 671-72; Cheyfitz testimony, *P&T Transcript* (Jan. 12, 2007), pp. 1565, 1586-90.

²⁵² On p. 14 of the *IC Report*, Clinton claims that in an article about my analysis of the 1887 Act (see note 117), John LaVelle “claims, without providing an exhaustive list, that [my depiction of the Act as imposing blood quantum standards is] repeated in at least 11 separate works authored by Professor Churchill. The [panel, meaning Clinton himself] undertook to—and did—locate more than eleven such references.” During his appearance before the P&T reviewers I asked Clinton—since he had clearly claimed to have discovered through independent research the same items as LaVelle—to name a single one of my publications mentioned in the *Report* which had not already been cited by LaVelle. He not only couldn’t do so, he pretended that I’d somehow “misunderstood” the rather clear language just quoted. Observing that, according to the AHA’s Hoffer, he appeared to be guilty of source-mining, a particularly widespread and insidious form of plagiarism, I then confronted Clinton, still employing the AHA Standards as a “point of reference,” with Hoffer’s explanation that under “certain conditions”—such as altering it without permission—using a very long quote, even *with* attribution, can be construed as plagiarism. In this connection, I pointed out that Clinton had incorporated a solid five-paragraph block of text written by Judith Royster into the *Report*, significantly altering its attendant annotation; *P&T Transcript* (Jan. 9, 2007), pp. 627-41.

²⁵³ *P&T Report*, pp. 48, 52.

²⁵⁴ *Ibid.*, pp. 52, 53.

²⁵⁵ *Ibid.*, p. 49.

²⁵⁶ *Ibid.*, p. 51.

²⁵⁷ *Ibid.*, p. 54.

²⁵⁸ Bernard Pratte, Jr., captain of the *St. Peter’s*—the boat on which the infected items were transported upriver—stated in an interview some thirty years after the fact that they were brought to St. Louis from Baltimore by

an unnamed fur company employee whom I've been able to identify as William May. Pratte says May placed the items aboard the *St. Peter's* itself. An independent source both identifies the infected items as having been blankets, and says that they were towed upriver in a pair of Mackinaw boats. It is confirmed that the *St. Peter's* was towing such boats. I have also been able to confirm that smallpox was present in Baltimore in late 1836, reaching epidemic proportions in 1837. Citations regarding these matters are being withheld, pending publication of an essay fully devoted to the topic.

²⁵⁹ *SCRM Transcript* (Feb. 18, 2006), pp. 107, 109.

²⁶⁰ In my initial three-sentence depiction of the events at Ft. Clark in a 1991 legal brief later collected in slightly revised form in my *Indians Are Us?* (1993), I erroneously referred to "army doctors" being present. The error—which I acknowledged in a written submission to the investigative panel—was not repeated in my subsequent publications and *Indians Are Us?* was never reprinted (thus precluding my correcting it therein). Although it is indicated at p. 115 of the *IC Report* that McIntosh consulted my submission, she makes no reference to it when, at pp. 71 and 73, she belabors the absence of a "military or Army doctor" at Forts Clark and Union during the summer of 1837 as if I'd never conceded my by-then-15-year-old error and was instead insisting that such personnel were present.

²⁶¹ *IC Report*, p. 73.

²⁶² For the paragraphs in question, see my *A Little Matter of Genocide*, pp. 155-56. A pair of amplification notes are also included at the bottom of p. 155.

²⁶³ See Charles Larpenteur, *Forty Years a Fur Trader on the Upper Missouri: The Personal Narrative of Charles Larpenteur, 1833-1872* (Lincoln: University of Nebraska Press, 1989), p. 102; R.G. Robertson, *Rotting Face: Smallpox and the American Indian* (Caldwell, ID: Caxton Press, 2001), p. 145. Had she followed up on these leads—by, say, conducting a Google search—McIntosh would have turned up ample confirmation of Denig's "surgical skill"; see, e.g., Barton H. Barbour, *Fort Union and the Upper Missouri Fur Trade* (Norman: University of Oklahoma Press, 2001), p. 136. It is even conceivable that she'd have run across the fact that Joshua Pilcher, the Indian agent at Ft. Pierre who was involved in the early stages of the smallpox outbreak, had "studied medicine" and displayed considerable "familiarity with smallpox prevention"; John E. Sunder, *Joshua Pilcher: Fur Trader and Indian Agent* (Norman: University of Oklahoma Press, 1968), pp. 10-11.

²⁶⁴ Larpenteur, *Forty Years a Trader*, p. 369.

²⁶⁵ While Barbour says that the job "fell to Larpenteur" because Denig was "incapacitated" by his illness, this would seem to be something of an overstatement. As Robertson and others have observed, Denig recovered rather quickly; by August he and Larpenteur were "work[ing] together" in administering "the white world's medical remedies." In all probability, Denig's condition was never such that Larpenteur could not at least consult with him on medical matters. Moreover, although there is no evidence that he'd undergone formal medical training, it is all but certain—according to one of McIntosh's expert witnesses—that Larpenteur had appreciable practical experience in the area, especially with regard to smallpox. See Barbour, *Fort Union*, p. 136; Robertson, *Rotting Face*, pp. 175-76; testimony of Michael J. Timbrook, *SCRM Transcript* (Feb. 18, 2006), p. 116.

²⁶⁶ Larpenteur, *Forty Years*, pp. 110-11. Also see Hiram Martin Chittendon, *A History of the American Fur Trade in the Far West*, 2 vols. (Stanford, CA: Academic Reprints, 1954) Vol. II, p. 625. There can be no question whether McIntosh was aware of this event, as she references both the relevant page-span in Larpenteur (albeit, an earlier, 2 vol., edition than the one I'm using), p. 71n189 of the *IC Report*, and pp. 619-27 in Chittendon at p. 58n150.

²⁶⁷ Chittendon, *American Fur Trade*, Vol. II, p. 625. In a work first published by the Smithsonian in 1930, it was estimated that by 1838, "of the upwards of 1000 lodges of Assiniboines [*sic*] but 400 hundred remained. Of these 200 were saved by being vaccinated in former years by the Hudson's Bay

Company"; Edwin Thompson Denig, *Five Indian Tribes of the Upper Missouri: Sioux, Arickaras, Assiniboines, Crees, Crows* (Norman: University of Oklahoma Press, 1961), p. 72.

²⁶⁸ Annie Louise Able, ed., *Chardon's Journal at Fort Clark, 1834-1839* (Freeport, NY: Books for Libraries Press, 1932), p. 132. While McIntosh cites an edition published in the same year by the State of South Dakota, the two volumes are identical. It is thus worth mentioning that she cites p. 132 of the *Journal* at p. 71n188 of the *IC Report*, but only for purposes of disparaging Chardon's medicinal techniques (which were not really all that different from those employed by the "trained professionals" of the day).

²⁶⁹ Robertson, *Rotting Face*, p. 182. Robertson claims that "no one suspected" that the woman was infected. This is patent nonsense. While it might be true that it was not yet *known* that she was infected, it is unquestionable that anyone exposed to active cases of smallpox were considered to be potentially infected—this was the whole principle underlying the practice of quarantine, after all—and thus potential transmitters of the disease itself. The threat thus attached to Charbonneau as well as his wife, and to their garments and any gifts they may have taken to her family. On the state of such knowledge during the relevant period, see the Timbrook testimony, *SCRM Transcript* (Feb. 18, 2006), pp. 115-16.

²⁷⁰ The Hidatsas were usually referred to by whites as "Minnetarees" and "Gros Ventres" in 1837. Analysts E. Wagner Stearn and Allen E. Stearn, listing Minnetarees and Gros Ventres as separate peoples, indicate that the former were reduced from 1,500 to 500, while the latter, which had numbered 3,000 in 1836, were "almost exterminated." Of an estimated 1,600 Mandans in 1836, only 31 survived; E. Wagner Stearn and Allen E. Stearn, *The Effect of Smallpox on the Destiny of the Amerindian* (Boston: Bruce Humphries, 1945), 94. Other sources indicated that the Mandan population was as large as 2,000 in 1836, with 138 surviving in 1838.

²⁷¹ As was pointed out by Getches to the P&T reviewers, Thornton has been quoted in the press as making this claim; *P&T Transcript* (Jan. 20, 2007), p. 1867. For Thornton's statements, see David Kelly, "Colorado Professor Faces Claims of Academic Fraud," *Los Angeles Times*, Feb. 12, 2005.

²⁷² Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1492* (Norman: University of Oklahoma Press, 1987), pp. 94-95; cite on p. 95. Providing such a reference rather than attempting to offer estimates in his own text was probably a wise choice on Thornton's part, given his inability to keep his numbers straight. On p. 95 he states that the 1837 epidemic claimed "virtually all of several thousand Mandan," while in a chart at the top of p. 96 he indicates that the Mandan population numbered only "1600-2000" in 1836. This is only one of many such examples.

²⁷³ On pp. 62-63 of the *IC Report*, McIntosh discusses my citation, in "An American Holocaust?" (see note 160)—wherein I made my sole attribution of a number "as high as 400,000" to Thornton—of Stearn and Stearn, pp. 89-94. Since she describes what appears on pp. 89-90 of the latter, one assumes that McIntosh reviewed p. 94 as well. The book in question is E. Wagner Stearn and Allen E. Stearn, *The Effect of Smallpox on the Destiny of the Amerindian* (Boston: Bruce Humphries, 1945).

