

Research Misconduct Complaint

Submitted to Professor Joseph Rosse, Chair
Standing Committee on Research Misconduct
University of Colorado at Boulder

by Professor Ward Churchill
July 19, 2007

In accordance with the Laws of the Regents of the University of Colorado and the policies issuing therefrom, I am hereby submitting a complaint on grounds of research misconduct against University of Colorado/Boulder (UCB) Distinguished Professor Emeritus of History Marjorie K. McIntosh and four collaborators.¹ The basis of the complaint is misrepresentation of sources, falsification and fabrication. Said offenses occur in a document titled *Report of the Investigative Committee of the Standing Committee on Research Misconduct at the University of Colorado at Boulder concerning Allegations of Academic Misconduct against Professor Ward Churchill* (May 9, 2006; hereinafter, *Report*). Insofar as it has been posted on an official University website for purposes of broad public distribution and consumption under the University's imprimatur, the document constitutes published scholarship.² Although the document was nominally coauthored by Professor McIntosh, UCB Professor of Law Marianne Wesson, UCB Professor of Sociology Michael Radelet, Arizona State University Professor of Law Robert Clinton, and University of Texas Professor of English José Limón—who, together with Professor McIntosh, comprised the so-called Investigative Committee—Professor McIntosh confirmed her primary authorship of the material specifically at issue in this complaint during her testimony before the University of Colorado's Committee on Privilege and Tenure (P&T) on January 10, 2007.³

¹ Most specifically at issue are the University of Colorado System, *Administrative Policy Statement Concerning Misconduct in Research and Authorship* (available at <http://www.cusys.edu/policies/Academic/misconduct.html>), and University of Colorado at Boulder, *Administrative Policy Statement on Misconduct in Research and Authorship, as Cited on Research Misconduct Rules, Operating Rules and Procedures of the Standing Committee on Research Misconduct* (available at http://www.colorado.edu/Academic/research_misconduct_rules.html). Insofar as the definition of misconduct advanced in the System Statement invokes "current federal regulations regarding scientific research misconduct, for example those promulgated by the National Science Foundation (NSF)," and further provides that these "policies and procedures...apply to University members on all campuses who are conducting research under different circumstances, regardless of whether or not it is in the field of science," the NSF regulations, as codified at 45 CFR, § 689.1 may be seen to apply (available at <http://www.nsf.gov/oig/resmisreg.pdf>). Insofar as Prof. McIntosh is a professional academic historian, the applicable standards are those set forth in the American Historical Association's *Statement on Standards of Professional Conduct* (available at <http://www.historians.org/pubs/Free/ProfessionalStandards.cfm?pv=y>); hereinafter referenced as *AHA Statement on Standards*.

² Publication occurred at the explicit request of UCB Law Prof. Marianne "Mimi" Wesson, who chaired the so-called Investigative Committee, apparently with the concurrence of the other committee members/coauthors. As Prof. Wesson explained in an e-mail communication to Prof. Fay G. Cohen of Dalhousie University on Mar. 23, 2006, "I have secured a commitment from the University administration that our report, unedited by any University officer, will be made public (copy on file). In addition to the *Report of the Investigative Committee Report* (hereinafter cited as *Report*), a audio download of a press conference featuring Prof. Wesson at the time the *Report* was released, and a press summary of the findings contained in the *Report*, are all posted under the University of Colorado imprimatur on an institutional website (all are available at <http://www.colorado.edu/news/reports/churchill/Churchillreport051606.html>.) Unless the University wishes to acknowledge that the scholarship of one a senior faculty member was officially-assessed in something *other than* a scholarly fashion, the Investigative Committee's published *Report* must be treated as a work of scholarship, subject to the definitions, rules, and standards set forth in Note 1.

³ At p. 116 of the *Report*, Prof. Marjorie McIntosh is credited, in addition to writing her own section—which constitutes approximately half the page-length therein (sans appendices)—with having "integrated" the sections submitted by each of her coauthors, then "edit[ing] and format[ing] the final document." Prof. McIntosh must thus be seen as having served as lead author of the over *Report*, bearing primary responsibility for its contents. Her coauthors, however, apart from whatever offenses may be reflected in such material as they themselves drafted, must, by virtue of their approval of the "final product" crafted by Prof. McIntosh, must be seen as having been complicit in Prof.

