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

Voting Members of the Committee
(for biographies, see Appendix A)

Chair: Marianne Wesson, Professor of Law, Wolf-Nichol Fellow,
and President's Teaching Scholar, University of Colorado at Boulder

Robert N. Clinton, Foundation Professor of Law,
Sandra Day O'Connor College of Law, Arizona State University

José E. Limón, Director, Center for Mexican-American Studies and
Mody C. Boatright Regents Professor of American and English Literature,
University of Texas at Austin

Marjorie K. McIntosh, Distinguished Professor of History,
University of Colorado at Boulder

Michael L. Radelet, Professor and Chair, Department of Sociology,
University of Colorado at Boulder

Other Members

Linda Morris, Office of Research Integrity,
University of Colorado at Boulder, Staff Assistant to the Committee

J. Eric Elliff, Morrison & Foerster LLP, Denver, Counsel to the Committee

May 9, 2006

FACT SHEET
University of Colorado at Boulder

Research Misconduct Investigative Process
May 16, 2006

The 12-member Standing Committee on Research Misconduct, following a review in summer 2005 by its inquiry subcommittee, announced in September 2005 that seven of nine allegations related to Professor Ward Churchill warranted a full investigation.

The seven allegations of research misconduct referred for further investigation included alleged instances of plagiarism, misuse of others' work, falsification and fabrication of authority.

Two allegations – regarding misrepresentation of ethnicity and copyright infringement – were not regarded as appropriate for further investigation under the definition of research misconduct.

Also not included in the investigative committee's review were Churchill's written and spoken remarks about 9-11 victims. Those written and spoken remarks were not included because those statements concerned Professor Churchill's opinions concerning United States' policies and global affairs and thus are constitutionally protected against government sanction by the First Amendment to the U.S. Constitution.

The Standing Committee appointed the five-member investigative committee in fall 2005 to conduct the investigation into the seven allegations. The investigative committee convened in January 2006. Based on the Operating Rules and Procedures of the Standing Committee on Research Misconduct, the investigative committee must reach one of the following three conclusions with respect to the allegations: a finding of misconduct; a finding of no culpable conduct, but serious research error; or a finding of no misconduct and no serious research error.

The investigative committee completed its report within 120 calendar days of the date of initiation and forwarded its report to the Standing Committee on May 9. The Standing Committee reviewed the report before accepting it for release on May 16.

The Standing Committee on Research Misconduct will consider the findings of the investigative committee in making its recommendations to Interim Provost Susan Avery and Arts and Sciences Dean Todd Gleeson. If warranted, the Dean and the Provost will make any disciplinary determinations. Depending on the seriousness of misconduct found, potential sanctions could range from a warning to dismissal. Other examples of disciplinary actions include reprimand, reduction in pay or suspension.

If research misconduct is found, the Provost's Office will determine and take appropriate action within university rules and procedures for faculty.

If any form of discipline is imposed, Professor Churchill may choose to pursue a hearing before the system-wide Committee on Privilege and Tenure.

Additional information about the campus's research misconduct investigative process is available online at www.colorado.edu/Academics/research_misconduct_rules.html.

For more information contact Barrie Hartman, interim CU-Boulder spokesperson, at (303) 735-6183 or (303) 818-7493.

1993 edition of his *Struggle for the Land*, a collection of essays, he writes: "Readers are urged to follow up with readings from the abundant notes. In this way, perhaps we can at last arrive at a common understanding of our common situation, the common peril which confronts us all, and a common strategy by which to eliminate it."[13]

Professor Churchill described his approach more fully in the introduction to *A Little Matter of Genocide*, another volume of essays, published in 1997:

> Throughout the book, I have gone out of my way to provide what Noam Chomsky has called "rich footnotes."[23] The reasons for this are several, and devolve not merely upon the usual scholarly fetish with indicating familiarity with "the literature." I *do* believe that when making many of the points I've sought to make, and with the bluntness which typically marks my work, one is well-advised to be thorough in revealing the basis upon which they rest. I also believe it is a matter not just of courtesy, but of ethics, to make proper attribution to those upon whose ideas and research one relies. Most importantly, I want those who read this book to be able to interrogate what I've said, to challenge it and consequently to build on it. The most expedient means to this end is the provision of copious annotation, citing sources both pro and con.[14]

Our Committee agrees wholeheartedly with Professor Churchill's emphasis on full and accurate referencing and his stress on the role of citations in promoting constructive interrogation of the statements made by himself and other authors.[15]

In examining the four allegations that draw attention to Professor Churchill's use of sources and references (Allegations A to D), our Committee's immediate charge was to establish whether the works he cites support his account and whether his statements were appropriately and accurately referenced. (Problems of that kind can lead to a finding of falsification.) In cases where the sources he cites do not support his claims, he is open to the charge of fabrication. Yet since detailed references are not required in broad accounts of the kind Professor Churchill has written in these essays, there was a possibility that he was drawing upon sources he did not think it necessary to cite. To investigate that possibility, thereby ensuring the utmost fairness to Professor Churchill, we have attempted to determine whether other evidence supports his claims.

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[13] *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide and Expropriation in Contemporary North America* (Monroe, ME: Common Courage Press), p. 10.

[14] *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 to the Present* (San Francisco: City Light Books), p. 10. Note 23 says: "See the remarks on annotation in Noam Chomsky, *Class Warfare: Interviews with David Barsamian* (Monroe, Maine: Common Courage Press, 1996)" but does not provide a specific page reference.

[15] That approach is recommended also by the American Historical Association's "Statement on Standards of Professional Conduct." Stressing the importance of "leaving a clear trail for subsequent historians to follow," the guidelines continue: "Knowing that trust is ultimately more important than winning a debate for the wrong reasons, professional historians are as interested in defining the limits and uncertainties of their own arguments as they are in persuading others that those arguments are correct. . . . The trail of evidence left by any single work of history becomes a starting point for subsequent investigations of the same subject, and thus makes a critical contribution to our collective capacity to ask and answer new questions about the past. For all these reasons, historians pride themselves on the accuracy with which they use and document sources. The sloppier their apparatus [their notes and bibliographies], the harder it is for other historians to trust their work" (online at www.historians.org/pubs/Free/ProfessionalStandards.cfm, p. 2 of 10, accessed 01/30/2006).

The questions we have asked are whether there is any reliable basis upon which a reasonable scholar could have come to the conclusion Professor Churchill presented, even if he did not cite it, and, if so, whether Professor Churchill relied on those sources in writing his essays.

Pursuing that inquiry required a considerable amount of research into the material available on the topics in question. We emphasize, however, that we have not attempted to examine every possible work written on the topics in question: we have merely examined the evidence relevant to his particular claims.

Allegations C and D concern the presentation of historical narratives and interpretations and the use of evidence. Each allegation refers to particular aspects of Professor Churchill's broader claim that smallpox was deliberately spread by white people at various times in the past to infect and kill American Indians. The Committee stresses that we were not charged with determining what actually happened in southern New England in 1614-1618 or at Fort Clark, North Dakota, in 1837. We have accordingly not tried to produce our own account of those events. That process should occur through the normal academic channels, among scholars who specialize in the periods and places concerned.

Our task was different and more specific: to investigate allegations that Professor Churchill misrepresented or falsified the sources he cited in support of his statements about the spread of smallpox and that he fabricated his accounts of the two historical situations. As we carried out that analysis, we bore in mind the University's statements that scholars should be controlled only by "the rational methods by which truth is established" but that "serious deviation from accepted practices" in research constitutes academic wrongdoing.[16] In exploring whether Professor Churchill may have been drawing upon sources that he did not cite specifically, we asked him to provide further information about his evidence, and we undertook our own examination of the relevant primary sources and both oral and written traditions.

The discussion of Allegation D is particularly detailed. The issue of how smallpox spread to Mandan Indians at Fort Clark compelled us to consider questions of "truth," ways of knowing (including the oral traditions of native people), and racism. The 1837 situation is also of considerable wider importance, for Professor Churchill's accounts of what happened there constitute the primary example he adduces in support of his argument concerning intentional genocide against Indians on the part of the U.S. Army. We therefore examined the sources in some detail in order to assess whether there is an evidentiary basis for his claims.

In this report, we have cited the people interviewed and our discussions with Professor Churchill by name and date. (A list of the witnesses and dates of discussions is provided in Appendix C.) Professor Churchill provided a number of written submissions to the preliminary inquiry conducted by the University's Standing Committee on Research Misconduct and later to our Committee. Those are cited as "Submission A to J" and are listed in Appendix C.

[16] Laws of the Regents, 5.D; Research Misconduct Rules, I.1: see Appendix B.

Part II. Investigation and Findings concerning the Seven Allegations

Allegation A. Misrepresentation of General Allotment Act of 1887

(described in previous stages of this process as Allegation 1)

A. The Allegation

In two published works, Professor John P. LaVelle (now a Professor of Law at the University of New Mexico Law School)[17] has alleged that Professor Ward Churchill has misrepresented the contents of the General Allotment Act of 1887 (Act of February 8, 1887, 24 Stat. 388, ch. 119, sometimes known as the "Dawes Act"), in order to establish that it imposed "for the first time" a federally created "eugenics code" on Indian tribes that mandated half-blood Indian blood quantum requirements, or at least some Indian blood quantum requirement, to qualify for an allotment.[18] In the title of the second article he has published about these claims, Professor LaVelle accuses Professor Churchill of formulating a "hoax." As forwarded to our Committee, the allegation focused on the most elaborated statement of Professor Churchill's position, found in his essay, "Perversions of Justice," in his *Struggle for the Land* (1993 edition), pp. 48-9.[19]

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[17] In interviews with our Committee, Professor Churchill and several of his witnesses suggested that at least some of the accusations of academic misconduct made against him involve continuing efforts to discredit his work by political opponents, some of whom are part of an opposing faction that resulted from a major political schism among the founders of the American Indian Movement (AIM): e.g., discussions with Professor Churchill, April 15-16, 2006; interview with Professor Glenn T. Morris, Chair and Associate Professor, Department of Political Science, University of Colorado at Denver, April 15, 2006; and interview with Russell Means, a Lakota activist, April 16, 2006. For a brief, albeit incomplete, synopsis of the origins of the divisions in AIM, *see* http://en.wikipedia.org/wiki/American_Indian_Movement, accessed 04/17/2006. For an illustration of the vitriolic diatribes of the faction of AIM opposed to Professor Churchill, including overt efforts to discredit his scholarship, see http://www.aimovement.org/moipr/USvAIMbackground.html, posted in 1993 and accessed 04/17/2006. Professor Churchill and his witnesses suggested to the Committee that Professor John LaVelle had been associated in San Francisco with the opposing faction of AIM and had sought to discredit his work as part of the larger political agenda of the faction AIM opposed to his work. Professor Churchill suggested that some of his other critics who lodged complaints with the University were also associated with the opposing AIM faction and had a political agenda and motive to discredit his work. While the appearance of the above-described diatribe in 1993 followed by the publication of the first of Professor LaVelle's articles in 1996 might add some credence to such suggestions, the Committee was charged with evaluating the claims of academic misconduct lodged by the University based on Professor LaVelle's criticisms on their merits, ignoring the motivation of the source of the criticism, just as it chose to ignore in addressing the merits of these allegations the motivation of the University in formally filing them. We also note that under the University's rules, the question of possible malice in submitting allegations is to be addressed only if no research misconduct is found by an investigative committee. See Appendix B.

[18] LaVelle, "Review Essay [of Ward Churchill, *Indians Are Us?: Culture and Genocide in Native North America*]," *American Indian Quarterly*, 20 (1996): 109-18, and his "The General Allotment Act 'Eligibility' Hoax: Distortions of Law, Policy and History in Derogation of Indian Tribes," *Wicazo Sa Review*, 14 (1999): 251-302.

[19] "Perversions of Justice: Examining the Doctrine of U.S. Rights to Occupancy in North America," in *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide, and Expropriation in Contemporary North America* (Monroe, ME: Common Courage Press, 1993), pp. 33-83.

> One of the first of these was the General Allotment Act of 1887, "which unilaterally negated Indian control over land tenure patterns within the reservations, forcibly replacing the traditional mode of collective use and occupancy with the Anglo-Saxon system of individual property ownership."[63] The Act also imposed for the first time a formal eugenics code—dubbed 'blood quantum'—by which American Indian identity would be federally defined on racial grounds rather than by native nations themselves on the basis of group membership/citizenship.[64]
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> Note 63: Ch. 119, 24 Stat. 388, now codified as amended at 25 U.S.C. 331 et seq., better known as the "Dawes Act," after its sponsor, Massachusetts Senator Henry Dawes. The quote is from Robbins, Rebecca L. "Self-Determination and Subordination: The Past, Present and Future of American Indian Governance," in Jaimes, op. cit., p. 93.
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> Note 64: See Jaimes, M. Annette, "Federal Indian Identification Policy: A Usurpation of Indigenous Sovereignty in North America," in Jaimes, op cit., pp. 123-38 [The State of Native America: Genocide, Colonization and Resistance", M. Annette Jaimes (ed.), South End Press, Boston, 1992.]. It is noteworthy that official eugenics codes have been employed by very few states, mostly such unsavory examples like Nazi Germany (against the Jews), South Africa (against "Coloreds") and Israel (against Palestinian Arabs).

Professor LaVelle claims, without providing an exhaustive list, that such claims are repeated in at least 11 separate works authored by Professor Churchill. Since Professor LaVelle did not list those references (although citing many of them separately in his second article on the issue), the Committee undertook to—and did—locate more than eleven such references. They are set forth in Appendix D together with their relevant footnote support and quotations from text.

While the statement quoted above constitutes the most elaborated and footnoted version of the claim, it may not be entirely typical. The phrases "eugenics code" and "blood quantum" appear in many of the versions of Professor Churchill's claims regarding the General Allotment Act of 1887. In many, perhaps most, the claim is limited to a "blood quantum" requirement. In several, however, the claim is that eligibility requirement was "of at least one-half 'blood'," and, in at least one case, that "Mixed Blood Indians" received title by patents in fee simple, while "'Full Blood Indians' were deeded with 'trust patents.'"[20] Thus, the allegedly misstated claims, like other allegations of research misconduct forwarded to the Committee, are not entirely internally consistent. In all cases Professor Churchill directly attributed these eligibility criteria to the enactment and provisions of the General Allotment Act of 1887, rather than to the allotment era of federal Indian policy or the implementation of the allotment policy, which is commonly

[20] For the former, see, e.g., "Nits Make Lice: The Extermination of North American Indians, 1607-1996," in his *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 to the Present* (San Francisco: City Lights Books, 1997), pp. 129-288, esp. note 586; for the latter, see, e.g., Ward Churchill and Glenn T. Morris, "Key Indian Laws and Cases," in *The State of Native America,* ed. M. Annette Jaimes (Boston: South End Press, 1992), pp. 13-21, esp. p. 14.

thought to have spanned the period of 1887 to 1934.[21] Furthermore, the statement above claims that this "eugenics code" was imposed "for the first time" in the General Allotment Act of 1887.

The ultimate significance of the debate between Professor LaVelle and Professor Churchill, and the context of LaVelle's allegations of misrepresentation of the provisions of the General Allotment of Act of 1887, is seen in Professor LaVelle's claim that by basing the assertion that blood quantum and tribal rolls originated on the "demonstrably false" claim that they were commanded by the General Allotment Act of 1887, Professor Churchill denigrates and disparages the sovereign right of Indian tribes to define their citizenship and identity as they wish, including the use of blood quantum criteria (which are commonly, but not universally, employed for that purpose).[22] Professor LaVelle particularly focuses critical attention on the following claims from Professor Churchill's *Indians Are Us?*, p. 92, to make his point:

> These entities' [Tribes'] membership rolls originated in the prevailing federal racial criteria of the late nineteenth century. The initial U.S. motive in quantifying the number of Indians by blood was to minimize the number of land parcels it would have to assign native people under provision of the 1887 Dawes Act. . . . Tribal rolls have typically been maintained in this reductionist fashion ever since.

LaVelle criticizes "Churchill's use of invented historical information to cast aspersions on Indian tribes," and describes Churchill's work as "false propaganda," particularly insofar as Churchill claims that the General Allotment Act imposed "an eligibility 'standard' of 'one-half or more degree of Indian blood.'"[23]

B. Discussion

For the Committee, this allegation raised two separate issues: (1) whether there was any basis for questioning Professor Churchill's research techniques, a matter which the Committee found turned, in part, on whether Professor Churchill is substantively incorrect in claiming that the General Allotment Act of 1887 "for the first time" contained an eligibility criteria of "Indian blood," as he often puts it (7 of 11 references), or of "one-half or more degree of Indian blood," as he claims elsewhere (3 of 11 references); and (2) whether, if substantively incorrect, the erroneous claim resulted from research misconduct or some other form of error. This discussion addresses these two questions in the order set forth. The Committee notes, however, that it did not view its role as arbitrating the truth or falsity of Professor Churchill's claims in the scholarly debate over the General Allotment Act of 1887 between him and Professor LaVelle. Rather, the Committee's role was to determine whether Professor Churchill had employed generally accepted scholarly research techniques in arriving at his conclusions. In short, the ultimate question is whether Professor Churchill employed rational techniques for finding truth in making

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[21] Robert Clinton, Carole Goldberg, and Rebecca Tsosie, *American Indian Law: Native Nations and the Federal System*, 4th edit. (Newark, NJ: LexisNexis, 2004), Ch. 1, Sec. B[2][f].
[22] E.g., LaVelle, "Review Essay."
[23] Ibid., 110, citing Churchill's *Indians Are Us? Culture and Genocide in Native North America* (Monroe, ME: Common Courage Press, 1994), p. 62.

the assertions attacked by Professor LaVelle, not merely whether he is correct or incorrect in his claims.

1. Accuracy of Professor Churchill's descriptions of the General Allotment Act of 1887

In evaluating the accuracy of Professor Churchill's research resulting in his description of the General Allotment Act of 1887 and Professor LaVelle's critique of it, the Committee benefited by having as one of its members a scholar who has researched and written about the history of federal Indian policy, including the General Allotment Act of 1887. From its review, the Committee concluded that Professor Churchill's descriptions of the General Allotment Act of 1887, while perhaps slightly more accurate than Professor LaVelle credits them with being, are nevertheless literally incorrect. In the context of the long-term historical significance of the General Allotment Act *period*, however, Professor Churchill may have the stronger side of the debate with Professor LaVelle as to the origins of a blood quantum requirement in tribal membership rolls. Obviously, this conclusion requires explanation.

First, a simple computer search performed by the Committee on the full text of the General Allotment Act of 1887, as originally enacted, reveals that the words "blood," "quantum," "half," "fifty percent," or "50%" are not employed anywhere in the original text of the statute. Thus, it is not literally true, as claimed in the Churchill paragraph quoted in the allegation, that the text of "*[t]he Act imposed* for the first time a formal eugenics code—dubbed 'blood quantum'—by which American Indian identity would be federally defined on racial grounds rather than by native nations themselves on the basis of group membership/citizenship." (Emphasis added.) The General Allotment Act of 1887, as originally enacted, simply applied to "Indian[s]" and, unlike many later statutes, contained no definition of Indian whatsoever. It certainly did not, as repeatedly claimed by Professor Churchill, expressly require any blood quantum, let alone one-half or more Indian blood.[24] In Submission D, Professor Churchill seemed to agree with the Committee, since he apparently conceded that the blood quantum or fifty-percent blood quantum requirement is not expressly contained in the text of the Act, but somehow implied in it.

In this respect, there is more truth to part of Professor Churchill's claim than Professor LaVelle is prepared to credit. Implementation of the *policy* of the General Allotment Act of 1887 clearly

[24] By its express terms, the General Allotment Act of 1887 also did not apply to "the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order" (General Allotment Act of 1887, § 8). Other special statutes and agreements allotted some of these lands, especially those of the tribes of the former Indian Territory (now eastern Oklahoma). The exclusion was also significant because 1868 treaties with some of the tribes located in the Indian Territory, some of which had been slave holding before the Civil War, required them to free their slaves and adopt as full citizens their freedmen. These tribal citizens, of course, would have no Indian blood but, under these treaties, were entitled to full political and property rights within the tribes, some of which were never fully granted. This issue remains highly controversial today. See generally, *Allen v. Cherokee Nation*, No. JAT-04-08 (Judicial Appeal Tribunal of the Cherokee Nation, decided March 7, 2006), discussed and available online at http://indianz.com/News/2006/012846.asp, accessed 03/16/2006 (2-1 decision of the highest court of the Cherokee Nation holding that the descent of a freedman was entitled to full membership and participation in the Cherokee Nation despite the lack of Indian blood) and criticized by the Principal Chief of the Cherokee Nation, online at http://indianz.com/News/2006/013060.asp, accessed 03/16/2006.

limited tribal eligibility for allotments to those of Indian blood. Even LaVelle notes that 25 U.S.C. § 345, enacted initially as the Act of August 15, 1894, c. 290, § 1, 28 Stat. 305, which authorized Indians entitled to allotments under an Act of Congress, such as the General Allotment Act of 1887, to file a lawsuit in federal court if denied that right, expressly provided the right to "[a]ll persons who are *in whole or in part of Indian blood or descent* who are entitled to an allotment of land under any law of Congress." (Emphasis supplied). Thus, it was not literally the General Allotment Act of 1887 that *required* Indian blood as a precondition to eligibility for an allotment, but, rather, that requirement constituted the general assumptions among federal legislative and executive officials in the late nineteenth century regarding who constituted an Indian. Those assumptions were codified and reflected in the 1894 legislation but certainly predated it.

Many scholars, including at least one member of this Committee, often speak of the period of the history of Indian policy between 1887 and 1934 as the "Allotment Period," since the dominant theme of the historical period was the forced assimilation of American Indians by destroying their collective cultures in various ways, in favor of treating Indians not as tribal citizens but as individuals, preferably individuals divorced from their roots as members of sovereign tribal peoples. The span of time is called the "Allotment Period" because the dominant legislation in effectuating the policy was the General Allotment Act, but it was not alone.[25] This era was the period of the emergence of federally-sponsored Indian boarding schools, like Carlisle (located far from the reservations in Carlisle, Pennsylvania and attended by perhaps one of the most famous American athletes of the twentieth century, Jim Thorpe), to assure that Indians were not taught their tribal culture, language, and traditions as part of traditional child rearing and, instead, were schooled in western ways and the English language. Native languages, dress, and practices were prohibited in these schools. It also was the period in which the federal government began to assume, for the first time, governing control over reservation Indians in an effort to displace traditional tribal governance.[26]

The General Allotment Act of 1887 was part of an effort to individualize Indian relationships and property tenure (land owning) in order to forcibly assimilate Indians. While limited experiments with allotment had been tried (unsuccessfully) before, including federal efforts in the area now comprising Kansas in the 1850s, for the first time in federal Indian policy, the nationwide applicability of the General Allotment Act of 1887 led to the need to clearly define on a national level who constituted an Indian. The effort to individualize Indian relationships and property tenure in particular required federal officials to address who was an Indian entitled to an allotment. Since contact, most tribal definitions of identity were kinship based. Adoption and marriage with members of other tribes or non-Indians often effectuated complete citizenship within many tribal communities during this period. Some of the captive narratives validate that

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[25] See *Felix Cohen's The Handbook of Federal Indian Law*, ed. Rennard Strickland (Charlottesville, VA: Bobbs-Merrill, 1982), Ch. 2, Sec. C; Clinton, Goldberg, and Tsosie, *American Indian Law*, 4th edit., Ch. 1, Sec. B[2][f] (illustrations of the historical period associated with "Allotment"); see, more generally, Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: Univ. of Nebraska Press, 1984), *Americanizing the American Indians*, ed. Francis Prucha (Cambridge, MA: Harvard Univ. Press, 1973), and Francis Prucha, *The Great Father*, abridged edit. (Lincoln: Univ. of Nebraska Press, 1986), Ch. 15 (for sources on the period).

[26] For a brief survey of federal Indian policy during this period, see *Felix Cohen's Handbook of Federal Indian Law* pp. 127-33.

history.[27] While tribal definitions of community (what today we would consider tribal citizenship or tribal membership) were commonly based on biological, adoptive *or* marital kinship,[28] the federal authorities often refused to follow tribal definitions of their identity.

During the nineteenth century, federal law did *not* rely exclusively, or even primarily, on tribal kinship-based definitions of citizenship, but rather insisted on employing partially racially-based definitions by demanding some degree of Indian blood or ancestry. Perhaps the most dramatic proof of that point, although unassociated with the allotment period or the General Allotment Act of 1887 (and surprisingly not mentioned by Professor Churchill in any of his claims about the General Allotment Act of 1887), was the United States Supreme Court's decision in *United States v. Rogers*, 45 U.S. 567 (1846), announced four decades *before* passage of the General Allotment Act of 1887. In *Rogers*, the Court was confronted with the formal written laws of the Cherokee Nation that made white persons (or other non-Cherokees) who married tribal members and who resided in the Indian Territory citizens of the Cherokee Nation for as long as they continued to live there and did not remarry (if widowed or divorced). Notwithstanding the formal laws of the Cherokee Nation, the Court held that a white citizen of the Cherokee Nation who killed another similarly situated white Cherokee citizen was not an Indian for jurisdictional purposes and could therefore be tried in federal, rather than tribal, courts. Thus, in the nineteenth century, and *forty years before enactment of the General Allotment Act of 1887*, the United States Supreme Court already had adopted a racial definition of Indian, based literally on Indian ancestry (i.e., Indian blood), rather than the political definition of citizenship adopted by the Cherokee Nation. Professor Churchill is therefore more correct than Professor LaVelle in suggesting, as he does, that the requirement of Indian blood began with *federally-imposed* definitions of Indian status that, in Churchill's terms, "originated in the prevailing federal racial criteria of the late nineteenth century." Professor Churchill is inaccurate, however, insofar as he credits the General Allotment Act of 1887 as the source (as he puts it, "the first time") of that

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[27] For a discussion of the kinship based origins of native identification, see Clinton, Goldberg, & Tsosie, *American Indian Law*, 4th edit., pp. 1-2.

[28] Ironically, and quite by accident, one member of the Committee was told a story the weekend before the first deliberative meeting of the Committee at a speaking engagement that drove this background point home and supports Professor Churchill's overall thesis, albeit not the details of his description. Professor Clinton was speaking to some tribes in Southern California, at least one of which has cultural members on both sides of the U.S.-Mexico border. Today, therefore, there exists a United States and a Mexican division of this tribe, each of which has been forced by the international border to function as a separate unit since the Mexican-American War. Since they are relatives, they need to and have visited back and forth, a problem that has been made much harder by border crackdowns in the aftermath of the 9/11 tragedy and debates about border security. Working with the Border Patrol, the U.S. branch of the tribe sought freer access for their Mexican brothers and sisters, which the Border Patrol was prepared to grant upon the showing of a tribal membership card. The claim made to Professor Clinton by a tribal leader of the U.S. branch (who apparently knew nothing about his service on this Committee or the Churchill controversy) was that when they approached the Mexican tribe, the United States tribal leaders were quite surprised to learn that the Mexican tribe included in their membership non-Indians who married tribal members and others who were adopted (as would have been traditional for many tribes at contact). The U.S. contingent explained that would never work with federal authorities, notably the Border Patrol, and virtually cajoled the Mexican tribe into adopting a racially, or at least ancestrally, oriented blood quantum standard to convince federal authorities, and to bring their membership rules into conformity with the U.S. branch of the tribe. Of course, because of vast differences in Spanish and Mexican Indian policy, the Mexican branch of the tribe had never been subjected to anything like allotment and still reckoned their membership in traditional ways. The U.S. branch of the tribe was equally oblivious that their insistence on "blood quantum" for membership was, perhaps, not traditional and may only have emerged from late nineteenth-century racist definitions of Indians imposed by federal authorities.

federal imposition of racial Indian ancestry (i.e., Indian blood), since it had been accomplished at least forty years previously in the *Rogers* case. The General Allotment Act of 1887 was simply enacted and, more importantly, implemented against that background.

Section 1 of the Allotment Act of 1887 contemplated breaking up tribally held reservations and changing the ownership by allotting the land to "such Indians" as were entitled to participate, without defining what that meant. As noted above, the Act contained no express definition of who constituted an Indian. Based on *Rogers* and the white racial traditions of the day, that did mean for federal authorities, as Professor Churchill asserts, persons of *Indian "blood."* That point is dramatically demonstrated by the express language of the 1894 legislation quoted above, which was not seen as an amendment to the General Allotment Act of 1887, but merely reflected the underlying assumption surrounding what "Indian" meant for any purpose, including implementation of the General Allotment Act. Thus, Professor Churchill's claim made to the Committee (but not clearly stated in his published scholarship) that an eligibility requirement of Indian blood quantum could be *implied* in the Act, and was certainly the way it was implemented by federal agents, might literally be true. Nevertheless, the requirement of Indian blood did not originate with either express or implied requirements of the General Allotment Act of 1887, as Professor Churchill claims, and the *Rogers* case disproves. Furthermore, the fact that Indian blood may have been a requirement in the manner in which the General Allotment Act of 1887 was implemented, did not mean that the eligibility criteria were limited to persons of *one-half* Indian blood, as he sometimes claims. Neither was it true under the General Allotment Act of 1887, as Professor Churchill once claimed, that "'Mixed blood' Indians received title by fee simple patent; 'full bloods' were issued 'trust patents.'"[29]

While these latter two claims are both literally false and unsupportable regarding both the actual language of the General Allotment Act of 1887 and most of the period of its implementation, there was a brief, three-year history *thirty years after the enactment of the General Allotment Act of 1887* where the Act was implemented with criteria like, but not identical to, those Professor Churchill describes. That period is discussed fully in the published scholarship.[30] This three-year period has been briefly and accurately summarized in a recent article by Professor Judith Royster:[31]

> The twenty-five year trust period came under attack, however, by those who viewed the continued federal guardianship as an obstacle to the goal of assimilation. As a result, Congress amended the General Allotment Act in 1906 to authorize the early issuance of fee patents.[39] The Burke Act authorized the Secretary of the Interior to issue a fee patent to an allottee at any time, upon a determination that the individual was 'competent and capable of managing his or her affairs.'[40] Upon the issuance of one of these premature patents, the land was expressly subject to alienation, encumbrance, and taxation.[41]

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[29] "Perversions of Justice," in *Struggle for the Land*, p. 49.

[30] E.g., Janet A. McDonnell, *The Dispossession of the American Indian 1887-1934* (Bloomington: Indiana Univ. Press, 1991), Ch. 8 (one of the sources once cited by Professor Churchill) and Hoxie, *A Final Promise*, pp. 181-2. Both of these works were published *before* most of Professor Churchill's claims.

[31] Royster, "The Legacy of Allotment," *Arizona State Law Journal*, 27 (1995): 1-78, esp. pp. 10-12.

The effect of the Burke Act was immediate and substantial. In the three years following the passage of the 1906 act, patents were issued upon the recommendation of the Indian superintendent. Of the 2744 applications made during those years, all but 68 were granted. Surveys in 1908 showed that more than 60 percent of the premature patentees lost their lands. In 1909, an alarmed Commissioner of Indian Affairs began requiring a more detailed showing that the allottee was competent, and the approval rate dropped to approximately seventy percent of all applicants.

That relief was short-lived. In 1913, a new Commissioner of Indian Affairs not only reinstated the liberalized policy, but expanded upon it. Initially, the Indian superintendents were ordered to submit the names of competent Indians, but that procedure was soon replaced by 'competency commissions,' charged with roaming the reservations in search of allottees who could be issued premature patents. Under pressure to liberate the Indians from federal guardianship, the Indian Office issued patents to unqualified allottees and, in many cases, to allottees who neither applied for nor wanted to accept them. Despite reports showing that in many cases 90 percent or more of premature and forced-fee allottees lost their lands, the liberalized policy was formalized and further expanded in 1917.[50]

In that year, Indian Commissioner Sells announced that fee patents would simply be issued to all allottees of less than one-half Indian ancestry, while competency determinations would still be required for those of one-half or more Indian blood.[51] The effects were again devastating. In the eighteen months following Sells' policy announcement, the Indian Office issued premature patents for approximately one million acres, more than had been patented in the previous ten years.[52] Similarly, between 1917 and 1920, more than 17,000 patents were issued, twice as many as were issued in the previous ten years.[53] The havoc caused by Sells' policy resulted in a loss of support for liberalized patenting, and in 1920 a new Commissioner abolished the competency commissions and declared that no fee patents would issue without a determination of competency regardless of blood quantum.[54]

Between the two methods—expiration of the trust period and premature patents—thousands of patents in fee were issued, often amounting to several thousand in a single year. Once a patent in fee was issued, the land could be alienated, encumbered, and at least as to Burke Act patents, taxed. Thousands of Indian owners disposed of their lands by voluntary or fraudulent sales; many others lost their lands at sheriffs' sales for nonpayment of taxes or other liens. By the end of the allotment era, two-thirds of all the land allotted—approximately 27 million acres—had passed into non-Indian ownership.

[Non-relevant footnotes omitted.]

Relevant Footnotes:

[39] Burke Act of 1906, 34 Stat. 182 (amending § 6 of the General Allotment Act) (codified at 25 U.S.C. § 349).

[40] Id.

[41] Id.

[50] 1917 Commissioner of Indian Aff. Ann. Rep., reprinted in *Documents of United States Indian Policy*, supra note 20, at 213-14 (announcing a policy of 'greater liberalism' in the issuance of early fee patents).

[51] Id. at 214.

[52] McDonnell [Janet A. McDonnell, *The Dispossession of the American Indian 1887-1934* (1991)], supra note 44, at 107.

[53] Id. at 110.

[54] Id.

As one can see from Professor Royster's description, the Sells administrative policy on implementing the Burke Act modifications of the General Allotment Act of 1887 adopted in 1917 and ended in 1920 was the source of a *half-blood* Indian differentiation (and apparently the only time that distinction was ever nationally employed as the sole standard of a relevant Indian legal status, in this case competency, for federal Indian law purposes). Thus, the evidence indicates that during the allotment period, for a brief three-year window from 1917 to 1920, a half-blood quantum test was employed, *albeit not for the purpose that Professor Churchill claims*. The distinctions between Churchill's claims and the actual historic facts can be summarized as follows:

1. The half-blood Indian distinction arose from executive declaration of policy, not, as Professor Churchill claims, from the provisions of the General Allotment Act of 1887, although it was employed to implement one aspect of that Act.

2. To the extent that the half-blood distinction derived authority *indirectly* from any statute, it was the Burke Act of 1906 (which helped implement the allotment policy), not the General Allotment Act of 1887.

3. The half-blood distinction was only employed for three years and first arose in 1917, not in 1887, as Professor Churchill sometimes claims.

4. The half-blood distinction was *not* a test of who constituted an Indian, as Professor Churchill claims, but a test of the competency of Indians to be freed from trust restrictions.[32]

5. Professor Churchill frames the half-blood Indian test, when he employs it, as a test of inclusion in the category or class of Indians eligible for allotments, while in fact the half-blood test constituted a test of *exclusion* from trust restraints on allotments. Both "competent" Indians freed from trust restraints and "noncompetent" Indians with

[32] The trust restraints restricted the sale, other alienation, or taxation of Indian allotments.

remaining trust restricted allotments were legally considered Indians, at least until the trust restraints were removed.

6. The half-blood test was a test for the removal of pre-existing trust restraints on allotments, not the test for entitlement to an allotment, as Professor Churchill claims.

7. While it is true that those under a half-blood ended up with fee patents, while those of one-half or more Indian blood not otherwise deemed competent retained trust allotted lands, those differences in land title did *not* result from the nature of the allotments these Indians *originally* received, as Professor Churchill claims when he treats it as an allotment eligibility criterion.

