



University of Colorado System

Boulder • Colorado Springs • Denver and Health Sciences Center

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June 7, 2007

Patricia Hayes, Chair
Board of Regents of the University of Colorado
1800 Grant Street, Ste. 800
Denver, CO 80209

Confidential Personnel Matter

Dear Chair Hayes:

I am forwarding herewith my recommendation that a tenured faculty member, Professor Ward Churchill, be dismissed from the University pursuant to Regent Policy 5-I. The attached recommendation was made upon consideration of a report of the Privilege and Tenure Committee of the Faculty Senate dated May 3, 2007, and the record of the formal hearing before that body. Copies of the record of the case are being forwarded to the Office of the Board of Regents concurrently.

Although I have concurred with the Hearing Panel of the Privilege and Tenure Committee that there are grounds for dismissal in this case, two members of the Panel recommended that Professor Churchill be dismissed, while three members recommended that he be suspended. Because it is my determination that Professor Churchill should be dismissed, my recommendation was initially sent to the Panel for review and comment on May 25, 2007. The Panel acknowledged my initial determination by letter dated June 1, 2007, received by my office today, and declined to make additional comments to its report.

By letter dated May 3, 2007, Professor Churchill requested that I recuse myself from the dismissal for cause process and refrain from making recommendations regarding his case. Professor Churchill's letter asserted that I was "a founding member of the American Council of Trustees and Alumni (ACTA), continue to be quoted and praised by ACTA as one of its 'Friends in High Places,' and

Chair Patricia Hayes

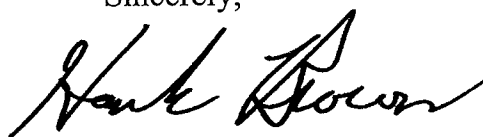
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participate in various ACTA projects.” Professor Churchill asserted that ACTA has produced a publication related to his case.

I have evaluated Professor Churchill’s request and I do not believe any conflict exists related to my past involvement with ACTA that would necessitate my recusal. A dozen years ago I served on the National Council of the Alumni Forum, a non-paid advisory committee of ACTA with no governance responsibilities. I resigned from the committee a decade ago. I am not presently involved in ACTA’s governance and I have had no role in any ACTA-sponsored writings related to Professor Churchill, nor have I read any such writings.

Sincerely,

A handwritten signature in black ink, appearing to read "Hank Brown". The signature is fluid and cursive, with a large initial "H" and "B".

Hank Brown

Cc: Professor Ward Churchill
Professor Philip Langer
✓ David Lane, Esq.
Patrick O'Rourke, Esq.
Ed Ramey, Esq.
Chancellor GP "Bud" Peterson



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Dear Chair Hayes:

On May 8, 2007, I received the *Panel Report Regarding Dismissal for Cause of Ward Churchill and the Issue of Selective Enforcement* dated May 3, 2007 (Panel Report) by a Hearing Panel of the Faculty Senate Committee on Privilege and Tenure, which is incorporated by reference herein. The Panel Report followed University of Colorado at Boulder Interim Chancellor Philip P. DiStefano's June 26, 2006 notice of intent to dismiss. The Panel heard evidence at a formal hearing held pursuant to Regent Policy 5-I on January 8-12 and 20-21, 2007.

Summary of my determination

Dismissal is the most serious sanction that can be imposed on a faculty member by the University. Pursuant to Article 5.C.1 of the *Laws of the Regents*, a faculty member may only be dismissed when there are grounds for dismissal and when, in the judgment of the Board of Regents, the good of the University requires such action. The ground for dismissal applicable in this case is conduct which falls below the minimum standards of professional integrity.

Based on my review of the Panel Report and the record of the dismissal for cause case, including the reports of the Standing Committee on Research Misconduct and its Investigative Committee, I concur with the Panel's finding of clear and convincing evidence that Professor Churchill engaged in conduct below the minimum standard of professional integrity. I also concur with the conclusion that Professor Churchill should be severely sanctioned. It is my determination that

Professor Churchill should be dismissed for cause as a result of his misconduct. In that determination, I concur with two of the five members of the hearing panel, as well as a majority of the members of the University of Colorado at Boulder's Standing Committee on Research Misconduct (SCRM).