The Issue

In her testimony before the P&T review panel, Professor McIntosh identified herself as having authored the section of the *Report* dealing with “Allegation D: Smallpox Epidemic at Fort Clark and Beyond, 1837-1840” (pages 39-82). At page 116 of the *Report* itself, it is also observed that in addition to writing her own section, “Professor McIntosh integrated those sections [written by other members of the Investigative Committee] and edited and formatted the final document.” It is thus fair to say that Professor McIntosh assumed a disproportionately substantial role in preparing the *Report*. Indeed, were it not for Professor Wesson’s role as Chair of the Committee, a circumstance which has translated into her being credited as lead author of the document, such credit might rightly be seen as accruing to Professor McIntosh.

The present complaint centers upon the manner in which Professor McIntosh, “in consultation with the entire Committee,”⁴ misrepresented the nature of my scholarship and other writings with respect to the smallpox pandemic unleashed among American Indians in the upper Missouri River region during the summer of 1837. Such misrepresentations appear both in the section written by Professor McIntosh, and elsewhere in the *Report*, presumably as a result of her broader integrative and editing functions. It should be emphasized before moving on to specific allegations that I have declined to challenge numerous subjective assessments advanced by Professor McIntosh and her coauthors with regard to my rhetorical style and the like. In each instance where Research Misconduct is alleged, it is because Professor McIntosh has misrepresented concrete facts, the evidence of which was readily available to her.

Allegation 1: Fabrication

(*re*, “Professor Churchill’s primary example of genocide by the U.S. Army”)

At page 12 of the *Report*, Professor McIntosh states, without further explanation, that, “The 1837 situation is 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 by the U.S. Army [emphasis added].” She cites nothing in support of this bald assertion, for the very good reason that nothing exists with which she *could* support it. That, in turn, is because it is categorically false. Apart from the question of whether Professor McIntosh might provide an example of an “accidental” genocide—intent, after all, is integral to the very definition of the crime⁵—it is demonstrably true that the most substantial run of text I’ve ever devoted to “the 1837 situation” was two paragraphs in length, attended by two footnotes.⁶ This was in a 150-page essay titled “‘Nits Make Lice,’” included in my 1997 book, *A Little Matter of Genocide*.⁷ The same essay contains a section spanning 35 pages devoted

McIntosh’s research misconduct. As they themselves put it at p. 10 of the *Report*, other than the discussion at pp. 99-103—which is not at issue in this complaint—“what follows represents a unanimous finding or conclusion of the Committee.”

⁴ *Report*, p. 116.

⁵ Genocide is defined in Article II of the 1948 Convention declaring it a crime as “any of the following acts undertaken with *intent* to destroy, in whole or in part, a national, ethnical, racial or religious group, as such [emphasis added].” Five types of activity are then delineated. For text, see Burns H. Weston, Richard A. Falk, and Anthony D’Amato, eds., *Basic Documents in International Law and World Order* (St. Paul, MN: West, [2nd ed.] 1990) p. 297.

⁶ It might be argued that my discussion of “the 1837 situation” in my “An American Holocaust? The Structure of Denial,” *Socialism and Democracy*, Vol. 17, No. 1 (Winter-Spring 2003) is longer, insofar as it takes up 3 paragraphs of text at pp. 54-6. Adding in the two footnotes accompanying the two paragraphs at issue here nonetheless produces a slightly greater length. Either way, the bottom line is that I’ve never devoted a full page of text to the matter at issue.

⁷ “‘Nits Make Lice’: The Extermination of American Indians, 1607-1996,” in Ward Churchill, *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 to the Present* (San Francisco: City Lights, 1997) pp. 129-288. The paragraphs and attendant footnotes focusing on “the 1837 situation” will be found at pp. 155-6.

exclusively to delineating the protracted pattern of genocidal actions perpetrated by the U.S. Army against American Indians between 1782-1890.⁸ Therein, eight pages are devoted to the 1864 Sand Creek Massacre alone.⁹ Indeed, while a number of such massacres are covered in the section attributing genocide to the Army, “the 1837 situation” is never mentioned.

As is catalogued by Professor McIntosh at pp. 40-1 of the *Report*, mention of “the 1837 situation,” will be found at five other points in my roughly 10,000 pages of published writing. While she quotes from each of these at various points in the *Report*,¹⁰ the fragmentary manner in which she does so tends to mask rather than reveal the fact that only one of these is comparable in length to that discussed in the preceding paragraph.¹¹ Three—one of which is a reprint of another—are a mere four *sentences* in length,¹² while the last consists of only *one* sentence.¹³ In each instance, the same thematic emphasis and overall textual proportionality evident in the “Nits Make Lice” example, sometimes to an even greater extent (e.g., a single sentence in a 424-page book). I have, moreover, published numerous and often lengthy analyses of the U.S. Army’s genocide of American Indians in which “the 1837 situation” goes *completely* unmentioned.¹⁴