This summary suggests the gross historical inaccuracies in the details of Professor Churchill's claims, which, nevertheless, contain more historical truth than Professor LaVelle acknowledges.

The general thrust of Professor Churchill's underlying basic point (seemingly and surprisingly rejected by Professor LaVelle) is that late nineteenth-century racism by federal officials in implementing the General Allotment Act of 1887, rather than traditional Indian cultural practices based on community citizenship, better accounts for the predominance of current blood quantum requirements in tribal membership rules. That argument certainly has a firm historical basis, dating back at least to the *Rogers* decision. Professor Churchill nevertheless has virtually all of the details of that history wrong. This racism predated the General Allotment Act of 1887, as *Rogers* demonstrates. It was not imposed either for "the first time" or in any express way by the General Allotment Act of 1887, as Professor Churchill claims, although blood quantum was certainly employed to *implement* the Act during its fifty-year history of wreaking havoc in Indian country and justifying massive transfers of two-thirds of the Indian land base into non-Indian ownership. There was *never* a half-blood quantum requirement for eligibility for an allotment under the Act, although that distinction was employed by administrative fiat for three years of the fifty-year period of implementing the Act for purposes of finding Indians "competent" under the Burke Act and thereby freeing them from trust restrictions that prevented them from selling their lands to non-Indians. Finally, to label it a federal "eugenics code" falsely implies enforced legal racial separation, such as prohibitions on miscegenation or residential segregation by race, while the entire history of the General Allotment Act of 1887 demonstrates that its point and purpose (in addition, perhaps, to dispossessing Indians from their lands) was to fully integrate and assimilate American Indians into non-Indian society, *often against their will*.

Thus, the Committee finds that no general hoax of the type suggested by some of Professor LaVelle's broader claims was perpetrated by Professor Churchill, since the core of his broad point (i.e., that the General Allotment Act of 1887, as implemented, required—albeit by implication—some Indian blood quantum to be eligible for an allotment) is correct, or at least clearly arguable. We find as well, however, that most of details and embellishments of that claim made by Professor Churchill are historically inaccurate or literally incorrect. Getting the general point correct but virtually all of the historical details wrong is certainly not the level of careful professional work one would expect of an ethnic studies scholar writing on important historical events in Indian studies. Nevertheless, reaching incorrect scholarly conclusions by itself does not constitute research misconduct unless some clear deviation from generally accepted scholarly practices produced such errors. The role of the Committee, as noted above, is

not to ascertain the ultimate truth or falsity of Professor Churchill's claims, but rather to evaluate the scholarly means by which he reached them to determine whether such means involved research misconduct. That point raises the question of whether the methodologies or approaches employed by Professor Churchill to arrive at some of these gross misstatements of historical detail constitute research misconduct.

2. Research misconduct

The course of the Committee's inquiry into Professor Churchill's alleged misrepresentation of the provisions of the General Allotment Act of 1887 explains much about its findings. It began by looking at the sources Professor Churchill cited to support the paragraph quoted at the start of this allegation, the most elaborated version of his General Allotment Act claim. The Committee immediately noted a number of quite unconventional aspects to Professor Churchill's use of sources. Footnotes 63 and 64 of his "Perversions of Justice," in *Struggle for the Land* (1993 edition), contain basically three sources to support the claims regarding the General Allotment Act of 1887. All appear to the reader to be reputable, independent *third-party* sources. First, Professor Churchill cites directly to the originally enacted version of the General Allotment Act of 1887, which, as noted above, contains absolutely no express support for his statement since it only employs the word "Indian." Not only is his statement unsupported by his source, but also more significantly, he did not follow the referencing convention that a lawyer or historian citing a lengthy statute for a particular detail normally would follow, which is to pinpoint the precise section number of the multi-section statute that supported his claim. As one will see throughout this report, this general reference to an apparent independent source *in its entirety* constitutes an unconventional referencing style frequently employed by Professor Churchill to create the appearance of independent support for his claims, while simultaneously discouraging or, at least, making far more difficult, any effort by other researchers to check his claims by failing to pinpoint the precise location of his claimed support in an otherwise lengthy work. Standing alone, this referencing failure might constitute some level of sloppiness, but certainly would not constitute research misconduct. When it is combined with a pattern of other misconduct reflected in this and other allegations, however, the Committee is left with a firm impression, by a preponderance of the evidence, that it constituted part of a deliberate research stratagem to create the appearance of independent verifiable support for claims that could not be supported through existing primary and secondary sources. To put it most simply, it was part of a pattern and consistent research stratagem to cloak extreme, unsupportable, propaganda-like claims of fact that support Professor Churchill's legal and political claims with the aura of authentic scholarly research by referencing apparently (but not actually) supportive independent third-party sources. The next problem discussed with these two footnotes makes this stratagem far clearer.

The other two *apparently independent third-party* sources cited in footnotes 63 and 64 are essays published in the same volume, *The State of Native America*, one under the name of a person named Rebecca Robbins and the other under the name of M. Annette Jaimes, the editor of the volume.[33] Since both essays do contain statements of the type that Professor Churchill claims,

[33] For the Robbins essay, see Allegation F below. The Committee understands that at all times relevant to this allegation Professor Churchill and M. Annette Jaimes were married, although they later divorced.

that might have put an end to the matter of research misconduct regarding this allegation, except for the fact that in response to the separate allegation that he had plagiarized the Robbins essay in another later published piece, Professor Churchill said in Submission E that he had in fact ghostwritten *both* the Robbins and the Jaimes essays, in full. He continued to adhere to that position in his discussion with our Committee, claiming that he wrote both pieces "from the ground up."[34] LaVelle's 1999 article had noted similarities in the writing style between several of the essays in *The State of Native America* and Professor Churchill's other works, questioning Professor Churchill's role in their creation.[35] Professor LaVelle apparently was unaware that at the time of the publication of her essay, Jaimes was the wife of Professor Churchill, and that Churchill not only contributed to that volume, but appears to have written under his own or a different name almost half the essays in it. Through legal counsel, both Rebecca Robbins and M. Annette Jaimes declined to speak with this Committee and, therefore, the Committee has no reason to doubt Professor Churchill's claims, suspected by Professor LaVelle, that he personally authored both the Robbins and the Jaimes papers in their entirety and it so finds by a preponderance of the evidence. That finding, however, constitutes a serious problem of research misconduct.

The initial support for the disputed statement involved three independent sources. As already noted, the Act does not expressly provide what Professor Churchill claims and therefore can provide no support for his claims whatsoever. The two other *apparently independent third-party sources*, the Robbins and Jaimes essays, turn out not to be independent sources at all but, rather, to have been ghostwritten in their entirety by Professor Churchill. This action provided him with *apparent* independent sources that he could and did in fact cite to support otherwise insupportable claims of legal and historical fact. In short, when one carefully dissects the Churchill claim quoted in the original allegation, the three apparently independent third-party sources dissolve into one source (the Act) that clearly does not expressly support his claim, and two other sources (the Robbins and Jaimes chapters) that he wrote himself. Although Professor Churchill purported to offer his claims as supported by research, based on independent sources, it turns out that the claims not only cannot be supported but that he has misrepresented the *independent* nature of his sources employed to buttress the unsupportable details of his conclusions. Were Professor Churchill a scientist, rather than a researcher engaged in social science research in ethnic studies, the equivalent would be (1) the misstatement of some underlying data (i.e., his mischaracterization of the General Allotment Act) and (2) the total fabrication of other data to support his hypothesis (i.e., the ghostwriting and self-citation of the Robbins and Jaimes essays). Clearly, ghostwriting the Robbins and Jaimes articles involved considerably more work than fabricating underlying scientific data, but that fact makes it no less a type of fabrication or falsification. The Committee is not claiming that Professor Churchill fabricated his general conclusions; rather, he fabricated the underlying data employed to support the insupportable details bolstering those conclusions.

Recognizing that Professor LaVelle claimed Professor Churchill had made these claims in eleven separate works, the Committee gave Professor Churchill the benefit of the doubt and went seeking all of those works to ascertain whether Professor Churchill provided any additional independent sources in other published versions of his claims that might more readily support his

[34] Interview, April 1, 2006.
[35] "The General Allotment Act 'Eligibility' Hoax," pp. 251-2.

conclusion. The fruits of that search are set forth in Appendix D. In general, Professor Churchill either provides no support for his claims regarding the General Allotment Act of 1887 or cites to the same basic sources set forth above, including, sometimes, references to his own work. In "Like Sand in the Wind," in his *Since Predator Came* (1995),[36] however, he does cite one additional third-party source: McDonnell's, *The Dispossession of the American Indian, 1887-1934* (1991). Unfortunately, our review of the McDonnell book indicates that it does not support Professor Churchill's description of the General Allotment Act of 1887 in that essay as requiring of Indians "that they were one-half or more degree of Indian blood" to be eligible for allotment. Worse still, the book actually explains the fifty percent blood quantum point by setting forth the Sells policy described above, devoting the entirety of a lengthy and illuminating chapter to that topic. Professor Churchill referenced this book in the footnote by again referring to the *entire* book, commencing with the reference signal, "Overall, see." This referencing of a lengthy source without pinpoint page or chapter citation, as he did with the General Allotment Act of 1887, creates the appearance of support without providing a reader the appropriate tools to rapidly check his authority. Chapters 7 and, most importantly, 8 of the McDonnell book accurately indicate the origins and purposes of the use of the half-blood blood quantum distinction to lie in the Sells competency hearing policy in the period between 1917 and 1920, not the General Allotment Act of 1887, as Professor Churchill claims. Thus, as with the use of the General Allotment Act of 1887 itself, this citation to the entirety of the McDonnell book masks the fact that he has simply misstated the contents of his sources and therefore falsified support for his historical claims and fabricated the embellished details of those claims.

Either Professor Churchill had not read his independent third-party sources, such as the General Allotment Act of 1887 or the McDonnell book, or he was engaged in a deliberate pattern of grossly misrepresenting their contents to support his pre-fabricated conclusions. Either might constitute misconduct but, given the pattern of research misconduct found throughout this report, the Committee finds by a preponderance of the evidence that the latter explanation constitutes the basic explanation for the pattern of misconduct observed here.

To give Professor Churchill further benefit of the doubt, the Committee tried to determine whether the sources he claims to have authored himself—the Robbins and Jaimes essays—contained any additional independent support for his thesis regarding the General Allotment Act of 1887. Perhaps, if the sources originally cited in the works he ghostwrote could support his claims with independent sources, either primary or secondary, his pattern of misrepresentation of historical events might be explained by somehow having been misled when he initially authored the Robbins and Jaimes chapters. That hypothesis, however, was not supported by the evidence. The Jaimes chapter, like some of Professor Churchill's work authored under his own name, cites nothing whatsoever to support the same claims regarding the General Allotment Act. In footnote 45 of the Robbins chapter, the author (in fact, Professor Churchill) cites—again without any section reference—the General Allotment Act of 1887 and another earlier classic work on allotment, similarly without a specific reference: "See, Otis, D.S., *The Dawes Act and the Allotment of Indian Land*, University of Oklahoma Press, Norman, 1973." Thus, Professor Churchill (if he wrote the Robbins piece, as he claims) was clearly aware of the Otis book, one of

[36] "Like Sand in the Wind: The Making of an American Indian Diaspora," in *Since Predator Came: Notes from the Struggle for American Indian Liberation* (Littleton, CO: Aigis Publications, 1995), pp. 167-202, esp. note 74.

the basic early works on the period.[37] Yet, inexplicably that book made no other appearance in any of the other essays in which Professor Churchill talks about blood quantum in the General Allotment Act of 1887. The review by our Committee of the Otis book demonstrates that it no more supports Professor Churchill's claim than does the McDonnell book. Surprisingly, out of the eleven different essays in which Professor Churchill makes this claim, he cites a true independent third party source other than the General Allotment Act of 1887 only once under his own name: his general reference to the McDonnell book noted above. He was clearly aware of the Otis book; yet he never cited it in any of the work he published under his own name. And worse still, there are a large number of reasonable third party sources that could be cited about this period (some of which are listed in note 25 above), which Professor Churchill never references when making these claims. This pattern suggests to the Committee that Professor Churchill was aware of the insupportable nature of the details of the claims he was making. It therefore forms part of a recurring pattern of failing to supply independent sources that his readers could consult, which would have disproved his claims.

The Committee does, however, note an important fact about the directionality of Professor Churchill's claims regarding the General Allotment Act of 1887. Professor LaVelle's criticisms, some of which are a bit over-stated but otherwise rest on a firm foundation, first appeared in print in 1996 in a review of Professor Churchill's book *Indians Are Us?*. Professor LaVelle elaborated upon his criticisms in a larger article in 1999. With two exceptions, all of Professor Churchill's claims of which the Committee is aware regarding the General Allotment Act of 1887 occurred *before* the first LaVelle critique. The claims were repeated twice more between 1996 and 1999, but, for all the Committee knows, may have been contained in chapters already in press before LaVelle published his criticisms. In these two pieces the nature of the claims was not softened. To Professor Churchill's credit, no essay has been brought to the attention of the Committee in which he repeated his public claims regarding the contents of the General Allotment Act of 1887 since Professor LaVelle's publication of his more elaborated critique in 1999, other than through the reprinting and republication of earlier essays and books. Thus, so far as the Committee can ascertain, while there was no softening or moderation of the claims regarding the General Allotment Act of 1887 after the first LaVelle critique was published in 1996, the public claims appear to have ceased after LaVelle published his fuller critique in 1999.

We note, however, that Professor Churchill has offered no public retraction or correction of his claim, which, as the above discussion demonstrates, he easily could be done without blunting the force of his underlying point. Furthermore, rather than conceding the historical inaccuracy of many of the details of some statements about the General Allotment Act of 1887, Professor Churchill has stood by them and attempted to defend them to this Committee, as best he could.[38]

C. Conclusion

Based on the foregoing, the Committee finds by a preponderance of the evidence that:
(a) Professor Churchill has engaged in research misconduct with respect to Allegation A

[37] The Otis book actually elaborates upon a lengthy report delivered to Congress in 1934 as part of the hearings that ultimately ended the allotment policy.
[38] Submission D and interview, April 1, 2006.

regarding the General Allotment Act of 1887; and (b) that such research misconduct was not and could not have been inadvertent and therefore was deliberate. Specifically, the Committee finds by a preponderance of the evidence that:

1. Professor Churchill repeatedly and deliberately cited the General Allotment Act of 1887 and once cited Janet McDowell's book for the details of historical and legal propositions that he advances. Because both sources in fact contradict his claims, this is a form of falsification of evidence.

2. Professor Churchill has deliberately cited two essays as independent sources of support for the details of his historic claims regarding the General Allotment Act of 1887, the Robbins and Jaimes essays, which he says he actually authored "from the ground up." He did not disclose either at the time of publication of those two essays or at the time he cited them in other later works that he had written the essays. This is a form of both evidentiary fabrication and failure to comply with established standards regarding author names on publications.

3. Professor Churchill deliberately embellished his broad, and otherwise accurate or, at least, reasonable, historic claims regarding the General Allotment Act of 1887 with details for which he offered no reliable independent support of any kind in his publications or in his defense during this investigation and for which the Committee was unable to find that any reasonable and reliable support exists. This is a form of fabrication of such details and embellishments.

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

(described in previous stages of this process as Allegation 2)

A. The Allegation

In a manner parallel to Allegation A and also based on an allegation from Professor John P. LaVelle, Allegation B complains that Professor Ward Churchill seriously misrepresented another U.S. government law, this time the Indian Arts and Crafts Act of 1990. Professor LaVelle elaborates on his charge in an extended essay, "The General Allotment Act 'Eligibility Hoax': Distortions of Law, Policy, and History in Derogation of Indian Tribes."[39] The alleged misrepresentation is to be found in Professor Churchill's essay, "Nobody's Pet Poodle," in his book, *Indians Are Us?*[40] The exact statement is correctly quoted in the allegation. However, we found it useful to read Professor Churchill's paragraph preceding the exact passage at issue, where he says that the Act:

> makes it a crime . . . for anyone not *federally recognized as being a Native American* to 'offer for display for sale or to sell any good, with or without a Government trademark, which . . . suggests it is Indian produced.' For galleries, museums, and other 'private concerns' which might elect to market or display as 'Indian arts and crafts' the work of any person not meeting the *federal definition of Indianness*, a fine of up to $5 million is imposed [pp. 91-2, emphasis added].

In the immediate follow-up passage at issue Professor Churchill says:

> The government 'standard' involved—usually called 'blood quantum' within the lexicon of 'scientific racism'—is that a person can be an 'American Indian artist' only if he or she is 'certifiably' of 'one quarter or more degree of Indian blood by birth.' Alternatively, the artist may be enrolled as a member of one or another of the federally-sanctioned Indian 'tribes' currently existing within the U.S. [p. 92].

B. Discussion

It is clear that for Professor Churchill, the "federal definition of Indianness" noted in the first passage has now become the "government standard" noted in the passage that immediately follows; and that this standard—this federal definition—requires a one-quarter blood quantum or, alternatively, enrollment in a federally-sanctioned tribe. However, Professor Churchill does recognize an alternative, namely enrollment in a federally-sanctioned tribe. Here, "alternatively" clearly has to mean something other than a blood-quantum requirement. Certainly also worth noting here is what is presented as a specific quantitative blood measure of "one-quarter." We also note that, other than the quotations above, nowhere in this essay nor in its footnotes does Professor Churchill reproduce any part of the Act itself as evidence for his claims, even though

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[39] *Wicazo Sa Review*, 14 (1999): 251-302.

[40] *Indians Are Us? Culture and Genocide in Native North America* (Monroe, ME: Common Courage Press, 1994), pp. 89-114.

the last quotation, i.e., "certifiably" of "one quarter or more degree of Indian blood by birth," is presented as coming from the Act itself.

Our Committee has reviewed the Indian Arts and Crafts Act carefully and finds that there is no "blood quantum" requirement specified within it as Professor Churchill claims, and that his seeming quotation from the Act above is not a quotation at all. The Act does not contain *anything* even remotely suggesting a federal recognition/definition of "Indianness" and clearly not a blood quantum of any kind. Further, it consistently specifies *only* what Professor Churchill cites as an *alternative*, namely recognition of the artist by a federally-sanctioned tribe.

It is certainly true that since the nineteenth century, the federal government, and many Indian tribes, have at various moments used some measure of blood quantum to determine Indian identity and tribal membership. For example, the Confederated Tribes of the Colville Reservation, the Blackfeet Tribe, the Comanche Nation, and the Ho-Chunk Nation all require, in their tribal constitutions, a blood quantum measure for tribal enrollment varying from one-eight to one-quarter.[41] Other tribes, however, like the very large Cherokee Nation, make no such requirement. Further, such requirements vary in measure from one-eight to one-quarter and are not all fixed at *one-quarter* as Professor Churchill claims in his essay. Therefore, the Act in some, perhaps large, numerical sense depends on and may be reinforcing such an historically required blood quantum measure. That is, when a tribe determines the Indian identity of an artist, it may be relying on some historically created and varying measure of blood quantum, and therefore the intensification of such a blood requirement in the present may be a consequence of the Act. Professor Churchill made that point in Submission D, noting that whether one refers to the Act itself or to the implementation of the Act, it is "to say the same thing." Professor Churchill thus appears to be conceding that the Act itself has no requirement of "blood quantum" within its text as he had originally stated. Rather, he now seems to say that its requirement that federally-sanctioned tribes determine the Indian identity of artists depends on and therefore reinforces the use of prior and unspecified "blood quantum" requirements derived from other historical agencies and moments as amply documented in our analysis of Allegation A.

Professor Churchill continues this latter kind of argument in a much more extended and later essay focused solely on the Act, called "The Nullification of Native North America: An Analysis of the 1990 Indian Arts and Crafts Act," in his *Acts of Rebellion*.[42] The essay criticizes the Act in a variety of ways, but we wish to focus only on the relevant matter of "blood quantum" that is at issue in this allegation. Unlike "Nobody's Pet Poodle," on the first page of this essay, Professor Churchill quotes the relevant portions of the Act, including its specification of how Indian identity is to be determined:[43]

> The term 'Indian' means any individual who is a member of an Indian tribe, or for purposes of this section is certified as an artisan by an Indian tribe;

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[41] For this and below, see C. Matthew Snipp, *American Indians: The First of This Land* (New York: Russell Sage Foundation, 1989), Appendix 4, Blood Quantum Requirements of Federally Recognized American Indian Tribes, pp. 361-5.
[42] *Acts of Rebellion: The Ward Churchill Reader* (New York: Routledge, 2003), pp. 23-42.
[43] "The Nullification of Native North America," p. 23.

and,

> The term 'Indian tribe' means — (A) any Indian tribe, band, nation, Alaska native village, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State Commission or similar organization legislatively vested with similar tribal recognition authority.

Following Professor Churchill, we quote the relevant portions of the Act to demonstrate again that the Act contains no provision whatsoever for a "blood quantum" requirement. And by citing it in full, Professor Churchill now seems to be implicitly acknowledging the absence of such a requirement. This acknowledgement is apparently affirmed in the only and small portion of his essay where the word "blood" appears. Professor Churchill says:

> Litigation will therefore necessarily occur in federal courts, subject to inquiries as to swhether the Act creates a legal classification based on race. Since . . . the requirement for enrollment in the vast majority of all federally-recognized tribes at this point *begins* with some minimum "degree of Indian blood," there can be no serious doubt that it does (36).

Here we plainly see a retreat from the original assertion that the Act textually requires a one-quarter blood quantum. Now, it is "some minimum 'degree of Indian blood'" although now with the recognition that it is Indian tribes, *not the Act itself,* that are imposing this requirement, if indeed they are. Moreover, Professor Churchill also clearly recognizes that there is still an open legal question whether, as a consequence, the Act "creates" legal classifications based on race, i.e., blood. He believes that it does—"there can be no serious doubt"—but the latter is a rhetorical posture because others do indeed have such a serious doubt.

We therefore conclude that although the Act itself may or may not have such consequences, it does not itself contain any blood quantum requirement—implicitly or explicitly—of any measure within its provisions as Professor Churchill originally asserted.

What do other scholars and analysts have to say about this matter? In his original specific assertion in "Nobody's Pet Poodle," Professor Churchill adduced no other scholars in support of his claim. However, in the next major paragraph, Professor Churchill does offer three major apparent citations in support of his general argument about the gradual extinction of Indians. One of these is M. Annette Jaimes' essay, "Federal Indian Identification Policy: A Usurpation of Indigenous Indian Sovereignty in North America."[44] However, this citation immediately raises another significant issue. As has already been demonstrated with respect to Allegation A, Professor Churchill claims that he himself wrote that essay by "Jaimes" but is now citing it as seeming third-party support for his argument, much as he did for the issue addressed in Allegation A. The other two references cite the work of Patricia Limerick and Robert

[44] In Ward Churchill, ed., *Critical Issue in Native North America* (Copenhagen: International Work Group on Indigenous Affairs, 1989), pp. 15-36.

Thornton.[45] Professor LaVelle contends that Professor Churchill willfully distorts the scholarship of both authors to buttress his claims concerning Indian statistical extermination.[46] Although that issue is not central to the allegation before us, the Committee's reading of Limerick's and Thornton's original writings finds that Professor LaVelle is correct in this instance as well: those authors do not support Professor Churchill's claims.

Professor Churchill was on slightly firmer ground when, in Submission D but not in his printed essays, he adduced Gail K. Sheffield's *The Arbitrary Indian: The Indian Arts and Crafts Act of 1990*.[47] However, Sheffield supports only that part of Professor Churchill's argument that says that, through its implementation, the Act may be assisting in the creation of legal classifications based on race or blood. Nowhere in the entire book does Sheffield claim that the Act itself textually contains a requirement "certifiably" of "one quarter or more degree of Indian blood by birth." Indeed, she says:

> The Indian Arts and Crafts Act of 1990 simplifies both the identity and identification questions. An Indian is any individual with requisite relationship to a designated political entity; his or her identification is merely a matter of simple documentation by that entity [p. 82].

Even with Professor Churchill's later concessions and modifications, it remains true that common readers of "Nobody's Pet Poodle," especially students and the lay public, will conclude from that essay that a major act of the federal government requires that Indians demonstrate, directly to the federal authorities, that they have one-quarter Indian blood before they can be certified as Indian artists. In truth no such federal requirement exists, and Professor Churchill knowingly evaded that truth in his essay. His later essay modifies and mollifies his initial and patently incorrect statements, but it does not offer an explicit retraction of them.

C. Conclusion

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

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[45] See references in Churchill's footnotes 3 and 4, pp. 108-9, to Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W.W. Norton, 1987), p. 338, and Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1492* (Norman: Univ. of Oklahoma Press, 1987), pp. 174-82.

[46] "The General Allotment Act 'Eligibility Hoax'," p. 265.

[47] Norman: Univ. of Oklahoma Press, 1997. He provides no specific page or chapter reference to this work.

We take note that Professor Churchill has evidently modified his position, both in "The Nullification of North America" (2003) and in his submissions during the process of our investigation. One might think that this modification resulted from the intervening appearance of Professor LaVelle's 1999 essay. Yet, it is telling that Professor Churchill's second essay nowhere references LaVelle's criticisms or responds to them as is appropriate for a scholar and an intellectual engaged in academic discourse. Indeed, Professor Churchill told our Committee that he did not even read Professor LaVelle's critique until four years after it came out and then did not think it warranted a response.[48] Professor Churchill has thus not taken advantage of scholarly debate to arrive at an accurate presentation of this matter.

[48] Interview, April 1, 2006.

Allegation C. Captain John Smith and Smallpox in New England, 1614-1618[49]

(described in previous stages of this process as Allegation 9)

A. The Allegation

Allegation C focuses on a statement made by Professor Churchill in an essay published in 2003: "An American Holocaust? The Structure of Denial."[50] The essay argues, among other things, that Europeans and Euroamericans intentionally introduced the smallpox virus to Native American tribes as part of a larger effort that Professor Churchill contends should be called "genocide." After discussing the actions of British General Jeffery Amherst and others at Fort Pitt in the Ohio River Valley in 1763, Professor Churchill writes, "It's important not to view what Amherst did as an isolated matter. It wasn't. It's simply the best documented."[51] Allegation C refers specifically to the next sentences:

> There are several earlier cases, one involving Captain John Smith of Pocahontas fame. There's some pretty strong circumstantial evidence that Smith introduced smallpox among the Wampanoags as a means of clearing the way for the invaders.[140]

Note 140 cites Neal Salisbury, *Manitou and Providence: Europeans, Indians, and the Making of New England, 1500-1643,* pp. 96-101.[52]

B. Discussion

Allegation C may be broken down into three separate questions:

a) Is there any evidence (circumstantial or otherwise) that Smith introduced any disease among the Wampanoags that appeared in the immediate aftermath of his 1614 visit?[53]

b) Was *smallpox* the disease that caused the epidemic among the Wampanoags in 1616-1618?[54]

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[49] For the goals and process of the Committee in dealing with the two history allegations, see Introduction, Section F, above.

[50] *Socialism and Democracy*, Vol. 17, No. 1 (Issue No. 33, 2003): 25-76. The journal is also available online at http://www.sdonline.org/33/ward_churchill.htm (accessed 01/18/2006).

[51] Ibid., on p. 54 of the printed version and in Section IV, p. 6, of the online version, for this and the quotation below. For Amherst and Fort Pitt in 1763, see Allegation D below, section D2.

[52] New York: Oxford Univ. Press, 1982.

[53] Circumstantial evidence is usually contrasted with "direct evidence," which is a statement by a witness who heard or saw something. According to *Black's Law Dictionary*, circumstantial evidence is "Testimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved" (5th edition, 1980, p. 221). Thus circumstantial evidence involves putting together chain links to infer a possible or plausible conclusion. As such, the more implausible the conclusion the more circumstantial evidence is needed to buttress it.

[54] Smallpox may be spread either through face-to-face contact with an infected person or by inhaling infected particles from the sores or scabs of someone who had the disease that were preserved in clothing, bedding, or other

c) Did Smith introduce "a" or "the" disease *intentionally* ("as a means of clearing the way for the invaders")?

1. Does the reference cited support Professor Churchill's claims?

In the cited pages, Salisbury discusses a trip to New England by John Smith in 1614, during which Smith realized that the French had already befriended the Native Americans, making establishment of English trading networks more difficult. On that trip, Smith also developed the most accurate map of the coast then available. He remained in New England for three months in 1614 and never returned.[55] In the cited pages, Salisbury tells readers about Smith's plans to pave the way for English colonization of the area.

The pages referenced by Professor Churchill in the Salisbury book do not contain the words "Wampanoags" and have no discussion of any disease or epidemic (including smallpox). They contain no suggestions that John Smith or anyone else intentionally introduced a disease. Quite the contrary—Salisbury's discussion of Smith's plan to move towards English colonization, which focuses on psychological strategies and military repression, includes the prospects for using Indian labor as a cheap labor force.

Conclusion: The cited source offers no support for any of the three claims outlined above. This is not a matter of incomplete footnoting or lack of footnoting, but of misleading footnoting. It is simply false to assert that the pages cited from Salisbury's work support the claims made in the relevant passages by Professor Churchill.

2. Do other sources support Professor Churchill's claims?

Is there other evidence not cited by Professor Churchill that might support the three claims made in the 2003 essay? Is there a basis from which a reasonable scholar might conclude that Professor Churchill's assertions are justified? In Submission G, Professor Churchill responded to Allegation C. There he argued that evidence he did not cite in his 2003 essay supports his statements and elaborates on what he was thinking: (1) John Smith had a "lethal bellicosity towards the Indians"; (2) the Wampanoags were decimated by a disease in the "immediate aftermath" of Smith's departure; and (3) he puts these two pieces together to find "strong circumstantial evidence" that Smith might have deliberately infected the Wampanoags.

In Submission G, Professor Churchill said also that he described the John Smith question more fully in his 1997 book, *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 to the Present*, pp. 169-70.[56] Thus, he invited our Committee to investigate both essays.[57]

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materials. This report will not deal with the medical aspects of smallpox. For the standard compendium, see Frank Fenner, D. A. Henderson, et al., *Smallpox and Its Eradication* (Geneva: World Health Organization, 1988).

[55] "John Smith did not return there [New England] in 1615 or ever again": Salisbury, *Manitou*, p. 101.

[56] San Francisco: City Light Books, pp. 129-288.

[57] The 2003 essay does not, however, mention the 1997 essay.

In the 1997 essay ("'Nits Make Lice': The Extermination of North American Indians, 1607-1996"), Professor Churchill refers to Smith's violence against Indians during his brief stay in New England and concludes, "Mysteriously—the Indians had had close contact with Europeans for years without getting sick—epidemics broke out in the immediate aftermath of Smith's expedition."[58] Churchill's text then uses a quotation to describe "a devastating 'virgin soil epidemic'" that "raged through New England" between 1616 and 1618.[59]

Thus, his claim in the "An American Holocaust" essay of 2003 is much stronger than in the "Nits Make Lice" essay of 1997. The 1997 statement is more detailed and more carefully worded, but it fails to provide any justification for the assertion that John Smith introduced a disease, that the disease was smallpox, or that he introduced the disease intentionally. In 1997 Professor Churchill simply states that it is "mysterious" that two events (Smith's visit and an epidemic) occurred at about the same time. The possibility that the epidemic was "smallpox" was not mentioned, nor does he claim circumstantial evidence that Smith intentionally introduced the disease. Professor Churchill's assertions thus grew more speculative over time, not less.

In an interview with our Committee on April 1, 2006, Professor Churchill said that in preparing his 2003 essay for publication (it was a composite of several oral presentations), he had added footnotes by referring back to his 1997 essay. He told us that he erroneously copied in a reference to Salisbury, when he should have cited another source.[60] He did not tell us what the correct reference would have been, but our reading of the book by Steele and the article by Snow and Lanphear that Professor Churchill cites in adjacent footnotes failed to find support for his claim that Captain Smith intentionally (or unintentionally) introduced the epidemic.[61]

The Committee therefore did some further research to see if other sources buttress Professor Churchill's claims.

Claim 1: Is there any evidence (circumstantial or other) that John Smith introduced a disease among the Wampanoags?

In the 1997 paper, Professor Churchill refers to the "close contact" that Indians had had with Europeans for years without getting sick (p. 169). In his note he points to what he believes was considerable interaction between Indians and French, Spanish, and English during the century

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[58] In *A Little Matter of Genocide*, p. 169. A note to that sentence speaks briefly about earlier contacts between Europeans and New England Indians, without citing any sources.

[59] Professor Churchill appropriately cites Ian K. Steele, *Warpaths: Invasions of North America*, p. 84, for this quotation, with an "also see" reference to Dean R. Snow and Kim M. Lanphear, "European Contact and Depopulation in the Northeast: The Timings of the First Epidemics," *Ethnohistory*, 35:1 (Winter 1988): 15-33.

[60] Notes to adjacent sentences cite, in addition to the Salisbury book, several sets of pages in Philip Barbour's edition of *The Complete Works of Captain John Smith, 1580-1631*, Steele, *Warpaths*, and Snow and Lanphear, "European Contact and Depopulation."

[61] Indeed, the Snow and Lanphear paper specifically rejects the hypothesis that the 1616 epidemic was caused by smallpox.

before John Smith's 1614 visit.[62] It is true that many Europeans visited southern New England before John Smith. Salisbury's account tells us that the Europeans were traders, explorers, or fishermen, and he notes that the outbreak that began in 1616 was particularly severe in those areas where French traders were most active.[63]

While no written records document disease epidemics occurring before 1616, New England Indians themselves believed that European contact had already had disastrous health consequences for their populations. As early as 1610, one Indian leader told a French visitor "that in his youth his people had been 'as thickly planted there as the hairs upon his head,' but that since the French had come their numbers had diminished radically under the impact of disease."[64] At about the same time, another French visitor, Pierre Biard, was told that:

> 60 members (a majority) of a Micmac village had perished during a single season while none of the French had even become ill. Biard was surely witnessing a 'virgin soil epidemic,' in which an immunologically vulnerable population is in large part destroyed after contact with outsiders. . . . Baird's estimate of 3000-3500 Micmac living in 1611 represents, according to Dean Snow's estimate, about one-fourth of the population a century earlier.[65]

Thus, Professor Churchill's assertion that "there is no record of any disease epidemic occurring before 1616" appears to be incorrect.

More bewildering is the assertion in the 1997 essay that states that the disease emerged in the "immediate aftermath" of Smith's departure. Salisbury states that "John Smith explored the coast from the Penobscot to Cape Cod between April and June 1614," and that he left New England in 1614 and never returned.[66] The epidemic broke out in 1616. Clearly, eighteen or more months passed between Smith's departure and the outbreak of the epidemic. We have found no evidence that the time between exposure and the outbreak of an epidemic could be that long.[67]

Conclusion: The Committee has not found any scholars who claim that the epidemic of 1616-1618 was introduced by John Smith. Professor Churchill does not connect the dots in his proposed set of circumstantial evidence, describing the chain of events that might have linked Smith with the epidemic. Salisbury, on the other hand, studied the geographic parameters of the epidemic and found them to coincide with the areas visited by French traders. Salisbury's "circumstantial evidence" is stronger than Professor Churchill's "speculation."