²⁷⁴ The upper Missouri peoples are broken out as being the Mandan, Arikaree [*sic*], Minnetaree, Gros Ventres, Assiniboine [*sic*], Cree (Knisteneaux), and Blackfeet. The "Prairie Tribes" mentioned are the Crow (Upsarokas), Pawnee, Kiowa, Apache (presumably Kiowa Apaches and/or Jicarillas), Comanche, Cheyenne, and Dakota/Yanktonais.

²⁷⁵ Robert Boyd, *The Coming of the Spirit of Pestilence: Introduced Infectious Diseases and Population Decline Among Northwest Coast Indians* (Vancouver: University of British Columbia Press, 2000), p. 136.

²⁷⁶ My insistence upon the propriety of interpreting the meaning of texts on the basis of the sources/data cited by the authors led to a truly bizarre

exchange with McIntosh during her testimony before the P&T reviewers in which she argued that if I wrote that “the United States was guilty of mass murder in dropping the atomic bomb on Hiroshima,” and she interpreted this to mean that I’d thereby “accused the United States of [. . .] the mass murder of 80,000 people,” she’d be guilty of falsifying what [I’d] said because [I] did not give numbers.” This remains true, or so she argued, even if I’d referred readers to a source in which the 80,000 figure was given, and even though the number might be the generally accepted estimate of the number of people killed by the Hiroshima bombing; *P&T Transcript* (Jan. 10, 2007), pp. 962-64. By this interpretive “standard,” of course, one would be guilty of “research misconduct” if one were to state that someone who’d written that “the nazis perpetrated the Holocaust” was holding the nazis responsible for the “murder of six million Jews.” It was precisely this sort of patent absurdity that led Robert A. Williams, when queried during the P&T review on whether he viewed the AHA standards as having been applied by the investigative panel, not as a “point of reference,” but in an especially rigid manner, to reply that he considered the panel’s application was “arbitrary and capricious”; *P&T Transcript* (Jan. 11, 2007), pp. 1407-10.

²⁷⁷ See my “Closing Argument to the P&T Appeal Panel,” Feb. 9, 2007 (available at <http://www.wardchurchill.net>).

²⁷⁸ *P&T Report*, p. 54.

²⁷⁹ This was a matter of considerable contention, beginning with the first witness. As I pointed out to Langer at the time, after paraphrasing the NSF definition of research misconduct as being a significant deviation from practices accepted within the relevant research community, “If you can’t enter testimony as to the frequency of [a given] activity, you cannot assess the acceptability of the practice by virtue of it occurring” without penalty; *P&T Transcript* (Jan. 8, 2007), p. 365.

²⁸⁰ When, for example, in response to my attorney’s attempt to question Wesson about the practices prevailing in legal scholarship, the university counsel heatedly objected that, “This isn’t law,” Langer instructed my attorney to, “Please stick to the question of whether this is a question of history or sociology or ethnics [*sic*].” A few minutes later, when Lane attempted to return to the topic, having laid a somewhat different foundation in the interim, the university counsel again objected. Langer sustained the objection, stating, “We’ll stay out of law.” Later, when Lane attempted to question expert witness McCabe about Harvard Law Professor Richard Ogletree’s admitted reliance on student ghostwriters, Langer’s response was, “Again, let’s stay away from law”; *P&T Transcript* (Jan. 8, 2007), pp. 243, 249, 370.

²⁸¹ Langer’s exact framing was that legal scholarship is “not the Arts and Sciences, so please let’s leave the law example alone”; *P&T Transcript* (Jan. 8, 2007), p. 365.

²⁸² In this connection, I observed that the people “hired by political science departments [are] quite often coming out of government agencies or working on staff for senators, congressmen, sometimes even the president,” and have often been “primarily engaged in what amounts to ghostwriting, formulating policy statements and so forth. Those go out under the senator’s name or the president’s name. Who do we cite?” By “we,” I was of course including the newly minted professors of political science who, in their published scholarship, may—in most instances *do*—have occasion to cite articles, speeches, and other items that they themselves ghostwrote (or had a hand in ghostwriting). A further question concerns political scientists and others who, in full knowledge that “Barry Goldwater’s” *Conscience of a Conservative* was actually written by L. Brent Bozell, for example, nonetheless attribute authorship to Goldwater. Langer, in a complete logical tangle, cut off this line of questioning saying that such issues are not “within the university framework” because, “Under scholarship, if you cite so-and-so, you assume they have written it, and if they haven’t written it, within the academic community, that’s a problem”; *P&T Transcript* (Jan. 8, 2007), pp. 389-91.

²⁸³ I finally managed to work the well-documented prevalence of ghostwriting in the publication/republishing of history textbooks into my closing statement; *P&T Transcript* (Jan. 21, 2007), pp. 2290-91.

²⁸⁴ As Robert T. Oliver, Professor Emeritus of Speech Communication at Penn State, put it well over a decade ago, "I strongly believe that ghostwriting is not only ethical but is also indispensable [. . .]. Every speech or communication department should have a course on ghostwriting"; Lois Einhorn, "Ghostwriting: Two Famous Ghosts Speak on Its Nature and Its Ethical Implications," in *Ethical Dimensions of Political Communication*, ed. Robert E. Denton, Jr., (Westport, CT: Praeger, 1991), pp. 127, 133. I tried to engage Donald McCabe, the university's expert witness on "academic integrity," on the practical implications of this, only to have Langer rule that such matters were not "within the university framework" and "beyond academic matters, particularly the notion of scholarship and what constitutes scholarship in the academic arena"; *P&T Transcript* (Jan. 8, 2007), pp. 387-93; Langer's rulings at pp. 390, 392.

²⁸⁵ *IC Report*, p. 90. McCabe, also offering no supporting evidence, made an all but identical assertion: "Broadly, I think there's a common understanding across the academic community with the need to appropriately cite the source of materials"; *P&T Transcript* (Jan. 8, 2007), p. 394. For their part, the P&T reviewers, "acknowledg[ing] the difficulty in finding specific guidelines related to ghostwriting"—in other words, they'd found none at all—nonetheless went on to speak of "what we take to be accepted standards by large components of the academic world" (emphasis added); *P&T Report*, p. 66. That such a formulation does not meet the requirement that standards be "clearly established" seems self-evident.

²⁸⁶ *P&T Report*, p. 66.

²⁸⁷ My recounting is quoted at length in the *P&T Report* at p. 57. As the P&T reviewers observe on the same page, John Hummel, the individual who requested my assistance, has been quoted "in a manner generally consistent with Professor Churchill's testimony."

²⁸⁸ The volume was *Critical Issues in Native North America*, cited in note 147.

²⁸⁹ "Native America: The Water Plot," *Z Magazine* 4, No. 4 (Apr. 1991), pp. 88-92.

²⁹⁰ Even if they had, the university's "jurisdiction" in the matter would have been questionable at best, given that the material was published prior to my joining the UCB faculty. The 1988 version of the material was never included in my CV, and thus played no role in my hiring or promotion. The *Z Magazine* article, moreover, was neither a scholarly publication nor ever claimed as such. That DiStefano—following the *Rocky Mountain News*—advanced allegations on these matters in the first place, that the SCRM opted to treat them as falling within its purview, and that both the investigative and the P&T reviewers followed suit, speaks volumes to the nature of the process. Every sector of the university community "exceeded its charge" in this instance.

²⁹¹ *IC Report*, pp. 84, 87; *P&T Report*, pp. 55, 56, 59.

²⁹² As Wesson frames the matter at p. 87 of the *IC Report*, my "footnotes [. . .] are not associated with [. . .] near-verbatim language from the 1989 [*sic*, 1988] essay" appearing in the paragraphs to which the note numbers are attached. In other words, the notes are there, but do not appear in *direct* conjunction with the passages paraphrased.

²⁹³ The confusion in this connection arises from a subterfuge engineered by Wesson. During the investigative proceedings, she queried me as to whether I was "angry about" and/or had "protested" the editors' alteration of authorial credit on the *Z Magazine* article. When I answered "yes" on both counts, she demanded to know "why, [. . .] if that's the case, [. . .] when you republished a very similar essay [. . .] in 1993 and again in 2002 [did] you never mention any of the earlier versions that were credited or partially

credited to Dam the Dams Campaign[?] You only mention that it was previously published in *Z Magazine*, which is a version in which you are cited as sole author." When I asked to be shown copies of the books containing the essays in which I'd supposedly done this, Wesson apologized that she'd neglected—rather conveniently, under the circumstances—to bring them, then returned to demanding an explanation. My response was that, "I'm sitting here under the impression that I did cite [the 1988 book chapter in which Dam the Dams was credited], but maybe I'm wrong." I wasn't. It turned out that Wesson was talking about the fact that the magazine article was included in the acknowledgements section in the front papers of both editions of my *Struggle for the Land*. It is nowhere "cited" in either book. The only version "mentioned" in the citations is the 1988 book chapter. See *SCRM Transcript* (Apr. 1, 2006), pp. 186-89; *IC Report*, pp. 86-87; *P&T Transcript* (Jan. 8, 2007), p. 265; *P&T Report*, p. 56.

²⁹⁴ *P&T Report*, p. 59.

