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## Ward Churchill at the Dalton Trumbo Fountain: Academic Freedom in the Aftermath of 9/11

By Ellen Schrecker

How many of the three hundred people who gathered around the Dalton Trumbo Fountain in front of the University of Colorado's student center on March 3, 2005, to hear Ward Churchill speak understood the irony of the location?<sup>1</sup> Trumbo, a successful screenwriter and Colorado alumnus, had been one of the so-called "Hollywood Ten" who were imprisoned and blacklisted for defying the House Un-American Activities Committee in 1947. Churchill, like Trumbo an outspoken radical, had just become the target of a nationwide campaign to eject him from his position as a tenured professor of American Indian studies on the Colorado faculty. In a hasty essay, written to explain why the perpetrators of the attack on the World Trade Center would have been so hostile to the United States, he had characterized the 9/11 victims as "little Eichmanns." That unfortunate phrase, unremarked at the time, emerged with a vengeance three years later in conjunction with a planned speech he was to give at Hamilton College in upstate

New York. Catapulted into notoriety by right-wing bloggers and talk-show hosts, Churchill then came under attack by Colorado politicians, who forced the university to investigate and then dismiss its controversial faculty member.

Because Churchill's outrageous comment and sloppy scholarship were to provide ammunition for his critics, his case does not seem quite as clear-cut a violation of civil liberties as Trumbo's conviction for contempt and subsequent blacklisting. But, in the late 1940s, as Trumbo was fighting for his First Amendment rights, most contemporaries refused to support him. He was a Communist—and everybody knew the Constitution did not protect Communists. So, one wonders, will the University of Colorado have second thoughts once the current furor subsides? Admittedly, it may be too soon to answer that question, but a closer look at what happened to Churchill may give us some insight into the current state of academic freedom.

It was the Emerald Society of Rockland County, New York, that touched off Churchill's troubles when its members protested Hamilton's appointment of Susan Rosenberg to teach a one-month course on memoir writing in fall 2004. Hired by the college's Kirkland Project for the Study of Gender, Society, and Culture, Rosenberg, a 1960s radical and member of the Weather Underground, had been connected to the fatal Brinks robbery of 1981. Arrested in 1984 as she was delivering an automatic weapon and 740 pounds of explosives to a storage facility in New Jersey, she was serving a 58-year sentence when she was pardoned by President Clinton in 2001, apparently because of her exemplary record in prison. Until her Hamilton appointment unleashed a storm of protest, she had been teaching quietly as an adjunct at the City University of New York. Shaken by the unfavorable publicity, Rosenberg and her Hamilton sponsors backed down and cancelled the course. When the by-then controversial Kirkland Project announced its speakers for the coming semester, a political science professor noted that Churchill was on the roster. When he discovered the "little Eichmanns" essay on the Web, the professor forwarded it to the administration, urging them to cancel Churchill's appearance. He also alerted the editor of Hamilton's student newspaper, who published an article about

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Churchill's 9/11 piece on January 21, 2005. Five days later, the *Syracuse Post-Standard* ran the story, which got picked up by a conservative Weblog. Within hours (such is the power of the Internet), hundreds of readers were contacting the Colorado press and politicians. Then, on January 28, Bill O'Reilly jumped into the fray, claiming that Churchill should be arrested for sedition and calling on his viewers to demand that Hamilton cancel Churchill's appearance.<sup>2</sup>

Deluged by thousands of e-mails, Hamilton's administration initially stood firm. It had, it is true, forced the Kirkland Project's director to transform Churchill's planned address on prisons and Native American rights into a forum on his controversial article. But, as the school's president Joan Hinde Stewart explained on January 30, free speech was at issue; were Hamilton to call off the talk, "we would be abandoning a principle on which this College and indeed this republic are founded."<sup>3</sup> For a president who had only just begun her tenure at a campus already polarized by her predecessor's plagiarism, Stewart's attempt to protect free expression was commendable, though temporary. Two days later, citing her responsibility for the "safety and security of our students, faculty, staff, and the community in which we live" in the face of "credible threats of violence," she cancelled the speech.<sup>4</sup>