There is thus no factual basis whatsoever upon which Professor McIntosh’s assertion that “the 1837 situation...constitute[s] the primary example [I] adduce in support of [my] argument” against the Army can be sustained. It would in fact be impossible, given the relative weight I’ve placed on it, to demonstrate that it occupies anything more than the most peripheral—and in certain respects tangential—place within the scheme of my critique of the Army’s policies, objectives, and performance vis-à-vis American Indians. That being so, there is no alternative but to conclude that Professor McIntosh’s claim to the contrary hinges upon nothing more than pure invention on her part. It is, by any definition, a fabrication. In her own words, Professor McIntosh is therefore guilty of “creating myths under the banner of academic scholarship.”¹⁵

Allegation 2: Fabrication (re, “Professor Churchill’s published essays”)

At page 81 of the *Report*, Professor McIntosh sets herself to the task of summing up what she sees as being the actionable defects in my “published essays about Fort Clark” (the latter reference being to what was termed “the 1837 situation” in Allegation 1). What she “sees” must

⁸ Ibid., pp. 209-45.

⁹ Ibid., pp. 228-36.

¹⁰ *Report*, pp. 61-3, 68, 70-1, 73-4, 78-80.

¹¹ “An American Holocaust?” at pp. 54-6.

¹² See “Bringing the Law Home: Application of the Genocide Convention in the United States,” in Ward Churchill, *Indians Are Us? Culture and Genocide in Native North America* (Monroe, ME: Common Courage Press, 1994) p. 35; “That ‘Most Peace-Loving of Nations’: A Record of U.S. Military Actions at Home and Abroad, 1776-2003,” in Ward Churchill, *On the Justice of Roosting Chickens: Reflections of the Consequences of U.S. Imperial Arrogance and Criminality* (Oakland, CA: AK Press, 2003) p. 48. The duplication is of “Bringing the Law Home,” which was retitled “Confronting Columbus Day: An Argument Based in International Law” when collected in *Acts of Rebellion: The Ward Churchill Reader* (New York: Routledge, 2003) at pp. 43-61. The all-important sentences appear at p. 56.

¹³ See the title essay in Ward Churchill, *Since Predator Came: Notes on the Struggle for American Indian Liberation* (Littleton, CO: Aigis, 1995) p. 28.

¹⁴ See, as prime examples, my “‘To Judge Them by the Standards of Their Time’: America’s Indian Fighters, the Laws of War and the Question of International Order,” and “A Breach of Trust: The Radioactive Colonization of Native North America,” both in Ward Churchill, *Perversions of Justice: Indigenous Peoples and Angloamerican Law* (San Francisco: City Lights, 2003) pp. 303-40, 153-200.

¹⁵ *Report*, p. 81.

be hallucinatory, however, since, as should be abundantly obvious by this point, I've never published anything remotely resembling an "essay on Fort Clark," to say nothing of multiple essays.¹⁶ While Professor McIntosh may have conjured this undefined number of nonexistent publications out of sheer embarrassment at having devoted 43 pages of the *Report* to parsing the total of roughly *four pages* of highly repetitive text I've actually published on the topic, it appears far more likely, given the general substance of this complaint, that she was once again, in a manner similar to that addressed in Allegation 1 above, deliberately inflating the significance I've assigned "Fort Clark" within my broader argument. In that case, her invention of "essays" that she then attributes to me must be seen as fitting within "a deliberate research stratagem" designed to lend an aura of plausibility to "extreme, unsupportable, propaganda-like claims of fact" where no facts may be accurately said to exist.¹⁷ Either way, Professor McIntosh's representation that I have "published essays about Fort Clark" is a fabrication.¹⁸

Allegation 3: Falsification (re, "works claimed by Professor Churchill as scholarship")

At page 10 of the *Report*, Professor McIntosh states that, "The allegations against Professor Churchill all concern works he claims as scholarship." Once again, her assertion is categorically untrue. While each of the essays in question may in fact *be* a work of scholarship, that in itself does not establish that I "*claim*" it as such. Whether the latter is so is established by the respective headings under which my various publications are listed in my professional vita. That Professor McIntosh was quite aware of this is demonstrated in an observation made three pages earlier.