²⁹⁵ At issue are the version of the "Water Plot" included in the 1993 edition of my *Struggle for the Land*, and its greatly expanded successor, and in the 2002 edition of *Struggle* (both editions cited in note 142), pp. 329-74 and 292-329, respectively. In the earlier version, the 1988 book chapter crediting Dam the Dams as first author is cited five times—in notes 16, 91, 94, 106, 114—while the *Z Magazine* article is unmentioned. In the later version, the book chapter is once again cited five times—in notes 16, 91, 94, 110, 137—and the article remains unmentioned.

²⁹⁶ Dam the Dams is credited as first author, and "23 members of the original Dam the Dams team creating the pamphlet are listed by name" in the 1988 book chapter; *P&T Report*, p. 55. All this to the contrary notwithstanding, the P&T reviewers, echoing Wesson's section of the *IC Report* (at pp. 86-87), managed to construe my subsequent "references to [this] first article in the sequence" as not giving proper credit to "the Dam the Dams organization" or its "specific language or ideas"; *P&T Report*, p. 55.

²⁹⁷ As Wesson put it, "the occasional citation of the Water Plot coauthored piece in some other place is not a purging of the plagiary of precise language"; *P&T Transcript* (Jan. 8, 2007), p. 263; quoted approvingly in the *P&T Report*, p. 59. By "some other place," Wesson presumably means the end of a paragraph rather than the end of a sentence (see note 292, above).

²⁹⁸ By its own account, the SCRM subcommittee of inquiry was able to obtain a xerox copy of the original pamphlet from a Canadian University archive only after weeks of searching. While acknowledging the issue of source accessibility, the P&T reviewers, purporting to paraphrase my testimony, observed that, "References to the *Z Magazine* article might have been more convenient for the reader, because it was more readily available to the reader." This is not only a categorical misrepresentation of my testimony—I was referring to the 1988 book chapter, *not* the *Z* article—it is a perfect illustration of how little care the reviewers took to distinguish one from the other. Their conflation of the two here and elsewhere is critically important, given that my supposed citation of the *Z* article *rather than* the 1988 book chapter, is the crux of their finding of plagiarism. See *P&T Transcript* (Jan. 21, 2007), p. 2287; *P&T Report*, p. 59.

²⁹⁹ A side-by-side comparison of the chapter on Abraham in Weiner's *Historians in Trouble: Plagiarism, Fraud, and Politics in the Ivory Tower* (New York: Free Press, 2005), pp. 94-105, and in Novick's *That Noble Dream: The 'Objectivity Question' in the American Historical Profession* (Cambridge, UK: Cambridge University Press, 1988), pp. 612-21, tells the tale in this regard.

³⁰⁰ I made this argument in an interview with Joshua Frank published by *CounterPunch* under the title, "On the Injustice of Getting Smeared: A Campaign of Fabrications and Gross Distortions," on Feb. 3, 2005. In a subsequent e-mail (copy on file), Weiner whined that I had "accused [him] of plagiarism" in my "*CounterPunch* interview," when in fact the exact

opposite was true. Or, at least it would be true unless—and this is unclear—Weiner himself subscribes to the notion that the citational issues involved in my case add up to plagiarism. In that case, using the same standards he's applying to me, Weiner *would* be guilty of plagiarizing Novick (and self-convicted at that).

³⁰¹ Quoted in Morson, "1993 essay also raises questions" (cited in note 159).

³⁰² Prof. Stephen Cahn, a specialist in academic ethics at the CUNY Graduate Center, quoted in Morson, "1993 essay also raises questions."

³⁰³ For a biographical sketch of Jaimes, who now goes by the name M.A. Jaimes Guerrero, see the San Francisco State University Women Studies Web site, <http://www.sfsu.edu/~woms/fac.html>.

³⁰⁴ "[T]here is no refutation of Professor Churchill's claim that others were responsible for the alleged plagiarism"; *IC Report*, p. 92, as paraphrased in *P&T Report*, p. 68.

³⁰⁵ The INP was conceived during the mid-'80s as a "think tank" that would engage in research/generate publications on indigenous issues.

³⁰⁶ Even Jaimes, who refused through her attorney to speak with the investigative panel—the P&T reviewers did not attempt to contact her—has been quoted in the press as at least partially corroborating my own description of my role, stating that, as she recalled, what I'd gone over was "a preliminary or pilot paper." For obvious reasons, she also professed *not* to recall who'd been involved in writing it; quoted in Frank, "Plagiarism" (cited in note 137). On Jaimes's refusal to speak to the investigative panel, see *IC Report*, p. 92; *P&T Report*, p. 68.

³⁰⁷ *P&T Report*, p. 67; citing "Investigative Report," p. 91, as well as the Dalhousie document itself. As is clearly stated at p. 91 of the *IC Report*, however, the "well-documented conclusion" reached by legal counsel at Dalhousie was that the passages plagiarized from Cohen appeared in an essay she'd written for the second volume of *Critical Issues in Native North America* (cited in note 144), which I'd edited, and which was published fully a year before the Jaimes book. The Dalhousie document reaches no "conclusion"—"well-documented" or otherwise—that I was responsible for the plagiarism of Cohen in *State of Native America*, and the investigative panel nowhere claims that it does.

³⁰⁸ The document at issue assumes the form of a letter: Brian C. Crocker, Q.C., University Secretary and Legal Counsel, Dalhousie University, to Social Sciences and Humanities Research Council of Canada, Re: Plagiarism, Feb. 9, 1997 (copy on file).

³⁰⁹ In a written response to my question, also submitted in writing (through Wesson, who modified it slightly), as to why she'd waited "approximately 13 years to complain to the University of Colorado about any role I may have had" in plagiarizing her material, Cohen stated that she "did not 'complain' at any point in time" (emphasis added) and had provided a copy of Crocker's letter "only when requested [to do so by] University of Colorado officials" (emphasis added). She also makes it clear that said officials initiated contact with her, not the other way around; Cohen to Elliff, Re: Professor Ward Churchill, Apr. 11, 2006 (copy on file).

³¹⁰ On April 4, 2006, Wesson posed an open-ended question to Cohen, clearly designed to elicit a response in some way implicating me: "Do you have any knowledge or information of any sort that can shed light on the truth, falsity, or likelihood, of the following proposition: 'Professor Churchill has no knowledge of how the essay "In Usual and Accustomed Places" was credited to the Institute for Natural Progress in the 1992 volume THE STATE OF NATIVE AMERICA, where it appeared, nor how he came to be identified in the "About the Contributors" sections [sic] as the lead author of the essay?'" The question itself contains three blatant falsehoods: (1) I had never

claimed to have “no knowledge” of how the INP had come to be credited (see note 305), (2) I had never claimed to have “no knowledge” of how my name ended up in the INP entry in the “About the Contributors” section, and (3) the “About the Contributors” section does *not* identify me as “lead author of the essay” (emphasis added). Despite Wesson’s set-up, Cohen’s written response included nothing that might be construed as an accusation that I myself had plagiarized her material; *IC Report*, p. 93. For my own responses to Wesson’s questions on these matters, demonstrating the falsehoods imbedded in her question to Cohen, see *SCRM Transcript* (Apr. 1, 2006), pp. 119-28.

³¹¹ Cohen to Elliff (Apr. 11, 2006), p. 3.

³¹² See note 117 and attendant text.

³¹³ At p. 6 of the *P&T Report*, the reviewers refer to “the allegations submitted by Professor LaVelle.” At pp. 13-14 of the *SCRM Report*, however, it is observed that Rosse “posed this question directly to Professor LaVelle, who responded by saying that he had not filed *any* complaint with the University” (emphasis added). On the same pages, Getches is paraphrased as saying that he had been in possession of the LaVelle article upon which the legal portions of *DiStefano’s* complaint were based for roughly six years.

³¹⁴ During his appearance before the P&T reviewers, Getches stated that he’d spoken with LaVelle by phone on “other business” in “early February” 2005—according to *DiStefano*, it was “February 8th or 9th” (i.e., as few as 72 hours after the ad hoc committee launched its investigation)—and that my case had been “coincidentally” brought up by LaVelle, who reminded Getches of his 1999 article accusing me of misrepresenting the 1887 and 1990 Acts. Getches claimed to have been “embarrassed that [he’d] not read” the piece, although LaVelle had “sent” him one in 1999, and asked LaVelle to send him another, which Getches then used as a basis for allegations submitted in *DiStefano’s* name. This testimony was in marked contrast to Getches’s statements to the SCRM a few months earlier (see note 313), wherein he recounted that he and LaVelle had discussed the article “at a professional conference in South Dakota in the late 1990s” and that he’d viewed the matter as “a typical academic disagreement” rather than “as a complaint regarding possible research misconduct” until the university’s need to find a basis on which to fire me arose in early 2005. See *P&T Transcript* (Jan. 20, 2007), pp. 1784-91, 1823; *SCRM Report*, p. 14. For *DiStefano’s* dating of the Getches/LaVelle call, see *P&T Transcript* (Jan. 10, 2007), p. 1110.

³¹⁵ In his testimony, Getches indicates that “LaVelle originally suggested that [Getches] call [Cohen, but Getches] didn’t want to do that, [so Getches] said ‘You can have her call me if you want, but I’m not going to do that.’ And I didn’t, except to return her call.” In an Aug. 16, 2006, memo to *DiStefano* and Gleeson in which he very belatedly “summarized” what was supposedly said during their conversation, Getches says that Cohen called him and that he returned her call on Feb. 12, 2005. Who called whom is unclear in Cohen’s responses to the investigative committee’s/my interrogatories, although she makes it clear that LaVelle initiated her exchange with Getches. Under cross-examination by my attorney, Getches responded to the question of “how many conversations [he’d had] with LaVelle” during the ad hoc committee’s investigation by saying, “Many. I can’t tell you the number, but many”; *P&T Transcript* (Jan. 20, 2007), p. 1823.