Other cancellations followed, as many schools, including Churchill's own, panicked at the prospect of hosting such a notorious speaker. A few institutions—the University of California, Berkeley; the University of Wisconsin–Whitewater; and the University of Hawaii–Manoa—did give the controversial scholar a platform. As was the case at Hamilton, Colorado's administrators initially cited safety concerns in their decision to cancel the lecture, but when a group of students sought an injunction against them, they reversed themselves and, on February 8, let the scheduled event take place.<sup>5</sup> Addressing a standing-room audience, the embattled professor lashed out at his critics and mounted an impassioned defense of his scholarship and activism.

By then, it was no longer a matter of being allowed to speak—Churchill's job was on the line. Colorado's Republican governor, Bill Owens, had called for his dismissal. While claiming that "[n]o one wants to infringe on Mr. Churchill's right to express himself," Owens had

insisted, “We are not compelled to accept his pro-terrorist views at state taxpayer subsidy nor under the banner of the University of Colorado. Ward Churchill besmirches the University and the excellent teaching, writing, and research of its facility [*sic*].”<sup>6</sup> The legislature had unanimously voted for a resolution demanding that Churchill be fired and two local talk-show hosts took an ad in the Boulder paper demanding his dismissal. In response, the university’s Board of Regents held an emergency meeting on February 3 at which the interim chancellor, Phil DiStefano, announced that he was about to launch a preliminary investigation of Churchill’s writings and activities in order to ascertain whether there were sufficient grounds for taking action against him.<sup>7</sup> A day later, the university’s president, Elizabeth Hoffman, addressed the Boulder faculty. Already damaged by a football recruiting scandal, Hoffman invoked the McCarthy era as she cited the threat to academic freedom that Churchill’s case might pose.<sup>8</sup> Within three days, she was gone, forced out by the governor and the regents because, as she later explained, she had refused to obey Governor Owens’s demand that she “fire Churchill tomorrow.”<sup>9</sup>

Controversy was nothing new for Ward Churchill. A prolific public intellectual, Churchill’s thirty-seven-page (now about fifty) C.V. listed two dozen books and hundreds of articles. Many, like his “little Eichmanns” essay, are highly polemical attacks on the past and present policies of the federal government, published by small presses and obscure journals far outside the academic mainstream. A longtime activist in American Indian affairs, Churchill’s confrontational style and radical politics had earned him enemies on both the right and the left, as well as on the Boulder campus. The fact that he claimed to be speaking as a Native American particularly outraged his former allies within the faction-ridden American Indian Movement, who called him a “wannabe” and tried to destroy his reputation as a Native American spokesman and scholar.<sup>10</sup> Whatever his background (and I am in no position to judge that issue), it is clear that Churchill’s energy, intelligence, and literary skill made him one of the Indian cause’s main public voices. In any event, given his take-no-prisoners rhetoric, his message—that whites have committed a form of genocide by undermining Native American

culture—was bound to alienate many both within and outside the academic world. But, as one of his supporters noted, “While at times tendentious and almost always pushing the envelope, if not tearing it to pieces,” Churchill “has helped to shape the discourse of the modern Indian rights movement.”<sup>11</sup>

His academic career was unorthodox, though not quite as aberrant as his critics suggested. He began teaching courses in Indian studies in the University of Colorado system in the 1980s, while also working as an administrator in the university’s American Indian Education Opportunity Program. By 1991, when he received his first regular faculty appointment as an associate professor with tenure, he had already gained a national reputation. According to Evelyn Hu-DeHart, then the head of the Center for Studies of Ethnicity and Race in America, even though Churchill could have been hired directly as a “special opportunity” candidate, the center mounted a national search before offering him a position. Since he may also have been under consideration for a full professorship at another institution, Colorado’s administration, which wanted to increase the “cultural diversity on campus,” felt under some pressure to make the appointment. His lack of a Ph.D. was a problem, but, as the vice chancellor for academic services explained in an e-mail to the dean of arts and sciences, “It would be a shame to lose him because of a standard which may be irrelevant in this case.”<sup>12</sup> Other scholars like Arthur Schlesinger and Colorado’s own Kenneth Boulding had achieved academic success without a doctorate, and Churchill was hardly the first faculty member to parlay an outside offer into a tenured position.