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[62] He then comments, "It is indeed 'interesting' that none of this often more substantial interaction produced a 'virgin soil epidemic,' but that one broke out just when it was most convenient—in fact, *necessary*—for the English."
[63] Salisbury, *Manitou*, pp. 102-03.
[64] Salisbury, *Manitou*, p. 57.
[65] Salisbury, *Manitou*, p. 58.
[66] Salisbury, *Manitou*, pp. 76 and 101.
[67] E.g., Clyde Dollar writes, "Smallpox is caused by a virus infection, and the incubation period (from exposure to the virus until the first symptoms appear) varies from eight to fourteen days" ("The High Plains Smallpox Epidemic of 1837-38," *Western Historical Quarterly*, 8 [1977]: 15-38, esp. p. 17). On February 18, 2006, Mark J. Timbrook of Minot State University told our Committee that the incubation period for smallpox is usually 12-14 days.

Since there is no evidence that John Smith introduced any disease, Claims 2 and 3 (below) are moot. We therefore address them only briefly.

Claim 2: Was the epidemic of 1616-1618 caused by smallpox?

It is impossible to be certain what disease spread among the Wampanoags in 1616-1618. Salisbury writes:

> Attempts by medical historians to diagnose the malady have floundered on the inconclusive nature of surviving descriptions. The only first-hand European witnesses whose observations survive . . . referred to the disease as simply "the plague," and the remaining evidence likewise supports the conclusion that the epidemic represented a strain of the plague.[68]

Salisbury cites three journal articles to support this sentence but also refers readers to five sources "for diagnoses other than plague."[69] Thornton likewise notes the ambiguity concerning the 1616-1618 outbreak: "The nature of the epidemic has also been debated. According to different scholars, it was perhaps the bubonic plague or even yellow fever; it may have been smallpox."[70]

Conclusion: The Committee's reading of relevant literature indicates that there is no clear evidence about the exact nature of the epidemic and nothing that points specifically to smallpox. Professor Churchill does not provide even "circumstantial evidence" to support his claim that the disease was smallpox or tell his readers by what logic he reached this conclusion. Hence his claim is unsubstantiated.

Claim 3: Was it intentional?

There is no question that John Smith was brutal in his treatment of Indians and interested in having English settlers colonize New England. However, the evidence suggests that he viewed the native population as an important source of labor. As Salisbury explains, Smith "would use military repression in order to force the natives to work for their colonial masters."[71] The evidence that Smith wanted to use Indians as a labor force contradicts Professor Churchill's contention that he wanted to see them wiped out.

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[68] Salisbury, *Manitou*, pp. 101-2.
[69] Salisbury, *Manitou*, p. 267, note 33. Measles and chicken pox have also been suggested as possible causes of this outbreak.
[70] Russell Thornton, *American Indian Holocaust and Survival: A Population History since 1492* (Norman: Univ. of Oklahoma Press, 1987), p. 71.
[71] Salisbury, *Manitou*, p. 99.

C. Conclusion

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

Allegation D: Smallpox Epidemic at Fort Clark and Beyond, 1837-1840[72]

(described in previous stages of this process as Allegation 3)

This allegation concerns Professor Churchill's claims that the U.S. Army deliberately spread smallpox to Mandan Indians living near Fort Clark in what is now North Dakota in 1837, using infected blankets taken from a military infirmary in St. Louis. We have examined this charge in particular depth, including a close look at the primary sources, for several reasons. We needed to make some preliminary observations about how historians study and interpret the past. The allegation is very general and had to be broken down into five separate sub-questions for careful analysis. Further, the belief that the U.S. Army intentionally spread smallpox to Indians by means of infected blankets is widely held. In some cases that idea may stem from the well-documented attempt involving British General Jeffery Amherst and soldiers at Fort Pitt in 1763, before the United States became independent. Professor Churchill's descriptions of the Fort Clark episode in 1837, if well founded, would provide support for the claim that the U.S. Army followed a similar course of action in the nineteenth century.

A. The Allegation and Essays Examined

Allegation D is described as follows in the letter submitted by Dr. Philip P. DiStefano, Interim Chancellor of the University of Colorado at Boulder, to Professor Joe Rosse, Chair of the Standing Committee on Research Misconduct, dated March 29, 2005:

> Professor Thomas Brown of Lamar University forwarded information alleging that a theory Professor Churchill has published as fact—that the U.S. Army perpetuated genocide—is clearly contrary to the source Professor Churchill cites.[12][73] Professor Churchill has asserted that the U.S. Army deliberately distributed smallpox-infested blankets to Mandan Indians in 1837, causing an epidemic in which over 100,000 people died.[13][74] However, the source he cites is contrary to both the number of dead and his version of the story.[14][75] Indeed, his source, Professor Russell Thornton of UCLA and other experts agree that the story is without historical basis.[15][76] Professor Brown states:

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[72] For the goals and process of this Committee in dealing with the two history allegations, see Introduction, Section F, above.

[73] Note 12 says: Thomas Brown, "Assessing Ward Churchill's Version of the 1837 Smallpox Epidemic," (Updated February 13, 2005), at http://hal.lamar.edu/~browntf/Churchill1.htm.

[74] Note 13 says: *See, e.g.*, Ward Churchill, "Bringing the Law Back Home: Application of the Genocide Convention in the United States," in *Indians Are Us?*, *supra*, at 11, 35 (1994); Ward Churchill, *A Little Matter of Genocide*, 155-56 (1998). The accounts, including facts like the number who died, vary between Churchill's two books.

[75] Note 14 says: *See* Russell Thornton, *American Indian Holocaust and Survival* [*A Population History since 1492* (Norman: Univ. of Oklahoma Press)], 94-96 (1987).

[76] Note 15 says: Professor Thornton was recently reported to have said that the information is wrong. David Kelly, "Colorado Professor Faces Claims of Academic Fraud," *Los Angeles Times* (February 12, 2005). Thornton was also quoted by *Inside Higher Ed* acknowledging that Churchill has "misrepresented my work" and saying "[i]ssues like Ward Churchill cast aspersions on legitimate Indian scholars," *at* http://www.insidehighered.com/insider/a_new_ward_churchill_controversy. *See also* Guenter Lewy, "Were

> Situating Churchill's rendition of the epidemic in a broader historiographical analysis, one must reluctantly conclude that Churchill fabricated the most crucial details of his genocide story. Churchill radically misrepresented the sources he cites in support of his genocide charges, sources which say essentially the opposite of what Churchill attributes to them.[16][77]

Our investigation focused on Professor Churchill's accounts of the Fort Clark episode and its consequences in six essays published between 1994 and 2003 under his own name.[78] One of these is a re-publication of an earlier essay under a different name, providing five distinct statements.[79] They occur in the following essays:

1. "Bringing the Law Home: Application of the Genocide Convention in the United States," in his collection of essays, *Indians Are Us? Culture and Genocide in Native North America* (Monroe, ME: Common Courage Press, 1994), pp. 11-63. The passage in question is on p. 35 of the text; note 68 is on p. 57.[80]

2. "Since Predator Came: A Survey of Native North America Since 1492," in his collection of essays, *Since Predator Came: Notes from the Struggle for American Indian Liberation* (Littleton, CO: Aigis Publications, 1995), pp. 27-40. The relevant passage is on p. 28.

3. "'Nits Make Lice': The Extermination of North American Indians, 1607-1996," in his collection of essays, *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 to the Present* (San Francisco: City Light Books, 1997), 129-288. The passage in question is on pp. 155-6 of the text; the notes are on the bottom of pp. 155 and 261.

4. "Confronting Columbus Day: An Argument Based in International Law," in his collection, *Acts of Rebellion: The Ward Churchill Reader* (New York: Routledge, 2003), pp. 43-61. The relevant passage is on p. 56. Professor Churchill's description of the Fort Clark situation and resulting deaths is verbatim identical to the account in his "Bringing the Law Home," with the same single note. Because it is not a distinct statement, it will be excluded from detailed analysis here.

American Indians the Victims of Genocide?," *Commentary* (Nov. 22, 2004). Professor Thornton communicated with the University during the course of this review and confirmed his belief that Professor Churchill has misrepresented his work.

[77] Note 16 says: Brown, *supra.*

[78] We did not consider the essay nominally written by Lenore A. Stiffarm and Phil Lane, Jr., "The Demography of Native North America: A Question of American Indian Survival," in *The State of Native America: Genocide, Colonization, and Resistance*, ed. M. Annette Jaimes (Boston: South End Press, 1992), 23-53, which Professor Churchill claimed in his response to Allegation F to have written himself (see below). In the Stiffarm and Lane essay, the brief mention of the Fort Clark episode, the numbers provided for the resulting pandemic, and the sources cited (pp. 32-3) are strikingly similar to Professor Churchill's accounts in the first three essays listed here. If Professor Churchill did write the Stiffarm and Lane essay, it preceded the other essays examined here by two years.

[79] The first and third of these essays were mentioned in the original allegation; we added the other four when our investigation found that they too mention the Fort Clark episode. Professor Churchill was notified of this expansion on February 13, 2006.

[80] In Submissions B and H, Professor Churchill emphasized that this essay was written originally as a legal brief in connection with his arrest at a demonstration against Columbus Day in October 1991.

5. "That 'Most Peace-Loving of Nations': A Record of U.S. Military Actions at Home and Abroad, 1776-2003," in his collection, *On the Justice of Roosting Chickens: Reflections on the Consequences of U.S. Imperial Arrogance and Criminality* (Oakland, CA: AK Press, 2003), pp. 39-85. The relevant passage is on p. 48.

6. "An American Holocaust? The Structure of Denial," in *Socialism and Democracy*, Issue 33 (Vol. 17, No. 1, 2003): 25-76, and available online at: http://www.sdonline.org/33/ward_churchill.htm.
   In the printed version, the relevant paragraphs are on pp. 54-6.
   Notes 142-6 are on p. 72.
   In the online version, the relevant paragraphs are in Pt. VI, pp. 4-5 of 6, http://sdonline.org/33/ward_churchill_4.htm.
   Notes 142-6 are in http://sdonline.org/33/ward_churchill_6.htm.
   All subsequent citations in this report refer to the printed version.

Since this allegation was submitted, Professor Churchill has looked more closely at what happened at Fort Clark in 1837. Joseph H. Wenzel of Phoenix, AZ, a retired engineer and paralegal, volunteered in March 2005 to do pro bono historical research in support of Professor Churchill's claims. Wenzel continued his work through February 2006, and Professor Churchill subsequently submitted Wenzel's report to our Committee.[81]

B. Summary of Historical Events

This allegation concerns a series of similar accounts by Professor Churchill describing the outbreak of smallpox among Mandan Indians living near Fort Clark on the upper Missouri River in 1837 and the smallpox pandemic of 1837-1840 that swept through many of the tribes of western North America. As background for the analysis that follows, we present a summary of events based upon reliable primary sources and avoiding the specific issues under contention in this allegation.[82] Readers may wish to refer to the accompanying map of the Missouri River and the major trading posts and tribes along it in 1832 (but note that many of the Arikara, Mandan, and Hidatsa had moved further north by 1837).

In late spring and summer, 1837, the steamship *St. Peter's* made its annual trip of some 2,000 miles up the Missouri River from St. Louis to Fort Union, at the confluence with the Yellowstone River, and then back. Leaving St. Louis around April 17, the boat carried both

[81] The materials sent by Wenzel (who has a Ph.D. in Electrical and Computer Engineering) to Professor Churchill on February 28, 2006 and submitted to our Committee by Professor Churchill on March 21, 2006 included microfilm printouts of some early sources.

[82] See the primary sources cited in the course of this narrative and in section D1 below. For secondary accounts, see Roy W. Meyer, *The Village Indians of the Upper Missouri: The Mandans, Hidatsas, and Arikaras* (Lincoln: Univ. of Nebraska Press, 1977), Clyde D. Dollar, "The High Plains Smallpox Epidemic of 1837-38," *Western Historical Quarterly*, 8 (1977): 15-38, and Mark J. Timbrook, "An Extended Interpretation of the Smallpox Epidemic of 1837" (M.A. thesis, Vermont College of Norwich University, 2001).

Map 1. The Missouri River and Adjacent Tribes in 1832

From Michael K. Trimble, "The 1837-1838 Smallpox Epidemic on the Upper Missouri," in *Skeletal Biology in the Great Plains: Migration, Warfare, Health, and Subsistence*, ed. D. W. Owsley and R. L. Jantz (Washington, DC: Smithsonian Institution Press, 1994), Fig. 1, p. 83.

trading goods and annuities to be distributed to those Indian tribes with which the U.S. government had treaties.[83] At its stops along the way, it picked up furs and hides at the stockaded trading posts of the Missouri branch of the American Fur Company, based in St. Louis, which operated the boat. Among the passengers on the *St. Peter's* in 1837 were two agents of the U.S. Office (or Bureau) of Indian Affairs: Joshua Pilcher, a former trader who was then Indian agent for the Upper Missouri; and William Fulkerson, named in 1835 as subagent for the Mandan tribe. On June 19, during its outbound trip, the *St. Peter's* stopped overnight at the post called Fort Clark, in what is now North Dakota, near to a cluster of Mandan, Hidatsa, and Arikara villages. The Mandan agent would normally have distributed annuities to the Indians, but this year Fulkerson said he had "nothing to give his red children."[84] The *St. Peter's*, with Fulkerson aboard, then continued upriver another 300 miles to Fort Union, the most distant post that a steamboat could reach, before turning around for the voyage back to St. Louis. On its return trip, the *St. Peter's* spent just an hour at Fort Clark, between 6 a.m. and 7 a.m. on June 28. On that stop Fulkerson offered no more than "a few words of good talk" and "a few presents" to the Arikara.[85]

Far more significant than the goods or people carried on the *St. Peter's* was the presence of smallpox (*Variola major*).[86] Sometime before the *St. Peter's* arrived at Leavenworth, Kansas around April 29, a crew member became ill with a fever, but the nature of his sickness was apparently not identified.[87] One of the Indian agents on the boat encouraged the captain, Bernard Pratte, Jr., to put the sick man ashore at Leavenworth, but he refused to do so.[88] (Pratte was the son of one of the owners of the trading firm Pratte, Chouteau & Company, which had bought the Missouri branch of the American Fur Company from John Jacob Astor in 1834.) By the time the *St. Peter's* reached Black Snake Hills—today's Saint Joseph—a few days later, the man's illness had been identified as smallpox. Other people were displaying the initial symptoms of the disease when the boat came to Council Bluffs, 600 miles further upstream, where annuities and trade goods were offloaded. On May 30, Pilcher wrote to the person in charge of a trading post further upstream, advising him that smallpox had been present aboard

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[83] It is probable that in summer, 1837, due to the financial crisis of that year, the government distributed annuities only as far upriver as Fort Pierre. See Sub-Question 1 below.

[84] *Chardon's Journal at Fort Clark, 1834-1839,* ed. Anne H. Abel (Pierre: Dept. of History, State of South Dakota, 1932), p. 118.

[85] Ibid., p. 119.

[86] Smallpox may be spread either through face-to-face contact with an infected person or by inhaling infected particles from the sores or scabs of someone who had the disease that were preserved in clothing, bedding, or other materials. This report will not deal with the medical aspects of smallpox. For the standard compendium, see Frank Fenner, D. A. Henderson, et al., *Smallpox and Its Eradication* (Geneva: World Health Organization, 1988). For medical details as they relate to the Fort Clark epidemic, including the various types of smallpox probably present there, see, e.g., Timbrook, "An Extended Interpretation," ch. 1, and Michael K. Trimble, "Epidemiology on the Northern Plains: A Cultural Perspective" (Ph.D. thesis, University of Missouri-Columbia, 1985), pp. 196-204.

[87] Pilcher to William Clark, St. Louis, February 5, 1838, in "Letters Received by the Office of Indian Affairs, 1824-1880," Microcopy no. 234, National Archives Microfilm Publications (Washington: National Archives and Records Service, 1966), Records of the Upper Missouri Agency, reel 884, 1836-51 (hereafter cited as *Letters Received*, reel 884), frame 273. All items cited in this set have been checked against the microfilm printouts included by Joseph Wenzel in his report to Professor Churchill. Pilcher described the crew member who became ill as a "mulatto."

[88] Pratte said he did so because he needed the man's labor, but he may also have feared that his boat would be quarantined. For cholera aboard the steamboat *Yellow Stone* in 1833 and the resulting quarantine, which Pratte knew about, see Timbrook, "An Extended Interpretation," pp. 46-8.

the boat for 35 days (i.e., since about a week after it left St. Louis) and telling him to warn the Indians in his area to stay away from the post when the *St. Peter's* docked.[89]

When the *St. Peter's* arrived at the Sioux Agency south of Fort Pierre on June 5, Pilcher left the boat, taking with him annuity goods that were distributed to the Yankton and Santee Sioux waiting there to receive them. Five days later Pilcher wrote to William Clark, the Superintendent of Indian Affairs in St. Louis, that smallpox had broken out on the *St. Peter's* and he had been unable to prevent some contact with the Indians when it landed. Although he had sent messages to the other bands of Sioux advising them to stay away from the river and trading posts for the summer, he was afraid that the disease would be "communicated to most of the tribes from the Platte to the Yellowstone."[90]

By the time the *St. Peter's* reached Fort Clark and the nearby Indian villages on June 19, an unknown number of crewmen and/or passengers were recovering from the disease, were actively ill, or had been infected even if they were not yet displaying symptoms. Nevertheless they went ashore to "frolick" that evening with local people. Three Arikara women who had boarded the *St. Peter's* near Council Bluffs left the boat to return to their nearby villages, and a few other passengers may also have remained at Fort Clark. Twenty-four days after the first stop of the *St. Peter's* at Fort Clark, and sixteen days after its downriver pause, Francis (or François) A. Chardon, a fur trader who represented the American Fur Company at the post, noted in his journal that a young Mandan had died of smallpox.[91] Thereafter the disease raged through the Mandan, assisted by the fact that they were living in settled communities, with their substantial, domed earthlodges situated close to each other.[92] Whereas the Mandan are estimated to have numbered around 1,600-2,000 in June of 1837, by October only 138 people were said to be still alive.[93] The Mandans' vulnerability to disease was presumably heightened because the winter had been hard, the spring and early summer were wet and cold, and food was scarce.

The Hidatsa and Arikara were affected somewhat less severely than the Mandan, perhaps in part because many of them were away at summer hunting camps when the disease broke out.[94]

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[89] "Papers of the St. Louis Fur Trade, reels 24-5 (Chouteau Family Collection, Missouri Historical Society, Bethesda, MD: Univ. Publs. of America, 1991, microform, hereafter cited as "Chouteau Family Collection"), Part 1, Pilcher to Jacob Halsey. All items cited in this set have been checked against the microfilm printouts included by Joseph Wenzel in his report to Professor Churchill.

[90] *Letters Received*, reel 884, frame 282. On July 1, Pilcher wrote to Clark that smallpox was spreading among the Indians in his area, with "the whole band scatter[e]d into small parties and flying in alarm" (ibid., frame 277). It seems likely that once smallpox had broken out among the Sioux, the disease would have been communicated to all the other western tribes even if there had not been a secondary infection at Fort Clark, given the frequent contacts (through trade or war) between them.

[91] For Chardon's journal, see section D1 below.

[92] For this and below, see Timbrook, "An Extended Inquiry," ch. 6, which includes information from archaeological excavations at Mitutanka village done in 1909 and research on earthlodges done in summer, 2000 at the Knife River Indian Villages at Stanton, North Dakota. Trimble uses archaeological, cultural, and epidemiological evidence in examining the spread of smallpox within and outside the Mandan villages ("Epidemiology on the Northern Plains," esp. ch. 9).

[93] Thornton, *American Indian Holocaust and Survival*, 96. Thornton notes that there had probably been around 15,000 Mandan in 1738, but they had already been greatly reduced by earlier outbreaks of disease, including smallpox and cholera, and by warfare with other Indian tribes.

[94] For the possibility that some of the Arikara had been vaccinated in 1832 when they were living further south, see Sub-Question 4 below.

Nevertheless, around 70% of the Hidatsa and 50% of the Arikara are thought to have died. Smallpox was transmitted from the *St. Peter's* to the Assiniboine and Blackfeet around Fort Union as well: by the winter of 1837, only tiny remnants of those formerly powerful tribes were left.[95] The pandemic spread over the next three years to Indians living throughout the western United States, including California, and up into Canada. Although the total number of people who died is unknown and in dispute, even a moderate estimate deems it "overwhelming."[96]

It is impossible to read this history without being deeply horrified by the enormous devastation of Indian lives and culture caused by the pandemic. Sources from the period make clear the terror, agony, and hideous deaths brought by smallpox to people who had acquired only limited immunity to the disease through previous epidemics. Smallpox brought unspeakable misery to individual families and communities, cutting a scythe stroke of mortality through many tribes and gravely impairing the continuation of key cultural patterns. Further, without any doubt it facilitated the westward movement of Euroamericans into large regions of the country formerly controlled by Indians. No one, we believe, would dispute those observations.

We understand the grief and anger that have long led some people to see the outbreak as deliberate and to want to pin blame for the tragedy upon a particular group. Professor Churchill forms part of that tradition. The question before us, however, is whether he made appropriate use of evidence in preparing his account of what happened.

C. "Truth," Ways of Knowing, and Racism

Scholars may legitimately disagree in their understanding of historical sources and hence in the interpretations they present of events, especially when eye-witness accounts are limited and biased. As the American Historical Association's "Statement on Standards of Professional Conduct" affirms, "Multiple, conflicting perspectives are among the truths of history. . . . Universal agreement is not a condition to which historians typically aspire. Instead, we understand that interpretive disagreements are vital to the creative ferment of our profession, and can in fact contribute to some of our most original and valuable insights."[97]

There is no single, indisputably "true story" about what happened at Fort Clark and the Mandan-Hidatsa-Arikara villages in 1837. Few of the accounts by people who were there at the time or who heard about it from participants were written down right away, and several were authored by people trying to clear themselves of responsibility for the pandemic that followed. Professor Churchill is entirely free to present his own reading of the evidence. Like scholars in all fields, however, he is expected to present an account that is built upon and supported by that evidence.[98]

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[95] Trimble, "The 1837-1838 Smallpox Epidemic," p. 82.

[96] Thornton, *American Indian Holocaust and Survival*, p. 95. Thornton suggests approximate figures for certain tribes but does not offer a total number (pp. 94-5): see the fuller discussion under Sub-Question 5 below.

[97] On-line at http://www.historians.org/pubs/Free/ProfessionalStandards.cfm, p. 3 of 10, accessed 01/30/2006.

[98] The Committee does not agree with David Henige's statement, quoted approvingly by Professor Churchill, that when scholars are attempting to challenge established historical beliefs about topics for which the evidence is limited, "The aim is to convince without being able to demonstrate. In the circumstances, disputants are forced to take liberties with the evidence and presentation, for to maintain rigorous standards would be to abandon the contest

The Committee recognizes the validity of many ways of knowing about the past. Written sources (whether recorded by contemporaries or produced by more recent scholars) and oral evidence from the traditional histories of native people can sometimes be supplemented by information about material culture from archaeological investigations and by epidemiological analyses of medical problems. Multiple perspectives, providing different vantage points about a given set of events, enhance our ability to understand the complexity of the past. Thus, the oral tradition of a tribe involved in a previous event may force reconsideration of established accounts derived exclusively from written documentation. Not surprisingly, the participants in the 1837 Fort Clark episode who described what happened there and people who wrote accounts based on second-hand information do not provide a single narrative or explanation, nor do subsequent historians. The oral traditions of the Mandan, Arikara, Hidatsa, and Sioux peoples, those closest to the events at Fort Clark, likewise contain multiple and conflicting assessments. We believe that all kinds of sources have value; we privilege none.

We appreciate as well that the methods of learning about and documenting native oral narratives may differ from those employed in a conventional academic interview, when an outside researcher arrives with notebook in hand to ask questions of local people.[99] For some indigenous people around the world, "scientific accuracy" and rigorous documentation are regarded as tools that have helped the dominant culture to trap them in a colonialist reading of their own past.[100] Professor George Tinker, a scholar of American Indian religion, pointed out to our Committee that Indian spokespeople who attempt to correct popular but erroneous impressions of important events or issues may draw upon traditional beliefs and knowledge but be unable to describe their sources in detail.[101] That situation can arise when a person has simply grown up with a particular understanding, having heard it from various members of the tribe over time, rather than in a formal interview on a stated date, or when it is necessary to protect tribal people who fear negative consequences of their statements.

We believe, however, that scholars need to indicate in their published work when they are drawing upon native traditions, even if they cannot provide specific documentation of particular conversations. In his interview with us, Professor Michael Yellow Bird noted that citation is very important in scholarly work and said that if he were referring in an academic publication to knowledge he had gained through conversation with Indian people, he would indicate that source at least in general terms.[102] If possible, he would provide a note stating, "Personal communication," followed by the name of the person and date of the conversation.

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as unwinnable" (*Numbers from Nowhere: The American Indian Contact Population Debate* [Norman: Univ. of Oklahoma Press, 1998], p. 8 (as cited by Professor Churchill in Submission C, with the comment, "Exactly so").

[99] Russell Means told our Committee that when he was 4 years old, his great-grandmother, who was one of the first Christian leaders on their reservation in South Dakota and headed her own church, instructed him that if an anthropologist should ever ask him to describe her history, he should refuse (interview, April 16, 2006). Means remembers the conversation because he did not know then what an "anthropologist" was.

[100] See, e.g., Linda Tuhawai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999), pp. 34-5 and 137-40.

[101] Interview, April 1, 2006. Tinker is Professor of American Indian Cultures and Religious Traditions at Iliff School of Theology in Denver.

[102] Interview, April 15, 2006. Yellow Bird is Director of the Indigenous Nations Studies Program and Associate Professor of American Studies at the University of Kansas. The format he describes follows the conventions of the American Psychological Association, which his field—Social Work—uses.

The Committee accepts Professor Churchill's observation, made in his essays and during the course of this investigation, that some—perhaps many—of the white people who formulated policies about Indians and who dealt with them personally during in the 1820s and 1830s were deeply racist. Animosity against Indians was prevalent among high-ranking government officials in Washington. Their fear and hatred was directed especially against the Indians of the upper Missouri River, particularly those who—like the Arikara and Blackfeet—had not signed treaties with the U.S. government. In 1826, Secretary of War Lewis Cass wrote in an article in the *North American Review*: "The Indians, in that extensive region, are to this day far beyond the operation of any causes, primary or secondary, which can be traced to civilised man."[103] Cass discussed the Mandan and Arikara in particular, and all tribes further up the Missouri by implication. Anti-Indian rhetoric in the 1830s was associated with the policy of "removal," which forced some tribes to move to new locations further west in order to open their former land to white settlers.

Openly racist views were expressed by some of the participants in the 1837 Fort Clark episode as well. Chardon kept a minimal journal that on some days noted little more than the weather and how many rats had been killed, but it constitutes the only written account prepared by an eye-witness during the period leading up to and during the epidemic there. In 1835, Chardon had noted in his journal that the Mandan "are without any exception (except the Crees) the meanest, dirtiest, worthless, cowardly set of Dogs—on the Missouri," and in mentioning that a Mandan war party was just setting off, he commented, "May they never return to their Village, is the Wish of Your Humble Servant."[104] On September 19, 1837, as the epidemic among the Mandan was reaching an end, Chardon estimated that at least 800 had died, commenting: "What a bande of RASCALS has been used up."[105] Indian Agent Pilcher, who worked mainly among the Sioux and was sympathetic to them, was strongly opposed to the Arikara. He commented that they "have long been notorious for their treachery and barbarity" and is said to have told a missionary that he knew no other way to stop the Arikara "than to kill them off."[106]

People attempting to explain how smallpox spread to the Mandan in 1837 have likewise displayed anti-Indian attitudes, whether writing at that time or more recently. In what Mark J. Timbrook has described as "The Art of Deflection," most contemporary observers assigned blame for the epidemic to the Indians themselves.[107] Three of the five whites who were present at Fort Clark or were told about it shortly afterwards by eye-witnesses placed responsibility for the spread of smallpox on Indian people: they said that an Indian stole a blanket from someone

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[103] Cass, "Indians of North America," *North American Review* 24 (1826): 391, microfilm 3299, reel 270, as cited by J. Diane Pearson, "Lewis Cass and the Politics of Disease: The Indian Vaccination Act of 1832," *Wicazo Sa Review*, Vol. 18, No. 2 (2003): 9-35, esp. p. 20, online at http://muse.jhu.edu/journals/wicazo_sa_review/v018/18.2pearson01.html, accessed 02/22/2006.
[104] Chardon, *Journal*, pp. 28 and 34.
[105] Ibid., p. 137.
[106] Pilcher, "Report," 1838, in *The New American State Papers: Indian Affairs*, 1: 500, and S. Allis, in *The Dunbar-Allis Letters on the Pawnee*, ed. W. Wedell (New York: Garland, 1985), 701, both as cited by Pearson, "Lewis Cass and the Politics of Disease," notes 54 and 53.
[107] "An Extended Interpretation," p. 75.

on the ship who had the disease.[108] Several second-hand accounts mentioned a Negro as the person who first came down with the disease aboard the *St. Peter's* and infected others. Explanations like these form part of what Adrienne Mayor has described as a common historical pattern of blaming epidemics on "others," such as a slave, a black, a mulatto, or a vagabond; she notes also the frequency with which blankets appear in stories about smallpox and Indians in the New World.[109] Some twentieth-century writers have demonstrated a different kind of prejudice, expressed often in connection with Indians' alleged lack of understanding of disease, vaccination, and quarantine. Bernard De Voto, regarded as a spiritual figurehead in the history of the American West, used terms like "the neolithic mind" and "the structure of savage thought" when discussing the Mandan epidemic of 1837.[110]

We emphasize, however, that our acknowledgment that virulent anti-Indian sentiments were present in the 1820s and 1830s and that some modern writers have displayed racist thinking does not relieve us of the obligation to investigate the questions before us: whether Professor Churchill makes appropriate use of the sources he cites, whether his account of what happened at Fort Clark is consistent with other evidence, and whether he actually relied upon that evidence in preparing his statements.

D. Evidence concerning Smallpox at Fort Clark in 1837

Because this allegation focuses on the use of evidence, we lay out here the main categories of sources relevant to the Fort Clark situation as a basis for assessing Professor Churchill's account. For anyone attempting to understand events in the past, the basic information must come originally from primary sources: those written or told during the period under study. The oral traditions of Indian people provide further information; accounts written by historians who rely on written documentation offer additional narratives and interpretations. Archaeological excavations carried out at Fort Clark and the nearby Mandan villages do not tell us how smallpox was introduced, but they do shed light on how both Indians and whites lived there. Epidemiological investigation, especially the approach known as "disease ecology," has been helpful in exploring the forms, symptoms, and incubation period of smallpox and how the disease may have spread among the Mandan and other Indians in the 1837 epidemic.[111]

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[108] For these accounts and the following sentence, see Section D1 below. A fourth early source said that smallpox was carried to the Indian villages by women who left the *St. Peter's* at Fort Clark, but the author seemed to place primary responsibility on the captain of the boat for refusing to put ashore the first person to acquire the disease earlier in the voyage; the last blamed the crew of the boat for allowing Indians to come aboard at Fort Clark.

[109] Adrienne Mayor, "The Nessus Shirt in the New World: Smallpox Blankets in History and Legend," *The Journal of American Folklore*, 108, 427 (1995): 54-77. Online through JSTOR at http://links.jstor.org, accessed 02/22/2006.

[110] *Across the Wide Missouri* (Boston: Houghton Mifflin, 1947), pp. 297 and 284. See also section D3 below.

[111] "Disease ecology" integrates cultural, biological, and environmental factors. See, e.g., Michael K. Trimble, "Epidemiology on the Northern Plains," esp. chs. 7-9, and his *An Ethnohistorical Interpretation of the Spread of Smallpox in the Northern Plains* (Reprints in Anthropology, Vol. 33, Lincoln, NE: J & L Reprint Co., 1986). Trimble is Director of the Army Corps of Engineers Mandatory Center of Expertise (MCX) for the Curation and Management of Archeological Collections in the St. Louis District. Trimble's work has been expanded and in some respects questioned by Timbrook, "An Extended Interpretation," ch. 5.

1. Primary sources produced by those present at or informed about Fort Clark

Any attempt to establish exactly what happened and to determine the causes of the smallpox epidemic is hampered by the paucity and contradictions of primary sources. One must also view with some skepticism statements by participants in these events who were attempting to exonerate themselves from wrongdoing by assigning blame to others.

The laconic journal kept by Francis Chardon gives no indication of how smallpox spread from the *St. Peter's* to Indians in summer, 1837. He notes little about the two stops of the *St. Peter's* at Fort Clark and the Mandan villages and does not mention smallpox until several weeks after the second stop.[112] The absence of any reference to smallpox in connection with the *St. Peter's* upstream visit is puzzling, as there must have been people on board with visible evidence of the disease. From July 14 through early September, however, Chardon's journal is full of notes about dead and dying Indians; later it reports the spread of smallpox to neighboring tribes.

Another contemporary source—this from an apparently Mandan perspective—consists of a speech said to have been given by Chief Four Bears as he was dying of smallpox in 1837.[113] The text of the speech was preserved together with Chardon's journal and was later inserted into the appropriate chronological place by the editor of the published volume. Although the authenticity of the speech has been questioned, it seems possible that Four Bears did give such a speech (though perhaps not on the day of his death) and that Chardon was told about it by someone who spoke both Mandan and either French or English.[114] While Four Bears' speech was certainly mediated—translated and transcribed by someone other than its nominal author—it may provide a generally accurate representation of his sentiments. A descendant of Four Bears recited his statement in full in a conversation around 2000 and accepted it as reliable.[115]

Here is Four Bears' speech, said by Chardon to have been given to the Arikara and Mandan on July 30, 1837:

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[112] For Monday, June 19, Chardon, who had gone downriver to meet the *St. Peter's* and rode up to Fort Clark on it, says only: "Started at daylight and arrived at the Mandans at 3 P.M., onloaded the merchandises for the Fort—all hands a Frolicking, found my hunters Out—" (Chardon, *Journal*, p. 118). For Tuesday, June 20, he says: "The Steam Boat left here this Morning early for Fort Union, the Agent for the Mandans has gone above, as he has nothing to give his red children—Halsey has went up to reside at Fort Union—my Hunters arrived with plenty of fresh Meat—" (ibid.). For Wednesday, June 28, he says: "Cold for the season—the S. B. arrived from above at 6 A.M. and started at 7 A.M. The Agent distributed out a few Presents to the Rees [Arikaras], and gave them a few words of good talk, and departed" (ibid., p. 119). The rest of his notes for June 28 deal with other matters. Not until Friday, July 14 does Chardon mention smallpox: "A young Mandan died to day of the Small Pox—several others has caught it—the Indians all being out Makeing dried Meat has saved several of them—" (ibid., p. 121).

[113] Chardon, *Journal*, 124-5. In his journal for July 26, Chardon wrote: "The 4 Bears (Mandan) has caught the small pox, and got crazy and has disappeared from camp—he arrived here in the afternoon" (ibid., p. 123). On July 30, he wrote: "One of our best friends of the Village (The Four Bears) died to day, regretted by all who Knew him" (ibid., 124).

[114] Dollar doubts its authenticity ("The High Plains Smallpox Epidemic," pp. 29-32). The grounds for his concern are that it is recorded in English, which Four Bears would not have used; it uses terms Four Bears would not have employed; Four Bears would not have been physically able to deliver a speech when he was so ill; and Chardon would not have been present at an Indian gathering to hear it anyway. Mark Timbrook also questioned whether Four Bears made the speech, at least not on the day indicated in Chardon's *Journal* (interview, February 18, 2006).

