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Regents of the University of Colorado
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Provost Philip DiStefano, University of Colorado-Boulder
Members of the Investigative Committee in the Churchill Case
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Research Misconduct Complaint Concerning Investigative Committee Report of May 9, 2006

As scholars who value the importance of diverse and, particularly, Indigenous Peoples' perspectives within the academy, as well as Academic Freedom and the First Amendment, we have followed with great concern the University of Colorado's attacks on Professor Ward Churchill, a tenured full professor of American Indian Studies and former Chair of the Ethnic Studies Department.

We are particularly disturbed by the use of the May 9, 2006 *Report of the Investigative Committee of the Standing Committee on Research Misconduct of the University of Colorado at Boulder concerning Allegations of Academic Misconduct against Professor Ward Churchill* (the "Report") as the basis for recommending any sanctions against Professor Churchill, due to the false statements, misrepresentations, and biases manifest in that Report.

Because neither the Investigative Committee nor the University administration has been willing to rescind the Report, even when many of its problems have been pointed out, we bring five charges of Research Misconduct against its authors:

- * Marianne Wesson, Professor of Law, University of Colorado and chair of the Committee;
- * Marjorie McIntosh, Professor of History, University of Colorado;
- * Michael Radelet, Professor of Sociology, University of Colorado;
- * Robert Clinton, Professor of Law, Arizona State University; and
- * José Limón, Professor of American and English Literature, University of Texas at Austin.

These authors (collectively, the "Committee") each took credit for collective authorship of the Report and stated unanimous agreement on its findings, differing only as to their recommended sanctions. They published the Report as a public document before the completion of the University's internal review process, and held a press conference to announce their conclusions, thus assuming scholarly responsibility for its content.¹

¹ While Professors Clinton and Limón are not University of Colorado faculty, they were acting on behalf of the University in this matter. The University therefore has an obligation to include them in the investigation of these charges and to forward its findings to their respective institutions.

This Committee's mandate, according to the laws and policies of the University, was to conduct "an information-seeking, nonadversarial proceeding"(Report, p.9)² to determine if Professor Churchill's work violated established scholarly standards. As noted below, we believe it far exceeded its mandate by engaging in a clearly adversarial investigation.

Its Report is long and obfuscatory, making it difficult to identify all of the many instances of fraud, fabrication, plagiarism and/or serious deviation from accepted scholarly practices contained therein. We do not attempt to enumerate all instances of such misconduct in this document. We do, however, recognize the validity the five allegations of research misconduct filed against the Committee by 11 professors on May 10, 2007 (attached as Appendix A) and urge you to thoroughly investigate those charges. In addition, we bring the five new charges enumerated below.

We focus on these as specific examples of how the Committee, which included no American Indian/Indigenous scholars, attempted to suppress legitimate interpretations of Indigenous history with respect to smallpox epidemics by itself engaging in fabrication, falsification, and suppression of evidence. Each of these instances is significant in its own terms. Furthermore, when considered together with the allegations filed on May 10, 2007, we believe they demonstrate a consistent pattern of deliberate misrepresentation intended to discredit Professor Churchill's larger body of scholarship which has been recognized by numerous American Indian/Indigenous studies programs and scholars across the United States and Canada as articulating Indigenous perspectives.

The charges discussed below illustrate that the "findings" of the Committee are inaccurate and misleading. They also reveal a broader problem with both the Report and the underlying investigation of Professor Churchill. Indigenous/American Indian and Ethnic Studies programs were established, and scholars like Professor Churchill brought into the academy, precisely to address the failure of orthodox scholarship to reflect accurately the histories and lived realities of Indigenous and other dispossessed peoples. The punitive process now being employed against Professor Churchill very predictably – and, therefore, we believe, intentionally – chills the academic freedom of all those who challenge the orthodoxy advocated by mainstream scholars and preempts full consideration of the real nature and effects of "Indian policy" in North America.³

For all of these reasons, we believe the fallacies and misrepresentations which permeate the Report must be taken very seriously.

We therefore bring this formal complaint of research misconduct against Professors Wesson, McIntosh, Radelet, Clinton, and Limón (hereinafter the "Committee") for the following instances of misrepresentation, falsification, fabrication, and/or suppression of evidence and for exceeding their mandate in their Report of May 9, 2006:

² Unless otherwise indicated, all subsequent page references are to the Report.