³¹⁶ *DiStefano* testimony, *P&T Transcript* (Jan. 10, 2007), p. 1107. What Cohen might have said in such a submission is of course speculative, but it may reasonably be assumed that it would have been substantially the same as her written responses to the investigative panel’s interrogatories she submitted in April 2006. That being so, it should be emphasized that Getches’s claim—advanced in a memo written 18 months after the fact (see note 315)—that Cohen accused me of “completely plagiarizing” her material during their Feb. 12, 2005, phone conversation stands in stark contrast to anything

Cohen herself has written. There is thus the clear appearance that Getches preempted Cohen's plan to make her own submission as a means of allowing the ad hoc committee—i.e., Getches himself—to shape “Cohen's” allegations in accordance with the demands of “DiStefano's” complaint (also written primarily by Getches).

³¹⁷ *P&T Report*, p. 70; *IC Report*, p. 93.

³¹⁸ Much was also made of my being credited, in the volume's “About the Contributors” section, with having “assumed the lead role in preparing the INP contribution” to *The State of Native America*. It was demonstrated during the investigation, however, that the entries had been written by the volume editor, Jaimes, rather than the individual contributors. It is worth mentioning, moreover, that had she said that I'd “assumed the lead role in finalizing the INP contribution,” the entry would have been quite accurate. As I explained to Wesson during an exchange on the matter, it is my impression that Jaimes may have felt she was thanking me for my assistance by framing the entry as she did. In the alternative, of course, she may have been trying to disguise her own plagiarism. See *SCRM Transcript* (Apr. 1, 2006), pp. 122, 127; *IC Report*, p. 92.

³¹⁹ **PROFESSOR WESSON:** [. . .] did you prepare that Report of Faculty Professional Activities yourself? **PROFESSOR CHURCHILL:** I doubt it. **PROFESSOR WESSON:** Did you sign it? **PROFESSOR CHURCHILL:** Probably did [. . .]. **PROFESSOR WESSON:** Did you read it before you signed it? **PROFESSOR CHURCHILL:** Probably not. **PROFESSOR WESSON:** Was it your custom to have somebody else prepare these things for you and then [. . .] not read it before you signed it? . . . **PROFESSOR CHURCHILL:** Yeah [. . .]. **PROFESSOR WESSON:** Who other than you probably read it? **PROFESSOR CHURCHILL:** Probably Karen Moreira, who was the office assistant [for Ethnic Studies] and it probably came off a cut and paste list [. . .]. But I'll tell you what. If I put [something] in my faculty report, it gains me nothing. If I put it in my vita, it gains me something, so if I'm going to take credit [for something I didn't do] it's going to be in my CV [. . .]. **DR. RADELET:** And it's never appeared in earlier versions of your CV, as far as you can remember? **PROFESSOR CHURCHILL:** [. . .] It would still be here if it had”; *SCRM Transcript* (Apr. 1, 2006), pp. 124-26. It should be noted that I later suggested that the panel contact Ms. Moreira, who is retired, both to confirm that she and other office personnel typically prepared my annual reports (as well as those of other faculty members), and to inquire as to whether she retained any independent recollection of how the INP essay came to be listed in 1991 (a period in which Jaimes often helped prepare such documents). As Moreira confirmed by e-mail on Oct. 6, 2006 (copy on file), she was never contacted by the panel.

³²⁰ “Professor Churchill signed the report and is thus responsible for its contents [. . .]. [E]ven if this was not an act of plagiarism, it certainly constituted the misappropriation of the work of another and thus constitutes ‘failure to comply with established standards regarding author names on publications,’ a form of research misconduct under our Research Misconduct Rules”; *IC Report*, pp. 92-93. Also see *P&T Report*, p. 69.

³²¹ *IC Report*, p. 104.

³²² It should be mentioned that Clinton actually *does* refer to himself—routinely so—as a “coauthor” of Cohen's book. See, e.g., *P&T Transcript* (Jan. 9, 2007), pp. 637, 689.

³²³ For investigative panel verbiage, see quote in note 320. For Clinton's responses to my suggestion, see *P&T Transcript* (Jan. 9, 2007), pp. 689-90. His claim that “somebody took that off my Web site” was no doubt true, given that identical misinformation *still* appears on Clinton's home page, “last updated on April 24, 2007” (available at <http://members.cox.net/Indianlaw/index.html>) (Ed. note: As of 21 Dec. 2008, the preceding link to Clinton's home page was no longer available. Clinton's current personal home page is now located at <http://www.robert-clinton.com/>. Additionally, Clinton's CV

is no longer publically accessible and reference to it is accompanied by the following note: "CV [PDF] [requires secure password from Professor Clinton]"). So, too, his faculty page on the ASU law school's Web site, albeit the parenthetical qualifier, "1982 ed.," has been deleted (available at http://www.law.asu.edu/Apps/Faculty/Faculty.aspx?individual_id=286). Such misrepresentation of authorship is by no means insignificant. Nor can the misrepresentation be unknowing, since, even before I challenged him on the matter, Clinton acknowledged that the book has "always been called the Cohen 'Handbook of Federal Indian law.' Still is"; *P&T Transcript* (Jan. 9, 2007), p. 689.

³²⁴ *P&T Transcript* (Jan. 9, 2007), pp. 690, 698.

³²⁵ *Ibid.*, p. 699. The implications attending Clinton's responses in this exchange were plainly unnerving to the panelists, so much so that, in an effort to neutralize the issue, they apparently felt compelled to advance a truly ludicrous argument on p. 69 of the *P&T Report*, to wit: "The situation involving Professor Clinton is not analogous. Indicating something false in a biographical summary might be considered falsification, but not plagiarism." My "analogy" had nothing to do with "comparative misconduct," however. Indeed, I made no accusation that Clinton had engaged in plagiarism, falsification, or any other "failure to meet established standards" of academic comportment in terms of attributing authorship. My points were that the circumstances lending an *appearance* of misconduct in his case were virtually *identical* to those involved in my own, and that Clinton's was a veritable paraphrase of my own "unconvincing" explanation. Thus, to rephrase the P&T reviewers' formulation so that it actually addresses the issue raised, rather than obfuscating it: "Indicating something false in an annual faculty report *might* be considered falsification, but *not* plagiarism." Alternatively, it might be construed as a form of error born of an aversion to bureaucratic tedium. For the investigative panel's framing, see *IC Report*, p. 92.

³²⁶ *P&T Report*, p. 61; *IC Report*, p. 88. The essays primarily at issue were Robbins's "Self-Determination and Subordination: The Past, Present, and Future of American Indian Self-Governance," and Jaimes's "Federal Indian Identification Policy: A Usurpation of Indigenous Sovereignty in North America," both in Jaimes, *State of Native America*, at pp. 87-122 and 123-38, respectively.

³²⁷ *P&T Report*, pp. 64, 66.

³²⁸ *Ibid.*, p. 66. To their credit, the reviewers seem to have simply ignored—or at least declined to rely upon—Clinton's tortured attempt to gloss the issue by arguing that the standards at issue are "established," not in black letter form, but within "academic common law"; *P&T Transcript* (Jan. 9, 2007), pp. 577-80.

³²⁹ At p. 89 of the *IC Report*, the panelists, purportedly paraphrasing the university's rules defining research misconduct, observe that "the publication of one's own scholarly work (as distinct from creative work or fiction) under another name constitutes [a] failure to comply with established standards concerning author names on publications." The problems here are two: first, the panel was never able to cite sources wherein the "standards" it claimed to invoke were "established," and, second, the university rules do not exempt "creative work and fiction" from compliance with such standards as have been established.

³³⁰ *P&T Report*, pp. 66, 65. Overall, the panelists' argument is perfectly circular. On p. 64, they refer only to the university's "rules prohibiting such failure" as mine to "comply with established standards regarding author names on publications" without ever being able to cite the "established standards" they claim I violated. Quite the opposite, in fact, since, at p. 65, the panelists admit that the "University 'Research Misconduct Rules' and the American Historical Association guidelines are silent on the issue." Hence, in citing only the university's rules, the reviewers offer a conspicuous *absence* of established standards as "proof" not only that such standards exist, but that I violated them. For the previous panel's variation on the same theme, see *IC Report*, p. 89.

³³¹ All three are quoted in Morson, “1993 essay also raises questions” (cited in note 159).

³³² See McCabe testimony, *P&T Transcript* (Jan. 8, 2007), pp. 337-97.

³³³ *P&T Report*, p. 64.

³³⁴ Concerning the discipline of communications, the evidence submitted to the panel included Einhorn’s interviews—quoted on the same page of the *IC Report* and cited in notes 252 and 253 thereon—with two professional “ghosts” tenured as senior professors *because* of their expertise as such, and whose records of academic accomplishment as faculty members at Penn State and Cal State, Long Beach centered upon the continued practice of ghostwriting (for citation, see note 284). With respect to AIS, see, e.g., Williams testimony; *P&T Transcript* (Jan. 11, 2007), pp. 1335-36, 1339-41. Also Cheyfitz testimony; *P&T Transcript* (Jan. 12, 2007), pp. 1604-09. Apparently, the reviewers considered neither of the witnesses from AIS, or those quoted from communications, to be “credible.”