[115] As reported to us by Mark Timbrook, February 18, 2006. It is possible that the man in question was familiar with Chardon's *Journal.*

> My Friends one and all, Listen to what I have to say— Ever since I can remember, I have loved the Whites, I have lived With them ever since I was a Boy, and to the best of my Knowledge, I have never Wronged a White Man, on the Contrary, I have always Protected them from the insults of Others, Which they cannot deny. The 4 Bears never saw a White Man hungry, but what he gave him to eat, Drink, and a Buffaloe skin to sleep on, in time of Need. I was always ready to die for them, Which they cannot deny. I have done every thing that a red Skin could do for them, and how have they repaid it! With ingratitude! I have Never Called a White Man a Dog, but to day, I do Pronounce them to be a set of Black harted Dogs, they have deceived Me, them that I always considered as Brothers, has turned Out to be My Worst enemies. I have been in Many Battles, and often Wounded, but the Wounds of My enemies I exhalt in, but to day I am Wounded, and by Whom, by those same White Dogs that I have always Considered, and treated as Brothers. I do not fear *Death* my friends. You Know it, but to *die* with my face rotten, that even the Wolves will shrink with horror at seeing Me, and say to themselves, that is the 4 Bears the Friend of the Whites—
>
> Listen well what I have to say, as it will be the last time you will hear Me. think of your Wives, Children, Brothers, Sisters, Friends, and in fact all that you hold dear, are all Dead, or Dying, with their faces all rotten, caused by those dogs the whites, think of all that My friends, and rise all together and Not leave one of them alive. The 4 Bears will act his Part— .[116]

Chardon's journal also provides second-hand information about contemporary attitudes of the "Gros Ventre," a tribe that was camped close to Fort Clark in summer 1837. Because white people at that time did not distinguish between the Hidatsa and the "Gros Ventre" living near them, his statement may well reflect Hidatsa opinions.[117] On August 5, Chardon reported that "a great many" of the Gros Ventre had died of smallpox, including several chiefs. "They swear vengence against all the Whites, as they say the small pox was brought here by the S[team] B[oat]."[118]

The life story of an Arikara named Soldier, who was born in 1831 and lived in a village near Fort Clark as a child, was published in 1920.[119] Soldier said that many of the Arikara were attacked by smallpox in 1837 and that many died, including his parents; he himself came down with the disease a little later but survived. He mentioned that a steamboat came up the river in 1837 and that there were whites in the area, but he did not discuss how smallpox was introduced.[120]

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[116] Chardon, *Journal*, pp. 124-5.

[117] This confluence of terms was described to us by Professor Yellow Bird, interview, April 15, 2006, and is mentioned in Joseph H. Cash and Gerald W. Wolff, *The Three Affiliated Tribes (Mandan, Arikara, and Hidatsa)* (Phoenix, AZ: Indian Tribal Series, 1974), p. 16. The Gros Ventre proper were in Montana.

[118] Chardon, *Journal*, p. 126. On July 6, he noted that the Bull band of the Gros Ventres had given "us [presumably those at Fort Clark] a splendid dance" (p. 120).

[119] As an appendix to *The Arikara Narrative of the Campaign against the Hostile Dakotas, June, 1876*, ed. O. G. Libby (Bismarck: North Dakota Historical Collections, Vol. 6), pp. 179-87.

[120] A large collection of traditional Arikara historical narratives published in the 1990s does not include any references to smallpox: Douglas R. Parks, ed., *Traditional Narratives of the Arikara Indians*, 2 vols. (Lincoln: Univ. of Nebraska Press, 1991), and his *Myths and Traditions of the Arikara Indians* (Lincoln: Univ. of Nebraska Press, 1996). A collection of Hidatsa texts published in 1939 does not include any that are historical apart from one twentieth-century one: Robert H. Lowie, *Hidatsa Texts* (Indianapolis: Indiana Historical Soc., 1939).

When news of the 1837 outbreak reached William Clark, Superintendent of Indian Affairs in St. Louis, he asked William Fulkerson, the subagent for the Mandan, to send him a report.[121] Fulkerson, who had only been at Fort Clark that summer during the two brief stops of the *St. Peter's*, responded as follows:

> U[pper] M[iss]o[uri] Sub Agency
> Sept. 20th 1837
> Dear Sir—
>
> It is with regret I have to communicate to you that the small pox has broke out in this country and is sweeping all before it— Unless it be checked in its mad career I would not be surprised if it wiped the Mandan and Rickaree [i.e., Arikara] Tribes of Indians clean from the face of the earth— I also understand that it has broken out among the Assinnaboine and Black feet Indians where it is also causing great havoc and distress.
>
> It was communicated here from a blanket, dearly stolen by a Rickaree, from one of the hands of the Steam Boat St. Peters which arrived here this Spring:— he was just recovering from it when the blanket was stolen.—
>
> It was communicated among the Black feet, by a Blackfoot Indian who left on board the S. B. St. Peters to return to his tribe.— He caught the infection on board the Steam Boat whilst on his passage to the Mouth of the Yellow Stone— Where it will now stop, none can tell.
>
> From Your Most Obdt. & Hble Srvt Wm. N. Fulkerson U. Mo. Ind Sub Agt.
> [To] Genl. Wm. Clarke Supt. Intd. Ind. Affs. St. Louis.[122]

Clark doubted that Fulkerson had written from his post with the Mandan, as his letter implied, and thought that his explanation was unreliable, but the blanket story continued to circulate.[123]

When Clark was later questioned by the Commissioner of Indian Affairs in Washington about the epidemic, he asked Pilcher, as agent for the Upper Missouri, for *his* explanation.[124] Pilcher's report, sent from St. Louis on February 5, 1838, offered a different story. He first described events on the *St. Peter's* prior to his own departure from the boat at the Sioux Agency, including Pratte's refusal to put the sick man ashore. Pilcher continued:

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[121] There is no evidence that Fulkerson went upriver again after his trip on the *St. Peter's* in early summer 1837 (Dollar, "The High Plains Smallpox Epidemic," p. 33). He spent that winter at his home in Saint Charles, Missouri, and resigned his job on March 1, 1838 (Meyer, *Village Indians*, p. 92). Charles Larpenteur, the trader at Fort Union, described Fulkerson as "the greenest of all agents I ever saw" and said he was paid $1500 in 1837 for what was in fact "a pleasure trip from St. Louis to Fort Union" (*Forty Years a Fur Trader on the Upper Missouri*, ed. Elliott Coues, 2 vols. [New York: Francis P. Harper, 1898], Vol. 2, p. 416, misnaming him "Ferguson" but clearly referring to Fulkerson).

[122] *Letters Received*, reel 884, frame 284.

[123] Clark wrote on February 6, 1838 that in his opinion, Fulkerson "relates rather what he had heard, than that which came under his own observation, there being no reason to believe he has visited his Sub Agency since last summer, but much to confirm the contrary opinion" (*Letters Received*, reel 884, frame 271). Fulkerson probably wrote from his home near St. Louis.

[124] William Clark to C. A. Harris, Commissioner of Indian Affairs, February 6, 1838 (*Letters Received*, reel 884, frame 270).

> The manner of its introductions among the Mandans is easily accounted for:— Three Indian women of the Riccara tribe, asked and receiv[e]d permission to go up on the boat to join their tribe who were then living with the Mandans— these women had been living among the Pawnes for some years pass[e]d— they all took the disease and were much afflicted with it when they pass[e]d my Agency and I was informed that they had not recover[e]d from it when they reach[e]d the Mandan Villages some four hundred miles above.[125]

Several white people who were present at Fort Clark described in later years their recollections of what had happened there. The famous ornithologist John James Audubon toured the upper Missouri region in 1843. While there he met Francis Chardon and asked how smallpox had spread to the Indians. The published version of Audubon's *Journals* says that Chardon explained that when the steamboat (which he misnamed the *Assiniboin)* arrived at Fort Clark, many people aboard it had smallpox. "An Indian stole the blanket of one of the steamboat's watchmen (who lay at the point of death, if not already dead), wrapped himself in it, and carried it off, unaware of the disease that was to cost him his life, and that of many of his tribe— thousands, indeed."[126] Although Chardon said he offered a reward for return of the blanket and later sent a messenger to the Indians who were hunting buffalo on the prairie, urging them not to return, he was unable to avert the disaster that followed.

Bernard Pratte, Jr., the captain of the *St. Peter's* in 1837, was interviewed for an article in the *Missouri Republican* in 1879, when he was probably around 75 years old. Pratte was quoted as saying that he "supposed that he was in some measure the innocent cause of this calamity" [the near extirpation of the Mandans by smallpox].[127] During a steamboat trip up the Missouri in 1836 [sic], Pratte "buried 18 men on the voyage up. When he got opposite the Mandan village he had a man on board who had had the small pox and recovered, the wages paid being a temptation to him to continue on the voyage. While on watch during the night an Indian swam on board and stole this man's blanket. Every effort was made to avert the danger, and word was left among the Indians that the thief was on shore with the stolen blanket. The Indians were

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[125] *Letters Received*, reel 884, frames 273-5. Pilcher went on to say that "the only way to protect the Indians against the fatal effects of a disease that has frequently swept off whole nations or so diminished their numbers, as to leave them an easy prey to their enemies, will be to introduce a general system of Vaccination." He then described how vaccination should be carried out. See Sub-Question 4 below.

[126] Maria R. Audubon, *Audubon and His Journals* (ed. Elliott Coues, orig. publ. 1897; repr. New York: Dover, 1960), Vol. 2, pp. 42-3. Audubon said that Chardon continued that he "offered a reward immediately for the return of the blanket, as well as a new one in its stead, and promised that no punishment should be inflicted. But the robber was a great chief; through shame, or some other motive, he never came forward, and, before many days, was a corpse. Most of the Riccarees and Mandans were some eighty miles in the prairies, hunting Buffaloes and saving meat for the winter. Mr. Chardon despatched an express to acquaint them all of the awful calamity, enjoining them to keep far off, for that death would await them in their villages. They sent word in return, that their corn was suffering for want of work, that they were not afraid, and would return. . . . Mr. Chardon sent the man back again, and told them their crop of corn was nothing compared to their lives; but Indians are Indians, and, in spite of all entreaties, they moved *en masse*, to confront the awful catastrophe that was about to follow." Mark Timbrook suggested in his interview with our Committee on February 18, 2006 that the published text of Audubon's journal, as edited by his daughter and Elliott Coues, may not be fully accurate. The *Assiniboin* was another steamboat that plied the Missouri at about that time.

[127] For this paragraph, see interview on November 24, 1879, from the O. W. Collet Scrapbook, Vol. A, pp. 122-3, Missouri Historical Society, St. Louis (photocopy supplied to Professor Churchill by Joseph Wenzel and forwarded to us).

adjured to hunt up the thief and urged to send him out on the plains, there to die alone, without infecting the whole village. The result was that the Mandans were infected with the small-pox and out of 2,500 ONLY SIXTY SOULS WERE LEFT."

A letter written the following summer by an unnamed person in New Orleans seems to have been based upon personal experience at Fort Union during the 1837 epidemic.[128] That account, dated June 6, 1838, says that the disease first broke out around June 15, 1837 among the Mandan, and it describes the terrible devastation wrought by the disease among many tribes. The only explanation offered, however, is that "the small-pox was communicated to the Indians by a person who was on board the steam-boat which went, last summer, up to the mouth of the Yellow Stone, to convey both the government presents for the Indians, and the goods for the barter trade of the fur dealers."

The narrative of his life published many years later by Charles Larpenteur, a fur trader and clerk of the American Fur Company's post at Fort Union, describes events there after the *St. Peter's* landed in 1837 and was found to have smallpox on board, but he does not indicate what happened at Fort Clark or how the epidemic began.[129]

A second-hand account of events at Fork Clark was published seven years later. The artist George Catlin, who visited (and painted) the Mandan during his trip up the Missouri in 1832, later described how smallpox had spread to and among that tribe in an appendix to his book about Indian life, published in 1844.[130] Catlin's narrative, which he titled "Extinction of the Mandans," was based upon "the accounts given by two or three white men, who were amongst the Mandans during the ravages of this frightful disease." Their stories, reported to him in New York in 1838, in one case by a trader who had recently come from the Missouri, were "most appalling and actually too heart-rending and disgusting to be recorded. The disease was introduced into the country by the Fur Company's steamer from St. Louis; which had two of their crew sick with the disease when it approached the Upper Missouri, and imprudently stopped to trade at the Mandan village, which was on the bank of the river, where the chiefs and others were allowed to come on board, by which means the disease got ashore."[131]

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[128] For this paragraph, see the letter published initially in the translator's preface to Maximilian, Prince of Wied, *Travels in the Interior of North America*, Vol. 1, ed. R. G. Thwaites (Cleveland, OH: A. H. Clark, 1905), pp. 33-6 (Vol. 22 of *Early Western Travels*, 1748-1846, ed. R. G. Thwaites); it was reprinted in E. Wagner Stearn and Allen E. Stearn, *The Effect of Smallpox on the Destiny of the Amerindian* (Boston: Bruce Humphries, 1945), pp. 89-90. The author describes what "we" did during the outbreak at Fort Union. The statement that the Mandans were living near the fort at Leavenworth, not Fort Clark, was probably a slip.

[129] Larpenteur, *Forty Years a Fur Trader*, Vol. 1, pp. 131-5. Mark Timbrook said in his interview with us (February 18, 2006) that Elliott Coues, the editor of the volume, took considerable liberties with Larpenteur's actual text; in his "The Smallpox Epidemic of 1837-38," Timbrook notes that Michael Casler, a National Park Service Ranger at Fort Union, has recently rediscovered the original text and is preparing it for print. See also Sub-Question 4 below.

[130] *Letters and Notes on the Manners, Customs, and Conditions of the North American Indians*, 2 vols. (orig. publ. London, 1844; New York: Dover Publs., 1973), Vol. 2, App. A, pp. 257-61.

[131] Ibid., p. 257. Catlin, who says that introduction of smallpox among the Mandan was accidental, noted: "I am constrained to believe, that the gentlemen in charge of the steamer did not believe it to be the small-pox; for if they had known it to be such, I cannot conceive of such imprudence, as regarded their own interests in the country, as well as the fate of these poor people, by allowing their boat to advance into the country under such circumstances."

The remaining second- or third-hand written statements, though of uncertain reliability, are of interest because they suggest the intentional spread of smallpox by means of infected items from St. Louis. None, however, mentions Fort Clark, the Mandan, blankets, or the U.S. Army. In the first, Alexander Culbertson, a trader at Fort McKenzie in what is now central Montana, is said to have alleged that "Bill May" hid pieces of clothing infected with smallpox on the *St. Peter's* at St. Louis because he was angry at being denied passage on her.[132] William P. May was indeed a person involved in the fur trade, but what is known about his whereabouts during the summer of 1837 renders it unlikely that he was in St. Louis at the time the boat set off. Further, his supposed act of retaliation was apparently directed against those who operated or rode on the *St. Peter's*, not against Indians.

The other references concern James Beckwourth (or Beckwith), a mixed-race scout, trapper, and explorer who in the 1830s was trading and acting as a war chief among the Crow along what is now the Montana-Wyoming border. Joe Meek, a mountain man, later recalled that Beckwourth was accused by James Bridger of having intentionally introduced smallpox among the Blackfeet by means of "two infected articles" that he brought upriver from St. Louis on "a Mackinaw boat."[133] Bridger's charge, and Meek's reporting of it, may have been malicious, stemming in part from racially based distrust of Beckwourth, who was commonly termed a "Negro" or even "a mongrel." Other evidence raises the possibility, however, that Beckwourth did ride upriver on the *St. Peter's* in 1837, came down with smallpox while aboard the boat, and communicated it to others. In his late-life interview, Bernard Pratte, Jr. said that Beckwourth had been a passenger on the boat that summer and had caught the disease from some infected items placed aboard the vessel in St. Louis.[134] A missionary with the Pawnee likewise reported that Beckwourth was the person who first came down with smallpox on the *St. Peter's* and spread it to others.[135] If those

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[132] De Voto, *Across the Wide Missouri*, pp. 442-3, note 1, which does not provide a specific reference but points out why Culbertson's statement is unlikely to be correct. Culbertson's diary, which has not been published, is at the Missouri Historical Society. The only recent biography of Culbertson does not mention his accusation or May: Lesley Wischmann, *Frontier Diplomats: Alexander Culbertson and Natoyist-Siksina' among the Blackfeet* (orig. publ. 2000; Norman: Univ. of Oklahoma Press, 2004). May had been paid by Pratte, Chouteau at Fort Union the previous year (see two vouchers dated May 14, 1836 in Chouteau Family Collection, Part I, reels 24-5). Wenzel suggests that May had been living on the *St. Peter's* for 3 weeks before it left St. Louis, but his argument is unconvincing.

[133] Meek's reminiscences, originally published in 1870, are presented in Frances F. Victor, *River of the West*, pp. 231-2, as cited by Elinor Wilson, *Jim Beckwourth: Black Mountain Man and War Chief of the Crows* (Norman: Univ. of Oklahoma Press, 1972), p. 80. For how Beckwourth was labeled, see Wilson, *Jim Beckwourth*, ch. 1. Beckwourth's possible act was mentioned also in a footnote to H. H. Bancroft's *History of the Northwest Coast*, Vol. 2 (San Francisco: A. L. Bancroft, 1884), p. 602 and note 3. Under 1836, Bancroft notes that "the small-pox made its appearance" that year, "attacking the natives with all its early virulence." A note says: "Beckwourth, the negro, was accused, I do not know how justly, of wilfully sowing small-pox among the pestiferous Blackfeet, by disposing to them of certain infected articles brought from St. Louis."

[134] Pratte's rather confused story said that a young trapper in Fort Pierre, angry that he had not been sent money from someone in St. Louis, "out of revenge . . . bundled up some clothes with directions that they be put on board of a steamer." Beckwith, "the renowned desperado, went up on the boat and used the bundle which was put on board as a pillow. He contracted, in consequence, the small-pox." (Interview on November 24, 1879, from the O. W. Collet Scrapbook, Vol. A, pp. 122-3, Missouri Historical Society, St. Louis.)

[135] Revd. Samuel Allis, "Forty Years among the Indians . . . ," *Nebraska State Historical Society Collections*, vol. II (1887), p. 149, as cited by Wilson, *Jim Beckwourth*, pp. 81-2. For Pilcher's account, see section B above. Beckwourth's own narrative, dictated to someone else in his later years, seems to indicate that because he was in a great hurry that summer, he traveled by land from St. Louis to Fort Clark before turning west into Indian country

stories are correct, Beckwourth may have been the "mulatto" described by Pilcher, thus perhaps providing another example of the desire to find a racial "other" on whom to blame the epidemic. Neither of the latter reports suggests, however, that Beckwourth introduced the disease intentionally.

2. Indian oral traditions

Many Indians believe that whites, especially the army, used infected blankets to spread smallpox to their people at some time in the past. As Mayor has observed, mention of a smallpox blanket "works as a shorthand censure of Europeans' treatment of native people in the New World."[136] The oral traditions of some North American tribes mention the deliberate spread of smallpox by whites, though often without reference to a particular period or place.[137]

Some of those generic statements may be based at least in part upon what happened at Fort Pitt in 1763, at the end of the Seven Years' (or "French and Indian") War. This well-documented episode leaves no doubt that British General Jeffery Amherst suggested that smallpox-infected blankets be used to kill the Indians who were attacking Fort Pitt; Captain Simeon Ecuyer, the British commander of the fort, actually approved the inclusion of several smallpox-infected items from a hospital in a diplomatic present to Delaware emissaries who had participated in a parley at the fort in late June.[138] A prize-winning historian of that period has recently noted that "Amherst's genocidal intentions and Ecuyer's abominable act" indicate "the extent to which native peoples had been dehumanized" in the minds of Amherst and his fellow officers.[139]

The general claim that Indians had been deliberately infected with smallpox by whites was expressed during the 1960s and early 1970s by Indian activists. A somewhat more specific

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(*The Life and Adventures of James P. Beckwourth, as told to Thomas D. Bonner* [orig. publ. 1856; Lincoln: Univ. of Nebraska Press, 1972], ch. 28, esp. pp. 394-5).

[136] "The Nessus Shirt," p. 54.

[137] In Submission H, Professor Churchill provided several examples—from written, not oral sources—of Indian tribes that thought that whites had intentionally spread the disease. Only two were chronologically specific, referring to the French in 1616 and Texans in 1843.

[138] British Colonel Henry Bouquet, who was trying to organize troops to relieve the fort, wrote to Amherst that he hoped "to extirpate that Vermine from a Country they have forfeited, and with it all Claim to the Rights of Humanity." "Amherst replied that when Bouquet reached the valley he should try to spread disease among the Indians by passing smallpox-infected blankets among them. 'We must,' he wrote, 'Use Every Stratagem in our Power to Reduce them.'" (For these quotations, see Fred Anderson, *Crucible of War: The Seven Years' War and the Fate of Empire in British North America, 1754-1766* [New York: Alfred Knopf, 2000], p. 542). Although smallpox was already endemic among the tribes in that region, Amherst hoped that the blanket technique might "Exterpate this Execrable Race" (Michael N. McConnell, *A Country Between: The Upper Ohio Valley and its Peoples, 1724-1774* [Lincoln: Univ. of Nebraska Press, 1992], p. 194). For Ecuyer and smallpox-infected items, see Anderson, *Crucible of War*, p. 541. A trader at Fort Pitt wrote sarcastically in his journal, "Out of regard to them [the Indians], we gave them two Blankets and a Handkerchief out of the Small Pox Hospital. I hope it will have the desired effect" (Elizabeth A. Fenn, "Biological Warfare in Eighteenth-Century America: Beyond Jeffery Amherst," *Journal of American History*, 86, 4 (2000): 1552-80, esp. p. 1554). Smallpox was also a problem among white colonial soldiers during the American Revolution: Elizabeth A. Fenn, *Pox Americana: The Great Smallpox Epidemic of 1775-82* (New York: Hill and Wang, 2001), pp. 80-89.

[139] Fred Anderson, *The War That Made America* (New York: Viking, 2005), pp. 237-8.

statement was made by Buffy Sainte-Marie in her 1966 song, "My Country 'Tis of thy People You're Dying." The third stanza says:

> Hear how the bargain was made for West,
> With her shivering children in zero degrees.
> "Blankets for your land" – so the treaties attest.
> Oh well, blankets for land, that's a bargain indeed.
> And the blankets were those Uncle Sam had collected
> From smallpox diseased dying soldiers that day.
> And the tribes were wiped out
> And the history books censored
> A hundred years of your statesmen
> say, "It's better this way".
> But a few of the conquered have somehow survived
> And their blood runs the redder
> Though genes have been paled.[140]

Several branches of the Sioux tribe that were located in the region around Fort Clark in 1837 and had contacts with the Mandan have some oral tradition concerning a smallpox epidemic introduced by whites.

1. Ella C. Deloria, the noted early ethnographer and member of the Standing Rock Sioux, did not document any references to smallpox in the collection of texts she published in 1932.[141] In her novel, *Waterlily*, however, she attributes spread of the disease among the Dakota Sioux to several bundles of blankets that had been "dropped by an army" (presumably of white men) passing through Arapaho territory.[142] Twenty of those blankets, which were much in demand, were then brought to the Dakota and distributed through gifts and exchanges to many others.

2. Vine Deloria, Jr., Ella's nephew, may perhaps have been thinking about a Sioux tradition when he wrote in 1969: "In the old days blankets infected with smallpox were given to the tribes in an effort to decimate them. In the past they were systematically hunted down and destroyed."[143]

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[140] Words and music by Sainte-Marie, from her album "Little Wheels Spin and Spin," put out in 1966: http://creative-native.com/lyrics/mycountry.htm, accessed 02/15/2006. Sainte-Marie, born on a Cree reservation in Saskatchewan, was adopted and raised in Massachusetts and Maine. She received her undergraduate degree in 1962 and later obtained a Ph.D. in Fine Arts from the Univ. of Massachusetts (information from her website, http://www.creative-native.com/biograp.htm, accessed 02/22/2006). It is not clear what particular events she had in mind in the stanza quoted.

[141] Deloria, *Dakota Texts* (orig. publ. 1932; Freeman, SD: Univ. of South Dakota Press, 1978). For a short biography of Ella Deloria, see the introduction to her *Speaking of Indians* written by Vine Deloria, Jr. (Lincoln: Univ. of Nebraska Press, 1998), pp. ix-xix.

[142] Deloria, *Waterlily* (Lincoln: Univ. of Nebraska Press, 1992), pp. 187-8. She states that although people did not realize that the epidemic of smallpox that followed was associated with the blankets, "The new blankets which the sons of Buffalo Boy had brought home were infested with deadly germs, against which the people had no immunity" (ibid., p. 196); see also pp. 208-9. *Waterlily* was completed in 1944 but not published in the author's lifetime.

[143] Deloria, *Custer Died for Your Sins: An Indian Manifesto* (London: Macmillan, 1969), p. 54. His statement does not specify a period or place.

3. Russell Means, a member of the Oglalla Sioux, told us in his interview on April 16, 2006, that when the Fort Clark smallpox epidemic was described to him by elders, they said it had been spread by whites. (His people did not distinguish between the various kinds of whites at the time, whether traders, the army, or missionaries.) The Mandan had come to his tribe to report the sickness spreading among them and to ask for their help.

Oral traditions among the Mandan, Hidatsa, and Arikara tribes contain divergent accounts of the Fort Clark situation.

1. In a conversation held sometime around 2000, a descendant of Four Bears, the Mandan chief who died in 1837, said that the spread of smallpox was deliberate and held the American Fur Company responsible.[144] Quoting Four Bears' speech as recorded in Chardon's *Journal* almost verbatim, he went on to say that an infected blanket was the source of infection but did not indicate how it came into Indian hands.

2. A different tradition says the local Indians agreed that a sick white man could be left ashore in one of their villages (perhaps when the *St. Peter's* passed by on its return trip), and that person infected others. In 1949, the U.S. House of Representatives' Subcommittee on Indian Affairs held hearings concerning the proposed construction of Garrison Dam on the Missouri River in North Dakota. (By submerging a considerable fraction of the land assigned to the Three Affiliated Tribes of Fort Berthold, the dam displaced about 90% of the Mandan, Hidatsa, and Arikara.) One of those who spoke was Jefferson B. Smith, an official delegate of the Tribal Business Council of the Three Affiliated Tribes. Smith said, "The three tribes inhabited the Dakotas and eastern Montana. They were once populous tribes. It is a common knowledge among our older people that on or about the year 1837 a boat drifted down the river bearing some white men, one of which was allowed to remain at an Indian village. He had smallpox. Ravages of the disease nearly exterminated the tribes."[145]

3. Marilyn Hudson, Director of the Fort Berthold Museum and a member of one of the Three Affiliated Tribes, told a member of our Committee that she is unaware of any oral traditions among the Mandan that indicate that the source of the epidemic was infected blankets from the U.S. Army.[146] In the written pieces she sent to us, Hudson discredits statements by contemporary Indian agents and fur traders that tried to shift the blame for smallpox onto native people by saying they stole a blanket.[147] She notes that whereas nearly all Mandan family histories describe people lost to smallpox in 1837, there are

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[144] As described to us by Mark Timbrook, February 18, 2006, who asked us to respect the sensitivity of the matter by not naming this person.

[145] *Hearings before the Subcommittee on Indian Affairs of the Committee on Public Lands, House of Representatives, Eighty-First Congress, First Session, on H. J. Res. 33, April 29, 30, May 2 and 3, 1949* (Washington: U.S. Government Printing Office, 1949), pp. 69-70. Jefferson was a member of the Gros Ventre tribe.

[146] In a telephone conversation with Robert Clinton, February 9, 2006.

[147] An unpublished paper titled "The Three Affiliated Tribes and Smallpox: A Brief Historical Review," February 17, 2003, and an unpublished text of an undated speech, both kindly sent to our Committee by Ms. Hudson (and furnished by us to Professor Churchill).

many different explanations about how the disease was brought to Fort Clark. Hudson believes that the most reliable version is that presented by Jefferson B. Smith, whom she describes as "one of our tribal leaders," at the Garrison Dam hearings in 1949 (see above).

4. In his interview with our Committee on April 15, 2006, Professor Yellow Bird, a member of the Sahnish (Arikara) and Hidatsa tribes who grew up on the Fort Berthold Reservation, said that people in his tribes object to the laying of responsibility for the 1837 epidemic upon the three Arikara women who left the *St. Peter's*. He reported that the older people he has talked to generally agree that smallpox was introduced deliberately by whites, but their narratives do not specify which whites those were, whether the military or traders. Some accounts mention the *St. Peter's*, and his people talk about how the disease could have been spread, through blankets, clothing, or other materials, but their traditions do not provide a definite answer. He has found no major differences between Mandan, Arikara, and Hidatsa descriptions.

5. Mark J. Timbrook of Minot State University is a local historian who has been studying the Mandan smallpox epidemic of 1837 for 18 years.[148] Although not himself an Indian, he has many contacts within the community and has collected oral evidence about the Fort Clark history from certain members of the Three Affiliated Tribes. Noting that "many of the elders still maintained a very high degree of sensitivity" to the issue of the smallpox epidemic, Timbrook said that several of the people with whom he talked said the disease started when the steamboat came upriver but did not mention blankets.[149] He has himself encountered no oral traditions that indicate that the U.S. Army was involved in spreading smallpox. He was told by a tribal member "who has access to the entire community" that most accounts conclude that introduction of the disease was probably accidental, not deliberate. Timbrook found also that tribal accounts of the Fort Clark episode vary: Mandan and Hidatsa versions, which are quite similar, are more inflamed and include those people who allege the deliberate spread of smallpox, whereas Arikara narratives are generally less angry.

3. Historical accounts based upon written documents

Historians who rely on written records have not concluded that smallpox was introduced deliberately among the Mandan at Fort Clark in 1837, but many writers assign blame to those in charge of the *St. Peter's* for continuing its voyage upriver after the disease had been identified.

The first major history of the fur trade, published in 1902 by H. M. Chittenden, describes the horror of the smallpox epidemic among the Indians of the Upper Missouri and offers a detailed account of how it began.[150] His narrative is based upon letters from the American Fur

[148] Interviewed by our Committee on February 18, 2006. Timbrook, who wrote his M.A. thesis in History at Vermont College of Norwich University about the epidemic, has also consulted an extensive array of primary written sources and been present at several archaeological excavations.
[149] Another person he interviewed was described in heading (1) of this section.
[150] *The American Fur Trade of the Far West,* Vol. II (Stanford, CA: Academic Reprints, 1954), pp. 619-27.

Company's posts along the river, the letter from New Orleans in 1838, Audubon's statement about what Chardon told him, and Larpenteur's journal. Since Chittenden's account forms the basis for much subsequent work, it is worth summarizing.

Chittenden notes that the disease was introduced by the annual steamboat sent upstream by the American Fur Company. Although smallpox had broken out aboard the *St. Peter's* by the time it reached Fort Pierre, with several deaths before it reached the Mandan at Fort Clark, the ship did not turn back. Chittenden says, "The course of the American Fur Company on this occasion was in many respects culpable, for, knowing the terrible effects of the disease, it should not have permitted the infected boat to visit the tribes. The situation, however, was a very difficult one to deal with. The Indians expected the boat and knew that it had many goods for them, and if it had failed to arrive they could never have been made to understand that it was not because of an attempt to rob them. Moreover, to have returned and sent up another steamboat would have been impossible, for the river would have been too low by that time. As the company would be the greatest sufferer from an epidemic among the Indians, they can not be accused of any selfish motives in the course they pursued. Nevertheless that course was very ill-advised. It would have been better to have put the goods on shore, and have fumigated them, and then to have taken them up in keelboats. Such, however, was not the decision."[151] Chittenden then describes the unsuccessful efforts of the company's officers to keep Indians away from the boat.

Another influential account of the Fort Clark situation came nearly a half-century later, in De Voto's *Across the Wide Missouri.* A brilliant essayist (though not a trained historian), De Voto grippingly narrates the Fort Clark story in a chapter entitled, "The Conqueror (1837)." While his account is written with great sympathy for the Mandan and emphasized Chardon's hatred for them, De Voto denies that smallpox had been introduced deliberately.[152] (He mentions the story that Chardon told Audubon about a stolen blanket, commenting that while there was "nothing improbable" about the story, it had "a quality of legend and reappears at Fort McKenzie and, in fact, nearly everywhere else.") Rejecting "the abuse heaped on the American Fur Company," De Voto argues that the local agents of the company would have been willing to sacrifice that year's trade to protect future trade. In strikingly racist terms, he says that the agents indeed tried to do that but "failed because of the state of human knowledge and the nature of the neolithic mind."[153]

More recent scholarship has downplayed the possibility of a stolen blanket. Roy W. Meyer's book on *The Village Indians of the Upper Missouri: The Mandans, Hidatsas, and Arikaras,* published in 1977, is regarded as a standard work on the history of those tribes. Meyer places blame on Captain Bernard Pratte, Jr. for refusing to turn the *St. Peter's* around and return to St. Louis after smallpox became apparent: "Commercial considerations dictated that the boat make its round of visits to the forts, whatever the consequences to the Indians along its route."[154] He mentions the blanket story but comments that "the precise manner in which the smallpox reached the Mandans is perhaps of little importance, since Captain Pratte's insistence upon making his

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[151] Chittenden, *The American Fur Trade,* pp. 620-21.
[152] *Across the Wide Missouri,* pp. 279-301. The quotation below is on p. 281. The book's impact was heightened by the colored reproductions of contemporary drawings and paintings of Indian life that accompanied it.
[153] Ibid., p. 296.
[154] Meyer, *Village Indians,* p. 91. The quotation below is on p. 92.

regular journey made it inevitable that the disease would be transmitted to them in one way or another."

Clyde D. Dollar, in his article, "The High Plains Smallpox Epidemic," written also in 1977, argues that smallpox was inadvertently spread by sick people aboard the *St. Peter's* who left the boat at Fort Clark or the nearby Indian villages.[155] Dollar suggests that although we cannot determine whether the blanket theft actually took place, the story may have "provided an understandable explanation for a disaster so massive and so hideous that it defied comprehension." Although Dollar's description of actual events is in general scholarly, drawing upon letters submitted to the Office of Indian Affairs, his essay ends with a far more subjective conclusion: "No finger of responsibility for the disaster should now be pointed at any person or institution, since the evidence no longer will support such a judgment. Rather, the hapless actors in this tragedy acted out their parts as dictated by chance and their own human frailties of limited understanding of invisible forces. To condemn under these circumstances is to go beyond the role of the historian and encroach on that of the demagogue."[156]

R. G. Robertson's book, *Rotting Face: Smallpox and the American Indian*, published in 2001, focuses on the epidemic of 1837. It vividly integrates elements based upon historical evidence with the author's descriptions of what he thinks probably happened. Robertson agrees that while it is possible that a stolen blanket started the outbreak at Fort Clark, the more likely cause was direct human transmission.[157] Robertson faults Pratte, Chouteau & Company as owner of the *St. Peter's* and more particularly Captain Pratte for failing to turn the boat back and go into quarantine once it became clear that someone was ill with smallpox. Robertson argues that Pratte's refusal to accept the advice of the Indian agent stemmed from the fact that if he had reported smallpox on board, he would have had to burn his cargo. Robertson believes that Pratte would not have intentionally killed off his best customers, the Indians. He was therefore "not guilty of premeditated genocide, but he was guilty of contributing to the deaths of thousands of innocent people. The law calls his offence criminal negligence. Yet in light of all the deaths, the almost complete annihilation of the Mandans, and the terrible suffering the region endured, the label criminal negligence is benign, hardly befitting an action that had such horrendous consequences."[158]

E. Investigation and Findings concerning Five Sub-Questions

Because Allegation D is very broad, we broke it down into five sub-questions, considered sequentially below.

1. Is there any reasonable basis for Professor Churchill's claim that smallpox was spread intentionally by the U.S. Army to Mandan Indians at Fort Clark in 1837 by means of infected blankets?