³ This conclusion is bolstered by the fact that immediately after acknowledging that "[b]ecause the essays cited in these allegations offer broad accounts, extensive notes would not be expected or required," the Committee adds that "scholars who challenge exiting accounts and present a new interpretation are encouraged to provide references"(p.10). In other words, a higher standard is imposed on those who challenge orthodoxy. The Committee then proceeds to dissect Professor Churchill's references in minute detail.

1. The Committee misrepresented and suppressed evidence concerning smallpox among the Wampanoags in New England, 1614-1618.

Professor Churchill was charged with research misconduct stating, “There’s some pretty strong circumstantial evidence that [Captain John] Smith introduced smallpox among the Wampanoags as a means of clearing the way for the invaders” (p.33).

The Committee concludes that Professor Churchill “fabricated his account, because no evidence – not even circumstantial evidence – supports his claim” (p.38). It claims to have done “further research to see if other sources buttress Professor Churchill’s claims” (p.35) and asserts that there is “*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.” (p.37, emphasis added).

There are, in fact, numerous readily accessible sources which describe the disease as smallpox, thus refuting the conclusions of the Committee. To quote only a few examples:

“For example, the first smallpox epidemic, in 1616, sharply reduced populations of Indians along the northeast Atlantic Coast.” John F. Richards, *The Unending Frontier: An Environmental History of the Early Modern World* (Berkeley: University of California Press, 2003) p.503.

“Importation of smallpox also decimated the native peoples of North America, facilitating the European colonization of the continent. In 1616-1619, a smallpox epidemic cut down almost nine-tenths of the Indian population in the Massachusetts Bay area. . . .” Jonathan B. Tucker, *Scourge: The Once and Future Threat of Smallpox* (New York: Atlantic Monthly, 2001) p.11.

“New England Indians, from Massachusetts to Maine, suffered a smallpox from 1616-1619.” Sana Loue, *Gender, Ethnicity, and Health Research* (New York: Kluwer Academic, 1999) p.136.

In addition, numerous timelines of early American history list a 1616 smallpox epidemic in the northeast as a seminal event. See, e.g., John W. Wright, ed., *The New York Times Almanac 2007: The Almanac of Record*, (New York: Penguin, 2006) p.78; Larissa Juliet Taylor, ed., *Great Events from History: The 17th Century* (Pasadena, CA: Salem Press, 2005) (Table of Contents, “1617ff., Smallpox Kills Native American Populations”); David Lea, et al., *A Political Chronology of the Americas* (London: Europa, 2001), p.225.

Dozens of other examples can be found by a simple Google or Amazon.com engine search.

Our findings:

If the Committee was “unable,” as it claims, to locate such references, it is because they did not look, not because such references do not exist. Its claim to have engaged in “further research” which yielded “no evidence” is therefore a deliberate misrepresentation and a falsification and/or suppression of readily available evidence.

2. The Committee misrepresented and suppressed evidence concerning Smith and the deliberate infection of the Wampanoags.

The Committee dismisses the possibility of intentional dissemination of smallpox by asserting that since John Smith “wanted to use Indians as a labor force” (p.37), he would not have wanted them eliminated. On this basis, it finds that Professor Churchill “fabricated” the possibility of deliberate infection.

In fact, however, it is widely recognized that Squanto, a Wampanoag who dealt extensively with English settlers, not only believed that the infection was deliberate, but told others that the colonists had the

means to do so “buried in the ground” and “could send it amongs whom they would.” (This was reported by William Bradford on p.175 of his *Of Plymouth Plantation*, 1908 edition available at http://www.mith2.umd.edu/eada/html/display.php?docs=bradford_history.xml&action=show.) Smith, of course, was a primary figure among these English colonists.

Our findings:

There is clearly “circumstantial evidence” to support Professor Churchill’s statement. It is not possible to fabricate the possibility of deliberate infection in this case where there exists an historical record. The fact that subsequent U.S. historians have discounted this deliberate infection possibility does not erase or invalidate the reality that the main Wampanoag understanding we have available to us (a) supports Professor Churchill’s analysis and (b) is completely ignored by the Committee. Thus, the Committee’s claim not only suppresses and misrepresents available evidence but also reflects deliberate disparaging of Indigenous sources.

3. The Committee misrepresented and suppressed evidence concerning the 1837 smallpox epidemic among the Mandan/Hidatsa/Arikara and the withholding of vaccine.

Despite its claim not to be an arbiter of historical truth (p.12), the Committee devotes 44 pages of its Report to Professor Churchill’s brief summaries (the longest consisting of two paragraphs) of the smallpox epidemic originating near Fort Clark in 1837.