³³⁵ As is clearly stated on the very first page of the *P&T Report*, it is the responsibility of the university “to show by clear and convincing evidence” that, with respect to each of the investigative panel’s findings of misconduct, I had in fact “engaged in ‘conduct which falls below the minimum standards of professional integrity.’” The principle plainly applies as much—in some ways more—to the question of what constitutes “accepted practices” within the research communities relevant to my scholarship as to any other element of the findings. It was therefore not *my* job to “prove” that ghostwriting is a practice that has long enjoyed *de facto* acceptance in several of the disciplines with which my scholarship intersects—although I presented considerable evidence to that effect—but instead the university’s to provide concrete evidence to the contrary. The university presented *none*.

³³⁶ Apart from the portion of my closing statement devoted to the prevalence of ghostwritten material in certain sectors of historical literature and the corresponding practice of ghostwriting among academic historians (see note 283), the exhibits submitted to the P&T reviewers included several articles on the topic, notably Diana Jean Schemo’s “Schoolbooks are given F’s in originality,” *The New York Times*, July 13, 2006, offering a good overview of how pervasive the practice really is.

³³⁷ At p. 65 of the *P&T Report*, the reviewers argue that “[e]xamples drawn from politics seem irrelevant because the ghostwriter is paid specifically to perform this job for a speaker who neither has time nor inclination to write his or her own speech.” This was deceptive in several respects and to all appearances deliberately so. First, as the reviewers were well aware, speeches are by no means the only material ghostwritten for political figures; position papers, policy studies, reports, books—and, yes, articles published in academic journals—figure in quite prominently. Second, although Langer repeatedly closed off testimony on the matter, the reviewers *did* hear evidence to the effect that political science departments *routinely* bring into their faculties individuals whose credentials include the holding of key staff positions with these same political figures, jobs that entail ghostwriting as a matter of course. Third, the reviewers also heard testimony—and evidence was submitted—concerning the fact that ghostwritten material is not infrequently provided to political figures by faculty members in a range of disciplines (not just political science). The “political” and “academic” arenas are thus structurally interpenetrating; any claim—such as that made by the reviewers—that they can be neatly segregated for analytical purposes is unsustainable. Finally, there could have been *nothing* more irrelevant to the issue at hand than the question of whether the ghostwriters were paid or unpaid.

³³⁸ *P&T Report*, p. 64. My primary example was the Harvard law school; more specifically, the recent cases of Richard Ogletree, Laurence Tribe, and Alan Dershowitz. While Langer consistently ruled that testimony on such

matters was “irrelevant,” and could not be elicited (see notes 281, 282), I submitted several articles on such issues along with my other exhibits: Lauren A.E. Schuker, “Dershowitz Accused of Plagiarism,” *Harvard Crimson*, Sept. 29, 2003; Crimson Staff, “What Academia is Hiding,” *Harvard Crimson*, Sept. 13, 2004; Joseph Bottum, “Another Harvard Copycat,” *Weekly Standard*, Sept. 20, 2004; Daniel J. Hemel and Lauren A.E. Schuker, “Prof. Admits to Misusing Source,” *Harvard Crimson*, Sept. 27, 2004; Joyce Howard Price, “Law professor apologizes for plagiarism in 1985 book,” *Washington Times*, Sept. 29, 2004; Sara Rimer, “When plagiarism’s shadow falls on admired scholars,” *The New York Times*, Nov. 24, 2004.

³³⁹ *P&T Report*, p. 66. By “other communities,” it may be assumed, given the context, that the reviewers were referring to “research communities” (per the NSF regs). This of course leaves open the question of *which* research communities they had in mind. In view of the evidence presented during the hearings, it may also be assumed that AIS was salient in this regard. To the extent that this is so, their entirely accurate observation in this instance serves to contradict their denial at p. 64 of the *Report* that they’d encountered “no credible evidence” that ghostwriting is “an accepted practice [in] Ethnic Studies” (see note 330).

³⁴⁰ “[A] single counterexample, no matter how distinguished, cannot nullify an overwhelming consensus about established practices”; *IC Report*, p. 90. The reference to “a single counterexample” concerns the fact that when asked by the investigative panel whether I could name a scholar known to have published under names other than his/her own and not been censured as a result my immediate response—although I subsequently provided a number of other examples—was “C.L.R. James.” In response, Wesson, who wrote this section of the *IC Report*, misrepresented both the nature of James’s academic career—she describes him only as a “noted Caribbean novelist and historian,” without mentioning the fact that he was hired to teach black radical *politics*—or the explicitly political nature of his pseudonymic publications, and cited nothing to support her grossly distorted depiction of either the man or his work. Moreover, when, towards the end of the investigation, I inquired whether the panel desired additional information on the matter, Wesson replied, “I don’t need anything further unless you want to submit something else on C.L.R. James”; *SCRM Transcript* (Apr. 1, 2006), pp. 265-66.

³⁴¹ *IC Report*, pp. 23, 24, 31.

³⁴² *Ibid.*, p. 90.

³⁴³ *P&T Report*, p. 66.

³⁴⁴ The reviewers are of course entitled to their personal opinions on the nature of accepted practices, but, as should go without saying, I am no less entitled to mine (which is obviously rather different than theirs). Absent reference to *something* concrete—a statement of principle by a professional association, for example, or a credible study, poll, survey—*something*—their “take” on the matter is no more valid than mine. Yet, like the investigative panelists before them, and in sharp contrast to my submission(s) of evidence supporting my contention that the citational practices at issue aren’t especially unusual, the P&T reviewers cited *nothing* corroborating their view.

³⁴⁵ What is it, exactly, that we should understand as constituting a “large component of the academic world”? Two thirds of all academics? Half? A hundred thousand faculty members? A hundred? The reviewers themselves? And of what, precisely, does this “academic world” consist? All senior professors? All who have tenure? Does it encompass those with tenure-track positions? Adjunct faculty? Teaching and/or research assistants? Does it include administrators? Alumni? Tuition-paying students? Regents? Donors? The legislature? The media? Anyone/everyone sharing the reviewers’ particular “take” on things? Ultimately, the P&T reviewers might as well have prefaced their conclusion with the stock phrase employed by those lacking the evidence necessary to sustain their arguments, “As everybody knows [. . .].”

³⁴⁶ *IC Report*, pp. 23, 24, 31, 90.

³⁴⁷ *Ibid.*, p. 90.

³⁴⁸ There is no shortage of readily-available manuals on this, produced both for those desiring to ghostwrite and for those—including scholars—desiring their services. See, e.g., Eva Shaw, PhD, *Ghostwriting for Fun and Profit* (Carlsbad, CA: Writeriffic, 2004); Mahesh Gossman, *Write a Book Without Lifting a Finger: How to Hire a Ghostwriter Without Lifting a Finger* (Santa Cruz, CA: Finger Press, 2004).

³⁴⁹ Quoted in Einhorn, “Ghostwriting,” p. 131.

³⁵⁰ *Ibid.*

³⁵¹ Theodore C. Sorenson, primary ghostwriter for President John Kennedy, quoted in Richard Tofel, *Sounding the Trumpet: The Making of John F. Kennedy’s Inaugural Address* (Chicago: Ivan R. Dee, 2005), p. 53.

³⁵² “At least five people were involved [in writing] Kennedy’s Inaugural Address. One of [these was] Arthur Schlesinger”; Prof. Craig Smith, quoted in Einhorn, “Ghostwriting,” p. 139. For further detail, see Robert Schlesinger, *White House Ghosts: Presidents and Their Speechwriters* (New York: Simon & Schuster, 2008), pp. 104-13. For examples of Schlesinger’s unqualified attribution to Kennedy of speeches he himself had at least partially ghostwritten, see Arthur M. Schlesinger, Jr., *A Thousand Days: John F. Kennedy in the White House* (London: Andre Deutsch, 1966).

³⁵³ Gar Alperovitz, *Decision to Use the Atomic Bomb and the Architecture of an American Myth* (New York: HarperCollins, 1995), p. 541. The book in question is Harry S. Truman, *The Memoirs of Harry S. Truman*, 2 vols. (Garden City, NY: Doubleday, 1955).

³⁵⁴ Martin Nimko, *The All-in-One College Guide* (New York: Barron’s Educational, 2004), back matter. The books, of course, are Sen. Clinton’s *It Takes a Village, and Other Lessons Children Teach Us* (New York: Simon and Schuster, 1996) and *Living History* (New York: Simon and Schuster, 2003).