Background

Before discussing the specific allegations against Professor Churchill, it is important to describe the extensive process that has occurred during the past two years. Before I received the Panel Report, the more than twenty-five professors involved in the investigative and hearing processes unanimously determined: (1) Professor Churchill engaged in intentional and repeated research misconduct; and (2) the misconduct required a severe sanction.

In each of the processes, the committees employed the University's system wide policy defining Misconduct in Research and Authorship. The policy exists for the University to "fulfill its obligations and ensure the public trust," and it applies to "all faculty, students, administrators or staff on all of the University's campuses who are engaged in research, whether or not it is externally funded."

The policy on Misconduct in Research and Authorship specifically prohibits several types of misconduct, including "fabrication, falsification, plagiarism and other forms of misappropriation of ideas." The Office of Research Integrity for the University of Colorado at Boulder has defined the terms "fabrication of data," "falsification of data," "data," and "plagiarism." They are:

Fabrication involves making up data, notes or other research information and reporting them.

Falsification involves manipulation of the research process, or altering data, such that the reported results are not accurate.

Data refers to whatever forms of evidence are relevant to publication of research in a particular discipline.

Plagiarism involves portraying another person's intellectual property as one's own.

The record in this case is remarkable for the extensive process it details. On February 3, 2005, the Board of Regents convened a special meeting to consider recently publicized comments of Professor Churchill. At the meeting, Chancellor DiStefano announced that he would review Professor Churchill's remarks to

determine whether they fell outside the protections provided by the First Amendment. He was assisted in the review by David H. Getches, the Dean of the University of Colorado School of Law, and Todd Gleeson, the Dean of the College of Arts and Sciences of the University of Colorado at Boulder. Chancellor DiStefano ultimately determined that Professor Churchill's comments were protected by the First Amendment to the United States Constitution.

During the course of the review, Chancellor DiStefano received information indicating that Professor Churchill may have engaged in research misconduct. After reviewing the information to assure that the claims of research misconduct were not frivolous, Chancellor DiStefano forwarded nine allegations of research misconduct to the SCRM March 29, 2005 and June 13, 2005.

The SCRM empanelled an Inquiry Committee of six faculty members to determine whether any of the allegations against Professor Churchill merited further investigation. The Inquiry Committee received written submissions from Professor Churchill related to the allegations. The Inquiry Committee also interviewed Professor Churchill before issuing its report. The Inquiry Committee issued a report August 19, 2005, in which it dismissed two allegations against Professor Churchill, but unanimously agreed to forward seven allegations of research misconduct to an Investigative Committee.

The Investigative Committee was empanelled in January 2006 to conduct a *de novo* review of the allegations of research misconduct. It was comprised of three faculty members from the University of Colorado at Boulder and two tenured faculty members from other major public universities. The Investigative Committee had expertise in American Indian law and policy, ethnic studies, history, sociology, and law. The Investigative Committee heard testimony on four occasions between February 2006 and April 2006, including the testimony of witnesses suggested by Professor Churchill. Professor Churchill submitted additional written responses to the Investigative Committee. The Investigative Committee issued a report May 9, 2006, in which it found that Professor Churchill had engaged in multiple acts of research misconduct.

The Investigative Committee transmitted its report to the SCRM. Professor Churchill issued a written response to the Investigative Committee's report, in which he detailed his objections. The SCRM issued its report June 13, 2006, which unanimously accepted the Investigative Committee's report and findings. Of the nine faculty members holding voting rights on the SCRM, six recommended dismissal, two recommended suspension without pay for a period of five years, and one recommended suspension without pay for two years.

The SCRM transmitted its report, which incorporated the Investigative Committee's report, to then-Interim Provost Susan Avery who provided it to Chancellor DiStefano. Chancellor DiStefano provided Professor Churchill with an opportunity to meet with him to respond to the findings, but Professor Churchill informed Chancellor DiStefano that he had already made his position known about the reports and did not wish to add anything further to the record. After reviewing the reports and consulting with Dean Gleeson and Provost Avery, Chancellor DiStefano issued a notice of intent to dismiss pursuant to Article 5.C.2(B) of the *Laws of the Regents*. The notice of intent to dismiss was based on findings that Professor Churchill "engaged in a pattern of serious, repeated, and deliberate research misconduct" as detailed in the reports and recommendations of the Investigative Committee and the SCRM.