Over the years, Churchill continued his career as a controversial public intellectual and faculty member, winning teaching awards and compiling a publications record that, Hu-DeHart noted, “most faculty would die for.” In 1994, his enemies within the American Indian Movement alerted the Colorado administration to the questionable nature of his identity as a Native American. But the authorities determined that the statute of limitations had expired with regard to the job application on which he had claimed that ethnicity and they dismissed the complaint.<sup>13</sup> Anyhow, as Hu-DeHart explained, “He was not hired based on his genealogy. He

was hired because of his expertise." Three years later, Churchill was promoted to full professor. In 2002, he became chair of the Ethnic Studies Department when Hu-DeHart left for Brown; the following year, he got a massive raise as "part of a retention offer" that the dean explained was designed "to recognize your outstanding contribution to scholarship and teaching in the area of Native American studies. Retaining you as a valued member of our faculty is a high priority for both the department and the college."<sup>14</sup> Although Churchill had neither muted his rhetoric nor abandoned his activism (he had, in fact, been arrested in fall 2004 for trying to disrupt Denver's Columbus Day parade), it was clear that the university would not have questioned his scholarship had the "little Eichmanns" furor not erupted.

Churchill's problems, though certainly exacerbated by his outrageous language and confrontational demeanor, were not solely of his making. He had become a convenient target for an already wide-ranging attack on American higher education. Had Churchill been a professor of marketing or electrical engineering, the campaign against him might have been less virulent (though, as we shall see, being a computer scientist did not protect the University of South Florida's Sami al-Arian). But Churchill was the chair of Colorado's Ethnic Studies Department, an academic haven for left-wing and minority group activists. Formed in 1994 by combining the departments of African American Studies and Chicano Studies, Ethnic Studies, like similar departments at other schools, had emerged from the struggles over diversity in the 1960s and 1970s. Its political agenda, as well as its interdisciplinary and often unorthodox faculty members and academic program, put the department on the defensive as it fought for resources and respect within the university.<sup>15</sup> It was, as two of its supporters noted in a letter to the Colorado administration, "a collective attempt on the part of anti-racist activists of all stripes to transform an exclusionary and essentially racist—as well as sexist and homophobic—educational system."<sup>16</sup>

Such a mission was not guaranteed to win much support among the conservative citizens and politicians of Colorado. And, as the hate mail that poured into the Ethnic Studies office during the height of the frenzy over Churchill revealed, the department's opponents did not

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hide their views. "Fire his sorry ass!" was one of the milder messages that the department forwarded to the administration and regents in its request for assistance in coping with the more than 1,000 e-mails a day it was receiving. Churchill was far from the only target; the entire department came under fire. One message, for example, urged that "[t]he proper response to ... Chief Ward Churchill is to shut down the ethnic studies department entirely"; another called the department "a collection of f\*cking faggots and victocrats. No wonder 'ethnic studies' is a universal joke." And still another gloated, "I'm glad the Indians were wiped out."<sup>17</sup>

The failure of either the administration or the regents to respond to the department's appeal for help is suggestive. More genteel—and more powerful—voices than the e-mails' authors were ganging up on Ethnic Studies. Some were allied with the educational conservatives who had been struggling for years against what they saw as a drive to dismantle traditional standards by the likes of Ward Churchill and his academic allies. Governor Owens, for example, was a key combatant in those culture wars, as was Regent Tom Lucero, who had helped Owens sponsor a retreat for his fellow regents put on by the American Council of Trustees and Alumni (ACTA), the lead organization in the crusade against multiculturalism and the academic left. Hank Brown, the former Colorado senator who took over the presidency of the university after Hoffman resigned, had been an early ACTA supporter and was an entrenched member of the GOP's conservative establishment. One does not have to be a conspiracy theorist to recognize that the Churchill case gave Colorado's partisans of traditional higher education a perfect opportunity to take on the unpopular department, and they rushed to do so. At its March 24 meeting, the regents decided to examine both the Women's Studies and the Ethnic Studies departments, requesting them to provide syllabi, course evaluations, and information about their majors and minors.<sup>18</sup>

