

## Some Thoughts on the Ward Churchill Case and on Ethnic Studies at C.U., Boulder — Albert Ramirez, Chair, Department of Ethnic Studies University of Colorado, Boulder

### **Contextual Factors in the Ward Churchill Case**

On May 16, the “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” was made public. The report is the latest in a series of investigative inquiries that began in February of 2005. The findings and conclusions are serious, as are the possible sanctions recommended by each of the individual members of the Committee. As with earlier conclusions reached by different panels and committees, the recommendations were made public and made available to the local and national media. On May 20, Professor Churchill submitted his response to the report, entitled “Summary of Fallacies in the University of Colorado Investigative Committee Report of May 9, 2006.” While the Committee’s assessment of Professor Churchill’s work leads to attributions of research misconduct, in his response to the report, Professor Churchill alleges that the committee’s document “contains numerous false statements, misrepresentations of fact, and internal contradictions.” Given the polarized and contradictory nature of the two sets of conclusions and interpretations concerning the work of Professor Churchill and the work of the investigative committee, there remains a high probability that this case will ultimately go to court. Consequently, this paper will not address the allegations of research misconduct contained in the May 16 report but rather will focus on some of the contextual issues discussed in the report.

The Committee begins its report by noting its “concern regarding the timing and, perhaps, the motives for the University’s decision to initiate these charges at this time.” The Committee, quite correctly, goes on to stipulate that these external factors are beyond its charge, and that it has attempted to keep “the background and origins of this particular dispute out of our consideration of the particular allegations.” The Committee uses the analogy of “a motorist who is stopped for speeding because the police officer was offended by the contents of her bumper sticker, and who otherwise would have been sent away with a warning, is still guilty of speeding, even if the officer’s motive for punishing the speeder was the offense taken to the speeder’s exercise of her right to free speech. No court would consider the improper motive of the police officer to constitute a defense to speeding, however protected by legal free speech

guarantees the contents of the bumper sticker might be.” Using this analogy, the Committee sees itself as the “court” which is investigating whether or not the driver—Ward Churchill—is guilty of the specific charge of speeding—research misconduct—and therefore views the other contextual factors as irrelevant.

Continuing further with this analogy—we would hope that the judicial system in which the particular case of the speeder is embedded would at some point look at the broader issues of equal justice for all motorists. Are the scales of justice balanced or are they tilted in favor of certain individuals and against other persons who might not display the correct bumper sticker? What if the police officer only stops speeders who display this particular bumper sticker, and does not stop or give tickets to other speeders who either do not display this particular bumper sticker, or who display a bumper sticker in concert with the police officer’s own values and ideas? What if other drivers going twenty miles beyond the legal speed limit are not stopped and ticketed, while drivers with the incorrect bumper sticker are stopped when they are driving only five miles above the legal speed limit? What if this bias extends beyond one police officer, and is a system-wide bias among police officers in general. What if persons who otherwise might express their freedom of speech through their bumper stickers are cognizant of this system-wide bias, and are therefore intimidated and reluctant to express their opinions through the use of bumper stickers or through any other means, thus surrendering their right of free speech?

Whereas the Committee has the luxury of not having to address these broader, contextual questions, the University does not. A fair and unbiased decision by the University regarding Ward Churchill must take into consideration the University’s own reasons and motives for the initiation of this investigation, as well as the outside influencing factors that impacted the University’s ultimate decision. The University’s decision will have a significant effect on the entire university community. The faculty, in particular, must remain reassured by the results of this investigative process that they will not someday be targeted because of their own “bumper stickers.”

The Committee’s “disquiet” regarding the timing and motives regarding these allegations “is exacerbated by the fact that the formal complainant in the charges before us is the Interim Chancellor of the University, despite the express provision in the Laws of the Board of Regents of the University of Colorado that faculty members’ ‘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.’” Now is the time for the

University to reflect on these questions and to engage in a process of introspective analysis. The University needs to render a judgment on itself before it renders a judgment either for or against one of its own members of the university community.

As mentioned above, the Committee expressed concern about the fact that “the formal complainant in the charges before us is the Interim Chancellor of the University.” It should be a concern, since the administrative officer to whom the Committee and the Standing Committee on Research Misconduct is sending its allegations of research misconduct—and who will render the final decision in this matter—is the very same University officer who made the initial complaint to the faculty committee! There is something inherently wrong, in terms of due process, with an investigative system in which the same person or office is the complainant as well as the judge and prosecutor.