Professor Churchill requested review of the Chancellor's notice by the Faculty Senate Committee on Privilege and Tenure. In response to Professor Churchill's assertion that the University was not following its process, the Chair of the Privilege and Tenure Committee suspended the dismissal for cause process and allowed Professor Churchill sixty days to seek relief from a court. The Privilege and Tenure Committee process then continued and a formal, *de novo* hearing was held in accordance with Regent Policy 5-I. The hearing took place over a period of seven days between January 1, 2007 and January 21, 2007 before a hearing panel comprised of five faculty members from the University's campuses. Professor Churchill represented himself at times during the hearing and at other times was assisted by his attorney.

At the hearing Professor Churchill and his counsel were afforded opportunities to examine Chancellor DiStefano, Dean Gleeson, Dean Getches, the Chair of the Standing Committee on Research Misconduct, and every member of the Investigative Committee. Professor Churchill also presented the testimony of Professor Eric Cheyfitz, King Downing, Professor Richard Delgado, Professor George Tinker, Professor Robert Williams, and Professor Michael Yellow Bird, and offered documentary evidence.

At the conclusion of the hearing, Professor Churchill and the University presented closing statements and additional written statements accompanied by additional exhibits. The Panel issued a preliminary report April 11, 2007 and the parties were allowed to submit written responses. After reviewing the responses, the Panel declined to modify its report and issued a final report May 8, 2007.

Factual allegations considered by the Panel

The Panel considered the seven allegations (divided into fifteen specific instances) of research misconduct relied upon by the Chancellor in issuing the notice of intent to dismiss, all of which were based on findings by the SCRM.¹ The Panel found, by clear and convincing evidence, three instances of evidentiary fabrication by ghost writing and self citation, two instances of fabrication of material, one instance of falsification, two instances of plagiarism, and one instance of failure to comply with established standards on the use of author names on publications. In each of these instances the Panel found further that Professor Churchill's conduct fell below the minimum standard of professional integrity. In each instance where the Panel found research misconduct, it concurred with the findings of the SCRM.

After reviewing the findings, the rationale supporting them, and other information in the record of the case, I agree with these findings of the Panel and the SCRM. I am satisfied that these findings, by themselves, clearly support my determination that Professor Churchill is not qualified to hold a tenured faculty position at the University of Colorado and should be dismissed for repeated failures to meet minimum standards of professional integrity.

The Panel examined seven additional instances of alleged research misconduct and concluded either that there was not clear and convincing evidence of research misconduct or that, if there were clear and convincing evidence of research misconduct, such misconduct did not fall below the minimum standards of professional integrity. I accept the Panel's findings in this regard except as noted in the following comments.

The first allegation the Panel considered was that Professor Churchill misrepresented a federal statute known as the General Allotment Act of 1887 by asserting that the Act imposed a federally created "eugenics code" on Indian tribes that mandated half-blood Indian blood quantum requirements for allotments when the Act does not contain any such requirements. The Panel agreed with the SCRM that Professor Churchill falsified data by citing the Act and a book by Janet McDonnell where the cited sources do not support, and actually contradict, his claims. Finally, the Panel agreed with the SCRM that such conduct violated the University's rules on research misconduct, but declined to find by clear and convincing evidence that the conduct fell below the minimum standards of professional integrity.

¹ Because the SCRM adopted and incorporated the Investigative Committee's report, I will refer here only to the findings of the SCRM.

I believe the Panel erred in this respect. The SCRM reviewed the Allotment Act and found that it “does not contain anything remotely suggesting a federal definition of ‘Indianness’ [or] blood quantum requirement” as posited by Professor Churchill. The SCRM found further that Professor Churchill “seriously and deliberately misrepresented the specification of a blood quantum requirement” and that the misrepresentation was “not a scholarly error” but “part of a general pattern of . . . misconduct”

The evidence is clear and convincing that Professor Churchill quoted a federal statute for an assertion that was wholly unsupported by that statute and that he did so deliberately and for the purpose of misleading his readers. The Panel also agreed with the SCRM that Professor Churchill fabricated data by presenting details and embellishments to his arguments that had no basis in fact. Because the Panel found clear and convincing evidence that the conduct in question—a form of academic deceit—occurred, I am bound to conclude that it fell below the minimum standards of professional integrity.