³⁵⁵ In October 2004, it was revealed that Tribe’s 1985 book, *God Save This Honorable Court* (New York: Random House), had been ghostwritten, at least in part, by “Ronald Klain [. . .] only a first-year student at Harvard law” when Tribe’s book was drafted and by 2004 “a Washington lawyer who was Chief of Staff for Vice President Gore.” Shortly thereafter, serious questions, still unanswered, were raised about the role played by the thirty-two student assistants—prominent among them both Klain and Elena Kagan, now Dean of Harvard Law—who were thanked by Prof. Tribe for their contributions to the second edition of *American Constitutional Law*. By the end of November 2004, University of Georgia historian Peter Charles Hoffer, a member of the AHA’s Professional Division, had appeared on C-Span’s *Booknotes*, suggesting that, rather than an author, Tribe might be more accurately described as a “compiler” of material actually ghostwritten by his students; Joseph Bottum, “The Big Mahatma,” *The Weekly Standard*, Oct. 4, 2004 (available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/004/674eijco.asp>); Lawrence R. Velvel, “Re: Larry Tribe, Larry Summers, and Elena Kagan,” *Velvel on National Affairs*, Apr. 22, 2005, p. 4 (available at http://www.inblogs.net/velvelonnationalaffairs/2005/04/re-larry-tribe-larry-summers-and-elena_22.html) (Ed. note: Original link disabled as of 21 Dec. 2008 via “Account suspended” notice); Brian Lamb, “Interview with Peter Charles Hoffer,” *Booknotes*, Nov. 21, 2004, p. 15 (available at http://www.booknotes.org/Transcript/index_print.asp?ProgramID=1807). For examples of Kagan attributing to Tribe authorship of material she’s suspected of ghostwriting, see her “Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine,” *University of Chicago Law Review*, No. 63, (Spring 1996) note 67; “Presidential Administration,” *Harvard Law Review*, No. 114 (June 2001) note 483.

³⁵⁶ One indication of the scale involved was offered by the late Georgetown University political scientist Evron Kirkpatrick, director of the American Political Science Association from 1954-1981—and subsequently a senior

fellow at the right-wing American Enterprise Institute—in a talk delivered shortly before his death in 1995. Kirkpatrick proudly “enumerated the many political scientists who occupied public office, worked in electoral campaigns or served officialdom in various capacities. His remarks evoked no outcry from his mainstream colleagues” on university faculties across the country, despite the fact that ghostwriting is a routine function of most of the positions at issue; Michael Parenti, *Against Empire* (San Francisco: City Lights, 2001), p. 192. Such realities are obvious to anyone who cares to look.

³⁵⁷ The best overview is undoubtedly Richard Gid Powers’s *G-Men: Hoover’s FBI in American Popular Culture* (Carbondale: Southern Illinois University Press, 1983), which includes a comprehensive bibliography of Hoover’s articles and speeches, complete with the identities of the ghost-writer(s) responsible for each, at pp. 328-36. On authorship of Hoover’s books, see Richard Gid Powers, *Secrecy and Power: The Life of J. Edgar Hoover* (New York: Free Press, 1987), p. 344; Curt Gentry, *J. Edgar Hoover: The Man and the Secrets* (New York: W.W. Norton, 1991), pp. 176n, 449.

³⁵⁸ See George H. Nash, *The Conservative Intellectual Movement in America Since 1945* (New York: Basic Books, 1976), pp. 200-07. The book in question is Barry Goldwater, *Conscience of a Conservative* (New York: McFadden Capitol Hill Books, 1961).

³⁵⁹ Sorenson ghostwrote numerous articles for Kennedy, as well as his *Profiles in Courage* (New York: Harper Bros., 1956). For details, see Sorenson’s memoir, *Counselor: A Life at the Edge of History* (New York: Harper, 2008), pp. 142-52, 259-660.

³⁶⁰ Prof. Robert T. Oliver, quoted in Einhorn, “Ghostwriting,” p. 126.

³⁶¹ In traditional Indian practices, “authorship has no importance whatsoever,” at least in this respect; Cheyfitz testimony, *P&T Transcript* (Jan. 12, 2007), p. 1606. At p. 1607, Cheyfitz, whose credentials include training in comparative literature at Johns Hopkins, links such concepts to “some pretty sophisticated literary theory [like that set forth in] Foucault’s famous essay, ‘What is an Author?’” The essay in question is included in Paul Rabinow, ed., *The Foucault Reader* (New York: Pantheon, 1984), pp. 101-20.

³⁶² Williams testimony, *P&T Transcript* (Jan. 11, 2007), pp. 1335-36. At pp. 1339-41, when confronted with the same question in connection with the Jaimes essay, Williams replied, “It doesn’t matter [. . .]. [A]s far as I’m concerned, it’s clearly, clearly within the accepted realm of discursive stances of [an] Indian studies scholar.” Williams also links my citational practice in this regard to “Homi Bhabha’s notion [of] plasticity and double identity and posing,” observing that “anybody who reads anything in postcolonial theory knows that the idea of the pose is absolutely necessary for the minority scholar to say certain things.” Here, he refers to certain of the themes sketched in Bhabha’s essay, “How Newness Enters the World: Postmodern space, post-colonial times and the trials of cultural translation,” collected in his *The Location of Culture* (New York: Routledge, 1994), pp. 212-35.

³⁶³ Cheyfitz testimony, *P&T Transcript* (Jan. 12, 2007), p. 1606. At pp. 1604-05, Cheyfitz also observes that, “[W]e have two adult scholars here who did sign off on [the essays] and apparently—we haven’t heard anything to the contrary—agree with these opinions [. . .]. The Robbins essay is an excellent essay, by the way. It’s an excellent summary of federal Indian law from [the] beginning.”

³⁶⁴ In addition to the Williams and Cheyfitz testimonies (already discussed) I provided the reviewers with quotes and/or xeroxed excerpts from Vickers, *Native American Identities*, at p. 163; Thomas Biolsi, “The Birth of the Reservation: Making the Modern Individual Among the Lakota,” *American Ethnologist*, Vol. 22, No. 1 (February 1995), pp. 28-29; R. David Edmunds, “Native Americans, New Voices: American Indian History, 1895-1995,” *American Historical Review*, Vol. 100, No. 3 (June 1995), pp. 733-34; Patricia Penn Hilden, *When Nickels Were Indians: A Mixed-Blood Urban Story* (Washington, D.C.: Smithsonian Institution, 1995), pp. 150-51; Fred

Lomayesva, "Indian Identity—Post Indian Reflections," *Tulsa Law Journal*, No. 3 (1999), p. 67; Steve Russell, "A Black and White Issue: The Invisibility of American Indians in Racial Policy Discourse," *Georgetown Public Policy Review*, No. 29 (1999), p. 132; Everett Saucedo, "Curse of the New Buffalo: A Critique of Tribal Sovereignty in the Post-IGRA World," *Scholar: The St. Mary's Law Review on Minority Issues*, Vol. 3 (Fall 2000), p. 103; Lucy A. Curry, "A Closer Look at Santa Clara Pueblo v. Martinez: Membership by Sex, by Race, and by Tradition," *Wisconsin Women's Law Journal*, No. 61 (Fall 2001), p. 161; Margo S. Brownell, "Who is an Indian? Searching for an Answer at the Core of Indian Law," *University of Michigan Journal of Law Reform*, No. 34 (Fall/Winter 2000-2001), p. 279; L. Scott Gould, "Mixing Bodies and Beliefs: The Predicament of Tribes," *Columbia Law Review*, Vol. 101 (2001), pp. 722-23; Robert B. Porter, "Pursuing the Path to Indigenization in an Era of Emergent International Law Governing the Rights of Indigenous Peoples," *Yale Human Rights and Development Law Journal*, Vol. 5 (Jan. 2002), p. 138; Eva Marie Garroute, *Real Indians: Identity and Survival in Native America* (Berkeley: University of California Press, 2003), pp. 21, 42, 52; Circe Sturm, *Blood Politics: Race, Culture and Identity in the Cherokee Nation of Oklahoma* (Berkeley: University of California Press, 2002), pp. 78-79; Stephen Brimley, "Five Hundred Sixty Nations Among Us: Understanding the Basics of Native American Sovereignty," *Maine Policy Review*, Vol. 13, No. 1 (2004), pp. 48-55. There are any number of additional items I might have cited as evidence, but these seemed quite sufficient to the purpose at hand. That the investigative panelists might simply have "overlooked" all this—assuming they tried to find it, as is implied at pp. 25-26 of the *IC Report*—is implausible.

³⁶⁵ See notes 199, 200, and attendant text.

³⁶⁶ The exchange appears at pp. 690-91 of the *P&T Transcript* for January 9, 2007.

³⁶⁷ *Ibid.*, 691-92.

³⁶⁸ *Ibid.*, 692.

³⁶⁹ The 1982 edition of *Cohen's Handbook* lists eight legal scholars, Prof. Clinton among them, as comprising its "Board of Authors and Editors." Three others are David Getches, dean of the CU law school and member of the interim chancellor's ad hoc committee; Prof. Richard B. Collins of the CU law school; and Charles F. Wilkinson, Distinguished University Professor and Moses Lasky Professor of Law at the University of Colorado. A further twelve individuals are listed as "Contributing Writers." Given the "arrangement" described by Prof. Clinton, and the fact that the book contains no authorial credits, it must be concluded that all twenty participants share Clinton's circumstances.

³⁷⁰ *IC Report*, p. 23. Also see Clinton's testimony in *P&T Transcript* (Jan. 12, 2007), pp. 1614-18.

³⁷¹ *IC Report*, pp. 23, 25, 73.

³⁷² *Ibid.*, p. 25.

³⁷³ *Ibid.*, pp. 24, 23.

³⁷⁴ *P&T Transcript* (Jan. 9, 2007), p. 692.

³⁷⁵ *Ibid.*, pp. 692-93.

³⁷⁶ *Ibid.*, p. 639.

³⁷⁷ *P&T Transcript* (Jan. 10, 2007), p. 937. The book in question is Marjorie Keniston McIntosh, *Working Women in English Society, 1300-1620* (Cambridge, UK: Cambridge University Press, 2005).