Instead of sending the allegations directly to a faculty committee, the initial investigative panel consisted not of faculty, but of the then Provost of the University of Colorado at Boulder and now Interim Chancellor, and of two Deans whom he appointed to serve on this panel. The panel found reasonable grounds for sending the allegations to a faculty committee. This is problematical for several reasons, not the least of which is the question of conflict of interest, since two of the faculty members of the subsequent Investigative Committee report directly or indirectly to one of these deans, and the third member reports directly to the other dean. While there is no reason to believe that this had any role in the investigative process with respect to these three faculty, it does raise the appearance of administrative impropriety. This could have been avoided had the initial panel investigating these allegations been a faculty panel, and not an administrative one.

#### Ethnic Studies at C.U. - Boulder

Although Professor Churchill has been the primary subject of scrutiny and of investigation, it is evident that he has not been the only person placed under the academic, bureaucratic, and political microscope. So too, have been his colleagues in the Department of Ethnic Studies. So too, have been not just the majors and minors in ethnic studies, but all students who take ethnic studies courses at the University of Colorado. Some politicians and public officials have even questioned the very discipline of Ethnic Studies, and its legitimacy as a field of study within academia. Unfortunately, in the past 15 months since the beginning of this investigative process, the University has elected to remain silent in this regard and has failed to respond to those who have also prejudged the department and the discipline.

On April 25, 2005, the faculty of the Department of Ethnic Studies submitted a formal letter to the Board of Regents, to President Betsy Hoffman, and to Interim Chancellor Phil DiStefano informing them of the numerous e-mails and phone calls the department was receiving as a function of the media coverage regarding Ward Churchill. Many of these e-mails were racist and extremely acrimonious, questioning not only Professor Churchill's right to be at this university, but that of the Department of Ethnic Studies as well. In the letter, the Department requested that the University publicly support and defend ethnic studies, and indicated its willingness to work with these university administrators in order to change the racial climate on campus. After more than one year since this letter was written, the Department is still awaiting a response. One can only wonder if Professor Churchill had been a member of any another department, if that entire department would have been prejudged by the public as well. And if so, if the administration would have completely disregarded that department's request to work with its faculty to resolve the issues created by the controversy.

Consequently, if any of the sanctions recommended by the Investigative Committee are implemented by the University, not only will the critics of Professor Churchill feel justified, but also those who have generalized from this single case to the C.U. Department of Ethnic Studies and to the field of ethnic studies as a whole. The University has a responsibility, therefore, in whatever decision it might make concerning Professor Churchill, to simultaneously indicate its support concerning the legitimacy of ethnic studies, and to acknowledge the contribution that the Department of Ethnic Studies has made to the teaching and scholarly mission of the University of Colorado.

It is puzzling, in fact, that the University has not taken a more supportive role in regard to the department, since ethnic studies at C.U. has contributed significantly to the research and teaching mission of the University. With respect to research and scholarship, for example, the current ten full-time faculty in the department have written 26 books and authored more than 280 journal articles or book chapters. This scholarly record compares quite favorably with that of the "well-developed ethnic studies programs at four major research universities" mentioned in the report of the investigative committee. In the past three years alone, the C. U. ethnic studies faculty have produced five books and ten forthcoming books, fifty articles or book chapters, and about another twelve forthcoming, and dozens of encyclopedia entries and book reviews. The ethnic studies faculty maintain membership in an array of major professional organizations, with several of these faculty holding leadership positions in most of them, as well as serving as journal editors and on

advisory boards. With respect to teaching several of the faculty have won teaching awards. The average instructor rating for the Boulder campus is 3.37; the average for the ethnic studies faculty is 3.38. The average course rating for the campus is 3.21, and for the department it is 3.27. These higher ratings for the department are not due to inflated student grades, since the average student grade for the campus is 3.30, and for the department it is 3.28.

It is critical that the University affirm its support of the Department of Ethnic Studies. The University can no longer continue to remain silent in this regard, unless it wants to send a message to other academic departments on campus that, when they are at risk and under the bureaucratic and political microscope, they, too, are on their own.