The second allegation the Panel considered was that Professor Churchill similarly misrepresented the Indian Arts and Crafts Act of 1990, again by asserting that the Act specifies blood quantum requirements when the Act does not contain any such requirement. Again, the Panel accepted the findings of the SCRM, here that Professor Churchill falsified data by misrepresenting the statute. Again, the Panel declined to conclude that the conduct fell below minimum standards of professional integrity.

I believe the Panel erred in this regard for the same reasons set forth above. The evidence is clear that Professor Churchill deliberately misrepresented the language of a federal statute to support one of his central academic premises. Indeed, the Panel Report found that Professor Churchill “knowingly evaded the truth in his essay.” I conclude that the conduct described above, which the Panel found by clear and convincing evidence, falls below the minimum standards of professional integrity.

These two disagreements with the Panel do not alter my belief that the Panel conducted a comprehensive and careful review and reached findings of conduct that falls below the minimum standards of professional integrity that are well-supported by the record. Nor do they affect my ultimate determination on dismissal. I believe the Panel findings with which I have concurred establish a clear pattern of deliberate academic deception by Professor Churchill, as discussed in more detail below.

Additional considerations

The Panel also considered Professor Churchill's allegations that the University engaged in selective enforcement of its rules regarding research misconduct and that the investigation of allegations of research misconduct by the University violated Professor Churchill's due process rights. The Panel ultimately considered whether Professor Churchill had proven these allegations by a preponderance of the evidence.

Professor Churchill's allegation of selective enforcement is based on his assertion that the University's pursuit of the research misconduct allegations against him was intended to punish him for exercising his First Amendment rights. In light of these concerns, I have scrutinized the record of this case for evidence that Professor Churchill's exercise of his First Amendment rights adversely influenced any of the committees that investigated or heard the allegations against Professor Churchill. The record demonstrates that the committees took extraordinary care to consider only the allegations of research misconduct and were not motivated by any desire to punish Professor Churchill for exercising his First Amendment rights. Each expressly acknowledged the essential purpose of academic freedom and free speech in the University setting, but recognized that academic freedom does not protect fraudulent scholarship.

Ultimately, more than twenty-five faculty members, both from within and outside the University community, evaluated the allegations against Professor Churchill. Each faculty member, without exception, determined that Professor Churchill engaged in deliberate and repeated research misconduct. I am satisfied that the findings of research misconduct throughout the record of this case were not improperly influenced by Professor Churchill's exercise of protected speech, and I concur with the Panel's finding that Professor Churchill did not establish selective enforcement by a preponderance of the evidence.

The University cannot disregard allegations of serious research misconduct simply because the allegations were made against a professor whose comments have attracted a high degree of public attention. The prohibition against research misconduct extends to all faculty members, irrespective of their academic disciplines or political views. Were it otherwise, the University could not maintain the integrity of the scholarly enterprise.

Further, a claim of selective enforcement would seem to require evidence that the University has not enforced its research misconduct rules against a similarly situated faculty member. The University adopted its Administrative Policy Statement on Misconduct in Research and Authorship in 1989. The record does

not contain evidence that the University failed to pursue similar allegations of research misconduct against any other professor since adoption of its policy.

Professor Churchill also claimed that his due process rights were violated by ambiguity in the standards applicable to his work and irregularities in the research misconduct investigation. The panel found that Churchill failed to prove these allegations by a preponderance of the evidence. I concur with the panel's findings in this regard.

I also concur with the Panel's findings that any procedural irregularities did not deprive Professor Churchill of adequate due process. At its core, due process requires notice of the allegations against someone and a meaningful opportunity to be heard. As described in more detail above, Professor Churchill received notice of the allegations against him in mid-2005 and extensive opportunities to respond to them before an investigative body and a hearing panel, both of which were constituted of his peers. Professor Churchill had more than a year to respond to each of the allegations—in writing, in his own interviews with the committees, and through the testimony of his own witnesses. I conclude that the University provided more than adequate process.