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[155] *Western Historical Quarterly*, 8 (1977): 15-38. The quotation below is on p. 38.
[156] Ibid., p. 38.
[157] Robertson, *Rotting Face* (Caldwell, ID: Caxton Press), pp. 299-303.
[158] Ibid., p. 303.

2. Is there any reasonable basis for Professor Churchill's claim that those blankets had been taken from a smallpox infirmary in St. Louis?

3. Is there any reasonable basis for Professor Churchill's claim that army doctors or the post surgeon advised the Indians to scatter after smallpox broke out among them?

4. Is there any reasonable basis for Professor Churchill's claim that the army had stored rather than administered a smallpox vaccine distributed for the purpose of inoculating Indians?

5. Did Professor Churchill misuse the sources he cites when describing how many Indians died in the pandemic that followed the Fort Clark situation?

Sub-Question 1. Is there any reasonable basis for Professor Churchill's claim that smallpox was spread intentionally by the U.S. Army to Mandan Indians at Fort Clark in 1837, using infected blankets?

a. Professor Churchill's statements and what the sources he cites say

1. In "Bringing the Law Home" (published in 1994), Professor Churchill writes: "Such tactics [deliberate spread of disease by the British among American Indians during the colonial period] were also continued by the United States after the American Revolution. At Fort Clark on the upper Missouri River, for instance, the U.S. Army distributed smallpox-laden blankets as gifts among the Mandan. The blankets had been gathered from a military infirmary in St. Louis where troops infected with the disease were quarantined" (p. 35).

   He does not give a year for when this happened and provides no references for those sentences, but at the end of the paragraph, he provides the following note: "The Fort Clark incident is covered in Thornton, op. cit. [*American Indian Holocaust and Survival*], pp. 94-6."

   That wording indicates that his account was based on Thornton, whereas in fact Thornton says something quite different about the Fort Clark situation. On pp. 95-9 (not 94-6), Thornton discusses the Mandan situation in some detail. He says that that the disease was spread by people on the steamboat who had smallpox and/or by Indians who came in contact with them after the boat had first stopped at Fort Clark and then gone on to the Mandan villages. He says that this started a "pandemic," but he does not mention blankets or suggest deliberate infection on the part of the U.S. Army or the American Fur Company. Professor Churchill therefore misrepresents what Thornton says.

   Professor Churchill claimed in Submission B that he cited Thornton *only* with reference to the numbers who died, but his wording in the note itself, as described above, says something different.

2. In "Since Predator Came" (published in 1995), Professor Churchill writes (after mentioning Amherst in 1763): "In a similar instance, occurring in 1836, the U.S. Army

knowingly distributed smallpox-laden blankets among the Missouri River Mandans; the resulting pandemic claimed as many as a quarter-million native lives[10]" (p. 28).

Note 10 says, "The dispensing of small-pox-infected blankets at Fort Clark is covered in Russell Thornton, *American Indian Holocaust and Survival,* pp. 94-96. As above, that is a misrepresentation of Thornton.

By saying that the Army "knowingly" distributed the blankets, Professor Churchill has intensified the accusation.

This is the first place that he describes the year incorrectly as 1836.

3. In "Nits Make Lice" (published in 1997), Professor Churchill writes: "Only slightly more ambiguous [than Amherst's order in 1763] was the U.S. Army's dispensing of 'trade blankets' to Mandans and other Indians gathered at Fort Clark, on the Missouri River in present-day North Dakota, beginning on June 20, 1837. Far from being trade goods, the blankets had been taken from a military infirmary in St. Louis quarantined for smallpox, and brought upriver aboard the steamboat *St. Peter's*" (p. 155).

   He provides no references for those sentences.

4. In "That 'Most Peace-Loving of Nations'" (published in 2003), when describing several different events in 1836 (again the wrong year), Professor Churchill says: "At Fort Clark, on the upper Missouri River, army officers distribute as 'gifts' blankets taken from a smallpox infirmary among Mandan leaders assembled at a parlay requested by the military" (p. 48).

   He provides no notes for any of his chronological statements, although the general opening pages of the essay are referenced. At the back of the book is a list of "Sources Used in Preparing the Chronologies" (pp. 302-09). It does not include works that discuss Fort Clark.

5. In "An American Holocaust?" (published in 2003), Professor Churchill presents a narrative that is very similar to previous statements (including the wrong year), but it contains several new and more extreme claims:

   (a) "In 1836, at Fort Clark, on the upper Missouri River, the U.S. Army did the same thing as Amherst. It was considered desirable to eliminate the Mandans, who were serving as middlemen in the regional fur trade, and, by claiming a share of the profits in the process, diminishing the take of John Jacob Astor and other American businessmen. So the commander of Fort Clark had a boatload of blankets shipped upriver from a smallpox infirmary in St. Louis, with the idea of distributing them during a 'friendship' parlay with the Mandans" (pp. 54-5).

   Professor Churchill provides no specific reference for those statements, which go beyond his earlier essays in saying that the goal was to "eliminate" the Mandans so as to remove middlemen payments in the fur trade.

   (b) "There's a bit of confusion as to whether they [the U.S. Army and/or the commander of Fort Clark, subject unclear] actually started passing them out, or whether some young Indian men 'stole' a couple of blankets, but it really doesn't matter, because the army was planning on distributing them anyway" (p. 55).

   No reference is given here, but at the end of that paragraph, four sentences later, Professor Churchill cites Stearn and Stearn, *The Effect of Smallpox on the*

> *Destiny of the Amerindian*, 89-94. On pp. 89-90, Stearn and Stern reproduce the unidentified letter written from New Orleans the following year, apparently by someone who had been at Fort Union.[159] That letter provides no support for Professor Churchill's account. Nor do the later pages cited in Stearn and Stearn, which discuss the 1840s and total numbers who may have died.

The Committee therefore finds that Professor Churchill has misrepresented the sources he cites and that they do not support his claim.

b. Discussion

Although Professor Churchill has chosen to provide detailed references for many of his statements, these essays are broad surveys that might otherwise not require specific notes.[160] As he noted in Submission H, "I have never addressed the issue of Fort Clark other than in passing." But since the citations he does provide do not support his accounts, one must ask on what information he did base his statements. Our Committee has therefore investigated whether Professor Churchill may have been drawing upon other evidence that he did not cite expressly, a process that gave him considerable benefit of the doubt. To do so, we explored both written and oral sources.

(1) Written accounts

In his submissions and interviews with the Committee, Professor Churchill provided no persuasive written evidence to back his claim for the intentional distribution of infected blankets to Mandan Indians by the U.S. Army.

Nor did our own investigation yield other written sources that support that position.[161] As described above, accounts written by fur traders and Indian agents in 1837-1838 do not support Professor Churchill's account of what happened, though their explanations must be questioned since they were trying to absolve themselves of responsibility for the disaster. Two rather dubious nineteenth-century sources written by whites claim that individual people introduced smallpox by means of infected items from St. Louis, but they do not refer to the army, blankets, Fort Clark, or the Mandan. Blankets imported from Britain were certainly among the trading goods of the American Fur Company carried by the *St. Peter's* on its voyage up the Missouri and may have been among the annuities distributed to tribes as far north as Fort Pierre.[162] Contemporary accounts that present a Mandan or Gros Ventre/Hidatsa perspective accuse whites of having spread smallpox and in one case mention the steamboat but do not say which whites

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[159] See section D1 above. Stearn and Stearn, pp. 81-2, describe the Fort Clark situation briefly but in terms unlike Professor Churchill's narrative.
[160] See Introduction, section F, above.
[161] See section D1 above for this paragraph.
[162] English blankets were listed in an inventory of the trade goods carried on the *St. Peter's* for the American Fur Company (as discovered and reported by Mark Timbrook, interview, February 18, 2006). French blankets had been ordered by Pratte, Chouteau but did not arrive before the boat left: Chouteau Family Collection, Part 1, p. 205, letter from Pierre Chouteau in St. Louis to P. D. Papin in Fort Pierre, April 16, 1837.

were responsible or mention blankets as the source of infection. Similarly, we found no written historiographic tradition that backs Professor Churchill's interpretation.

In his essays, Professor Churchill refers to "the U.S. Army" or "army officers" at Fort Clark and to a "commander" there. Even if one accepts his argument (made in Submission B) that those terms were "shorthand" that applied also to policies of the Department of War and therefore to the local agents of the Office of Indian Affairs, which was an administrative unit of the Department of War, we found no evidence that the army had any representatives at Fort Clark.

Michael Trimble and Mark Timbrook, both of whom are familiar with the archaeological evidence as well as other sources, said that neither the army nor the Office of Indian Affairs had a building or physical presence at Fort Clark, nor did they maintain any personnel there.[163] At all the upriver posts, the Office made use of the American Fur Company's transportation system and facilities; it had a spokesperson at Fort Clark only when the subagent for the Mandan area made his visit each summer. Fulkerson, the subagent who traveled upriver on the *St. Peter's* in June 1837, was certainly not resident at Fort Clark, as Professor Churchill has claimed.[164] Chardon represented the American Fur Company.

In Submission B, Professor Churchill commented: "Recall that I was working in part from [Evan S.] Connell [*Son of the Morning Star*], and that, contrary to Brown, Connell does indicate that 'soldiers' were stationed at Fort Union."[165] Several factors weaken Professor Churchill's claim.

1. In his printed essays, Professor Churchill does not give any indication that he was using Connell as a source of information except for the number of Indian deaths (see below).

2. Professor Churchill's decision to rely upon Connell's book is puzzling. Connell is an acclaimed and highly respected author of novels, short stories, and essays. *Son of the Morning Star*, his dramatic and well-received book about Custer (later filmed for television), was written for the general public. Connell provides no notes to the sources of his information, and it is possible that parts of the book are slightly fictionalized. Thus it is not a scholarly source for the events Professor Churchill is describing.

3. Connell's reference to "soldiers" relates to Fort Union, 300 miles further upstream from Fort Clark. (Mark Timbrook, drawing upon Larpenteur's original account, demonstrates that those "soldiers" were actually local fur traders who left the fort to retrieve some horses stolen by Indians.[166])

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[163] Interviews with both people on February 18, 2006. Timbrook said that the most outlying cantonment of the U.S. Army on the Missouri River in 1819-1827 was where Council Bluffs is now located; by 1837 the army had moved back to Leavenworth. All the upper "forts" were merely posts managed by the American Fur Company.
[164] Submission B.
[165] Connell's biography of Custer was published in New York: Harper, 1984. The second reference is to Thomas Brown, "Assessing Ward Churchill's Version of the 1837 Smallpox Epidemic": http://hal.lamar.edu/~brownf/Churchill1.htm, updated on February 13, 2005. An earlier draft of that posting triggered this allegation.
[166] Interview, February 18, 2006.

Neither did we encounter evidence that infected blankets were "distributed" by any representative of the military or government at Fort Clark.[167] Timbrook believes that Fulkerson did not hand out any annuity goods there in 1837: the financial crisis of that year and resulting shortage of specie evidently impaired the government's ability to provide the normal annuities to the upper Missouri Indians.[168] In an interview with our Committee, Professor Churchill agreed that no annuities were distributed higher than Fort Pierre in 1837.[169] That admission appears to throw into doubt his claim that the U.S. Army—or any government representative—was responsible for the introducing the epidemic among the Mandan through infected annuity blankets. Any intentional spread of smallpox via infected blankets must then have occurred through the trade goods carried on the *St. Peter's.* [170]

We have seen no evidence to support Professor Churchill's claim that the U.S. Army intended to kill off the Mandan Indians. It is certainly true, as we have observed, that some people in the U.S. Army and Department of War held strong anti-Indian views.[171] By the later 1830s white settlers were starting to put pressure on the government to deny Indian claims to land along the lower Missouri, in what is now Missouri and Kansas. No sources show, however, that whites were trying to take up land in North Dakota: that did not happen until later in the nineteenth century.

During the course of our investigation, Professor Churchill raised the possibility that it may have been the fur company, not the army, who wanted to destroy the Mandan.[172] Because, however, he did not mention that idea in his printed essays, we will not discuss it in detail. We note, however, that during the second half of the 1830s, although the Mandan, Hidatsa, and Arikara were still providing a small volume of furs to the fur company, they were not important intermediaries in that trade: they had been greatly reduced in numbers and hunting area, due in part to earlier outbreaks of disease, including smallpox.[173] Professor Churchill said himself in Submission B that "Pratte and Chouteau no longer required the services" of the Mandan, Arikara, and Hidatsa as brokers between their own buyers and Indians living further to the west

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[167] In several of his essays, Professor Churchill says the blankets were distributed, or were intended for distribution, at a "parlay requested by the military" or at a "friendship parlay" that the U.S. army called with the Indians (e.g., "That 'Most Peace-Loving of Nations'," p. 48, and "An American Holocaust?," p. 55). In the course of this investigation, Professor Churchill told our Committee that he meant by that term the annual distribution of goods by the Indian agent to the Mandan. While we find no evidence that the army was involved, we are willing to accept that an annuity distribution could perhaps be called a "parlay," but it was not a parlay in the sense of a temporary truce for negotiation between warring opponents.

[168] Interview, February 18, 2006, based upon the original version of Larpenteur's diary, and see his "The Smallpox Epidemic of 1837-38," pp. 43-8. Annuities for the entire Missouri River were provided by the Quartermaster Corps in St. Louis. The *St. Peter's* was 3 weeks late in leaving St. Louis in 1837 because of difficulties in obtaining supplies (Chouteau Family Collection, Part 1, p. 205, letter from Pierre Chouteau in St. Louis to P. D. Papin in Fort Pierre, April 16, 1837).

[169] Interview, April 1, 2006.

[170] British trade blankets were, however, brought upriver in two containers that had been bound and sealed at the point of manufacture, which lessens the likelihood that they were infected while in St. Louis (Timbrook, interview, February 18, 2006, based on the inventory of the American Fur Company's goods).

[171] For racism, see section C above. For below, see, e.g., *Letters Received*, reel 884, frame 242, Joshua Pilcher to C. A. Harris, September 30, 1837.

[172] Interview, February 18, 2006.

[173] Timbrook, interview, February 18, 2006, and his "The Smallpox Epidemic of 1837-38," p. 33.

and north: the company had now established direct contacts with those tribes. It is not clear how that statement relates to his subsequent questioning of the motives of the fur company.

Shortly before the completion of this investigation, Professor Churchill suggested yet another possibility: that James Beckwourth (Beckwith) may have been the source of smallpox.[174] If, as we believe, Professor Churchill did not mean to suggest that Beckwourth deliberately spread the disease to the Indians, he has retreated even further from his original claim about the U.S. Army. Further, Professor Churchill's submission shows that he became interested in Beckwourth through the report he received from Joseph Wenzel in March 2006: there is no indication that he had Beckwourth in mind when writing his published works.[175]

This allegation provides another example of Professor Churchill's practice of referring to essays that he claims to have written himself as if they were independent authorities. In Submission H, when discussing an article by Guenter Lewy, Professor Churchill drew attention to the fact that Lewy notes that Lenore A. Stiffarm and Phil Lane, Jr. support Churchill's claim that the U.S. Army started the pandemic of 1837-40 by distributing smallpox-infected blankets at Fort Clark.[176] Professor Churchill gave no indication in that submission that he claims elsewhere to have authored the Stiffarm and Lane essay himself (see discussion of Allegation F, below).

(2) Oral traditions

In the essays discussed in this allegation, Professor Churchill makes no mention of oral traditions in discussing the Fort Clark episode and gives no indication that he made any use of them in writing those statements. All his references are to printed sources. Similarly, he did not raise the question of oral traditions during the early stages of inquiry into this allegation.[177]

The possibility that Professor Churchill might have drawn upon oral evidence when writing his essays emerged for the first time in an interview with our Committee on January 28, 2006. Raising the issue of tribal oral traditions as sources for the Fort Clark situation, Professor Churchill implied that he had utilized them in his accounts. His wording led us to understand that he had himself talked with members of the Mandan, Hidatsa, or Arikara Nations. When we sent him a list of specific questions about this allegation on February 13, 2006, we therefore asked him to provide details about how and when he had acquired that knowledge.[178] He has never done so. Instead, in our conversation on February 18, 2006, he said that he had been

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[174] Interview, April 1, 2006, and Submission I.

[175] Wenzel presented an elaborate but not well supported theory combining two elements: (1) only the U.S. Army had the "motive, method and moment" to provide smallpox-infected annuities, including blankets, to the Upper Missouri tribes, whom it wanted to remove from land desired by white settlers; and (2) Beckwourth, who he claims had been living aboard the *St. Peter's* during a 3-week delay in its departure from St. Louis, traveled upriver on the boat and was the first person to contract smallpox, spreading it subsequently to others.

[176] Professor Churchill was criticizing Lewy's piece, "Were American Indians the Victims of Genocide?" The Stiffarm and Lane essay is "The Demography of Native North America" in *The State of Native America*, pp. 23-53. Professor Churchill also accused Lewy of "extraordinarily sloppy scholarship" for misreporting the number of sources he cited for one of his Fort Clark accounts (Submission H).

[177] E.g., oral sources are not mentioned at all in his Submission B, written in May 2005.

[178] Although the standard scholarly format for describing an interview requires the names of the interviewee and interviewer, the date, and the location of the conversation, we would—as discussed above—have accepted less precise documentation (see section C above).

referring to oral traditions more generally, based on other people's work, and would send us written references the following week. He also indicated that he could bring in Hidatsa and Blackfoot professors to speak about their oral histories as well as several other influential Indians who would support his use of oral materials to challenge established interpretations based upon written sources. The Committee expressed its interest in talking with all those witnesses.

In a discussion on April 1, 2006, Professor Churchill acknowledged that he was not personally familiar with the traditions of the Three Affiliated Tribes but said he had gained his understanding of the Fort Clark episode through conversation with a Hidatsa professor whose name he asked us not to include in our report. Subsequently he notified us (as we had learned ourselves) that the person he had mentioned is not from one of those tribes. He later suggested that we interview Professor Michael Yellow Bird, which we did on April 15, 2006. Professor Yellow Bird said in response to a question from Professor Churchill that there is nothing in the latter's account of the Fort Clark situation that contradicts his people's traditions, but he also stated expressly that he had not met or had any communication with Professor Churchill until September 2005 (i.e., 2-11 years *after* the essays in question were published).

On April 3, 2006, Professor Churchill submitted his response to the questions about Allegation D raised in the letter of February 13 and the interview of February 18. Now he no longer claimed that he had detailed sources of information about the Fort Clark episode from talking with tribal people. Instead he wrote (in Submission H) that he "made no effort to offer corroboration of anything other than the number of fatalities" presented for the ensuing pandemic because he considered his account to be "rather self-evident—such stories have been integral to native oral histories for centuries; I've heard them all my life."[179] He then listed diverse sources that refer to the idea that whites had communicated smallpox to Indians, often through infected blankets, at some time in the past. None of those sources refers specifically to Fort Clark or the 1837 epidemic.

Whereas Professor Churchill thus provided no evidence that when writing his essays he had used the oral traditions of the tribes who were at or near Fort Clark when the epidemic began, our investigation found that the Indians whose reactions n 1837 were recorded and at least one of the oral traditions of the relevant tribes do contain some reference to the deliberate spread of smallpox by whites, a term that may have included the U.S. Army.[180] A few sources mention infected blankets.

c. Conclusions concerning Sub-Question 1

1. Our investigation has found that there is some evidence in written accounts of Indian reactions in 1837 and in native oral traditions that would allow a reasonable scholar who relies heavily on such sources to reach Professor Churchill's interpretation that smallpox

[179] The sources he cited are Buffy Sainte-Marie's, "My Country 'Tis of Thy People You're Dying"; Vine Deloria Jr.'s "Indian Manifesto," in *Custer Died for Your Sins*; Jared Diamond's "celebrated puff-piece," *Guns, Germs and Steel*; "serious works of scholarship" like Ann Ramenofsky's *Vectors of Death;* and the popular TV series, "Dr. Quinn, Medicine Woman." Most of those examples do not refer to a specific period or place.
[180] See sections D1 and 2 above. Indians at the time rarely distinguished between white traders and white soldiers.

was introduced deliberately among Mandan Indians near Fort Clark by the U.S. Army, using infected blankets.[181] We therefore do not conclude that he fabricated his account.

2. Professor Churchill did not, however, give any indication in the text or notes of his published essays that he himself was drawing upon Indian oral traditions, as he subsequently claimed. If those were indeed his sources, he deviated significantly from accepted research practices by not acknowledging and giving appropriate recognition to native traditions in his publications.

3. During the course of our investigation, Professor Churchill was unable to present any evidence that demonstrates that at the time he wrote those essays he was basing his account upon knowledge of the oral traditions of the tribes that were at or near Fort Clark in 1837. Instead he disrespectfully introduced Indian sources only belatedly, as a defense against this allegation.

4. Professor Churchill has misrepresented several of the published works that he cites in his essays, a form of falsification.

5. During our investigation Professor Churchill raised two alternative explanations for the spread of smallpox, suggesting that he recognized that the evidence may not support his accusation of the U.S. Army.

Sub-Question 2. Is there any reasonable basis for Professor Churchill's claim that those blankets had been taken from a smallpox infirmary in St. Louis?

a. Professor Churchill's statements and what the sources he cites say

In "Bringing the Law Home" (1994), Professor Churchill writes: "At Fort Clark on the upper Missouri River, for instance, the U.S. Army distributed smallpox-laden blankets as gifts among the Mandan. The blankets had been gathered from a military infirmary in St. Louis where troops infected with the disease were quarantined" (p. 35). He provides no references for those particular sentences, but a note at the end of the paragraph says: "The Fort Clark incident is covered in Thornton, op. cit. [*American Indian Holocaust and Survival*], pp. 94-6." Thornton, pp. 95-9, makes no reference either to blankets or to any items taken from a military infirmary in St. Louis.

A similar assertion is made in "'Nits Make Lice.'"[182] The wording in "An American Holocaust" is slightly stronger, as Professor Churchill refers to "a boatload of blankets shipped upriver from a smallpox infirmary in St. Louis" (p. 55).

[181] Other oral traditions among the tribes involved and written primary sources suggest different explanations (see sections D1 and 2 above).

[182] "Far from being trade goods, the blankets had been taken from a military infirmary in St. Louis quarantined for smallpox" (p. 155).

b. Discussion

We have found no evidence to support this claim. Several nineteenth-century sources written by whites assert that individual men introduced smallpox by means of infected items from St. Louis (see section D1 above), but they do not refer to blankets or say that the contaminated goods came from a smallpox hospital.

Mark Timbrook has searched the St. Louis newspapers for 3 years on either side of 1837 looking for mentions of smallpox at the military base there ("Jefferson Barracks").[183] He has found none. Mark Timbrook pointed out also that the Indian tribes who received annuities were accustomed to new, good-quality, and generally imported goods. He doubts that they would have accepted used, poorly made hospital blankets.

Professor Churchill in his Submission B in effect withdrew his claim that smallpox-infected blankets had been taken from an infirmary in St. Louis. He wrote: "The mention of St. Louis raises the matter of the smallpox infirmary. In actuality, it was not located in the city. The reality—that the infirmary was situated aboard the *St. Peter's* itself—is much worse."[184]

If Professor Churchill has abandoned his original position that infected blankets from a military infirmary were placed on board the *St. Peter's* for distribution to Indians, his argument for the premeditated introduction of smallpox—planned before the steamboat left St. Louis—is gravely weakened.

Any charge that smallpox was spread deliberately must then shift to what happened after the boat departed from St. Louis. In Submission B, though not in his published essays, Professor Churchill said that the failure of the *St. Peter's* to return to Fort Leavenworth and go into quarantine once smallpox had broken out aboard ship demonstrates the intentional spread of smallpox: Captain Pratte and the two Indian agents were therefore guilty of genocide.[185] Because, however, Professor Churchill did not make that suggestion in the essays under consideration, we did not include it in our investigation.

c. Conclusions concerning Sub-Question 2

1. Professor Churchill provides no reference for this claim in his published essays.

2. Our investigation, including Professor Churchill's own submissions and interviews, did not find any sources that refer to blankets from a military infirmary in St. Louis.

3. We therefore conclude that Professor Churchill fabricated this aspect of his account.

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[183] Interview, February 18, 2006.
[184] He argued that "the *St. Peter's* was converted into what amounted to a floating smallpox infirmary, or, perhaps more accurately, a bacteriological weapon aimed directly at the Mandans" (Submission B).
[185] Submission B.

4. During our investigation, Professor Churchill appeared to retract this claim, but in a later submission he expressed his intent to re-publish with no substantive changes the essay that describes in fullest and most extreme form the introduction of smallpox at Fort Clark, including this particular feature.[186]

Sub-Question 3. Is there any reasonable basis for Professor Churchill's claim that army doctors or the post surgeon advised the Indians to scatter after smallpox broke out among them?

a. Professor Churchill's statements and what the sources he cites say

1. In "Bringing the Law Home" (1994), Professor Churchill writes: "Although the medical practice of the day required the precise opposite procedure, army doctors ordered the Mandans to disperse once they exhibited symptoms of infection" (p. 35).

   He gives no specific reference for that sentence, but the note at the end of the paragraph reads: "The Fort Clark incident is covered in Thornton, *op. cit.* [*American Indian Holocaust and Survival*], pp. 94-6." Thornton, pp. 95-9, makes no mention of a medical person or an order to disperse.

2. In "Nits Make Lice" (1997), Professor Churchill writes: "When the first Indians showed symptoms of the disease on July 14, the post surgeon advised those camped near the post to scatter and seek 'sanctuary' in the villages of healthy relatives[136]" (p. 155).

   Note 136 cites Stearn and Stearn, *The Effects of Smallpox*, pp. 89-94, and Chardon's *Journal*, without a specific page reference.

   Stearn and Stearn, pages 89-90, print the June 6, 1838 letter from someone in St. Louis, which does not mention a doctor or scattering.[187] Pages 91-4 deal with smallpox among other tribes in the following years.

   Chardon's *Journal* contains no mention on any pages of a doctor or post surgeon at Fort Clark and does not refer to anyone who told the Indians to scatter.

   In Submission B, Professor Churchill explained his reference to Chardon. Noting that "there are many possible reasons for citing a particular item," he said he did not cite Chardon as a source for his claim about a doctor's order to scatter. "My purpose was to expose readers to the racist virulence infesting his [Chardon's] verbiage, believing that no one who read his book could thereafter believe that the epidemic was 'accidental.'"

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[186] Professor Churchill responded strongly (in Submission H) to what he perceived as a suggestion that he had retreated from what he said about the 1837 pandemic: "For the record, I *have not*. On the contrary, I'm preparing to publish it again." He explained that his essay, "An American Holocaust?," will be included in a collection of his pieces to be printed later in 2006 by AK Press of Oakland. For that edition, he said, he was making only the following minor changes to his previous account of what happened at Fort Clark: correcting the year from 1836 to 1837; substituting the term "U.S. Department of War" for "U.S. Army"; deleting the statement about "confusion" as to whether Indians stole blankets; changing his statement that the Mandans knew nothing about smallpox to noting their earlier devastation by the disease; and expanding his notes. The substance of his account is to remain as presented in the earlier version of the essay.

[187] See section D1 above.

If Professor Churchill had explained in his note that he was referencing Chardon as an example of racist attitudes, that would have been fine. In the absence of such a statement, however, readers may assume that a work cited backs the author's account. In this case, it does not.

3. In "An American Holocaust?" (2003), Professor Churchill writes: "When the first Mandans began to display symptoms of the disease, they went straight to the post surgeon. They knew nothing about treating smallpox, but they'd heard about it and were terrified of it, and, since it was a white man's disease, they went to the white doctor to find out what to do. What did he tell them? To scatter, to run for their lives, to seek shelter in the villages of healthy relatives as far away as possible[142]" (p. 55).

   Note 142 cites Stearn and Stearn, *Effects of Smallpox*, 89-94, who say nothing that supports his claim.

   This statement is more extreme than in previous essays, without additional references.

   In Submission H, Professor Churchill noted that this essay was "a composite developed from the edited transcripts of several public lectures—primarily that of a lecture delivered at the Brecht Center in September 1998" and that he added notes to it later. That origin does not release him from the need for accuracy and careful referencing in the published version.

b. Discussion

We found no evidence that anyone at Fort Clark had any formal medical training. The treatments mentioned by Chardon in summer/fall 1837 refer to epson salts, a hot whiskey punch, and (for a nosebleed) a mixture of magnesia, peppermint, "sugar lead," and Indian grog.[188] The only indication that someone responded to smallpox in what might be described as a medical capacity concerns Charles Larpenteur, a fur trader and clerk at Fort Union, 300 miles further upstream. When smallpox broke out there, Larpenteur used the only medical book available to him—Dr. Thomas' *Domestic Medicine,* distributed to all the upriver posts—in an attempt to inoculate those living at the fort, but with disastrous consequences.[189]

Professor Churchill has apparently conflated evidence from Fort Union and Fort Clark, and even then, it does not appear warranted to describe Larpenteur as a "doctor" or "surgeon." Certainly he was not a military or Army doctor.

In Submission B, Professor Churchill pulled back somewhat from his claims both that there was a doctor and that he was a military person.

1. Professor Churchill said that it was Chardon, "rather than the post surgeon, who sent those exposed to the pox to an as yet uninfected Hidatsa village. This by no means exonerates the 'surgeon,' a man named Charles Larpenteur who was not actually a

[188] In his *Journal*, pp. 126, 133, and 132.
[189] *Forty Years a Fur Trader*, Vol. 1, pp. 132-3. See Sub-Question 4 below.

medical doctor but rather a clerk who may have received bit of training, as was common in western outposts."

Once more Professor Churchill was evidently confused about the actions of Chardon (at Fort Clark) and Larpenteur (at Fort Union).

2. Professor Churchill indicated that he used "the military term 'post surgeon' rather than the more conventionally civilian 'doctor'" because he was basing his account in part upon Connell, who says that 'soldiers' were stationed at Fort Union.

With respect to the alleged order to scatter, Professor Churchill provides no evidence to support that claim, and we have found none in any of the primary written or oral sources. Indeed, the Mandan could not have scattered. They were already concentrated into a few villages along the Missouri, following the reduction of their numbers from earlier outbreaks of disease and warfare, and those villages were surrounded by enemy tribes.[190]

Nor does the main secondary study upon which Professor Churchill based his Submission B—Robertson's *Rotting Face*—substantiate even his modified assertion that Chardon ordered the Indians to scatter. (Robertson's book was published in 2001, after the first cluster of Professor Churchill's essays considered here but before the publication of the 2003 ones. It is not cited in either of the later works.) The only reference to Chardon's sending people away from Fort Clark suggests quite the opposite. Robertson says that in August 1837, Chardon sent Toussaint Charbonneau, a long-time trader who was then at Fort Clark, from that post to a village of the Knife River Hidatsa that had been quarantined by their own "tribal police," begging the Hidatsa in the main hunting camp to stay where they were.[191] Charbonneau took with him his Hidatsa wife, and they stayed at Knife River for several weeks. She developed smallpox symptoms after they arrived and died there, breaking the Hidatsa quarantine. Robertson says that no one knew she had been exposed before they left: this was not an intentional attempt to spread the disease.

It is not correct to say that the Mandan were unfamiliar with smallpox. Both Thornton and Stearn and Stearn, two of Professor Churchill's standard sources, indicate that smallpox had broken out repeatedly—though never with the virulence of 1837—among the High Plains Indians, including the Mandan, during the eighteenth and earlier nineteenth centuries.[192]

c. Conclusions concerning Sub-Question 3

1. Professor Churchill has listed works that appear by their titles to be legitimate sources but do not in fact support his statements. He has therefore falsified his sources.

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[190] Both Michael Trimble and Mark Timbrook suggested to us if that Mandan *had* scattered, they might have had a higher survival rate: dispersed tribes living in small bands offered less possibility for direct human transmission of the disease and therefore suffered lower mortality in the 1837-1840 pandemic than did those living in settled communities (interviews, February 18, 2006).

[191] Robertson, *Rotting Face*, p. 182.

[192] Thornton, *American Indian Holocaust,* esp. pp. 93-6, and Stearn and Stearn, *The Effect of Smallpox,* esp. pp. 72-9.

2. He provided an insufficient reference by citing a book without giving specific page numbers. This is a minor matter in itself unless it forms part of a pattern.

3. We have found no evidence to support his claims that:

    a. There was a military doctor/surgeon (or indeed anyone with medical training) at Fort Clark or Fort Union.

    b. Someone advised the Indians to scatter.

4. We therefore conclude that Professor Churchill has fabricated this element of his account.

5. Professor Churchill's statements in his published essays become more extreme over time, moving further from the sources he cites, without supplying any further references.

Sub-Question 4. Is there any reasonable basis for Professor Churchill's claim that the army had stored rather than administered a smallpox vaccine distributed for the purpose of inoculating Indians?

a. Professor Churchill's statements and what the sources he cites say

1. In "Nits Make Lice" (1997), Professor Churchill says that when smallpox showed up at "Fort Union, adjacent to the main Mandan village some forty miles further upriver" [from Fort Clark], "the trader there, Jacob Halsey, who was married to an Indian woman, then attempted to administer a vaccine which had been stored by the army rather than used to inoculate the people for whom it was supposedly provided*" (p. 155).

    Note * first cites Connell, *Son of the Morning Star*, pp. 15-16. Connell says (p. 16): "Jacob Halsey, in charge of the Fort Union depot, thought the best thing to do was to vaccinate everybody, and he is said to have been surprised when a number of his subjects began vomiting, bleeding, and dying. Halsey himself caught the pox. He got over it, but his Indian wife did not." (Connell does not provide any sources at all for his book.)

    Professor Churchill's note goes on to critique the claim made by "deniers" like Steven T. Katz (in "The Uniqueness of the Holocaust: The Historical Dimension," in Alan S. Rosenbaum, ed., *Is the Holocaust Unique? Perspectives on Comparative Genocide* [Boulder, CO: Westview Press, 1996], p. 21), that the U.S. attempted to prevent the spread of smallpox among Indian people through vaccination. Although a federal policy announced in 1833 [sic] required the inoculation of all Indians, Professor Churchill argues that the requirement was not acted upon. Instead, "In post after post, vaccines, when they were provided at all, languished in storerooms rather than being administered." Professor Churchill provides no evidence for that statement.

2. In "An American Holocaust" (2003), Professor Churchill adds a new paragraph that attacks the claim that the transmission of smallpox at Fort Clark was an inadvertent

tragedy that resulted from "'ignorance' on the part of the officers involved, including the post surgeon." He acknowledges that people were not acquainted with microbes in that period but gives evidence that the principle of vaccination had been introduced into England around 1715. "By 1750, the whole English army had been inoculated against smallpox . . . and, by 1780, George Washington had ordered that his Continental Army be inoculated as well.[145] So, unquestionably, the surgeon at Fort Clark was aware of the procedure. It had long since become standard. Indeed, a whole supply of vaccine, designated for inoculating Indians, was sitting in his store-room when the disease broke out. It had been there for several months, and there is no evidence that he'd ever tried to use it for its intended purpose.[146] Both the surgeon and the post commander were also quite aware of the principle of quarantine. Quarantining people who'd come down with the pox had been standard medical practice for the better part of 50 years. All things considered, then, it seems to me you'd have to have undergone a lobotomy to actually believe that the surgeon's telling the Mandans to 'scatter' and 'run for their lives' was either 'accidental' or an 'honest mistake'" (p. 56).

Note 145 cites Jonathan B. Tucker, *Scourge: The Once and Future Threat of Smallpox* (New York: Atlantic Monthly Press, 2001), pp. 16-22. Tucker there summarizes the history of variolation, the British use of smallpox against Indians at Fort Pitt in 1763, and accusations that the British used smallpox against the rebellious Americans during the Revolutionary War.