The Committee acknowledges that it did “*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” (p.81, emphasis added). In other words, the Committee acknowledges that Professor Churchill’s interpretation is fundamentally sound. Yet the Committee devotes 44 pages to justifying its conclusion that Professor Churchill “has created myths under the banner of academic scholarship” with respect to the manner in which this was accomplished and the numbers killed by the epidemic (pp.81-82).

It should be noted that the sole source of this “allegation” against Professor Churchill was a web posting by Thomas Brown, an assistant professor of sociology (pp.39-40). Although Assistant Professor Brown subsequently revised his posting, its initial iteration exhibited extreme personal animosity toward Professor Churchill. The Committee’s parsing of Professor Churchill’s brief statements about the 1837 smallpox epidemic solely on the basis of a clearly hostile critique reflects both bad faith and bias on the part of the Committee.

Our findings:

The Committee states that it “found *no* evidence” supporting Professor Churchill’s claims that vaccine intended for Indians was withheld at Forts Union and Clark and, therefore, concluded that he had “fabricated those statements” (p.78, emphasis added).

This statement is directly contradicted by the Committee’s own acknowledgment of two sources referenced by Professor Churchill, Evan S. Connell’s *Son of the Morning Star: Custer and the Little Bighorn* (pp.74-75) and R.G. Robertson’s *Rotting Face: Smallpox and the American Indian* (pp.76-77).

The Committee acknowledges that Professor Churchill’s account “accords in part” with Connell’s work, and we note that putting various pieces of evidence together to come up with a distinct analysis is the essence of scholarship. However, the Committee then proceeds to dismiss this source as “problematic” because “Connell’s description does not agree with the primary evidence and the accounts provided by other historians.”(p.75)

On the following page, the Committee acknowledges that, according to Robertson, Army personnel took cowpox vaccine to Fort Union. It then summarily dismisses this evidence as well: "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. . . . Careful examination of the train of citations indicates that Robertson is incorrect" (p.76). In footnote 199, the Committee gives its analysis of the sources cited by Robertson.⁴

In other words, Professor Churchill *did* provide evidence but the Committee performed an independent assessment of the reliability of his sources, and decided to hold Professor Churchill accountable to *its* interpretation of the facts. The Committee thus exceeded its charge, which was to determine if there was "any reasonable basis" for Professor Churchill's statements, and then misrepresented and suppressed evidence by claiming to have found *no* evidence that supported Professor Churchill.⁵

Further, after concluding that there was no evidence to support the withholding of vaccine in connection with the 1837 epidemic, the Committee adds that by "fabricating" these statements, Professor Churchill "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." (p.78)

If the Committee were simply assessing the evidence supporting Professor Churchill's statements, why did it superimpose its own conclusions concerning this aspect of Indigenous history? Of what relevance are its opinions on which historical facts are of broader import, or whether Professor Churchill was undermining a particular interpretation? Such gratuitous statements, found throughout the Report, illustrate that the Committee had an agenda diverging from its mission of objectively weighing the charges at issue.

4. The Committee misrepresented and suppressed evidence concerning the role of the military in the 1837 smallpox epidemic, and denied access to its sources.

The Committee states:

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 was introduced deliberately among Mandan Indians near Fort Clark by the U.S. Army, using infected blankets. We therefore do not conclude that he fabricated his account (p. 68, footnote omitted).

Yet the Committee discusses this charge for nearly eight pages, in the process putting forth its own interpretation of this event which discounts the role of the U.S. military. In the process, it makes numerous false and/or misleading statements.

First, the Committee justifies its extended focus on this allegation by claiming that 1837 smallpox epidemic 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 on the part of the U.S. Army" (p.12, emphasis added).

In its "analysis," the Committee asserts: "we found no evidence that the army had any representatives at Fort Clark"(p.64); "[n]either did we encounter evidence that infected blankets were 'distributed' by any

⁴ In other instances, however, the Committee itself relies on Robertson to support its interpretations (see, e.g., p.72).

⁵ We note that the Committee seems comfortable making assertions supported by no evidence. For example, it emphasizes (pp.71, 75) that Fort Union was 300 miles from Fort Clark (a point used to discredit Professor Churchill's analysis) when, in fact, its own map (p.42) indicates that the distance was closer to 100 miles.

representative of the military or government at Fort Clark” (p.65, footnote omitted); and “[w]e have seen no evidence to support Professor Churchill’s claim that the U.S. Army intended to kill off the Mandan Indians” (p.65).