Finally, both the SCRM Investigative Committee and the Panel express concerns about the importance and preservation of academic freedom. Academic freedom is defined by Article 5.D.1 of the *Laws of the Regents* as the freedom to inquire, discover, publish and teach truth as the faculty member sees it. It is and must continue to be a guiding principle of the University.² Within the bounds of the definition, however, “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.”

Further, a faculty member's exercise of academic freedom is subject to “the control and authority of the rational means by which truth is established.” *Laws of the Regents* 5(D)(1)(B). Commitment to the rational means by which truth is established is at the heart of the University's academic mission. Indeed, Regent Policy 11.F.2 requires research be given equal weight to teaching in evaluating a faculty member. The success of public research institutions such as the University

² My commitment to academic freedom long predates this particular case. In 1995, I co-authored an article with Senator Joe Lieberman in which Senator Lieberman and I urged alumni and trustees to speak up on behalf of academic values and to encourage our colleges and universities to teach that, “[i]n the American marketplace of ideas, we should fight ideas with which we disagree by offering a better idea, not by denying others the right to voice their concerns.” *Academic Freedom: Alumni Can Help Fight the PC War*, Sens. Hank Brown and Joe Lieberman, Roll Call, Vol. 41, No. 6 (July 17, 1995). I remain committed to those principles.

of Colorado requires public faith that the search for truth is conducted according to the highest standards. The University's continued success, therefore, depends on its reputation for integrity in research. For these reasons, the University prohibits any member of the faculty from engaging in "fabrication, falsification, plagiarism and other forms of misappropriation of ideas." Allegations such as those brought against Professor Churchill fall clearly outside the protections of academic freedom. As the Panel report accurately stated:

The nature of the offenses here involving plagiarism, fabrication, and falsification goes to the heart of the academic enterprise and undermines public faith in the University of Colorado and in universities more generally.

Professor Churchill's conduct has clearly violated the University's policies on academic freedom and is inimical to the University's core academic mission. I am satisfied, therefore, that the findings of research misconduct made by the panel and the SCRM do not erode the University's commitment to the principle of academic freedom.

Recommendation

Based on my review of the Panel Report and the record, I am convinced that the faculty committees involved in this matter—that is, the Panel, the SCRM and, most notably, the Investigatory Committee of the SCRM—conducted an exceptionally thorough and careful review of the allegations against Professor Churchill before concluding that Professor Churchill had engaged in the numerous instances of research misconduct detailed in the record. I am also convinced that Professor Churchill had a full and fair opportunity to address those allegations and to present his position.

Because I concur with the Panel that grounds for dismissal exist, I must determine whether to recommend to the Regents that the good of the University requires Professor Churchill's dismissal. In considering the good of the University in light of the record, three points emerge.

1. Professor Churchill's research misconduct has been severe. The Investigative Committee described a pattern of repeated, intentional misrepresentation. As articulated by the SCRM, "[p]roviding misleading or incorrect citations, bending accounts to fit one's desired interpretation, or simply making up information all strike at the foundation of scholarly historical work."

2. Professor Churchill's misconduct seriously impacts the University's academic reputation and the reputations of its faculty. The integrity of the work of the faculty is central to the University's academic mission. And, as a publicly supported institution, the public must be able to trust that the University's resources will be dedicated to academic endeavors carried out according to the highest possible standards. Professor Churchill's conduct, if allowed to stand, would erode the University's integrity and public trust.
3. Professor Churchill's conduct has been deliberate. The SCRM concluded that "[t]he pattern and nature of the violations suggest that Professor Churchill's behavior was motivated not simply by a lack of awareness of academic standards, but in willful disregard of those standards." Indeed, the pattern of misconduct described by the Investigative Committee is that of a faculty member who engages in repeated and deliberate academic deception and remains unwilling to correct his academic record when challenged. Such behavior by a member of our faculty necessitates the severest sanction, or the University risks continued damage to its reputation for academic integrity.

For the foregoing reasons, it is my determination and recommendation to the Board of Regents that the good of the University requires that Professor Churchill be dismissed from the faculty.

Sincerely,

A handwritten signature in black ink, appearing to read "Hank Brown", written in a cursive style.

Hank Brown
President