On his Curriculum Vitae, Professor Churchill properly lists work written for a general audience separately from his academic publications. The heading "Journalism and Popular Essays" include more than 70 articles. His category "Selected Editorials" refers to newspaper publications in eight states, while the heading "Polemics" cites 20 works on the Holocaust, racism, feminism, and the Indian resistance in Nicaragua.¹⁹

There are also sections in my CV bearing the headings "Scholarly Essays (Peer Reviewed)" and "Scholarly Essays (Unrefereed)." I do indeed claim the publications listed under each of these headings as "works of scholarship." On the other hand, *none* of my books is—or has ever been—listed under a comparable heading. To the contrary, the main heading simply reads "Books," a general classification which is then subdivided into four categories: "Authored," "Coauthored," "Edited," and "Coedited." Words like "scholarly" and "scholarship" nowhere appear in connection with my books. The same is true with regard to the items listed in my CV under the heading "Book Chapters." This, as Professor McIntosh herself observed, is "proper," mainly because my books invariably include both scholarly and popular essays.²⁰ Similarly, the items listed under "Book Chapters" consist of both scholarly and popular materials.

¹⁶ Actually, Prof. McIntosh herself admits this at p. 63 of the *Report*, quoting me to the effect that I "have never addressed the issue of Fort Clark other than in passing." She does not explain how, in her view, my passing remarks magically became "published essays about Fort Clark." Whatever the mental process involved, it should be obvious that the result displays no attachment to reality.

¹⁷ For the language quoted, see the *Report*, p. 23.

¹⁸ According to the relevant NSF criteria, codified in 45 CFR § 689.1 (see Note 1, above), "*Fabrication* means making up data or results or reporting them [emphasis in original]." In the present instance, Prof. McIntosh has both invented data and reported these fabrications as facts.

¹⁹ *Report*, p. 7. A copy of my current CV is attached for purposes of illustration.

²⁰ Given the admixtures involved, any given book might be classified as either a scholarly or a popular publication for annual reporting purposes within the institution. Such reports, which are both confidential and subject to evaluative criteria not generally prevailing in the public domain, do not constitute public claims of the sort Prof. McIntosh plainly

To determine whether I might be accurately said to claim a given book chapter, or a particular essay collected in one of my own books, as a “scholarly work,” it is therefore necessary to take the extra step of checking to see whether the item in question is also listed in my CV under either of the two categories of scholarly essays. Following this rather simple procedure reveals that, of the *six* works Professor McIntosh has me “claim[ing] as scholarship,” only *two* appear under headings indicating that I actually do so.²¹ The remaining four—i.e., two-thirds of the total advanced by Professor McIntosh—are not listed under either of the relevant headings. It bears repeating that the issue is *not* whether the works in question might be reasonably be described as scholarship. Rather, it is whether I *claim* them as such. Since Professor McIntosh asserts quite unequivocally that I *do*, when in fact I demonstrably *do not*, she is patently guilty of falsification.²²

Conclusion

The blatant and systematic manner in which Professor McIntosh and her coauthors have misrepresented both the nature and the substance of my work eliminates any possibility that their distortions resulted from simple error. Reinforcing this conclusion is evidence, quoted in Allegation 3, that Professor McIntosh was fully aware of the extent to which she was falsifying my scholarly “claims.” It might be mentioned, moreover, that it places no undue burden upon a scholar as senior as she to expect her to have mastered the distinctions a sentence or a paragraph from an “essay.” So, too, her four collaborators, all of whom, by their own admission “agreed about every section of the report,” thereby arriving at “unanimous finding[s]” throughout.²³ A stronger statement of endorsement is difficult to imagine. Hence, having lent their names and scholarly reputations to the purpose of increasing the credibility inhering in Professor McIntosh’s fraudulent material, they are no less accountable than she for the Research Misconduct at issue.

suggests. They pertain, moreover, to the particular year in which they are submitted. They thus, by definition, relegate themselves to the past tense. To apprehend what I presently and publicly “claim as scholarship,” it is therefore necessary to proceed on the basis of how publications are listed my professional vita.

²¹ “An American Holocaust?” is listed as a peer-reviewed scholarly essay, while “Since Predator Came” is listed as a “Scholarly Essay (Unrefereed).”

²² According to the relevant NSF criteria, codified in 45 CFR § 689.1 (see Note 1, above), “*Falsification* means manipulating research materials, equipment, or processes, or changing or manipulating data or results such that the research is not accurately reflected in the research record [emphasis in original].” Unquestionably, Prof. McIntosh’s misrepresentation of the obvious source of her information—i.e., my CV—constitutes a “changing [of] data...such that [her] research is not accurately reflected in the research record (i.e., the *Report*).”

²³ *Report*, p. 10.