Outside of Colorado as well, Churchill's notoriety encouraged many right-wing commentators to resume the offensive against the educational legacy of the 1960s that had been such an important component of the culture wars of the late 1980s and early 1990s. "How Many Ward Churchills?" a 2006 ACTA publication asked, as its authors tallied up the courses that

“too often look more like lessons in political advocacy and sensitivity training than objective and balanced presentations of scholarly research.”<sup>19</sup> Among the dozens of courses at forty-seven of the nation’s top colleges and universities that ACTA cited as examples of “academe’s increasingly unapologetic ideological tilt” were those in traditional humanities and social science departments as well as in interdisciplinary programs. Courses with the words “Race,” “Gender,” “Sex,” “Whiteness,” and “Ethnicity” in their titles made it to ACTA’s list, as did “The Post-Colonial Novel,” “International Human Rights Law,” “Introduction to Women’s Studies in the Humanities,” and “Environmental Justice Movements in the United States.”<sup>20</sup>

ACTA was hardly unique in treating Churchill as a symptom of what was wrong with the academic profession. Picking up on themes that had surfaced during the earlier “political correctness” debates, academia’s critics not only questioned the intellectual credibility of the new fields like ethnic studies, but also viewed them as, the right-wing commentator Phyllis Schlafly noted in 2005, “university-financed ‘movements’ of the Left.” Besides indoctrinating their students, Schlafly claimed, leftists controlled their universities “because of the lock that the radicals have on the hiring of new professors, the granting of tenure, and selections of publications by academic journals and the university press.”<sup>21</sup> David Horowitz’s online magazine, *FrontPage*, featured a similar critique of ethnic studies. Calling the Colorado department a “cult,” *FrontPage*’s authors explained,

CU has evidently downplayed academics in order to present a collection of pampered, job-protected scholars platforms to express their political views.... [I]n presenting such a one-sided perspective about the manifold opportunities America gives to peoples of all races and ethnicities ... the college is shirking its educational responsibilities in favor of treacherous partisan indoctrination.<sup>22</sup>

It is significant that, both in Colorado and elsewhere, much of the rhetoric unleashed against Churchill and the academic left he supposedly represented focused on the issue of tenure. Especially at a time when, as Schlafly perspicaciously noted, there was an “exorbitant rise in tuition,” the economic security tenured professors enjoyed was bound to stir envy and



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resentment among less-privileged individuals and, thus, gain allies for those who had other complaints against the academic profession.<sup>23</sup> The issue was particularly acute in Colorado because of Churchill's unconventional background and the seemingly unorthodox manner in which he had gained his permanent appointment. From the start, both regents and legislators complained about Churchill's tenure. As Regent Patricia Hayes explained, they wanted to find out "how that happened, and [to] have assurances that it is not happening now ... and see if we need to make changes to add more scrutiny."<sup>24</sup> After learning that all the people responsible for Churchill's appointment were no longer at CU, Hayes noted, "There is no one we could actually string up for this at this point." Instead, at its March 24 meeting, the board agreed to collaborate with the faculty in establishing an advisory group of regents, professors, and student and community representatives, chaired by a "distinguished individual from outside academia," to review the whole tenure process. There was a sense of urgency about the review because it was widely believed that if the university did not act, the state legislature might do so instead.<sup>25</sup> Even so, it took two years before the panel, which was headed by a retired Air Force general and assisted by the PricewaterhouseCoopers consulting firm, came up with some rather minor reforms. But, at least, it had prevented the legislature from imposing more drastic measures.<sup>26</sup>

At the same time, the university had begun to grapple with the issue of what to do about Churchill. Although interim Chancellor DiStefano had outraged many faculty members by acting unilaterally and not following the university's preexisting procedures, his announcement that he would mount a preliminary investigation managed to—as it no doubt was intended to—head off more damaging probes by outside politicians and regents.<sup>27</sup> While acknowledging that he found Churchill's remarks "offensive," "appalling," and "repugnant," DiStefano emphasized that it was important for the university to grant its notorious professor all the protections due process provides. Along with the deans of the law school and of arts and sciences, he was planning to comb through Churchill's speeches and writings to see whether he had so "overstepped his bounds as a faculty member" that the university could begin proceedings against him. "Two primary questions will be examined in this review," DiStefano explained.