Note 146 cites Connell, *Son of Morning Star*, pp. 15-16, and again denounces Katz.

b. Discussion

We need first to clarify terminology. In 1837, people knew of two ways to try to prevent smallpox, both sometimes called "inoculation."

1. The first, described more precisely as "variolation," involved the deliberate induction of a mild case of smallpox in order to achieve subsequent immunity. In the type of variolation commonly used in Britain and North America during the eighteenth and first half of the nineteenth centuries, a small amount of material was taken from the pus of a scab on someone who had survived one of the less lethal forms of smallpox and rubbed into a scratch on the recipient. In most cases, the recipient would come down with a light case of the disease, producing only scant scarring, and would acquire lifetime immunity; a small fraction of the recipients, however, died from the disease. A person who had been variolated was contagious while experiencing the disease and therefore had to be quarantined.

2. "Vaccination" consisted of injecting a live but weakened vaccine (such as that produced by the related disease of cowpox) immediately under the skin of the recipient. The recipient did not actually acquire smallpox and was not infectious but gained the desired immunity. Vaccination was introduced by Edward Jenner in Britain in 1796 and gradually came into use in North America during the following decades.

In Professor Churchill's accounts of the vaccination issue, several problems emerge.

1. Fort Union lay 300 miles upriver from Fort Clark and was not adjacent to the Mandan villages.[193]

2. Professor Churchill's account of what happened at Fort Union accords in part with what Connell says, but Professor Churchill goes beyond Connell in stating that vaccine had been stored by the army rather than used to inoculate Indians, as intended.

3. Professor Churchill's choice of Connell as a scholarly source is problematic. Connell's description does not agree with the primary evidence and the accounts provided by other historians: this may be an area in which he modified his sources for dramatic purposes, as was arguably appropriate for him to do given the nature of his book.

4. The federal program to vaccinate Indians was created in 1832, not 1833.

The narrative provided by Larpenteur, the trader and clerk at Fort Union, is rather different.[194] He says that when the *St. Peter's* arrived at Fort Union with smallpox aboard, "Our only apprehensions were that the disease might spread among the Indians, for Mr. Halsey [a trader who had traveled from Fort Pierre to take charge of the Fort Union post for the American Fur Company and had come down with smallpox after boarding the boat at Fort Pierre] had been vaccinated, and soon recovered. Prompt measures were adopted to prevent an epidemic. As we had no vaccine matter we decided to inoculate with the smallpox itself; and after the systems of those who were to be inoculated had been prepared according to Dr. Thomas' medical book, the operation was performed upon about 30 Indian squaws and a few white men. [The Assiniboin men were all away hunting.] This was done to have it all over and everything cleaned up before any Indians should come in, on their fall trade, which commenced early in September. The smallpox matter should have been taken from a very healthy person; but, unfortunately, Mr. Halsey was not sound, and the operation proved fatal to most of our patients."[195] One of those who died from the inoculation was Larpenteur's own Indian wife.[196]

The traders at Fort Union also attempted to impose a quarantine, refusing to allow anyone into the post while smallpox was raging within. After describing these efforts, Larpenteur notes that while the epidemic was at its worst, a party of 40 Indians came to the fort. When they insisted that they be allowed to enter, "Nothing else would do—we must open the door; but on showing

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[193] In Submission B, Professor Churchill commented that "since the two forts tend to be treated as virtually synonymous in the literature on the 1837 epidemic," he was not distorting his sources when he used evidence from one about the other.

[194] Mark Timbrook said in his interview (February 18, 2006) that the published version of Larpenteur's narrative differs in some key respects from the original journal, which has recently been rediscovered. Since our Committee did not have access to the latter, we had to rely on the printed text. There is no indication that Professor Churchill used either version.

[195] Larpenteur, *Forty Years a Fur Trader*, Vol. 1, pp. 132-3.

[196] Coues in ibid., p. 132, note 14, citing from Larpenteur's "Orig. Journ." Robertson says that Larpenteur commented in his journal that his wife had "death put in to her harm [arm]" by the inoculation: *Rotting Face*, p. 305 and note 11, citing Larpenteur, "White Man Bear (Mato Washejoe), Upper Missouri Trader: Journals and Notes of Charles Larpenteur between 1834 and 1872" (transcribed by Edwin T. Thompson, National Park Service Library, Denver). That passage is not included in the printed version of Larpenteur's account.

him ["the celebrated old chief Co-han"] a little boy who had not recovered, and whose face was still one solid scab, by holding him above the pickets, the Indians finally concluded to leave."[197] Larpenteur then describes the death and burial of many Indians at the fort in what has rightly been called "a cold-blooded tenor."

It thus appears that the medically uninformed people at Fort Union attempted to integrate elements of variolation and vaccination, with disastrous results. Although Halsey had been vaccinated and therefore survived, he was apparently infected with a fairly severe form of smallpox: his pus was therefore highly lethal when administered to the recipients. Larpenteur's account also makes clear that the reason they resorted to this technique was that they indeed had no vaccine, in contradiction to what Professor Churchill claims in his essays.

In Submission B, Professor Churchill admitted that he had erroneously conflated vaccination and inoculation in his published essays and had wrongly attributed the deed to Halsey rather than Larpenteur.

Professor Churchill did not, however, retract his statement that vaccine had been withheld by the Army: "There is firm indication that cowpox vaccine was on hand at Fort Union, and probably at Fort Clark as well, but that no effort was made, either at the onset of the 1837 [sic] or earlier, to use it (as opposed to the far more dangerous procedure of inoculation)."[198] A note to that sentence says, "During the fall of 1832, a Dr. Martin—probably the same individual mentioned in Note 76 as being escorted by the Army all the way north to Fort Union during the summer [of 1832]—delivered unspecified quantities of cowpox vaccine to Forts Kiowa and Pierre, the two downriver posts closest to Fort Clark. In addition, the American Fur Co. is documented as having delivered vaccine to its northern facilities; Ibid., p. 225." The latter is apparently a reference to Robertson, *Rotting Face*.

Robertson does indeed say that in summer, 1832, an Army major and some troops escorted a physician and some cowpox vaccine as far as Fort Union. That is a surprising statement, since it is in direct contradiction to the orders sent out by the government concerning which Indians were to be vaccinated (see below). Careful examination of the train of citations indicates that Robertson is incorrect.[199] He also notes that in summer and fall, 1832, the American Fur Company had shipped vaccine to Fort Pierre and sent a doctor there from Fort Kiowa to

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[197] Larpenteur, *Forty Years a Fur Trader*, p. 133. For below, see Robertson's comment in *Rotting Face*, p. 305.
[198] Submission B.
[199] In a general note to that paragraph, Robertson cites Stearn and Stearn, *Effect of Smallpox*, pp. 63-4, and John F. Taylor, "Sociocultural Effects of Epidemics on the Northern Plains, 1734-1850," *Western Canadian Journal of Anthropology*, 7, 4 (1977): 55-81, esp. p. 59. The latter refers to the impact on the Cree and Northern Assiniboin bands of a *Canadian* vaccination program, noting that the U.S. program of 1832-1833 had been arrested by Sioux opposition. Stearn and Stearn say that in 1832 "some of the Assiniboin and Indians of other tribes in that region [which region is unstated] were vaccinated by a surgeon escorted to these tribes by Major Bean" (p. 63). The reference they provide for that paragraph is the account by Maximilian, Prince of Wied of his voyage up the Missouri on the *Yellow Stone* steamboat in 1833 (*Travels in the Interior of North America*, Vol. 1, p. 286). Maximilian says, when describing a stop in May in what is now northeastern Nebraska, that the previous summer, Major Bean had inoculated 2,600 Punca Indians living near there against smallpox but that many had resisted, saying, "Now we are well; if we should become sick it will be time enough to submit to the operation" (pp. 281-7, esp. p. 286). None of this indicates that vaccine was taken to Fork Clark or Fort Union.

administer it. Fort Pierre was some 300 miles downstream from Fort Clark, and Fort Kiowa even further away.

Professor Churchill's Submission B continued, "In mitigation, it may well be true that the supplies of vaccine on hand had become inactive by the summer of 1837." A note cited Robertson, *Rotting Face* (p. 305), who says that Larpenteur responded as he did because he had "no active cowpox vaccine available."

Professor Churchill then devoted several paragraphs of Submission B to a federal program announced in 1832 to vaccinate American Indians against smallpox and the orders issued by Lewis Cass, Secretary of War, concerning the implementation of that program. Professor Churchill described his source for that account as: "Extracts from Diane Pearson's 'Medical Diplomacy and the American Indian: Thomas Jefferson, the Lewis and Clark Expedition, and the Subsequent Effects on American Indian Health and Public Policy' (*Wicazo Sa Review*, Vol. 19, No. 1, 1994) offered by Yoshie Furuhashi in 'Nothing but the Facts.'" Furuhashi's "Nothing but the Facts" was an online posting no longer available at the time of our investigation.

Professor Churchill's citation of Pearson is incorrect in several respects, though it is not clear whether the problem originated with Furuhashi or him. The work cited was published in 2004, not 1994, and that general essay makes only brief reference to the 1832 program,

An article by J. Diane Pearson that *is* directly relevant was published in *Wicazo Sa Review* in 2003: "Lewis Cass and the Politics of Disease: The Indian Vaccination Act of 1832."[200] In it Pearson describes the measure passed by Congress on May 5, 1832 ordering vaccination of Indian tribes. Included were those living on reservations or who were to be removed from their current locations, as well as tribes on the American "frontier." Five days later, Cass issued a general directive implementing the order, but he wrote separately to John Dougherty, the senior Indian agent for the Missouri River area, instructing him to limit vaccination to tribes in the lower Missouri valley. The Mandan were specifically excluded from vaccination, on the grounds that they had previously "committed hostilities" against citizens of the United States, as were the Arikara and Hidatsa, both accused of "unprovoked acts of hostility" against the United States; likewise excluded were all tribes further up the Missouri. When Dougherty asked for permission to continue the vaccination program the following year, Commissioner of Indian Affairs Elbert Herring personally rejected his request.

The evidence indicates, therefore, that the doctors who moved up the Missouri in the summer of 1832 vaccinated some Indians as far north as the Sioux tribes and probably some of the Arikara, who were at that time living south of the Mandan and Hidatas, but did not vaccinate—or carry vaccine to—any of the tribes beyond them.[201] (See Map 1, above.)

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[200] Vol. 18, No. 2: 9-35, also available online at http://muse.jhu.edu/journals/wicazo_sa_review/v018/18.2pearson01.htm, accessed 02/20/2006. The history of the vaccination program is discussed by Timbrook, "An Extended Inquiry," ch. 2.

[201] Timbrook believes that about half of the Arikara were in fact vaccinated before they moved northwards to join the Mandan, explaining their lower mortality rate in 1837 ("An Extended Inquiry," ch. 2, and interview, February 18, 2006).

Further, even if the doctors who implemented the program in 1832 had reached Fort Clark or Fort Union and left some of their vaccine there, it would not have retained its efficacy 5 years later. Contemporaries were well aware of the problem of maintaining an active vaccine, including the fact that it was killed if frozen. It would have been fruitless to store vaccine over even a single winter in the Upper Missouri posts.

c. Conclusions concerning Sub-Question 4

1. Our investigation found no evidence that supports Professor Churchill's claims that:

    a. At Fort Union in 1837, the army had stored rather than administered vaccine that was intended for Indians.

    b. At Fort Clark, a whole supply of vaccine, designated for inoculating Indians, had been sitting in the surgeon's store-room for several months when the disease broke out in 1837.

2. We therefore conclude that Professor Churchill has fabricated those statements. In so doing he has undermined the importance of the broader point that the U.S. Secretary of War deliberately and reprehensibly excluded the Mandan and all other tribes of the upper Missouri River from the Indian vaccination program of 1832.

Sub-Question 5. Did Professor Churchill misuse the sources he cites when describing how many Indians died in the pandemic that followed the Fort Clark situation?

a. Professor Churchill's statements and what the sources he cites say

1. In "Bringing the Law Home" (1994), Professor Churchill says that the pandemic among the Plains Indians "claimed at least 125,000 lives, and may have reached a toll several times that number[68]" (p. 35). Note 68 cites Thornton, *American Indian Holocaust and Survival*, pp. 94-6.

    Thornton says that the massive smallpox pandemic between 1836 and 1840 ranged from the northern plains to the Pacific Northwest, Canada, and Alaska. He notes that it was "perhaps the most severe episode of any disease among North American Indians, although it may very well only be the best documented" (p. 94).

    Explaining that smallpox was said to have been "brought to the northern plains by a steamboat traveling the Missouri River," Thornton notes that it "killed 10,000 American Indians there in but a few weeks. The total numbers of American Indians thought to have died are overwhelming" (pp. 94-5). Thornton then suggests figures for certain of those tribes, including the Mandan and Arikara, which add up to around 17,000-19,000 deaths. He mentions other tribes without providing numbers of deaths: Indians in California, "many Osage," the Choctaw, Chicksaw, and other southern tribes, the Kiowa, Apache, Gros Ventre, Winnebago, Comanche, Cayuse, and "other New Mexico, Canada, and Alaska Indians" (p. 95).

2. In “Since Predator Came” (1995), Professor Churchill writes: “the resulting pandemic claimed as many as a quarter-million lives[10]” (p. 28).

   Note 10 cites Thornton, *American Indian Holocaust*, pp. 94-96, but says that the reference concerns “the dispensing of smallpox-infected blankets at Fort Clark.” No other source for the number of deaths is given.

3. “Nits Make Lice” (1997) is somewhat more carefully worded and referenced. In that essay, after mentioning losses in various regions of the western part of the U.S. and Canada, Professor Churchill ends: “There is no conclusive figure as to how many Indians died—it depends a bit on how many one is willing to concede were there in the first place—but estimates run as high as 100,000.[138] However many people perished, their ‘vanishing’ made the subsequent U.S. conquest of the entire Plains region, begun seriously in the 1850s, far easier than it would otherwise have been” (p. 156).

   In support of his number, Professor Churchill provides two notes:

   (1) In a long general note on p. 155, he presents Thornton’s specific figures for the tribes about which numbers have been suggested and names other tribes for which data are unavailable. He does not, however, describe how he reached his own total number.

   (2) Note 138 cites Connell, *Son of the Morning Star*, p. 16. Connell says: “How many Indians from the Missouri tribes died of smallpox within the next few years can hardly be estimated. Possibly one hundred thousand.” Because Connell, who is not an expert on smallpox, provides no notes to his book at all, one cannot determine where his number came from.

4. In “That ‘Most Peace-Loving of Nations’” (2003), Professor Churchill writes (under the year 1836): “A pandemic is thus unleashed which decimates the indigenous population of the Great Plains from Canada to the Gulf of Mexico. At least 100,000 Indians die as a result, making subsequent conquest of the region by the U.S. much easier” (p. 48). He provides no notes for any of the chronological statements in this essay.

5. In “An American Holocaust?” (2003), Professor Churchill says: “It follows that what might have been a localized epidemic—the Mandans were pretty much doomed the moment the smallpox broke out among them, but it might have ended with them—ends up a pandemic that rages for 15 years, from the Blackfeet confederation in southern Canada all the way down into Texas, killing who knows how many people. The Smithsonian acknowledges about 100,000 fatalities. Thornton suggests it may have been as many as 400,000.[143] Whatever the number, it made the subsequent U.S. military conquest of the Great Plains region, which began in earnest about the time the pandemic was ending, a whole lot easier than it would otherwise have been. Of this, there can be no doubt” (p. 55).

   Professor Churchill provides no reference for the Smithsonian number. A sentence on the previous page says, when discussing the Fort Pitt situation of 1763, “Even by the Smithsonian’s low count, somewhere in the neighborhood of 100,000 Indians died of smallpox over the next six months” (p. 54). A note to that sentence refers to Stearn and

Stearn, *The Effects of Smallpox*, p. 49, which describes the 1780s, not the 1760s, and says nothing about the Smithsonian.

Note 143 cites Thornton, *American Indian Holocaust*, pp. 94-5. Thornton provides no basis for a figure of 400,000 and certainly does not "suggest" that it is correct.

As in several previous sub-questions, this essay's claims are more extreme than earlier ones.

b. Discussion

In Submission B, Professor Churchill provided a fuller account of how he arrived at his numbers, moving from the specific estimates provided by Thornton to the way he produced figures for all the other Western tribes. He claimed that his figures of 100,000-125,000 deaths are warranted, and it is possible that they are, given the methodology he describes there. He did not, however, indicate in the published essays how he reached that number. Nor did he explain to our Committee how he arrived at his later and higher figures, despite our request for further information.

We found no primary sources or oral or historiographic traditions that offer figures for the total number of Indians who died in the 1837-1840 epidemic.

c. Conclusions concerning Sub-Question 5

1. In his earlier essays, Professor Churchill cites Thornton's work in what is at least a misleading manner. In "An American Holocaust?," he actively misrepresents Thornton, a form of falsification.

2. His reference to Connell in "Nits Make Lice" is technically accurate. Connell is not, however, an authority on the topic and does not indicate the source of his own figure.

3. Professor Churchill offers no source for his "Smithsonian" numbers.

4. Because he provides no references for his numbers larger than 100,000 other than the incorrect citation of Thornton, Professor Churchill has proposed figures that are not supported by the evidence he cites.

5. When asked by this Committee to explain how he reached his larger figures, Professor Churchill did not furnish information. Nor did he indicate that he will clarify his approach when his "An American Holocaust?" essay is re-published. We therefore find that he has seriously deviated from accepted research practices.[202]

[202] E.g., the American Historical Association's "Statement on Standards of Professional Conduct," which stresses the importance of describing one's evidence and of making it available to other scholars: http://www.historians.org/pubs/Free/ProfessionalStandards.cfm, p. 4 of 10, accessed 11/10/2005.

F. Summary Conclusions for Allegation D

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

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

1. We do not find academic misconduct with respect to his general claim that the U.S. Army deliberately spread smallpox to Mandan Indians at Fort Clark in 1837, using infected blankets. Early accounts of what was said by Indians involved in that situation and certain native oral traditions provide some basis for that interpretation.[203]

2. Professor Churchill has not, however, respected those Indian traditions. He did not mention native oral sources in any of his published essays about Fort Clark. Instead he raised the possibility that he had drawn on oral material only in an attempt to produce after-the-fact justification for his claims during the course of this investigation. At that point, he purported to defend the legitimacy of his account by referencing oral tradition, but he provided no evidence that he had done any research whatsoever into the traditions of the Mandan or other relevant tribes regarding the smallpox epidemic of 1837 before publishing his essays. The Committee concludes that this behavior shows considerable disrespect for the native oral tradition by employing it as a defense against research misconduct while failing to use or acknowledge it in his published scholarship. In doing so, he engaged in a kind of falsification of evidence for his claims.

3. Professor Churchill engaged in poor scholarly practice but not research misconduct in providing incomplete references: citing a book without page numbers and giving no citation for specific numerical information mentioned in the text.

4. We found serious problems in the following areas:

    a. Professor Churchill misrepresented some of the published sources he cites, which do not in fact support his accounts.

    b. Because neither his own statements nor our investigation produced evidence to support some of his more detailed claims, we conclude that Professor Churchill has created myths under the banner of academic scholarship. Those points are:

        (1) That infected blankets were taken from a military infirmary in St. Louis.

[203] Alternative explanations are suggested by other oral traditions and written primary sources (see sections D1 and 2 above).

(2) That an army doctor or post surgeon advised the Indians to scatter once smallpox broke out among them, thereby spreading the disease.

(3) That the army had stored rather than administered a smallpox vaccine distributed for the purpose of inoculating Indians.

c. Professor Churchill provided insufficient evidence in his essays to support his assertions that as many as 100,000, 125,000, 250,000, or 400,000 Western American Indians died in the smallpox pandemic of 1837-1840 (different numbers appear in different essays). Nor did he provide further information when requested by this Committee.

5. The problems mentioned here appear in printed form over a period of ten years and generally become more extreme over time.

6. Although Professor Churchill appeared in his submissions to our Committee to acknowledge that several of his claims are not supported by the evidence, he emphasized that he plans to re-publish with only minor changes in wording, not substantive revisions, the essay that provides the fullest—and most extreme—account of the Fort Clark situation.[204]

7. We therefore find by a preponderance of the evidence a pattern of deliberate academic misconduct involving falsification, fabrication, and serious deviation from accepted practices in reporting results from research.

[204] "An American Holocaust?," as discussed in note 186 above.

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

(described in previous stages of this process as Allegation 8)

A. The Allegation

It is claimed in this allegation that Professor Churchill plagiarized original work by a group called the Dam the Dams Campaign, a Canadian environmental organization. The plagiarized source (according to the allegation) is a pamphlet called "The Water Plot" published in 1972 by the Dam the Dams Campaign.

The plagiarizing works are alleged to be four, all published in original or revised versions between 1989 and 2002: (1) an essay called "The Water Plot: Hydrological Rape in Northern Canada," published in 1989 in a volume edited by Professor Churchill, *Critical Issues In Native North America*, Vol. I, and there attributed to Dam the Dams Campaign and the Institute for Natural Progress[205]; (2) an essay credited solely to Professor Churchill, "The Water Plot: Hydrological Rape in Northern Canada," in his 1993 collection, *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide, and Expropriation in Contemporary North America*[206]; (3) a revised form of the previous essay in a reprinted edition of the same volume in 2002[207]; and (4) an article published in 1993 as "The Water Plot" in *Z Magazine*, with Professor Churchill again listed as the sole author.[208]

B. Discussion

Professor Churchill submits that the 1989 article was proper because it mentioned the Dam the Dams Campaign as a co-author, and claims that he was not responsible for the omission of Dam the Dams as co-author of the *Z Magazine* article. He further argues that the work published in the 1993 and 2002 editions of *Struggle for the Land* under his name is sufficiently different from the allegedly misappropriated work that his claim of sole authorship is justified, especially as he gave proper credit to the 1989 article by citing it in footnotes in both versions of the book.[209]

It is true that there are differences between the original "The Water Plot" pamphlet and the later publications in which this work is used. Professor Churchill is not, by the evidence, a clumsy plagiarist who would merely lift verbatim material from an uncredited source and publish it, unaltered and unaugmented, as his own. We do not doubt that Professor Churchill, who appears to be a fluent and gifted prose stylist, could easily have written essays on the subjects of this misappropriated work without plagiarism, simply by employing his own words and crediting his sources. Why he did not do so, and instead chose an easier, dishonorable route, is unexplained.

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[205] Copenhagen: International Work Group on Indigenous Affairs, Doc. 68, pp. 137-51.
[206] Monroe, ME: Common Courage Press, 1993, pp. 329-65.
[207] San Francisco: City Lights Books, 2002, pp. 292-329.
[208] April 1991, pp. 88-92.
[209] Submission G.

Each iteration of the Dam the Dams material in Professor Churchill's essays is longer and more elaborate than its predecessor (with the exception of the *Z Magazine* article, which was written for a popular audience), and each is more informative about intervening events. Even the 1993 and 2002 versions of the *Struggle for the Land* essay differ from one another: the latter is longer and more extensively annotated, indicating some revision in the interim. The continuous revision and updating of one's own earlier work is an admirable and proper scholarly activity, but no amount of supplementation can cleanse plagiarized work of its taint. And it is obvious that each version of the work that bears Professor Churchill's name (or that of the "Institute" he co-founded) contains several passages that are, with very small variation, copied from the original pamphlet. For example, it is instructive to compare the opening paragraphs of the five works: [210]

The original pamphlet ("The Water Plot"), which is unpaginated

> In Northwestern Ontario a water diversion scheme far larger than the James Bay Project has been planned and awaits only the right climate of public opinion to be put into operation.
>
> Should Canada's waters be diverted southward to supply the growing demand for clean, fresh water in the United States? According to those who propose such schemes, Canada would earn a great deal of foreign exchange thereby and would benefit greatly from the employment created by the construction of the required dams, dykes, canals, tunnels and pumping stations. So far, so good; but once these works are built, what then? This pamphlet attempts to answer this question as far as possible in terms of specific events that have already happened and to demonstrate that, not only are the benefits of such schemes vastly over-rated, but what little real benefit could be derived from them will be greatly outweighed by the costs of their adverse consequences.

Dam the Dams Campaign and the Institute for Natural Progress, "The Water Plot: Hydrological Rape in Northern Canada," in *Critical Issues in Native North America,* Vol. I, ed. Ward Churchill (Copenhagen: International Work Group on Indigenous Affairs, Doc. 68, 1989), p. 137

> In northern Canada, a water diversion scheme far larger than the James Bay Project has been planned and awaits only the right climate of public opinion to be put in operation. Should Canada's hydroelectricity and clean, fresh waters be diverted southward to supply the growing demand of the United States? According to those who propose such ideas, Canada would earn a great deal of foreign exchange thereby, and would benefit considerably from the employment created by construction of the required dams, dikes, canals, tunnels and pumping stations. So far, so good, but what happens once these works are built? This paper attempts to answer the question as far as possible in terms of

[210] One footnote is here omitted from each of the later works except for the *Z Magazine* piece, which had none. None of the notes refers to the Dam the Dams pamphlet.

specific events which have already occurred, and to demonstrate that what little benefit might actually accrue to the inhabitants of the Canadian north will be vastly outweighed by the costs of the adverse human and environmental consequences.

Ward Churchill, "The Water Plot," *Z Magazine,* April 1993, p. 88

In northern Canada, a water diversion scheme far larger than the combined James Bay Projects (see Winona LaDuke, *Z* June 1990) has been planned and awaits the right climate of public opinion to be put in operation. Should Canada's hydroelectricity and clean, fresh waters be diverted southward to supply the growing demand of the United States? According to those who propose such ideas, Canada would earn a great deal of foreign exchange, and would benefit considerably from the employment created by construction of the required dams, dikes, canals, tunnels, and pumping stations. So far, so good, but what happens once these works are built?

Ward Churchill, "The Water Plot: Hydrological Rape in Northern Canada," in his *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide, and Expropriation in Contemporary North America* (Monroe, ME: Common Courage Press, 1993), p. 329

In northern Canada, a water diversion scheme far larger than anything yet undertaken in the United States has been planned, piloted, and awaits only the right climate of public opinion to become a reality. By diverting Canada's hydroelectricity and clean, fresh waters to support the growing demand of the lower 48 U.S. states, the plan's proponents argue, Canada would earn a great deal of foreign exchange, and profit considerably from the employment created by construction of the required dams, dikes, canals, tunnels and pumping stations. But while proponents say little about the future once these works are built, the marginal benefits that might actually accrue to Canadians will be vastly outweighed by the costs of adverse economic, human and environmental consequences.

Ward Churchill, "The Water Plot: Hydrological Rape in Northern Canada," in his *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide, and Expropriation in Contemporary North America* (revd. edit., San Francisco: City Lights Books, 2002), p. 292

In northern Canada, a water diversion scheme far larger than anything yet undertaken in the United States has been planned, piloted and awaits only the right climate of public opinion. The idea is to divert Canada's hydroelectricity and clean, fresh waters to support the growing demand of the lower forty-eight U.S. states. According to proponents of the plan, Canada would earn a great deal of foreign exchange, and would profit considerably from the employment created by construction of the required dams, dikes, canals, tunnels and pumping stations. Little is said about what will happen once these works are built. As will be seen, what little benefit might actually accrue to the citizens of Canada will be

> vastly outweighed by the costs of adverse economic, human and environmental consequences.

There are many similar examples. There are also many passages in the later works that do not appear in the pamphlet, and are apparently original—indeed, by its last appearance in 2002, the essay had grown to several times the size of the pamphlet. Nevertheless, the repeated occasions of near-verbatim repetition constitute the clearest and most undeniable evidence of plagiarism.

Professor Churchill claims that his first use of the language from the pamphlet, in his 1989 essay, was authorized by an individual named John Hummel, who he believed to have the authority to negotiate on behalf of the Dam the Dams Campaign. In an interview with the Committee, Professor Churchill said that Hummel approached him, asking him to draw attention to the issue; he later sent to Churchill a box full of materials, including the pamphlet in question.[211] Professor Churchill points to the circumstance that at the end of the article he named several individuals (though not Hummel), identifying them as members of the Dam the Dams Campaign and crediting them with "assembling the original paper from which this essay was written." Contact information for Dam the Dams Campaign is offered. The endnote then discloses, "Rewriting/ updating for this volume was accommodated by Ward Churchill of the Institute for Natural Progress."

Good practice in a co-authorship situation calls for the obtaining of written permission, and an explicit effort to negotiate the language of the entire work with the co-author, rather than the informal and questionably authorized transaction Professor Churchill describes. Possibly a failure in this regard might not be regarded as the grave offense of plagiarism. Plagiarism is defined in the "Statement on Standards of Professional Conduct" of the American Historical Association as "the expropriation of another author's work, and the presentation of it as one's own."[212] But even if the first use of the language from the pamphlet did not constitute plagiarism, the later uses did.

Professor Churchill claims that he was not responsible for the circumstance that he was named as sole author of the article in *Z Magazine*: he maintains that the editor took Dam the Dams' name off the essay without his consent. This claim, like many of Professor Churchill's claims, is difficult to disprove, but it is the responsibility of an author working with a publisher to ensure that proper credit is given to co-authors and sources.

In any event, no such disclaimer of responsibility can pertain to the 1993 and 2002 articles, as Professor Churchill was himself the editor of those volumes.

It is true, as Professor Churchill points out, that there are references to the 1989 essay in footnotes to the 1993 and 2002 essays in *Struggle for the Land*. In the 1993 edition one footnote (note 16) cites the 1989 essay for the proposition that maps and information about proposed water diversion and hydroelectric projects have become hard to obtain; one (note 106) cites the 1989 essay for the proposition that certain water projects have been postponed; and three others (notes 91, 94, and 114) serve to annotate quotations. The use of footnotes (notes 16, 91, 94, 100,

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[211] Interview, April 1, 2006.
[212] On-line at http://www.historians.org/pubs/Free/ProfessionalStandards.cfm, accessed 01/30/2006.

and 137) in the 2002 edition is nearly identical. These footnotes appear among many others citing various works by numerous authors; they are not associated with the passages just noted; they do not justify the near-verbatim use of language from the 1989 essay; and they would be in any event insufficient to dispel the plagiarism of the original pamphlet, the existence of which they do not even acknowledge. (In both the 1993 and 2002 editions of *Struggle for the Land,* Professor Churchill informs the reader that a version of the "Hydrological Rape" article was previously published in *Z Magazine,* but he makes no mention in this context of Dam the Dams.[213] During conversation with the Committee, Professor Churchill said that he was angry with *Z Magazine* for its editorial failure to name Dam the Dams as a co-author in the article it published.[214] But his anger did not, it seems, prevent him from later acknowledging the magazine's version while neglecting to credit Dam the Dams.) The proper use of footnotes to indicate the source of some quotations suggests that Professor Churchill understood the need to credit the source of borrowed language, an understanding that he put to use inconsistently.

The original pamphlet was a paper publication, not available electronically; the near-verbatim repetition of its language must have resulted from something more intentional than an electronic cut-and-paste of the sort that might possibly lead to inadvertent plagiarism.

C. Conclusion

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

[213] 1993 edition, p. v; 2002 edition, p. 28.
[214] Interview, April 1, 2006.

Allegation F. Plagiarism of Professor Rebecca Robbins

(described in previous stages of this process as Allegation 5)

A. The Allegation

In this allegation it is claimed that Professor Churchill plagiarized original work authored by Professor Rebecca Robbins. The plagiarized source, according to the allegation, is Rebecca Robbins, "Self-Determination and Subordination: The Past, Present, and Future of American Indian Governance," in *The State of Native America: Genocide, Colonization, and Resistance*, edited by M. Annette Jaimes and published in 1992.[215]

The plagiarizing works are claimed to be the following essays by Professor Churchill: "Perversions of Justice: Examining the Doctrine of U.S. Rights to Occupancy in North America" (printed in the 1993 but not the 2002 edition of his *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide, and Expropriation in Contemporary North America*, published in 1993,[216] and in his 2003 collection, *Perversions of Justice: Indigenous People and Angloamerican Law*[217]); "Genocide in Arizona: The 'Navajo-Hopi Land Dispute' in Perspective" (in both editions of *Struggle for the Land*[218]); and "American Indian Self-Governance: Fact, Fantasy, and Prospects for the Future" (in the 1993 edition of *Struggle for the Land* but not the 2002 edition[219]). The similarities between these essays and the Robbins essay were originally noted in an article by Professor John P. LaVelle,[220] which was incorporated by reference into the Chancellor's letter of March 29, 2005 to the Standing Committee on Research Misconduct, which in turn forwarded these allegations to this Committee.

B. Discussion

Careful comparison of the work published under Robbins' name and that published under Churchill's does not indicate plagiarism. There are, to be sure, similarities. But the passages that Professor LaVelle's review calls to our attention are sufficiently different, sufficiently brief, and embedded in such disparate surrounding material that the Committee does not find that they constitute plagiarism. There is little or no verbatim repetition of language, only similar accounts of various historical events.

What these comparisons do suggest, rather than plagiarism, is common authorship. And indeed, that is precisely what Professor Churchill has claimed: he says that he is the original author of the work published as that of Rebecca Robbins. Our independent comparison of the Robbins essay in *The State of Native America* and Rebecca Robbins' doctoral dissertation suggests to us

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[215] Boston: South End Press, pp. 87-121.
[216] Monroe, ME: Common Courage Press, 1993, pp. 33-83.
[217] San Francisco: City Lights Books, pp. 1-31.
[218] Pp. 143-95 in the 1993 edition; pp. 135-72 in the 2002 edition (San Francisco: City Lights Books).
[219] Pp. 375-400.
[220] "The General Allotment Act 'Eligibility' Hoax: Distortions of Law, Policy and History in Derogation of Indian Tribes," *Wicazo Sa Review* 14 (1999): 251-302.

that it was, as Professor Churchill claims, he rather than she who wrote the essay. Rebecca Robbins, having been contacted through her attorney, declined to speak with this Committee. We find accordingly, by a preponderance of the evidence, that in this case Professor Churchill is not guilty of plagiarism.

Professor Churchill said in his Submission E that from time to time he publishes written work under "pseudonyms," which may sometimes be the names of actual living people. In this case, he claimed that he actually wrote ("from the ground up," as he puts it) five of the essays attributed to others in *The State of Native America*, including not only the essay credited to Robbins, but also those credited to M. Annette Jaimes (the volume's editor) as sole author, to Jaimes and Theresa Halsey as co-authors, to Lenore A. Stiffarm and Phil Lane, Jr. as co-authors, and to Jorge Noriega. (He said that he did not write the essay credited to "Marianna Guerrero," which according to him was an alias of Jaimes and one or more co-authors). He also said he wrote a number of other works in the late 1980s/early 1990s that were published under the name of M. Annette Jaimes. During later conversations with the Committee, Professor Churchill appeared to recant or at least modify some of these confessions (although not those related to Jaimes or Robbins), but there is no doubt that he made them unequivocally in writing. He acknowledged when talking with the Committee that Jaimes, Halsey, Stiffarm, Lane, and Noriega are actual persons who work or have worked in Native American studies. His later explanations are ambiguous and infused with a claimed lack of memory. Having examined some of these other works, we observe that their style and content bears a marked resemblance to other work by Professor Churchill. We therefore find that he was the principal, if not the sole, author of these works.