³⁷⁸ *P&T Transcript* (Jan. 10, 2007), pp. 937-38.

³⁷⁹ *Ibid.*, p. 938.

³⁸⁰ *Ibid.*, pp. 938-39.

³⁸¹ *Ibid.*, pp. 940-44. I asked that Prof. McIntosh read footnote 27 on p. 96. I had a further two-dozen notes marked, but one provided ample illustration.

³⁸² *Ibid.*, pp. 944-45.

³⁸³ *P&T Report*, p. ii.

³⁸⁴ *Ibid.*, p. 6.

³⁸⁵ *Ibid.*, p. ii.

³⁸⁶ On Brown's background and appointment at CU, see Rachel Burns, "Don't dismiss him: Scholars publish letter requesting reversal," *Colorado Daily*, Apr. 12, 2007. The reference in her subtitle is to a full-page letter signed by Derrick Bell, Noam Chomsky, Juan Cole, Drucilla Cornell, Richard Delgado, Richard Falk, Irene Gendzier, Rashid Khalidi, Mahmood Mamdani, Immanuel Wallerstein, and Howard Zinn, that appeared in the *New York Review of Books* on Apr. 12, 2007.

³⁸⁷ Brown to Patricia "Pat" Hayes, Chair, Board of Regents of the University of Colorado, May 25, 2007 (copy on file). For press reaction, see Jeff Kass and Lynn Bartles, "CU president recommends firing of Churchill," *Rocky Mountain News*, May 29, 2007; Amy Bounds, "Regents mum on Churchill report: Brown recommends firing controversial professor," *Daily Camera*, May 29, 2007; Brittany Anas, "Regents set date for Churchill decision: Meeting on July 24 will decide professor's employment fate," *Daily Camera*, July 12, 2007; Brittany Anas, "Churchill expects to be fired: Regents, aware of potential suit, stay quiet about hearing," *Daily Camera*, July 20, 2007.

³⁸⁸ Allison Sherry and Tom McGee, "Regents ax prof; battle not yet settled," *Denver Post*, July 25, 2007; Berny Morson, "Churchill fired; next shot in court," *Rocky Mountain News*, July 25, 2007; Brittany Anas, "Churchill dismissed: Controversial CU prof vows to fight back with lawsuit," *Daily Camera*, July 25, 2007; Paula Pant and Nicole Danna, "Churchill fired: Tenured professor dismissed from CU for academic misconduct by a vote of 8-1," *Colorado Daily*, July 25, 2007.

³⁸⁹ Jefferson Dodge, "Regents dismiss Churchill: Carlisle is sole Board member to vote against firing," *Silver & Gold Record*, July 26, 2007; Paula Pant, "Churchill sues CU: Carlisle explains her lone dissenting vote," *Colorado Daily*, July 26, 2007.

³⁹⁰ Cheyfitz is quoted extensively in Jefferson Dodge, "Debate over Churchill case persists: P&T report to go to President Brown next week," *Silver & Gold Record*, Mar. 29, 2007.

³⁹¹ Brittany Anas and Vincent Bradshaw, "Students rally for prof: Group organizes talk about disputed professor," *Daily Camera*, Apr. 12, 2007. For backdrop, see "Statement of the AAUP Chapter at the University of Colorado at Boulder Regarding the Investigation and Recommended Termination of Professor Ward Churchill," Jan. 25, 2007 (available at <http://www.aaup-cu.org/publications/chapterstatements.html>).

³⁹² Mimi Wesson, "An Error in report on Churchill needs correction," *Silver & Gold Record*, Apr. 12, 2007. Although "writing in [her] capacity as chair of the investigative committee," Wesson purportedly speaks only for herself ("It is not possible at this juncture for me to speak in behalf of the entire committee [. . .]"). The book in question is Neal Salisbury, *Manitou and Providence: Europeans, Indians, and the Making of New England, 1500-1643* (New York: Oxford University Press, 1982).

³⁹³ See my *A Little Matter of Genocide*, p. 169. It will be observed that the page in question is discussed by the panel on p. 35—and by pinpoint citation in note 58—of the *IC Report*.

³⁹⁴ Lest it be considered "unreasonable" to expect the panelists to have examined portions of Salisbury outside the range of pages I myself cited—i.e., pp. 96-101—it should be emphasized that they consistently did so for other purposes; see *IC Report*, pp. 36n63 ("Salisbury, *Manitou*, pp. 102-03"), p. 36n64 ("Salisbury, *Manitou*, p. 57"), p. 36n64 ("Salisbury, *Manitou*, p. 58"), p. 36n66 ("Salisbury, *Manitou*, pp. 76 and 101"), p. 37n68 ("Salisbury, *Manitou*, pp. 101-02"). It should also be mentioned that pp. 102-03 are precisely the pages Wesson, in "explaining" their "error," implied the panelists did *not* examine.

³⁹⁵ *IC Report*, p. 25.

³⁹⁶ Professors Eric Cheyfitz, Elisa Facio, Vijay Gupta, Margaret LeCompte, Paul Levitt, Tom Mayer, Emma Perez, Martin Walter, and Michael Yellow Bird, "Open Letter from Faculty Calling for Churchill Report Retraction," *Silver & Gold Record*, Apr. 23, 2007.

³⁹⁷ Professors Vijay Gupta, Margaret LeCompte, Paul Levitt, Thomas Mayer, Emma Perez, Michael Yellow Bird, Eric Cheyfitz, Elisa Facio, Martin Walter, Leonard Baca, and Brenda Romero, "A Filing of Research Misconduct Charges Against the Churchill Investigating Committee," submitted to the SCRM on May 10, 2007 (available at <http://www.wardchurchill.net>). For background, see Jefferson Dodge, "Group: Look into Churchill committee," *Silver & Gold Record*, May 17, 2007.

³⁹⁸ Jennifer Harbury and Sharon H. Venne, attorneys, and Professors James M. Craven (Clark College), Ruth Hsu (University of Hawai'i), David E. Stannard (University of Hawai'i), and Haunani-Kay Trask (University of Hawai'i), "Research Misconduct Complaint Concerning Investigative Committee Report of May 9, 2006," submitted to the SCRM on May 28, 2007 (available at <http://www.wardchurchill.net>).

³⁹⁹ These complaints were submitted on July 12 and 18, respectively; see generally, Brittany Anas, "Professor fires back at CU: Churchill accuses investigators of serial plagiarism," *Daily Camera*, July 21, 2007. It should be noted that Brown himself had already as much as accused the panel of plagiarizing his material; see Thomas Brown, "Did the U.S. Army Distribute Smallpox Blankets to Indians? Fabrication and Falsification in Ward Churchill's Genocide Rhetoric," *Plagiarism*, Vol. 1, No. 9 (Sept. 2006), p. 28n3 (available at <http://www.plagiarism.org>). During her appearance before the P&T reviewers, I asked McIntosh whether she was aware of Brown's allegation. When she replied in the affirmative, I inquired whether it was her understanding that, since the allegation had appeared in print, it would therefore be referred by the chancellor to the SCRM for investigation (as Brown's allegations against me had been). At that point, university counsel objected, and—although the reviewers were charged with determining whether I'd been the target of selective enforcement—Langer cut off the line of questioning; *P&T Transcript* (Jan. 10, 2007), pp. 923-25.

⁴⁰⁰ Joseph H. Wenzel, "Comments regarding the May 9, 2006, *Report of the Standing Committee on Research Misconduct at the University of Colorado, Boulder, against Professor Ward Churchill* and an included Complaint of Research Misconduct against Professor Marjorie K. McIntosh, in particular, and the Committee Members, by their endorsement of the report," submitted to Joseph Rosse on Dec. 3, 2007 (copy on file). In a separate communication to me, dated Nov. 9, 2007, Wenzel also recommended filing ethics charges against Wesson and Clinton with the relevant bar associations (copy on file).

⁴⁰¹ My original grievance concerning the administration's continuous breaches of confidentiality was filed in June 2005. As of August 2006, the only action taken by the P&T Committee was to request that I combine it with a grievance I'd filed on the matter of selective enforcement in November 2005, and resubmit. See letter, Churchill to Lodwick (chair of the P&T Committee), Re: Attached Consolidated Grievance, Aug. 16, 2006 (copy on file).

⁴⁰² Professors Lynda Dickson (chair), Jana Everett, Laurie Gaspar, and Joe Juhasz, "Level 2 Panel Report: Grievance on Breaches of Confidentiality against Professor Ward Churchill," July 10, 2007 (copy on file), p. 3.

⁴⁰³ *Ibid.*, pp. 2, 3. Additionally, the grievance panel observed that, "There were also breaches of confidentiality that, while not specifically spelled out in the university rules, are part of the general expectations that faculty have regarding confidentiality as part of the usual practice of the university. For example, Chancellor DiStefano did not request an executive session of the

Board of Regents meeting [on] Feb. 3, 2005. Then, on March 24, 2005, he made public not only the preliminary review panel's findings but he also announced other specific allegations against Professor Churchill," a number of which were ultimately dismissed.

⁴⁰⁴ *Ibid.*, p. 3.

⁴⁰⁵ *Ibid.*, p. 4.