“(1) Does Professor Churchill’s conduct, including his speech, provide any grounds for dismissal for cause ... ? (2) If so, is this conduct or speech protected by the First Amendment against University action?”<sup>28</sup>

It took a few weeks for DiStefano and his two-dean committee to study Churchill’s record. In the report that they rendered to the regents on March 24, 2005, they explained that, after consultations with administrators, attorneys, and other academics at Colorado and elsewhere, they had concluded that Churchill’s political remarks, “though repugnant in many respects,” were protected by the First Amendment. Years of Supreme Court decisions had made it clear that public institutions like the University of Colorado could not punish their employees for statements about matters of public concern, as long as those statements did not keep the employees from fulfilling their responsibilities on the job. Churchill had resigned his position as chair of ethnic studies at the beginning of the controversy, but he had continued to teach his classes and, thus, provided no grounds for a complaint on that account.<sup>29</sup>

His research, however, was more problematic. Although DiStefano admitted that the university had only begun to question Churchill’s scholarship as a result of the storm over the “little Eichmanns” article, because “adherence to minimum standards of professional integrity is a contractual requirement,” he believed that it was legitimate to investigate that scholarship no matter how its flaws had been discovered. Because the partisan nature of Churchill’s work had been attracting opposition for years and his enemies in the American Indian Movement had earlier complained to the administration about his ethnicity, DiStefano may have been, in the words of the faculty investigating committee, “disingenuous” here. It is more likely that the university knew that there was criticism of Churchill’s scholarship, but chose to ignore it because of his prominence as a prolific public intellectual.<sup>30</sup> Nonetheless, after obtaining information from Churchill’s critics within the field of Indian studies, DiStefano and the deans concluded that there was enough evidence of “research misconduct” —namely “plagiarism, misuse of others’ work, falsification, and fabrication of authority” —to refer the case to the university’s Standing Committee on Research Misconduct for a full-scale investigation.

DiStefano also wanted the committee to reassess the allegations that Churchill had fraudulently claimed to be an Indian, since such a misrepresentation might also be an instance of research misconduct.<sup>31</sup> All told, the administration formulated nine separate charges for the faculty to investigate.

The political nature of the preliminary report was obvious. The administration was under so much pressure from Colorado's politicians and regents that, although it might have bought off Churchill with an early retirement package, it felt compelled to investigate him.<sup>32</sup> No doubt it hoped that treating its notorious professor as an academic, rather than a political, transgressor would ensure that the inquest would remain in faculty hands—even if the expected outcome would be the same. Moreover, by conducting that investigation in accordance with the university's elaborate procedures for the dismissal of a tenured professor, the Colorado administration might be able to deflect criticism from civil libertarians and the AAUP. It was, above all, a question of damage control—though whether such a process actually protected Churchill's rights or preserved academic freedom and the faculty's autonomy, as DiStefano claimed to believe, is by no means clear.<sup>33</sup>

The Standing Committee on Research Misconduct was in no hurry. A subcommittee spent four months studying the allegations against Churchill's scholarship before recommending, in early September 2005, that two be dropped, including the one about his allegedly fraudulent claim to be an Indian. The other seven, it decided, should be examined in detail by a five-person special investigative committee.<sup>34</sup> There were problems staffing that investigation. Although Churchill did not know this at the time, the law school professor who became its chair had expressed hostility to him in an e-mail, calling him an "unpleasant (to say the least) individual" whose defense "reminds me unhappily of the rallying around O.J. Simpson and Bill Clinton and now Michael Jackson and other charismatic male celebrity wrongdoers."<sup>35</sup> At the same time, conflict-of-interest regulations were so stringently applied that they disqualified people who, like the Colorado professor who had signed a general statement in support of academic freedom, could be suspected of sympathy with Churchill. Similarly, the two outside scholars in