The Committee also states that Professor Churchill’s “admission” that in 1837 annuities were not distributed further north than Fort Pierre

appears to throw into doubt his claim that the U.S. Army – or any government representative – was responsible for [] 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* (p. 65, emphasis added, footnotes omitted).

The Committee also references the testimony of Russell Means and Michael Yellow Bird, both of whom stated that, according to their peoples’ histories, the epidemic was deliberately spread by “whites” (pp. 57, 58). The Committee then uses the fact that these accounts do not distinguish between military personnel and traders to support an interpretation which absolves the U.S. government of responsibility.

Our findings:

These and similar statements made in this section are problematic for several reasons. First, the Committee clearly exceeded its mandate. Having found that Professor Churchill was *not* guilty of fabricating his account, it had no cause to argue for an alternative historical interpretation. That it chose to do so reflects an intent to discredit both Professor Churchill and the perspective he articulates.

Second, the Committee’s rationale for its extended analysis of the 1837 smallpox epidemic – i.e., that it is Professor Churchill’s “primary example” of genocide by the Army – is simply false. Professor Churchill’s longest reference to this incident consists of two paragraphs, accompanied by three footnotes, found at pp. 155-156 of his book, *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 to the Present*. These two paragraphs are embedded in an essay focusing on genocidal actions by the U.S. military which extends to 134 pages *plus* 611 footnotes. Clearly the two paragraphs at issue were not his “primary example.”

Third, the Report misrepresents the evidence by inferring that the testimony of Russell Means and Michael Yellow Bird (the only American Indian witnesses who spoke to the matter) tended to absolve the military. The Committee superimposes its own interpretation which completely disregards the evidence that the Indigenous peoples at issue recognized the interdependent relationship between the military and other Euroderivative settlers.

Fourth, the Committee’s claims to have found *no* evidence on various issues relating to military involvement constitutes a misrepresentation and suppression of the evidence presented to it. That they couch these repeated statements in very particular terms may indicate an intent to make technically “accurate” statements, but in light of the context in which they are made, the statements are clearly misleading. Further, the “no evidence” claim is flatly contradicted by the evidence and arguments presented by Professor Churchill at pp.13-23 of his response, referenced on p.115 of the Report as “Submission B” (and attached hereto as Exhibit B).

This raises a fifth instance of misconduct in this matter. As the American Historical Association states, historians have an obligation to “make available their sources, evidence, and data” and to “favor free, open, equal, and nondiscriminatory access” to materials. (Statement on Standards of Professional Conduct, available at www.historians.org/pubs/Free/ProfessionalStandards.cfm). The AHA also admonishes scholars to respect confidentiality, but this Committee blatantly violated that obligation by publishing their Report while the internal investigation into allegations against Professor Churchill was still pending. Having done so, the Committee had an obligation to make its sources, particularly Professor Churchill’s responses, equally accessible to the public so that its conclusions could be assessed. Instead,

the Committee identifies ten submissions by Professor Churchill which it claims to have “considered” (p.115) but does not make them available.

For each of these reasons, we conclude that the Committee has falsified, distorted, misrepresented and/or suppressed evidence. In addition, it failed to act in an unbiased, nonadversarial manner, choosing instead to promote its own interpretations of historical events.

5. In asserting that Professor Churchill “disrespected” American Indian oral tradition, the Committee misrepresented, distorted, and suppressed evidence and exceeded its mandate to conduct a nonadversarial, fact-finding investigation.

This Committee’s sole responsibility was to conduct “an information-seeking, nonadversarial proceeding”(p.9) to determine if Professor Churchill had violated established academic standards for research. Its abandonment of this, its only official purpose, is perhaps best illustrated by the fact that on three occasions the Committee, which included no American Indian/Indigenous scholars, asserts that Professor Churchill “disrespected” American Indian oral traditions (pp.68, 81, 94) by introducing them “belatedly” (p.68) in support of his interpretations. The Committee concludes that Professor Churchill should be sanctioned for “a kind of falsification of evidence” (p.81) for failing to footnote Indigenous oral sources in his brief accounts of the 1837 smallpox epidemic.