⁴⁰⁶ Peterson to Weldon A. Lodwick, Privilege and Tenure Chair, Sept. 18, 2007 (copy on file). On Oct. 15, 2007, the grievance panel informed Lodwick by letter that the "Panel II members have reviewed the Chancellor's September 18 response to our report [. . .]. The unwillingness of the administration to render a public apology to Professor Churchill troubles several members of the panel, who believe that such unwillingness is not justified by argument either in the Chancellor's response or in the record of this case" (copy on file). The P&T Committee took no further action in the matter, however. Nor has it offered an apology for having delayed hearing my grievance until *after* the damage was done.

⁴⁰⁷ DiStefano—who undoubtedly thought his services in my case would be more suitably rewarded—was thereupon forced to reclaim his permanent position as provost, displacing Susan Avery, who then returned to the faculty. Such is often the lot of liberals who collaborate in the fulfillment of reactionary agendas.

⁴⁰⁸ Letter, Rosse to Churchill, Re: Allegations of Research Misconduct, July 18, 2007 (copy on file).

⁴⁰⁹ Jefferson Dodge, "Churchill, others had filed claims against committee," *Silver & Gold Record*, July 26, 2007.

⁴¹⁰ "MR. O'ROURKE: [. . .] the report of [the investigative panel] has never been submitted anywhere as being research subject to the APS on research misconduct [. . .]. This report was prepared as part of an investigation. It's not research"; *P&T Transcript* (Jan. 10, 2007), pp. 922, 924.

⁴¹¹ As DiStefano put in late March 2007, there was no need for the public to be "one bit concerned about the expertise" of the investigative panel because all five members were "experts in examining a piece of work and [determining] whether it was [. . .] falsified or fabricated"; quoted in Dodge, "Debate over Churchill case persists." Both the function and qualifications attributed to the panelist are clearly scholarly, *not* administrative. This is but one of *many* such statements by university officials.

⁴¹² "Pursuing [our] inquiry required a considerable amount of research into the material [. . .]"; "The committee therefore did further research [. . .]"; *IC Report*, pp. 12, 35. As Clinton subsequently put it, "we certainly did independent research"; *P&T Transcript* (Jan. 9, 2007), p. 622. McIntosh, for her part, claimed—falsely, but quite straightforwardly—to have engaged in primary research; *IC Report*, pp. 41n82 and attendant text, 43n87, 44n89.

⁴¹³ The *IC Report* includes such scholarly accoutrements as a review of the literature pertaining to the 1837 outbreak of smallpox on the upper Missouri (pp. 58-60), McIntosh's claim to have engaged in primary research (see note 412), the "tracing of citation trails" (e.g., p. 76n199), and some 254 footnotes. As Clinton explained during his appearance before the P&T reviewers, "When you essentially attempt to present works as scholarship with footnotes, then presumably, you're saying, This is the result of research"; *P&T Transcript* (Jan. 9, 2007), p. 685. The *IC Report* was thus unquestionably designed to present the *appearance* of scholarship.

⁴¹⁴ During her appearance before the P&T reviewers, Wesson went further still, concurring in the assessment that McIntosh's section of the report—complete with "maps, charts, documents about the [1837] smallpox epidemic"—was "ready for publication right now"; *P&T Transcript* (Jan. 8, 2007), p. 254. In fact, the *entire* report *has* been published, electronically, and with no caveat explaining to readers that it is merely an "administrative document," as opposed to scholarship, under the imprimatur of the

University of Colorado. It should be noted, moreover, that Wesson stipulated as a *precondition* to her participation on the investigative panel that its report would be publicly disseminated immediately upon completion (i.e., electronically published by the university). This was agreed to by Rosse, Acting Provost Avery, and other university officials, as well as the other panelists.

⁴¹⁵ During Clinton's appearance before the P&T reviewers, for example, I asked whether, "in this enunciation of unenunciated standards that everybody's supposed to just know [. . .] does the panel hold itself accountable to the same standards" it applied to me. He replied that he "would certainly hold [himself] accountable to the same standards." It was then clarified that my question pertained to the section of the *IC Report* he'd written rather than simply his published work. His answer remained the same; *P&T Hearing Report* (Jan. 9, 2007), p. 619. Similarly, during McIntosh's appearance, I inquired as to whether it was her understanding during the investigation that "members of the [investigative panel] itself would be held to the same standards as [they] were applying" to me. She answered that, "If they were working historical fields, yes, because those were the bases for our guidelines"; *P&T Transcript* (Jan. 10, 2007), p. 919.

⁴¹⁶ Quoted in Dodge, "Churchill, others had filed claims against committee." I also pointed out that if the investigation had been merely "administrative," there was no need for the university to have made such a well-publicized fetish of recruiting only "senior scholars" to serve on the panel when the services of the director of the campus rec center were more cheaply and conveniently available.

⁴¹⁷ "Submission of Professor Ward Churchill to the Board of Regents of the University of Colorado," July 12, 2007 (copy on file).

⁴¹⁸ "An important letter from CU President Brown forwarded to CU alumni," July 24, 2007 (distributed by CU Boulder Alumni Association [cobadmin@coloradoalum.org] under the heading "Breaking news re: CU professor Churchill"). For background and analysis, see Allison Sherry, "Donors applaud Churchill decision: A CU spokesman says money wasn't a factor in firing the prof, but there's no denying higher ed is in a squeeze," *Denver Post*, July 26, 2007.

⁴¹⁹ See, as examples, Hank Brown, "Why I Fired Professor Churchill," *The Wall Street Journal*, July 26, 2007; Hank Brown, "Upholding CU's Integrity," *Rocky Mountain News*, July 26, 2007; Hank Brown, "CU's Academic Integrity at Heart of Churchill Case," *Silver & Gold Record*, Aug. 16, 2007. For useful counterpoint and analysis, see Ira Chernus, "Who Knows Why Ward Churchill Was Fired?," *CommonDreams.org Newsletter*, July 30, 2007 (available at <http://www.commondreams.org/archive/2007/07/26/2780>); Andrew Austin, "The Truth According to Bud Peterson: A Case of Enforcing Patriotic Correctness," *Public Resistance*, Vol. 3, No. 1, (Dec. 2007) (available at <http://web.mac.com/publicresistance/3.1/3.1.2.html>).

⁴²⁰ The potential pay-off from my firing had already been calculated; see Berny Morson, "Fundraising record of \$125 million in CU's sights," *Rocky Mountain News*, June 7, 2007. Brown attributed such largesse on the part of right-wing donors to "renewed confidence" in the university's leadership.

⁴²¹ There were other candidates, but their names—and credentials—were withheld even from the regents on grounds of "confidentiality." On Benson's background, see "Bruce Benson Biography," *Daily Camera*, Feb. 21, 2008. Also see the articles referenced in notes 422-23.

⁴²² Among other things, "The faculty assembly voted 40-4 against him. A group called ProgressNow gathered signatures for an 'oppose Benson' petition. The [Colorado] House Majority leader, Democrat Alice Madden, said that when she heard the news, she thought it was a 'really bad' joke; she added that 'he will be the least educated president ever considered in modern history,'" to which the collective yawn emitted by Brown and his collaborators was all but audible; Stanley Fish, "Wanted: Someone Who Knows Nothing About the Job," *The New York Times*, Feb. 24, 2008.

⁴²³ Brittany Anas, "Benson gets the job: Regents name oil exec CU's present," *Daily Camera*, Feb. 21, 2008; Paula Pant, "President Benson: Regents approve oilman as CU's 22nd leader," *Colorado Daily*, Feb. 21, 2008; Berny Morson and Sara Burnett, "Split vote selects Benson: Six Republican regents back him; three Dems don't," *Rocky Mountain News*, Feb. 21, 2008; Allison Sherry, "Benson barrels by foes: CU regents pledge support to new president after partisan 6-3 vote," *Denver Post*, Feb. 21, 2008; Tim Hoover, "Lawmakers put criticism of Benson behind them," *Denver Post*, Feb. 21, 2007.

⁴²⁴ See, e.g., Stephanie Simon, "Help Wanted: Lefty College Seeks Right-Wing Prof; CU-Boulder Bid to Endow a 'Conservative' Chair Leaves Both Sides Uneasy," *The Wall Street Journal*, May 13, 2008.

⁴²⁵ "University seeks suit dismissal: Fired professor alleges regents violated his First Amendment rights," *Colorado Daily*, Sept. 6, 2007.

⁴²⁶ Labash, "Churchill Notoriety Tour" (cited in note 57).

⁴²⁷ See David Horowitz, *The Professors: The 101 Most Dangerous Academics in America* (Washington, D.C.: Regnery, 2006), pp. ix-xxxvii.

⁴²⁸ ACTA, *How Many Ward Churchills?* May 2006 (promo available at <http://www.goacta.org/press/PressReleases/2006PressReleases/5-12-06PR.pdf>).

⁴²⁹ Although technically retired after thirty years in the Colorado state personnel system—which is to say, I enjoy an adequate pension—I continue to write and publish at a steady rate, have delivered more than fifty invited lectures since 2005, and, at the request of a group of politically motivated students, even taught a two-semester, noncredit course on the UCB campus during academic year 2007-08. See generally, Jefferson Dodge, "The firing of Ward Churchill: One year later; Former UCB prof taught, published, gets PERA checks," *Silver & Gold Record*, July 24, 2008; Ashleigh Oldland, "Firing hasn't pushed Churchill off stage: Facebook, scuffle with reporter keep ex-prof in sight," *Rocky Mountain News*, Aug. 31, 2008.