Our finding that Professor Churchill is not guilty of plagiarism in connection with the "Rebecca Robbins" essay requires us to consider whether his behavior pertaining to it and other essays he published under the names of other authors constituted a different form of research misconduct.[221]

The operative definition of research misconduct for purposes of this allegation is found in the Operating Rules and Procedures of the Standing Committee on Research Misconduct of CU-Boulder, and the University of Colorado System Administrative Policy Statement on Misconduct in Research and Authorship.[222] Both sources designate as a form of misconduct "Failure to comply with established standards regarding author names on publications." We find that the publication of one's own scholarly work (as distinct from creative work or fiction) under another name constitutes such a failure. The failure is aggravated when the name used belongs to another actual person, especially one working in the same field, whether or not the other person consents to this use of his or her name.

The failure is particularly egregious when a misattribution of one's own writings to another actual person is then exploited by the author by using the misattributed work as apparently independent authority for claims that he makes in his own later scholarship, as Professor

[221] In the interest of fairness, the Committee's attorney notified Professor Churchill and his attorney in February 2006 that the Committee planned to consider whether, in light of Professor Churchill's admissions, definitions of research misconduct other than plagiarism ought to be taken into account in connection with this allegation.
[222] For these statements, see Appendix B below.

Churchill has done. There is extended discussion of one instance of this practice in Allegation A, above. Moreover, a reader of Professor Churchill's work who is aware of his claim about the "pseudo-authored" essays he has published cannot help but encounter other instances of his citation to these works as authority.[223] This sequence of events permits the author to create the false appearance that his claims are supported by other scholars when, in fact, he is the only source for such claims.

Professor Churchill argues against the conclusion that his acts of pseudo-authorship are a form of research misconduct, claiming that there are respectable precedents for the practice.[224] He avers that it was common for authors of a certain period, publishing in certain publications (mainly Trotskyite, he says), to use pseudonyms freely, citing especially the case of C. L. R. James, noted Caribbean novelist and historian. It does not appear, however, that "J. R. Johnson," which was the most important of C. L. R. James' pseudonyms, was an actual person with a separate identity. Nor have we been shown or discovered that James claimed, in his scholarly work, that Johnson was a separate historian who supported certain claims that James made about historical events. In these ways the case of C. L. R. James is quite different from that of Professor Churchill. In any event a single counterexample, however distinguished, cannot nullify an overwhelming consensus about established practice. In his Submission J, entitled "Ghostwriting," Professor Churchill made a variety of other points concerning the remarkable career of Professor James, the use of pseudonyms, and the alleged misuse of students to author certain notable academics' well-respected works. Although witty and provocative, this submission contained nothing that puts us in doubt about our conclusion that Professor Churchill's conduct in the matter of the "Rebecca Robbins" and other essays constituted research misconduct.

C. Conclusion

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

We were unable to determine the degree of Rebecca Robbins' complicity in this conduct. But it is misconduct whether or not she acquiesced in it, and irrespective of any benefit she may have enjoyed as a result of it.

In light of Professor Churchill's admissions, it is clear that his use of Rebecca Robbins' name on work authored by him was neither accidental nor isolated. He represents that he engaged in this practice intentionally and repeatedly. Accordingly, we find by a preponderance of the evidence that this research misconduct was deliberate.

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[223] See, e.g., his citation to the 1992 article by "Lenore A. Stiffarm and Phil Lane, Jr." in his essay "Radioactive Colonization," in his *Struggle for the Land,* 1993 edition, p. 309, note 2, as well as in his essay "Perversions of Justice" in that same volume, p. 66, note 19.

[224] Submissions E and J.

Allegation G. Plagiarism of Professor Fay G. Cohen

(described in previous stages of this process as Allegation 4)

A. The Allegation

In this allegation, it is claimed that Professor Churchill plagiarized original work by Professor Fay G. Cohen of Dalhousie University. The plagiarized source, according to the allegation, is Fay G. Cohen, "Implementing Indian Treaty Fishing Rights: Conflict and Cooperation," in *Critical Issues in Native North America*, edited by Ward Churchill, Vol. II (1991).[225] The plagiarizing work is claimed to be an essay called "In Usual and Accustomed Places," credited to the Institute of Natural Progress, in *The State of Native America: Genocide, Colonization, and Resistance*, edited by M. Annette Jaimes and published in 1992.[226]

The "About the Contributors" portion of *The State of Native America* contains the following entry: "Institute for Natural Progress is a collective research institute founded by Ward Churchill and Winona LaDuke in 1982. It produces occasional studies of issues and policies important to the well-being of Native North America. Churchill assumed the lead role in preparing the INP contribution to this volume." There is also an entry giving certain biographical information for Ward Churchill as well as one for Winona LaDuke. The volume contains as well an individually authored essay published over Professor Churchill's name; another essay is attributed to Churchill and LaDuke as co-authors, without mention of the Institute for Natural Progress. One essay is credited to M. Annette Jaimes. Nineteen "contributors" are listed altogether.

B. Discussion

There can be little doubt that large portions of the 1992 essay credited to the Institute for Natural Progress plagiarize the earlier essay by Professor Fay G. Cohen published in the 1991 volume edited by Professor Churchill. This is the well-documented conclusion reached by an investigation conducted in 1997 by the University Secretary and Legal Counsel at Dalhousie University, where Professor Cohen is a faculty member. It is not disputed by Professor Churchill, whose defense to this allegation rests on a different ground. And, as illustrated in Appendix E below, it is the irresistible conclusion to be reached by a reader comparing the two documents. Although substantial portions of the later work seem to be original (or at least not derived from the Cohen work), the robust similarities in language between the Cohen article and certain portions of the INP essay could not be coincidental. The author of the INP article knew of the Cohen essay: it is cited in footnotes at three points (in notes 2, 13, and 55, in the first two instances using an incorrect title). The systematic employment elsewhere in the INP essay, without attribution, of phrases, sequences, and sentences from the Cohen essay satisfies the definition of plagiarism. The occasional alteration of these phrases, sequences, and sentences by small additions and deletions cannot change this conclusion.

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[225] Copenhagen: International Work Group on Indigenous Affairs, Doc. 68, pp. 154-75.
[226] Boston: South End Press, pp. 217-39.

Professor Churchill said (in his Submission E) that whatever plagiarism might be found in the INP essay, he was not responsible for it. He claimed that he did not write the "About the Contributors" entry in which he is given credit for the INP essay, and had no knowledge until recently of what it said. He said that he did some minor editorial work in the nature of copyediting for the *State of Native America* volume at the request of Professor Jaimes, including on the INP essay, but he claimed that he did not recognize the essay as containing large portions of the Cohen chapter that had appeared in the volume he edited one year earlier. Professor Churchill said that he believes the offending essay to be the work of Professor Jaimes and others unknown to him.

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

Professor Churchill's claim that he does not know who was responsible for the misappropriation of Professor Cohen's work is not, however, convincing. Contrary to his claim that he did only light copyediting work on it, the essay in question, "In Usual and Accustomed Places," is listed as a work written (not edited) by him in his Faculty Report of Professional Activity for the year 1991, followed by the parenthetical notation "for the Institute for Natural Progress." That essay is listed in the same category—"Refereed Articles or Chapters Published in Journals Periodicals, Books, or Scholarly Encyclopedias"—as the article ascribed to his sole authorship in the same volume and another attributed to him and Winona LaDuke (whom he also acknowledges in his Faculty Report of Professional Activity). In conversation with the Committee, Professor Churchill claimed that he did not personally prepare his Faculty Report of Professional Activity that year, and that some assistant, or possibly Professor Jaimes, prepared it and erroneously included the essay.[227] The Committee is not sure it finds this claim credible, but in any event Professor Churchill signed the document and is responsible for its contents. His representation that he did not recognize large portions of the original Cohen article in "In Usual and Accustomed Places" strains credulity. He had been the editor of the volume in which Professor Cohen's original article appeared, only one year earlier.

In another context, Professor Churchill has claimed that he actually authored an essay included in *The State of Native America* volume and credited to its editor, M. Annette Jaimes. Professor Jaimes was a close professional associate, departmental colleague, and frequent collaborator of Professor Churchill.[228] He also claims that he wrote several other essays appearing in this volume and credited to others. (See report on Allegation F, above.)

Moreover, it appears that Professor Churchill had, at the time of the Cohen article's misuse, a history of putting the name of the Institute for Natural Progress on work authored by others. Only one year earlier, he had included an article co-credited to the Institute for Natural Progress and a Canadian environmental group called Dam the Dams Campaign in the 1991 volume that he edited—the same volume that contained Professor Cohen's original essay.[229] (See the further discussion in the report on Allegation E, above, where we conclude that the essay made

[227] Interview, April 1, 2006.
[228] She was also, he disclosed during an interview with the Committee, his wife at the time (ibid.).
[229] *Critical Issues in North America*, Vol. II.

substantial unacknowledged verbatim use of language from an earlier publication by the Canadian group.) It thus appears that Professor Churchill had included, in a book that he personally edited a year previously, an essay containing material authored by another and credited to the INP. This observation makes even more implausible his claim that had nothing to do with a similar act of misappropriation in favor of the INP in the following year.

Professor Cohen, who agreed to respond to written questions submitted by the Committee as well as by Professor Churchill, gives an account of her transactions with Professor Churchill that is entirely incompatible with his claimed lack of participation in the misappropriation of her work. As she describes events, Professor Churchill was her contact for both the *Critical Issues in Native North America* volume, which he edited, and for *The State of Native America*, ostensibly edited by Professor Jaimes, in which the Cohen essay was also originally scheduled to appear. Disputes with Professor Churchill over the editing and production of her essay led Professor Cohen to withdraw it from inclusion in the second volume. She provided our Committee with copies of the letters she sent to Professor Churchill, Professor Jaimes, and the publisher of the second volume announcing that she was withdrawing her contribution. Shortly thereafter, however, it appeared in that volume, somewhat altered and credited to the Institute for Natural Progress. The Committee finds Professor Cohen's account to be credible and convincing.

C. Conclusion

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

Plagiarism is defined in the "Statement on Standards of Professional Conduct of the American Historical Association" as "the expropriation of another author's work, and the presentation of it as one's own."[230] Professor Churchill's close association and identification with the Institute of Natural Progress, and his claim of credit for the essay in his Faculty Report of Professional Activities, give some support to a finding that he committed plagiarism in his misuse of Professor Cohen's work. But even if this was not an act of plagiarism, it certainly constituted a misappropriation of the work of another and thus constitutes "failure to comply with established standards regarding author names on publications," a form of research misconduct under our Research Misconduct Rules.

[230] On-line at http://www.historians.org/pubs/Free/ProfessionalStandards.cfm, accessed 01/30/2006.

Part III. Summary and Conclusions

A. Summary of Our Findings

The Committee's investigation of the seven allegations before us has unanimously found, by a preponderance of the evidence, that Professor Churchill committed several forms of academic misconduct as defined in the policy statements of the University of Colorado at Boulder and the University of Colorado system:[231]

1. Falsification, as discussed in Allegations A, B, C, and D.

2. Fabrication, as discussed in Allegations C and D.

3. Plagiarism, as discussed in Allegations E and G.

4. Failure to comply with established standards regarding author names on publications, as discussed most fully in Allegation F but also in Allegations A, B, and D.

5. Serious deviation from accepted practices in reporting results from research, as discussed in Allegation D.

We did not find plagiarism in Allegation F.

We note additionally that Professor Churchill was disrespectful of Indian oral traditions when dealing with the Mandan/Fort Clark smallpox epidemic of 1837. He did not mention native oral sources in his published essays but adduced them only retrospectively and disingenuously in an attempt to defend himself against charges of academic wrongdoing, as discussed in Allegation D.

The Research Misconduct Rules enjoin the Committee to address not only whether research misconduct has occurred, but also (if we find it has) whether the misconduct was deliberate or merely careless, whether it was an isolated event or part of a pattern, and how serious we judge the misconduct to be.[232] We have concluded that each of the seven allegations of research misconduct before us is borne out by the evidence, although in some instances the nature of the misconduct that we have found is not precisely as it was characterized in the allegation. Our findings on the question of deliberateness have been set forth in the reports on the separate allegations. The questions of pattern and seriousness considered below lead to the issue of sanctions.

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[231] See Appendix B below.

[232] Operating Rules and Procedures of the Standing Committee on Research Misconduct (see Appendix B below). These rules would also require us to address, in the event we found that no misconduct had taken place, whether the allegations were made maliciously and without reasonable basis. Our findings of research misconduct eliminate the occasion to address this question.

B. Patterns of Conduct

We have noted and discussed a number of distinct but related patterns of misconduct that deserve mention. One is an indifference to the proper attribution of scholarly work to its genuine author. This indifference has taken the form of misappropriation of the work of another, the attachment of the names of others to Professor Churchill's own work, and the use of uninformative titles such as "Institute of Natural Progress" to muddy the assignment of credit and responsibility for work.[233] The conventions of scholarly attribution are not empty forms of etiquette; they are central to the progress of scholarship and the accountability of the scholar. Professor Churchill's disregard for them is therefore troubling. We have also observed several instances in Professor Churchill's work of a willingness to make claims about legislation or historical events not supported by the evidence he cites or by any other evidence the Committee could locate.[234] A related pattern is the employment of vague or obfuscating citation and reference practices. More serious still is the pattern of citing one's own work, disguised by its attribution to another living scholar in the same field, as authority for assertions and claims that lack independent support.[235] We do not know whether these practices are the result of inadequate training or the desire to obscure the lack of support for his claims from other scholars and the historical record (we suspect the latter), but they make it difficult for the reader to verify or discredit his claims. Such practices are of particular concern because Professor Churchill has repeatedly stressed the importance of full documentation as a means of promoting dialogue.

Professor Churchill has, on more than one occasion, claimed that certain acts that appear to have been his were instead the responsibility of some other actor: his editor or publisher, his assistant, or his former wife and collaborator. In some cases we have not found these claims credible; in others we were unable to arrive at a judgment about their veracity. But apart from their plausibility, we have come to see these claims as emblems of a recurrent refusal to take responsibility for errors (whether or not abetted by some other person's act or omission), and a willingness to blame others for his troubles. In our view, this repeated behavior bears on a proper judgment about the seriousness of his misconduct.

If there is one crucial pattern that most affects our assessment, however, it is a pattern of failure to understand the difference between scholarship and polemic, or at least of behaving as though that difference does not matter. There are some signs that Professor Churchill does recognize the distinction: he correctly segregates the portion of his Curriculum Vitae that lists his publications into such categories as Books, Scholarly Essays (unrefereed), Scholarly Essays (refereed), Book Reviews, and Polemics. None of the writings discussed in this report appear as Polemics; it is the work he claims as scholarship that is the subject of this investigation. But the Committee has found repeated instances of his practice of fabricating details or ostensible written evidence to buttress his broader ideological arguments.[236] While his general claims may be correct, it is unacceptable scholarship to create fictitious support for them.

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[233] Allegations E and G above.
[234] Allegations A, B, C, and D above. For below, see Allegations A and D.
[235] Allegations A, D, and F above.
[236] Allegations A, B, C, and D above.

Professor Churchill's approach to scholarship betrays ideals that he himself has articulated about its methods and motivations. As mentioned in the Introduction to this report, Professor Churchill has expressly acknowledged that "it is a matter not just of courtesy, but of ethics, to make proper attribution to those upon whose ideas and research one relies."[237] He continues that he wants those who read his work to "be able to interrogate what I've said, to challenge it and consequently to build on it. The most expedient means to this end is the provision of copious annotation, citing sources both pro and con."

During conversation with the Committee, however, Churchill described his scholarly process in quite different terms:

> I've got this general understanding. You say, but can that general understanding be confirmed? Well, I'm looking to confirm it. I'm also looking for information, and I told you this at the outset, I'm looking to prove it's true.[238]

This conception of the obligations of the scholar is, to say the least, impoverished. It cannot be denied that each of us brings to the enterprise of scholarship certain pre-existing commitments and beliefs, as well as certain favored methodologies and organizing principles. It is impossible not to hope to find confirmation for what one has come to believe. But as a scholar, one must "look" not only to confirm one's hopes, but also to face the possibility that the evidence may disconfirm them. And even if one finds more evidence for the truth of one's beliefs than evidence against them, all of the evidence must be acknowledged and treated fairly. Some of the patterns of conduct discussed in this report represent significant departures from these bedrock principles of scholarship.

Of course, every scholar makes mistakes. No one is perfect, and few scholars have records free from an occasional error. The standards of our profession encourage the acknowledgement and correction of such errors (although, as Professor Churchill has pointed out to us, some scholars whose work has been exposed as erroneous have continued to write, teach, and work without much hindrance from their mistakes). But honest error is not the same as misconduct, and one of the factors that distinguish them is the intentions of the actor. As historian Ralph Luker has argued, "When every qualitative error in a book is an error in the direction of the book's thesis, you have prima facie evidence of fraud."[239] Or, as Professor Churchill himself has written, "Tailoring the facts to fit one's theory constitutes neither good science nor good journalism. Rather, it is intellectually dishonest and, when published for consumption by a mass audience, adds up to propaganda."[240]

We believe that these patterns of conduct and behavior properly affect any judgment about the gravity of Professor Churchill's behavior.

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[237] *A Little Matter of Genocide*, p. 10, for this and the following quotation.
[238] Interview, April 1, 2006.
[239] Ralph Luker, "The Crisis in History: A Review of the Three Books Written about the Scandals," *History News Network*, January 3, 2005, online at http://hnn.us/articles/9378.html, accessed 04/14/2006.
[240] *Since Predator Came: Notes from the Struggle for American Indian Liberation* (Littleton, CO: Aigis Publications, 1995), p. 265.

C. Seriousness of the Misconduct

Judging the seriousness of the misconduct described in this report requires consideration of the damage Professor Churchill's conduct imposes on other scholarship in the field of ethnic studies, especially Native American studies. This damage is particularly likely to be felt by those whose work concerns the mistreatment of Native Americans by European explorers, traders, settlers, and military personnel. Plenty of reliable evidence supports the conclusion that Native Americans were on more than one occasion subjected to racist genocidal campaigns by some of these actors. There is no need for any scholar to exaggerate data to support that conclusion. Those who do so inflict harm on other scholars doing meticulous work that documents aspects of the racism and genocide inflicted on Indian peoples of the Americas by the settler society, and on the enterprise of such scholarship more generally. Since this area of scholarly inquiry is often targeted by the hateful, the naïve, and those bent on denying alternative historic truths, it is especially vulnerable to injury by association with work employing unacceptable scholarly techniques.

The production of shoddy and irresponsible work also harms other individuals associated with Professor Churchill, including those who work in the Department of Ethnic Studies and elsewhere at the University of Colorado. Some scholars may experience vicarious negative effects from Professor Churchill's conduct, ranging from increased public skepticism about the integrity and value of their work to outright hostility to the academy as a whole. We recognize that all universities encounter criticism from time to time and must be strong enough to withstand it. They must also be courageous enough to defend faculty members who have aroused unjust criticism.[241] But the damage done to the reputation of ethnic studies as a field and to the University of Colorado as an academic institution is a consideration in our assessment of the seriousness of Professor Churchill's conduct.

We note that during the years when Professor Churchill published many of the essays at issue in these allegations he was a prolific writer and editor. We were not directed to examine his entire body of work for other instances of misrepresentation of sources or unauthorized use of the writings of others, nor could we have done so in the time allotted for our investigation. We only observe that great productivity in scholarship is praiseworthy, but not if it comes at the expense of careful original work and proper attribution of credit to their actual authors.

We have considered at length how to evaluate the seriousness of Professor Churchill's misconduct when our attention has been called to only a very small proportion of the writing that forms the extensive corpus of his work. We do not question that some of the general statements in his writings about the treatment of Indian people in the United States are correct. It may be that many of his specific assertions are also accurate and that on many occasions his sources say exactly what he claims. We note, however, that in the course of our investigation, as our work

[241] The Laws of the Regents explicitly state that "faculty members have the responsibility to maintain competence, exert themselves to the limit of their intellectual capacities in scholarship, research, writing, and speaking; and to act on and off the campus with integrity and in accordance with the highest standards of their profession," and that "while they fulfill this responsibility, their efforts should not be subjected to direct or indirect pressures or interference from within the university, and the university will resist to the utmost such pressures or interference when exerted from without." See Appendix B below.

has necessarily required us to read through a variety of Professor Churchill's writings in addition to those cited specifically in the allegations, we encountered a disquieting number of instances in which his use of sources aroused our concern. We are not in a position either to say that the flawed passages we have examined are typical of his work or to conclude that they represent an uncharacteristic divergence from proper standards of scholarship that he has observed in works not reviewed here.

Another factor that affected our consideration of seriousness is Professor Churchill's attitude toward shortcomings in his work identified by other scholars or our Committee's investigation. When criticism of his work has been printed in appropriate scholarly venues, he has not published substantive responses to such critiques. Instead his tendency is to attack the person offering that criticism. Thus, when Professor LaVelle published in 1996 a negative review of one of Professor Churchill's books, Professor Churchill's reaction was to fire off a rebuttal that the editor of the journal refused to publish because he considered it libelous.[242] Nor has Professor Churchill taken part in academic dialogue concerning Professor LaVelle's fuller critique of his claims and sources in 1999. In another example, Professor Churchill expressed to this Committee his intention of reprinting with only a few minor changes in wording his most recent and fullest account of the Fort Clark/Mandan smallpox epidemic of 1837.[243] Although he appeared to acknowledge during the course of this investigation that several of his claims as expressed in that essay are not supported by the evidence, he nevertheless plans to re-publish the piece without substantive revision.

Professor Churchill was likewise unwilling to acknowledge any serious wrongdoing in his conversations with our Committee, though he was civil and collegial in manner. He did admit once that he had copied the wrong reference into a note, and he implied that he might perhaps have phrased a passage differently or considered the consequences of an act (for example, attaching someone else's name to his work).[244] But about more fundamental problems, he did not back down. In connection with the use of other living scholars' names on his work, for instance, he claimed that the practice was common and acceptable, propositions we firmly reject. Professor Churchill repeatedly claimed in his written submissions and interviews with us that he has been singled out for unfair scrutiny by those who oppose his political views. We note, however, that his habit of responding to an accusation by disparaging the accuser rather than addressing the question serves as a way to evade genuine confrontation with the charges.

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[242] Professor Churchill told our Committee (on April 1, 2006) that after Professor John LaVelle's review essay came out in 1996, criticizing many features of Churchill's *Indians Are Us*, Churchill sent a response to the *American Indian Quarterly*, the journal that had published LaVelle's review. The editor of the *Quarterly* refused to publish Professor Churchill's response as submitted on the grounds that it was libelous. As Professor Churchill explained to the Committee, LaVelle "called me a liar, I called him a sellout." Professor Churchill did not revise his response or submit it elsewhere. Nor has he acknowledged in any way LaVelle's longer critique of his work, "The General Allotment Act 'Eligibility' Hoax: Distortions of Law, Policy and History in Derogation of Indian Tribes," published in the Spring 1999 edition of *Wicazo Sa Review*. Professor Churchill told us that he did not read that critique until four years after its publication, and when he did, he felt that it did not deserve a response. See Allegations A and B above for discussion of two of LaVelle's specific objections.

[243] See note 186 above.

[244] E.g., interview on April 1, 2006, for all three responses.

Some of the allegations that we have discussed in this report could plausibly have been characterized as not serious had they been founded on one instance, a singular departure from an otherwise clean record of scholarship. But this is sadly not the case. Taking all of these considerations into account, we agree unanimously that the misconduct we have found during our investigation and described in this report is serious.

D. The Question of Sanctions

As the Research Misconduct Rules of the Boulder campus describe this Committee's task, they do not ask us to recommend a decision about what sanction should be imposed for the misconduct we have found; the procedures reserve that decision for others.[245] We are enjoined by the University system's rules, however, to provide "a description of any sanctions." We take that requirement to mean that we should disclose our beliefs on the sanctions question, with the understanding that we are not the final judges and that the ultimate judges may have before them information unknown to or uninvestigated by us. While we do not find ourselves in full agreement about what a proper sanction might be in this case, we concur in several preliminary observations that we believe are necessary to ensure that our findings are not misinterpreted.

We emphasize that we have not taken any evidence on the question of the University's contributions to the situation that it now confronts or on the role of the media in the Churchill controversy. We therefore advance the following observations not as findings based on evidence, but as considerations we think should not be ignored by those who do eventually decide Professor Churchill's future at the University of Colorado.

As we have noted before, the Laws of the Regents of the University of Colorado expressly recognize the importance of robust and free debate in arriving at truth in the governing documents of this institution. About academic freedom these Laws say this:

> '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.[246]

The Laws also stipulate that:

> Faculty members have the responsibility to maintain competence, exert themselves to the limit of their intellectual capacities in scholarship, research, writing, and speaking; and to act on and off the campus with integrity and in accordance with the highest standards of their profession . . . [and] while they fulfill this responsibility, their efforts should not be subjected to direct or indirect pressures or interference from within the university, and the university will resist to the utmost such pressures or interference when exerted from without.[247]

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[245] For this and below, see Appendix B.
[246] Ibid.
[247] Ibid.

Thus the decision to hire, and especially to confer continuous tenure on, a faculty member is a deeply consequential one for the University, for by making this decision the University commits itself to the defense of the individual's work, so long as he or she lives up to the University's expectations. We believe that the University of Colorado[248] may have made the extraordinary decision to hire Professor Churchill, a charismatic public intellectual with no doctorate and no history of regular faculty membership at a university, to a tenured position without any probationary period in part because at that moment in the institution's history, it desired the favorable attention his notoriety and following were expected to bring.[249] This notoriety was achieved to some extent by the publication of some of the very essays that have now come under scrutiny because of their scholarly shortcomings. The hiring was, in short, largely the consequence of Professor Churchill's effectiveness as a polemicist.

In light of the explicit requirements of the Regents' Laws requiring the university to resist outside interference and pressures, it is at least ironic that the Interim Chancellor of the University has now become the formal complainant in this much-publicized proceeding. The University has perhaps gotten more than it bargained for when it made its high-risk decisions about Professor Churchill in the early 1990s, but there is very little about the present situation that is not foreshadowed by developments across the last fifteen years. For us, the indignation now exhibited by some University actors about Professor Churchill's work appears disingenuous, as they and their predecessors are the ones who decided to hire him.

There is another factor as well that we believe requires consideration by those who must decide on the proper sanction for Professor Churchill's misconduct: the role of some media outlets[250] and certain public figures in stirring up public animosity toward him and the University of Colorado. Political interference in the University's processes and decisions has recently undergone one of its periodic spikes, causing in some cases only a regrettable waste of resources, but in others actual threats to academic freedom and the best traditions of higher education. Although the great majority of the University of Colorado's funding comes from other sources, the State continues to provide some support. We appreciate that citizens of the State are entitled to take a proprietary interest in the way the institution conducts its business, despite the declining role of state financial support. Indeed, those of us on the Colorado faculty depend in many ways on the citizens of Colorado and their loyalty and (in the best case) affection. The two of us who teach at other state universities also recognize this relationship in our own States. Moreover, we cannot deny that the University has, in many instances during the past few years, mismanaged its affairs in a way that lends support to its critics. (Some of us have been among those critics.) But at the same time we have seen some elected officials exploit the legitimate concerns of their constituents and transform them into an agenda that weakens higher education in Colorado.

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[248] We speak here of the "University of Colorado" as an actor, aware that this description is inadequate, as it was in every case individuals who made the decisions we describe. We do not know who all of these individuals were, nor do we fully understand the processes behind the decisions, so we employ the University's name as a proxy for these actors and processes.

[249] No doubt it had other motives as well, such as the laudable one of increasing its offerings in Native American scholarship and learning.

[250] We do not wish to be taken for critics of media attention to University matters. Some of the media coverage of the Churchill matter has been accurate and thoughtful, even as some has been sensational and uninformed.

The role of the public and press in attacking Professor Churchill is part of a more general opening up of the academic world to wider participation over the past 20 years. Debates that would previously have been conducted within the academic world itself by scholars who worked in a given field are now matters of public knowledge and sometimes of considerable public interest. Everyone is able to express opinions about academic issues by contacting the media, posting ideas on the web or internet, or sending e-mails directly to the scholars involved. While this expansion of discussion has many positive features, it contains some worrying characteristics too. Members of the press have acquired considerable power to advance or harm scholarly reputations, especially for people who frequently appear in public venues and who advocate controversial positions about contemporary issues. Circulation figures rise if news media prepare accounts that grab public attention, sometimes irrespective of complete accuracy. Short news segments do not lend themselves to balanced reports of complex arguments. The ease of posting or sending anonymous statements on the web or e-mail has weakened previous expectations for accuracy and civility in debate over public issues. It may be difficult to assess the reliability of such statements and impossible to determine the motives of those who send them. Scholars who are described in negative terms in the news are sometimes subjected to vicious personal attacks on web pages or by e-mail.[251]

These changes in communication can have particular impact when an accusation of academic wrongdoing becomes a matter of public interest. People without formal training in a particular field of scholarship are able to assert just as forcefully as specialists that someone has falsified or misused evidence or has offered unwarranted interpretations. In this case, both the University administration and Professor Churchill relied at times on assertions made by "researchers" with no formal qualifications, background, or training about the topics under consideration. A recent book that discusses instances of alleged academic misconduct emphasizes that the outcomes of such accusations are heavily influenced by the extent of media/web/internet involvement.[252] Another analysis stresses the power of political groups and advocacy organizations in promoting charges of scholarly wrongdoing.[253] Focusing on historians, its author suggests that publications that question traditional American values may be scrutinized with particular intensity by people in the wider community. If any evidence of misconduct is found, scholars who critique accepted views are far more likely to be fired from their jobs—not just reprimanded—than are academics who support familiar interpretations.

The considerations we mention have been very much on our minds as we have considered a recommendation concerning the appropriate sanction for Professor Churchill's misconduct. Our thinking about this difficult question was also informed by the Rules of the Regents, which contain the following provision concerning revocation of tenure:

> **§ 5.C.1 Dismissal.** A faculty member may be dismissed when, in the judgment of the Board of Regents and subject to the Board of Regents' constitutional and statutory authority, the good of the university requires such action. The grounds

[251] This has certainly been the case for Professor Churchill and—by extension—for the University's Department of Ethnic Studies.

[252] Ron Robin, *Scandals and Scoundrels: Seven Cases That Shook the Academy* (Berkeley: Univ. of California Press, 2004), esp. pp. 23-36 and ch. 8.

[253] Jon Wiener, *Historians in Trouble: Plagiarism, Fraud, and Politics in the Ivory Tower* (New York: The New Press, 2005), esp. pp. 1-9 and 201-14.

> for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of *nolo contendere*, or sexual harassment or other conduct which falls below minimum standards of professional integrity.[254]

Our discussions convinced the members of the Committee that it would be difficult to communicate the degree of seriousness of the research misconduct identified by the Committee without also recommending what sanctions are appropriate. In arriving at these recommendations, the Committee limited consideration to the misconduct identified in these seven allegations and to the context of the allegations. We ignored other considerations that might legitimately be part of the consideration of sanctions by responsible University personnel.

While we are unanimous in finding that Professor Churchill's research misconduct is serious and that we should express the degree of that seriousness through a recommendation about sanctions, our discussions have not led to unanimity about what particular sanctions are warranted. What follows, then, is the only portion of our report that presents multiple views.

- Two members of the Committee conclude and recommend that Professor Churchill should not be dismissed. They reach this conclusion because they do not think his conduct so serious as to satisfy the criteria for revocation of tenure and dismissal set forth in section 5.C.1 of the Law of the Regents, because they are troubled by the circumstances under which these allegations have been made, and because they believe that his dismissal would have an adverse effect on the ability of other scholars to conduct their research with due freedom. These two members agree and recommend that the most appropriate sanction, following any required additional procedures as specified by the University's rules, is a suspension from University employment without pay for a term of two years.

- Three members of the Committee believe that Professor Churchill's research misconduct is so serious that it satisfies the criteria for revocation of tenure and dismissal specified in section 5.C.1 of the Laws of the Regents, and hence that revocation of tenure and dismissal, after completion of all normal procedures, is not an improper sanction. One of these members believes and recommends that dismissal is the most appropriate sanction; the other two believe and recommend that the most appropriate sanction is suspension from University employment without pay for a term of five years.

The Committee is in complete agreement that it will not disclose to anyone the individual votes of its members concerning sanctions.

[254] See Appendix B below.

Appendices A - E

Appendix A. Summary Biographies of the Voting Members of the Committee

MARIANNE WESSON, Chair of the Committee, is Professor of Law, Wolf-Nichol Fellow, President's Teaching Scholar, and Senior Scholar of the Women Studies Program at the University of Colorado. After graduating from Vassar College and the University of Texas Law School, working as law clerk to a federal judge, and serving as Assistant Attorney General for the State of Texas, she joined the faculty of the University of Colorado Law School in 1976. In 1992, she was designated a President's Teaching Scholar, the University's highest form of recognition for excellence in teaching. She is the author of four books (*Crimes and Defenses in Colorado, Render Up the Body, A Suggestion of Death*, and *Chilling Effect*) and numerous articles. In her teaching and research she specializes in criminal law, evidence, trial practice, and law and literature.

Professor Wesson served in 1989-1990 as Associate Vice President for Academic Affairs and in 1995-1996 as Acting Dean of the School of Law at the University of Colorado; from 1980 to 1982, while on leave from her faculty duties, she was Assistant United States Attorney for the District of Colorado. From 1989 to 1994 she served on the Colorado Supreme Court Grievance Committee. Her recent awards include the Mary Lathrop Award, conferred by the Colorado Women's Bar Association on an outstanding woman lawyer, and the Elizabeth Gee Memorial Lectureship, established by the Committee on Faculty Women of the University of Colorado. In 2003 she gave the Dorothy L. Thompson Civil Rights Lecture at Kansas State University. She is an elected member of the American Law Institute, and is admitted to practice before numerous courts, including the United States Supreme Court. She serves as regular legal correspondent for National Public Radio as well as an occasional commentator for other media outlets.

ROBERT N. CLINTON, Foundation Professor of Law at the Sandra Day O'Connor College of Law, Arizona State University, was born and raised in the Detroit, Michigan metropolitan area. He did his undergraduate work at the University of Michigan where he received a B.A. in political science in 1968 and attended the University of Chicago Law School, receiving his J.D. in 1971. After private practice in Chicago, he joined the faculty of the University of Iowa College of Law in 1973, where taught until 2000. While at the University of Iowa College of Law he served as the Wiley B. Rutledge Professor of Law and as an Affiliated Faculty Member of the American Indian and Native Studies Program of the University of Iowa College of Liberal Arts. For the 2001-2003 academic years, Professor Clinton served as the Barry Goldwater Chair of American Institutions at Arizona State University and is currently an Affiliated Faculty member of the American Indian Studies Program at Arizona State University.

He has visited as a scholar or teacher at the law schools of the University of Michigan, Arizona State University, Cornell University, and the University of San Diego. Additionally, he has often

taught in the Pre-Law Summer Institute for American Indian and Native Alaskan Students sponsored by the American Law Center, Inc.

Professor Clinton also has the honor and privilege to serve as Chief Justice of the Winnebago Supreme Court, as Associate Justice of the Cheyenne River Sioux Tribal Court of Appeals, and as Associate Justice for Colorado River Indian Tribes Court of Appeals. He has also served as a temporary judge or arbitrator for other tribes. Professor Clinton teaches and writes about federal Indian law, tribal law, and Native American history, constitutional law, federal courts, civil procedure and copyrights. His publications include numerous articles on federal Indian law and policy, constitutional law, and federal jurisdiction. He is the co-author of casebooks on Indian law and federal courts, *The Handbook of Federal Indian Law* (1982 ed.), *Colonial and American Indian Treaties* (a collection on CD-ROM), and over 25 major articles on federal Indian law, American constitutional law and history, and federal courts.