The Committee acknowledges that Professor Churchill is “one of the most widely read and influential writers in this country who deal with American Indian issues” (p.6), and that he is “[a]rticulating an Indian perspective”(p.7). We are aware that many Indigenous peoples concur with Western Shoshone elder and activist Carrie Dann’s statement:

In my opinion, as a traditional indigenous person, Mr. Churchill writes with the highest caliber of honesty and truth when speaking of indigenous oral histories and culture. I have often said that if I could hold a pen and write books I would write exactly what Mr. Churchill has written. . . .⁶

As the Committee also acknowledges, Professor Churchill has “an atypical but impressive record” and has “published an unusually high volume of work” (p.6). That a handful of short paragraphs or footnotes were extracted from his several thousand pages of published material and subjected to minute scrutiny alerts us to the possibility that it is the “alternative” perspectives Professor Churchill articulates, rather than the technicalities of the citations, that are under attack. In fact, the Committee as much as concedes this when it notes that “one might . . . ask why so much weight is being assigned to these particular pieces of Professor Churchill’s total publication record” and responds that the allegations “are important because they address central components of Professor Churchill’s broader interpretive stance: the themes of racism and genocide against American Indians” (pp. 8-9).

It appears that the Committee has attempted to divert attention from this rather glaring problem with the investigation as a whole by inserting the charge that Professor Churchill “disrespected” Indigenous traditions and history. This was not part of the Committee’s mandate, and its “conclusion” is simply a gratuitous assertion without any factual basis or complaint from American Indian/Indigenous scholars. In fact, Professor Churchill remains one of the most cited and read scholars in the disciplines of American Indian and/or Indigenous studies. The Report provides *no* evidence to support a claim that Professor Churchill disrespected Indigenous Peoples’ oral history and, in fact, it misrepresents, distorts, and/or suppresses the evidence which was presented.

The Committee’s biases are reflected in its example of how scholarly debate “cannot permit a statement to the effect that the attack on Pearl Harbor never occurred” (p.6). In other words, the Committee finds

⁶ Correspondence on file with authors.

the existence of this attack to be “common knowledge” not requiring citation. Yet it refuses to consider statements equivalently considered common knowledge in Indigenous communities to be acceptable.

The Report acknowledges that one may be unable to pinpoint sources “when a person has simply grown up with a particular understanding, having heard it from various members of the tribe over time . . . or when it is necessary to protect tribal people who fear negative consequences of their statements” (p.46). Yet the Committee continues, “*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” (p.46, emphasis added). No evidence is provided that this is anything other than the Committee’s subjective belief; it cites no standards. Further, should such “standards” be articulated, they would be blatantly discriminatory, for what determines “common knowledge” aside from one’s particular culture?

Our findings:

This Committee included no Indigenous scholars and no one with academic expertise in American Indian oral history, and it was not charged with investigating Professor Churchill’s level of “respect” for American Indian traditions. Yet it published, as part of its official “findings”, Professor Churchill “disrespected” American Indian oral history or traditions. This assertion is made without evidence, supported only by the Committee’s observation that Professor Churchill did not *cite* oral traditions when he published his very succinct summaries of the 1837 smallpox epidemic.

Professor Churchill introduced uncontradicted evidence that he relied upon these traditions when writing the passages, thus countering the Committee’s assertion that he merely invoked them after the fact (pp. 66-67). The Committee simply suppressed this evidence, choosing instead to impose its unsupported presumption that this could not have been the case and, implying thereby, that it refused to believe that these traditions could have been part of Professor Churchill’s own background.

Further, the Committee misrepresented, distorted, and/or suppressed the evidence presented by all of Professor Churchill’s witnesses – professors George Tinker, Glenn Morris and Michael Yellow Bird, and author/activist Russell Means – that Professor Churchill’s accounts reflected, comported with, and were supported by Indigenous oral traditions. Each of these witnesses is Indigenous, and both Russell Means and Michael Yellow Bird testified to firsthand understandings of the history of this epidemic, deriving from the Mandan, Arikara, and Hidatsa peoples (pp. 57-58).

The Committee’s bald assertion of “disrespect” is entirely unsupported by the evidence. It reflects an intent to discredit both Professor Churchill and the historical perspective he articulates, and directly violates the Committee’s responsibility to seek information and reach conclusions in a “nonadversarial” manner.

In conclusion, we believe that in each of the instances described above, the members of the Investigative Committee engaged in serious violations of the University of Colorado’s published Research Misconduct Rules as well as existing scholarly standards. We trust each allegation will be investigated thoroughly and in good faith. In light of the role played by the Standing Committee on Research Misconduct in approving the Report in question, and the bias that has been consistently and publicly demonstrated by University of Colorado administrators, we request that a neutral and objective panel of scholars from outside the University system be appointed to investigate these allegations.

Signed,

[signatories continued on p.9]

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