JOSÉ E. LIMÓN is the Mody C. Boatright Regents Professor of American and English Literature at the University of Texas at Austin and currently also serves as Director of the University's Center for Mexican-American Studies. He holds the B.A. in philosophy (1966), the M.A. in English (1969), and the Ph.D. in cultural anthropology (1978), all from the University of Texas at Austin. He has taught at the University of California at Santa Cruz, where he also served as Chairman of the American Studies Program. His academic interests are varied and include cultural studies, American literature, Mexican-American literature, anthropology and literature, U.S.-Mexico cultural relations, critical theory, and folklore and popular culture. In 1987-1988 he was a fellow at the Stanford Humanities Research Center. The National Endowment for the Humanities awarded him a research fellowship in 1994, and he received another research fellowship from the American Council of Learned Societies for 1997-1998.

Professor Limón has published articles in a wide range of scholarly journals and three books: *Mexican Ballads, Chicano Poems*: *History and Influence in Mexican-American Social Poetry* (University of California Press, 1992), which received an "Honorable Mention" award for the University of Chicago Folklore Prize for a "distinguished contribution to folklore scholarship"; *Dancing with the Devil: Society and Cultural Poetics in Mexican-American South Texas* (University of Wisconsin Press, 1994), the winner of the 1996 American Ethnological Society Senior Scholar Prize for "a vital and contentious contribution to ethnology"; and *American Encounters: Greater Mexico, the United States, and the Erotics of Culture* (Beacon Press, 1998). At present he is at work on an interdisciplinary study of the Mexican-American middle class entitled *Hispanic Self-Fashioning: The Making of a Mexican-American Middle Class Identity.*

MARJORIE K. McINTOSH, Distinguished Professor of History at the University of Colorado at Boulder, does two different kinds of historical work. With B.A., M.A., and Ph.D. degrees from Harvard University, she has written four books and many articles about the history of England between 1200 and 1620. Her research has been supported by grants from the American Council of Learned Societies, the National Endowment for the Humanities, the John Simon Guggenheim Foundation, the American Philosophical Society, and the American Bar

Foundation. Several of her books have won prizes or special honors, and she is a Fellow of the British Royal Historical Society.

Professor McIntosh also works with oral sources while doing research and teaching about modern African women's history. In 2002-2003, she was a member of the Department of Women and Gender Studies at Makerere University in Uganda, the leading institution in East Africa. In that interdisciplinary setting, she team-taught courses on the theory and methodology of oral history with African colleagues who had received their graduate training in a variety of different fields, and she supervised a number of M.A. theses. Her department (the first of its kind in sub-Saharan Africa) faced many of the same criticisms directed at ethnic studies programs in this country, in part because it attempts to make academic scholarship relevant to contemporary issues. Together with a Ugandan scholar, Professor McIntosh did research on women during the colonial and post-colonial periods. Their study depended heavily on oral histories collected through interviews with 130 women. The co-authored book that describes their findings is being jointly published by presses in Uganda, the U.S., and Britain. She is now writing a book about Yoruba women in Nigeria, 1820-1960.

MICHAEL L. RADELET is Professor and Chair, Department of Sociology, University of Colorado-Boulder, a position he assumed in 2004. He completed his Ph.D. in 1977 at Purdue and post-doctoral training (in Psychiatry and Ethics) at the University of Wisconsin Medical School, and then spent 22 years at the University of Florida before moving to Boulder in 2001. From 1996-2001 he served as Chair, Department of Sociology, University of Florida, and since 1995 he has been Visiting Professor, University of Westminster School of Law in London, England.

Professor Radelet's research focuses on capital punishment, especially the problems of erroneous convictions, racial bias, and ethical issues faced by health care personnel who are involved in capital cases and executions. In 2002, at the request of Illinois Governor George Ryan, he completed a study of racial biases in the death penalty in Illinois that Governor Ryan used in his decision in 2003 to commute 167 death sentences. More recently, his research on death sentencing in California was published in late 2005 in the *Santa Clara Law Review*, and a study on race and death sentencing in Colorado will appear in the next issue of the *University of Colorado Law Review*. Radelet has testified in approximately 75 death penalty cases, before committees of both the U.S. Senate and House of Representatives, and in legislatures in seven states. He has worked with scores of death row inmates, and is a member of the Board of Directors of "FOHVAMP," a Colorado group of families of homicide victims in which the homicide was not solved by the police. In February 2006, he won the "Paul Tappan Award" from the Western Society of Criminology, their highest award given for lifetime achievements and contributions in the field of Criminology.

Appendix B. Relevant Laws, Policies, and Administrative Statements of the University of Colorado at Boulder and the University of Colorado System concerning Academic Freedom, Research Misconduct, and Dismissal

A. Academic Freedom and Faculty Responsibility

Laws of the Regents, University of Colorado System
(http://www.cu.edu/regents/Laws/Article5D.htm)

§ 5.D.1. Intent and Definition

(A) 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 that atmosphere of free inquiry and discussion, which has become a tradition of universities and is called "academic freedom."

(B) 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.

(C) Within the bounds of this definition, academic freedom requires 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.

(D) Academic freedom does not give either faculty or students the right to disregard the standards of conduct outlined in part B of article 7 [referring to students] of these *Laws*.

(E) All members of the academic community have a responsibility to protect the university as a forum for the free expression of ideas.

§ 5.D.2. Faculty Responsibility

(A) Faculty members have the responsibility to maintain competence, exert themselves to the limit of their intellectual capacities in scholarship, research, writing, and speaking; and to act on and off the campus with integrity and in accordance with the highest standards of their profession. While they fulfill this responsibility, their efforts should not be subjected to direct or indirect pressures or interference from within the university, and the university will resist to the utmost such pressures or interference when exerted from without.

(B) Faculty members can meet their responsibilities only when they have confidence that their work will be judged on its merits alone. For this reason the appointment,

reappointment, promotion, and tenure of faculty members should be based primarily on the individual's ability in teaching, research/creative work, and service and should not be influenced by such extrinsic considerations as political, social, or religious views, 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.

(C) The faculty member is entitled to freedom in the classroom in discussing the subject, but should be careful not to introduce into teaching controversial matter that has no relation to the subject.

(D) Faculty members are citizens, members of learned professions, and members of the academic leadership of an educational institution. When speaking or writing as citizens, they should be free from university censorship or discipline, but their special position in the community imposes special obligations. As faculty members however, they should remember that the public may judge their profession and institution by their utterances. Hence faculty members should be accurate at all times, should exercise appropriate restraint and show respect for the opinions of others, and when speaking or writing as private citizens should make every effort to indicate that they are not speaking for the institution.

B. Definitions of Misconduct in Research and Authorship

1. University of Colorado at Boulder, Administrative Policy Statement on Misconduct in Research and Authorship, as Cited in Research Misconduct Rules, Operating Rules and Procedures of the Standing Committee on Research Misconduct (http://www.colorado.edu/Academics/research_misconduct_rules.html):

Research misconduct shall be considered to include:

1. Fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from research;
2. Material failure to comply with Federal requirements for protection of researchers, human subjects, or the public or for ensuring the welfare of laboratory animals;
3. Failure to meet other material legal requirements of research; or
4. Failure to comply with established standards regarding author names on publications.

2. University of Colorado System, Administrative Policy Statement concerning Misconduct in Research and Authorship (http://www.cusys.edu/policies/Academic/misconduct.html)

Under this policy “research misconduct” shall include but shall not be limited to:

(1) Fabrication, falsification, plagiarism and other forms of misappropriation of ideas, or additional practices that seriously deviate from those that are commonly accepted in the research community for proposing, conducting, or reporting research.

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

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

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

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

The definition of research misconduct does not include honest error or honest differences in interpretations or judgments of data. Moreover, the definition contained in this policy is not intended to override or contradict provisions of other regulations or policies, in particular those policies governing human research subjects and animal welfare. A finding of a substantive violation of specific policies in these areas will also be considered misconduct under this policy.

The University will undertake reasonable efforts to protect those persons who make good faith allegations regarding research misconduct. Institutional actions engaged in pursuant to this policy shall be conducted in a way that preserves confidentiality to the maximum extent possible, unless this would be inconsistent with protecting public health and safety.

C. Procedures to be Followed in an Investigation of Alleged Misconduct

1. University of Colorado at Boulder, Operating Rules and Procedures of the Standing Committee on Research Misconduct
(http://www.colorado.edu/Academics/research_misconduct_rules.html):

VI. Investigation Phase

When the Standing Committee has completed the inquiry phase and has decided that the evidence supporting the allegation(s) warrants a full investigation, it shall appoint a committee to conduct the investigation in consultation with the appropriate dean or vice chancellor. The investigation is an information-seeking, nonadversarial proceeding to explore further the allegations of misconduct and to evaluate whether any or all of the allegations are substantiated by a preponderance of the evidence. The investigation shall consist of review of the evidence presented in the inquiry and consideration of any additional evidence obtained from witnesses, physical exhibits, documents, and other sources. The investigation may include examination of such documentation as relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Interviews may be conducted with all persons making allegations

or against whom allegations are made, as well as with other individuals having information about the allegations. The investigation may include discovery and evaluation of information pertaining to research practices that may justify broadening the scope of the investigation beyond the initial allegation(s). The proceedings of the investigating committee (but not the deliberations) shall be tape recorded.

A. Appointment of Investigative Committee

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

1. In consultation with the appropriate dean or vice chancellor, the Standing Committee shall appoint an ad hoc committee of three to five members, including a chair, herein referred to as the investigating committee.
2. Investigating committee members may be selected from inside or outside the University, excluding members of the Standing Committee. Attention in selection should be paid to (1) avoiding conflicts of interest and (2) including appropriate research expertise within the committee to evaluate the allegation(s) under consideration.
3. The Standing Committee shall consult with the respondent and complainant to ensure that investigating committee members do not have a bias or conflict of interest in considering the case. If a member's impartiality is questioned, the Standing Committee may replace that member.
4. The chair of the Standing Committee shall meet with the Investigative Committee, prior to the initiation of the investigation, to discuss the procedures for the investigation phase, described in section VI of this document.

B. Investigation Process

1. The investigation shall be initiated within 30 calendar days of the completion of the inquiry and conducted as expeditiously as possible. The investigating committee shall reach a decision as to whether misconduct did occur and shall report its findings to the Standing Committee within 120 calendar days of the initiation of the investigation, unless a longer period is clearly warranted.
2. The investigating committee has the responsibility for conducting a thorough and unbiased investigation to gain full knowledge of the evidence. In accordance with this mandate, the investigating committee shall:
    a. Begin its proceedings by studying the information collected by the inquiry committee and by consulting the Standing Committee regarding the fundamentals of the case.
    b. Conduct a full examination of relevant evidence, which may require reinterviewing witnesses, interviewing additional witnesses, and pursuing other directions not considered in the inquiry. The investigating committee shall determine the extent or limitations of the examination of evidence. If the investigating committee broadens the scope of the investigation beyond that of the initial allegations, it shall notify the respondent of the new areas being studied and allow the respondent to supply additional information.

c. Take responsibility for providing the respondent with an opportunity to present his or her position, including the opportunity to present the testimony of witnesses, written statements, and other supporting documentation. The respondent may suggest additional avenues of investigation and witnesses to be interviewed by the committee. The respondent and the respondent's advisor may be present during the committee's questioning of witnesses. Neither the respondent nor the respondent's advisor may question witnesses directly; however, they may suggest questions to the committee.
d. Control the proceedings and limit the presentation of irrelevant or repetitious evidence. Any party appearing before the committee may have an advisor present, who may be an attorney. The advisor may assist the party in the presentation of information but may not speak on the party's behalf.
e. Take precautions to keep all details of the investigation confidential and request confidentiality from all persons who present information during the investigation.
f. Keep the Standing Committee informed on the progress of the investigation.

C. Findings and Disposition by the Investigating Committee

The objective of the disposition phase is to render an informed and unbiased judgment on the validity of the specific allegations and on other forms or instances of research misconduct considered in the investigation and to transmit that decision to the appropriate persons for action. The investigating committee, when it considers that its task has been completed, shall determine by recorded simple majority vote whether the allegations of misconduct are supported by the preponderance of evidence.

1. The investigating committee shall reach one of the following decisions, based on the definitions of misconduct in the University of Colorado Administrative Policy Statement on Misconduct in Research and Authorship: a finding of misconduct; a finding of no culpable conduct, but serious research error; a finding of no misconduct and no serious research error.

2. The investigating committee shall submit an initial written report to the Standing Committee that addresses the following specific issues:

    - Whether, in its judgment, misconduct did take place.
    - If misconduct did take place, (a) whether the misconduct was deliberate or merely careless; (b) whether the misconduct was an isolated event or part of a pattern; (c) an assessment of the seriousness of the misconduct.
    - If misconduct did not take place, whether the committee finds that allegations have been made without reasonable basis in fact and with malicious intent.

    The report shall include a detailed explanation of the investigating committee's decisions.

3. After consideration of the initial report the Standing Committee may request additional information, additional explanation and/or further investigation if necessary. It is expected that the Investigative Committee will respond to the request. When the

Standing Committee is satisfied with the Investigative Committee's response to the request, the Investigative Committee shall provide its fully documented final written report of the investigation to the Standing Committee. If no additional information, additional explanation and/or further investigation is requested, the initial report shall be considered the final report.

2. University of Colorado System, Administrative Policy Statement on Misconduct in Research and Authorship (http://www.cusys.edu/policies/Academic/misconduct.html)

D. The Full Investigation and Responsibilities of the Investigative Committee

The investigative committee shall take precautions to keep all details of the investigation confidential. The investigative committee's responsibilities shall include but are not limited to the following:

1. Initiate a full investigation within 30 days of the completion of the inquiry, if findings from the inquiry provide a sufficient basis for conducting a full investigation.

2. If an investigation is to be initiated, inform the Office of Research Integrity that it will be commenced on or before the date the investigation actually begins.

3. Promptly and expeditiously conduct a thorough investigation of the allegation(s) and collect sufficient data, which may include but is not limited to research data, research proposals, publications, and correspondence, in order to make an informed judgment regarding the allegation(s). The investigative committee shall take reasonable steps to ensure confidentiality in gathering information and shall request confidentiality from any persons who are asked to present information to the committee.

4. Seek appropriate consultation from individuals within or external to the University of Colorado, as necessary.

5. Keep the chair of the standing committee informed of the progress of the investigation.

6. Notify the Office of Research Integrity about the following, if they occur at any time during the investigation: a) immediate health hazards; b) a need to protect Federal funds or equipment; c) immediate need to protect the interests of the individuals affected; or d) it is probable that the alleged incident will be publicly reported.

7. Notify the Office of Research Integrity if there is a reasonable indication of criminal violation(s). In this instance, the Office of Research Integrity must be notified within 24 hours of obtaining such information.

8. Complete the investigation within 120 calendar days from its initiation, determine whether the alleged misconduct occurred and promptly report its findings to the standing committee.

9. Include the following information in the final investigative report: a) whether the misconduct that occurred was deliberate or merely careless; b) whether the misconduct was an isolated event or part of a pattern; c) the seriousness of the misconduct; d) a description of policies and procedures used to conclude the investigation; e) how and from whom information was obtained relevant to the investigation; f) the findings and their basis; g) the actual text or a summary of the views of the individual(s) found to have engaged in misconduct; and h) a description of any sanctions.

10. Submit this report to the Office of Research Integrity upon its completion, no later than 120 days from initiation of the investigation. If unable to meet this time requirement, submit to the Office of Research Integrity a request for an extension. The extension request must include an explanation for the delay, an interim report on progress to date, an outline of what remains to be done, and an estimated date of completion.

11. Ensure a copy of the final report is available to the respondent and allow the respondent to make comments on the report, include said comments in the final report and send the final report to the Office of Research Integrity.

12. Prepare and maintain adequate documentation to substantiate the investigation's findings. This documentation must be made available to the Director of the Office of Research Integrity.

D. Dismissal for Cause

Laws of the Regents, University of Colorado System
(http://www.cu.edu/regents/Laws/Article5C.htm)

§ 5.C. Dismissal for Cause and Grievances

§ 5.C.1. Dismissal

A faculty member may be dismissed when, in the judgment of the Board of Regents and subject to the Board of Regents constitutional and statutory authority, the good of the university requires such action. The grounds for dismissal shall be demonstrable professional incompetence, neglect of duty, insubordination, conviction of a felony or any offense involving moral turpitude upon a plea or verdict of guilty or following a plea of *nolo contendere*, or sexual harassment or other conduct which falls below minimum standards of professional integrity.

Appendix C. The Investigative Committee's Process

All of the procedures followed by the Investigative Committee (hereinafter the Committee) were either governed by or consistent with the University of Colorado at Boulder Operating Rules and Procedures of the Standing Committee on Research Misconduct (elsewhere in this report referred to as the Research Misconduct Rules). These rules were in turn written to be consistent with a University of Colorado System Administrative Policy Statement entitled Misconduct in Research and Authorship. Certain Laws of the Regents of the University of Colorado were also important to the Committee's work. In some cases we sought the advice of counsel to resolve questions about the interpretation of these governing documents. Because the Interim Chancellor of the University of Colorado at Boulder was the formal complainant in this matter, to avoid any conflict of interest or loyalty we sought the advice of outside counsel, J. Eric Elliff from the law firm of Morrison & Foerster, Denver, for most of our questions. Mr. Elliff also advised us when procedural decisions not dictated by the terms of these documents needed to be made. In all cases, however, the Committee's members take responsibility for the decisions made.

In March 2005, the Interim Chancellor forwarded to the Standing Committee on Research Misconduct (hereinafter SCRM) a letter containing allegations of research misconduct against Professor Ward Churchill. The SCRM appointed a subcommittee of six, known as the Inquiry Committee, to conduct a preliminary inquiry into these allegations. In June 2005, the Interim Chancellor forwarded additional allegations to the SCRM, and they were referred to the same Inquiry Committee. The referrals contained nine allegations in sum. In the course of its work the Inquiry Committee met with Professor Churchill, received written responses from him, interviewed other witnesses, and consulted documents. On August 19, 2005, the Inquiry Committee submitted its report to the SCRM; the report found seven of the nine original allegations worthy of further investigation.

In October 2005, the Chair of the SCRM requested the participation of Professors McIntosh, Radelet, and Wesson in the next, or investigative, phase of the matter; we agreed. Believing that the inclusion of qualified and expert individuals from outside the University of Colorado was desirable, the SCRM also requested the participation of Professor Bruce Johansen of the University of Nebraska at Lincoln and Professor Robert Williams of the University of Arizona. Professors Johansen and Williams initially agreed to serve in November 2005, but within a few weeks, dismayed by certain aspects of the process and the intensity of the surrounding publicity, they resigned from the Committee. In December 2005, Professors Clinton and Limón agreed to serve on the Committee.

Before the Committee was at full strength, on November 11, 2005, Professors McIntosh, Radelet, and Wesson met for planning purposes with the Chair of the SCRM, representatives of the Office of University Counsel, Eric Elliff and Stephen Dunham of Morrison & Foerster, and University of Colorado staff assistant Linda Morris. Ms. Morris has provided excellent and timely administrative assistance to the Committee for the many months of its existence.

The Committee met all together for the first time on January 11, 2006. Professor Churchill did not attend this meeting, as it was for purposes of planning and coordination. Professors Clinton

and Limón participated by telephone. The Committee invited University Counsel Charles Sweet to attend, as well as Professors Russell Moore, Cortlandt Pierpont, and Bella Mody of the Inquiry Sub-Committee of the SCRM, Professor Joseph Rosse, Chair of the SCRM, and Pauline Hale, then Director of Communications for CU-Boulder. Certain organizational and logistical decisions were made at the meeting.

The Committee next met on January 28, 2006. Professor Limón participated by telephone; all of the other Committee members attended in person, as did Linda Morris, Eric Elliff, and (for part of the time) Professor Churchill. Professor Churchill was invited to make any remarks he wished by way of an opening statement, and did so.

On four later days, the Committee interviewed witnesses. Professor Limón participated in some of those meetings by telephone rather than in person. Two of the witnesses were invited to speak with us because the Committee believed that they would provide relevant information; these were Mark J. Timbrook and Michael K. Trimble. Four others were interviewed at the suggestion of Professor Churchill: George E. Tinker, Glenn Morris, Michael Yellow Bird, and Russell Means. The Committee interviewed everyone requested by Professor Churchill, and he was present during all witness interviews. All interviews were recorded and transcribed, and transcripts were provided to Professor Churchill and his attorney. The witnesses chosen by the Committee were interviewed by telephone, at their request. The witnesses suggested by Professor Churchill were interviewed in person, at his request.

The witnesses were interviewed on the following dates:

Mark J. Timbrook, February 18, 2006
Michael K. Trimble, February 18, 2006
George Tinker, April 1, 2006
Glenn T. Morris, April 15, 2006
Michael Yellow Bird, April 15, 2006
Russell Means, April 16, 2006

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

One witness the Committee asked for an interview, Professor Fay Cohen, requested the receipt of questions in writing, wishing to respond in the same form. Professor Churchill was advised of the questions the Committee wished to put to this witness, and he suggested several additional questions. A letter was sent to Professor Cohen by Eric Elliff, containing both the Committee's questions and Professor Churchill's questions. Her written responses were received by the Committee and furnished to Professor Churchill.

At the meeting on February 18, 2006, Professor Churchill's attorney attended the morning session and spoke to the Committee. Professor Churchill addressed himself to the matters before the Committee on several occasions. On Februrary 13, 2006, he was furnished with a list of specific written questions that the Committee wished to have him answer. His oral statements were recorded or transcribed, or both, and these records were supplied to him and to his attorney. Professor Churchill has also sent occasional comments via email to the chair, and in every such case these were immediately forwarded to all Committee members.

Professor Churchill has also submitted written responses to the Committee, and they have been considered, as have the written responses he had earlier submitted to the SCRM during the inquiry stage. In this report, his submissions are cited as follows:

Submission A: Submitted to the SCRM on May 16, 2005, entitled, "I. Allegations of 'Academic Fraud.'"

Submission B: Submitted to the SCRM on May 16, 2005, entitled, "A. The Thomas Brown Allegations."

Submission C: Submitted to the SCRM on May 16, 2005, entitled, "C. A Few Thoughts on Sources and Interpretation."

Submission D: Submitted to the SCRM on May 24, 2005, entitled, "B. The John LaVelle Allegations."

Submission E: Submitted to the SCRM on May 24, 2005, entitled, "II. Allegations of 'Plagiarism.'"

Submission F: Submitted to the SCRM on June 2, 2005, a brief statement entitled, "Ward Churchill: Statement on Allegations of 'Academic Fraud.'"

Submission G: Submitted to the SCRM on June 29, 2005, entitled, "Ward Churchill Response to Additional Allegations of Research Misconduct (Trial by News Media)."

Submission H: Submitted to the Investigative Committee on April 3, 2006 (in response to a list of seven specific questions sent by the Committee to Professor Churchill on February 13, 2006), entitled, "The Fort Clark Smallpox Pandemic Revisited: A Case-Study of Genocide and Denial."

Submission I: Submitted as a letter to Professor Wesson, Chair of the Investigative Committee on April 16, 2006, titled: "Fort Clark Notes."

Submission J: Submitted to the Investigative Committee on April 16, 2006, entitled "Ghostwriting."

> The Committee received another written submission from Professor Churchill on May 6, 2006. Because our report was already in final form, we have not discussed its contents here.

Professor Churchill provided the Committee with a digital video disc that recorded the comments of Marvin Jones.

Professor Churchill was made aware that the Committee would consult publicly available documents, books, or periodicals, and that these materials might influence our deliberations. In a small number of cases when we consulted documents that were not available in public sources, copies were provided to Professor Churchill.

On February 17, March 21, April 2, and during periods on the other meeting dates, the Committee deliberated outside the presence of Professor Churchill, discussing our questions, conclusions, and eventually the form our report would take. Each Committee member prepared portions of this report, in consultation with the entire Committee. Professor McIntosh integrated those sections and edited and formatted the final document. Every finding or conclusion in this report prior to the final page represents the unanimous finding or conclusion of the Committee.

Appendix D: Professor Churchill's Statements regarding the General Allotment Act of 1887 (GAA) (for use with report on Allegation A)

All works are solely authored by him unless otherwise noted.

	Churchill Essay	Book in which Published	Footnote Citations	Blood Quantum Statement	Relevance
1	Ward Churchill and Glenn T. Morris, "Key Indian Law and Cases"	*The State of Native America: Genocide, Colonization, and Resistance*, ed. M. Annette Jaimes (Boston: South End Press, 1992), pp. 13-21.	None	. . . legally defined for the first time on the basis of a racist "blood quantum" code . . . "Full blood" Indians were deeded with "trust patents"; "mixed blood Indians" were deeded with "patents in fee simple"	Argues that the GAA legally defined native people on the basis of a racist "blood quantum" code for identification purposes by the federal government in order to receive parcel deeds.
2	"Perversions of Justice: Examining the Doctrine of U.S. Rights to Occupancy in North America"	*Struggle for the Land: Indigenous Resistance to Genocide, Ecocide, and Expropriation in Contemporary North America*, ed. Ward Churchill (Monroe, ME: Common Courage Press, 1993), pp. 33-83.	Note 63: Ch. 119, 24 Stat. 388, now codified as amended at 25 U.S.C. 331 et seq. The quote is from Robbins, Rebecca L. "Self-Determination and Subordination: The Past, Present and Future of American Indian Governance," in Jaimes, op. cit., p. 93.	GAA imposed "for the first time a formal eugenics code – dubbed 'blood quantum' – by which American Indian identity would be federally defined on racial grounds rather than by native nations themselves." "Mixed blood" Indians received title by fee	Same argument as above. This is the article whose wording is set forth at the start of the report on Allegation A.

			Note 64: M. Annette Jaimes, "Federal Indian Identification Policy: Usurpation of Indigenous Sovereignty in North America," in Jaimes, op cit., pp. 123-38 [*The State of Native America: Genocide, Colonization and Resistance*, ed. M. Annette Jaimes, Boston: South End Press, 1992.]. Note 65: Robbins, op. cit. Also see Janet A. McDonnell, *The Dispossession of the American Indian, 1887-1934* (1991).	simple patent; "full bloods" were issued "trust patents"	
3	"American Indian Self-Governance"	*Struggle for the Land*, 1993 edition, as above, pp. 375-400.	Note 18: For an elaboration on this theme, see M. Annette Jaimes, "Federal Indian Identification Policy" in *Critical Issues in Native North America*, Vol. I, ed. Churchill (1989), pp. 15-36.	. . . formal eugenics code termed "blood quantum" . . .	Argues that the Navajo Nation citizenry has been defined by the federal government, through imposition of a formal eugenics code termed "blood quantum" and nearly a century of direct control over tribal rolls.
4	"I Am Indigenist"	*Struggle for the Land*, 1993 edition,	Note 47: M. Annette Jaimes, "Federal	. . . foisted the notion that Indian identity	Argues that Euroamerican settlers saw things rather

		as above, pp. 403-51.	Indian Identification Policy," in *The State of Native America*, ed. M. Annette Jaimes (1992), pp. 123-38.	should be determined primarily by "blood quantum" . . .	differently, foisted the notion that Indian identity should be determined by "blood quantum," an outright eugenics code similar to those developed like Nazi Germany.
5	"Bringing the Law Home"	*Indians Are Us? Culture and Genocide in Native North America*, ed. Ward Churchill (Monroe, ME: Common Courage Press, 1994), pp. 11-64.	Note 97: No explicit citation but refers to Donald Fixico for the effects of scattering Indians among the non-Indian population and credits the term "statistical extermination" to M. Annette Jaimes, "Federal Indian Identification Policy," as above.	. . . eugenics formulation—dubbed "blood quantum"—ushered in by the 1887 GAA . . .	States that federal policies concerning Indian identification criteria carry with them an evident genocidal potential referring to the GAA and Federal Indian Relocation Program that adopt a eugenics formulation dubbed blood quantum.
6	"Nobody's Pet Poodle"	*Indians Are Us* (1994), as above, pp. 89-114.	None		Argues that the government is imposing its usual "blood quantum standard" in the Indian Arts and Crafts Act of 1990 by requiring artists to be enrolled in a federally recognized tribe with membership rolls that originated in the prevailing federal racial criteria of the late 19th century with the initial motive coming from the motive to free up lands

					and therefore creating the GAA.
7	**“**Naming Our Destiny”	*Indians Are Us* (1994), as above, pp. 291-357.	Note 4: Annette M. Jaimes, “Federal Indian Identification Policy,” as above.	. . . with a formal eugenics code dubbed “blood quantum” which is still in effect . . .	Referring to consequences of the Indian Arts and Crafts Act of 1990 by requiring a blood quantum via the tribal rolls. In the endnote he argues that this notion is a matter of U.S. policy implementation.
8	“Since Predator Came”	*Since Predator Came: Notes from the Struggle for American Indian Liberation* (Littleton, CO: Aigis Publications, 1995), pp. 27-40.	Note 29: cites his essay “Nobody’s Pet Poodle” Note 30: cites the Indian Citizenship Act.	Sentence before note 29: . . . a formal eugenics code was utilized . . . Sentence before note 30: . . . that they were one-half or more degree of Indian blood . . .	Argues dismantling of Indian reservations through the GAA which applied a formal eugenics code that defined who was and was not an “Indian.” Next, he relies solely on the Indian Citizenship Act to uphold the claim that natives who could prove to federal satisfaction that they were “of one half or more degree of Indian blood” and accept U.S. citizenship would be allowed to receive an individual land parcel.
9	“Like Sand in the Wind”	*Since Predator Came* (1995), as above, pp. 167-202.	Note 74: GAA and unspecific reference to Janet A. McDonnell, *The Dispossession of the American Indian.*	. . . that they were one-half or more degree of Indian blood . . .	Same argument as above.
10	“Nits Make Lice”	*A Little Matter of Genocide:*	Note 586: GAA.	. . . to document being of at least one-half	Same argument as above**.**

		Holocaust and Denial in the Americas, 1492 to the Present, ed. Ward Churchill, (San Francisco: City Light Books, 1997), pp. 129-288.		"blood". . .	
11	"Cold War Impacts on Native North America"	*A Little Matter of Genocide* (1997), as above, pp. 289-362.	<u>Starred note on p. 292:</u> same statements as in text of "Nits Make Lice."	. . . defined on a basis of restrictive "blood quantum" formula . . .	Same argument as above.

Appendix E. Comparison of Passages in Original and Allegedly Plagiarizing Texts for Allegation G

A. The following comes from the Cohen essay, pp. 154-5 (see report on Allegation G for publication information):

> For the Indian peoples of the Pacific Northwest, fish were 'not much less necessary than the atmosphere they breathed.' The tribal people centered both their diet and their way of life around the great runs of anadromous fish, the salmon and steelhead trout, that returned annually to their homes along the rivers and coastlines. When they negotiated treaties with the United States government in the 1850s, they gave up much of their land in return for cash payments, other aid, and the federal guarantee of protection for the fishing rights they retained. "This paper secures your fish," treaty negotiators told the native people.

Compare the Institute for Natural Progress essay, p. 218:

> As even the U.S. courts have recognized, fish have always been 'not much less necessary than the atmosphere they breathed' for the indigenous peoples of the Pacific Northwest. The Indians of this region traditionally centered both their diet and their way of life around the great runs of anadromous fish, the salmon and steelhead trout, that return each year from the open sea to spawn along rivers as far inland as central Idaho. It has been estimated that upwards of 60 percent of the nutrients consumed by these once wealthy peoples derived directly from the fish. Hence, when native nations of the Northwest negotiated treaties with the United States government during the 1850s and '60s, they were far more concerned with reserving perpetual access to their customary fishing sites along the coasts and interior waterways than with demarcating significant territorial units. In large part, they ceded the land itself (a total of about 64 million acres), retaining only small parcels for their own exclusive use and occupancy, in exchange for cash payments, other aid and solemn guarantees of their fishing rights (see Map I).

B. The following comes from the Cohen essay, pp. 165-6:

> The Great Lakes Chippewa (Anishinabe) bands in the U.S. are located in the middle of North America in a region defined by Lake Michigan, Lake Superior, and Lake Huron and dotted with thousands of smaller lakes. The region includes the states of Michigan, Minnesota, and Wisconsin. The treaty rights of the Anishinabe in all three states have been the subject of important lawsuits in recent years. This discussion deals primarily with the Anishinabe of Wisconsin. The traditional economy of the Anishinabe was based on hunting and gathering.

> The Chippewa harvested virtually everything on the landscape. They had some use or uses for all flora and fauna in their environment, whether for food, clothing, shelter, religious, commercial or other purposes.[footnote omitted]
>
> In the mid-nineteenth century, the Anishinabe ceded much of their vast lands through treaties with the United States, but they reserved their rights to the resources in these ceded territories.

Compare the Institute for Natural Progress essay, pp. 231-2:

> The Great Lakes Chippewa (Anishinabé) bands in the U.S. are indigenous to the very center of North America. The region is defined by Lake Michigan, Lake Superior, and Lake Huron, and is dotted with thousands of smaller lakes, in the present states of Michigan, Minnesota, and Wisconsin (see Map III). The treaty rights of Indians in all three states have been the subject of important lawsuits in recent years: *Minnesota Chippewa Tribe v. United States* (315 F. 2d 906, 911 (Ct. Cl. 1962)). *Menominee Tribe v. United States* (391 U.S. 404 (1968)), *People v. LaBlanc* (399 Mich. 31, 248 N.W. 2d 199 (1976)), and *United States v. Michigan* (623 F. 2d 448, 450 (6th Cir. 1980)). This discussion, however, deals primarily with the Anishinabé of Wisconsin.
>
> Although the Anishinabé were partially agricultural and engaged in a significant amount of trade, their traditional economy also incorporated considerable hunting, fishing, and gathering. 'The Chippewa harvested virtually everything on the landscape. They had some use or uses for all flora and fauna in their environment, whether for food, clothing, shelter, religious, commercial or other purposes.'[footnote omitted] By the Mid-19th century, the Anishinabé had ceded much of their vast lands through treaties with the United States and Canada, but they reserved rights to the resources in these ceded territories."

C. Professor Cohen's footnote 32 reads:

> For a discussion of the Wisconsin cases, see Strickland, Rennard, Stephan J. Hertzberg, and Steven R. Owens, 'Keeping Our Word: Indian Treaty Rights and Public Responsibilities. A Report on a Recommended Federal Role Following Wisconsin's Request for Federal Assistance,' April 16, 1990 (presently unpublished). At p. 10, Strickland, *et al.*, point out that although the cases refer to treaty rights, the rights predate the treaties. The courts recognize that the rights always belonged to the Anishinabe, and were reserved to them in the treaties. Some Anishinabe object to the term 'treaty rights' since it implies that the rights were actually created by the treaties, rather than simply acknowledged within them.

The INP essay's note 62 reads:

> For a discussion of the Wisconsin cases, see Strickland, Rennard, Stephan J. Hertzberg, and Steven R. Owens, 'Keeping Our Word: Indian Treaty Rights and Public Responsibilities. A Report on a Recommended Federal Role Following Wisconsin's Request for Federal Assistance,' April 16, 1990 (presently unpublished). At p. 10, Strickland, *et al*., point out that although the cases refer to treaty rights, the rights predate the treaties. The courts recognize that the rights always belonged to the Anishinabé, and were reserved to them in the treaties. Some Anishinabé object to the term 'treaty rights' since it implies that the rights were actually created by the treaties, rather than simply acknowledged within them.

The two footnotes are thus identical to the keystroke, except that in the latter, the character *é* appears in the word *Anishinabé*, rather than, as in the original, the character *e*.