Indian studies, who had originally agreed to serve on the investigating committee, resigned after they were attacked in the local press because, as one of them noted, “the level of discourse on this issue in the Denver area has become nearly hysterical” and the atmosphere so “toxic” that the group would be unable to do its work.<sup>36</sup>

It took nearly a year for the panel to sort out its membership, examine the evidence, hold hearings, and write up its 124-page report, which it formally completed on May 9, 2006. While the bulk of the report comprised an exhaustive analysis of the seven allegations against Churchill’s scholarship, it began with the disclaimer that the committee had not considered his “little Eichmanns” essay and other political writings, since it was clear they were under the protection of the First and Fourteenth Amendments. The committee also admitted that it had qualms about the context of the inquiry, and noted that it was “troubled by the origins of, and skeptical concerning the motives for, the current investigation.” Nonetheless, the report explained, “Serious claims of academic misconduct have been lodged and they require full investigation.”<sup>37</sup> The committee modeled its inquiry on the rigorous examination by a group of eminent historians of the work of Emory professor Michael Bellesiles, who had been charged with research misconduct a few years before. As the Bellesiles investigators did, the Colorado committee decided to ignore the political issues swirling around their inquiry and focus single-mindedly on Churchill’s scholarship.<sup>38</sup> The committee then compared its work to a situation in which a policeman tickets a speeder because he is offended by the motorist’s bumper sticker. Whatever the officer’s motives, the driver had violated the speed limit; so, too, with Churchill. Just as speeding was speeding, fraudulent scholarship was fraudulent scholarship—or so the committee claimed.<sup>39</sup>

There were two sets of allegations: Four charged Churchill with falsifying evidence or misrepresenting the facts about specific events or pieces of legislation; three charged him with plagiarism. Whether or not these transgressions should have cost him his job, it is clear that, in several instances, Churchill did go beyond the available evidence and was less than scrupulous in documenting his sources. As even some of his defenders admit, he seems to have stretched

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the truth in order to make a polemical point. The committee was not, however, going to let him get away with that. As Eric Cheyfitz, a Cornell specialist in American Indian literature, noted, “These guys were really nitpicking,” focusing on a few of Churchill’s more problematic assertions and doggedly tracking down their references and sources.<sup>40</sup> Thus, for example, the committee criticized Churchill for citing books without supplying specific page numbers—a practice common among historians (this author among them) who want to alert their readers to the most useful works about the subject under discussion without necessarily documenting a particular fact. In many places, the report reads like a prosecutor’s brief, in which every dubious citation or omission is pounced upon as reinforcing the case against the controversial professor, while alternative interpretations get overlooked. “What’s happened here,” Cheyfitz explained with regard to committee’s treatment of the disputed passages, “is that what should be an academic debate, they turned into an indictment.”<sup>41</sup>

More specifically, the report analyzed Churchill’s allegations, in several of his publications, that two federal statutes, the General Allotment Act of 1887 (or Dawes Act, as it is called) and the 1990 Indian Arts and Crafts Act, reinforced what he considered to be a racist definition of Native American identity. Both of these examples had been brought to the university’s attention by John LaVelle, a law professor at the University of New Mexico and longtime critic of Churchill’s work, who claimed, correctly, that neither statute contained the explicitly racist wording about “blood quantum” that Churchill said they did. Churchill had cited the two laws to support his argument that they were part of a broader campaign that pressured the Indians to abandon some traditional forms of tribal membership and adopt the federal government’s essentially racist “eugenic code,” with its assumptions about the biological basis for Native American identity. This was an issue that, as we have seen, had roiled the American Indian community for years—and one in which LaVelle was hardly a disinterested bystander. Significantly, the committee conceded that, while LaVelle’s indictment was technically correct, Churchill’s interpretation of the broader implications of the government’s standards for identity was historically “accurate or, at least, reasonable.” Still, it noted, the Colorado professor had

“deliberately embellished” that otherwise valid account.<sup>42</sup>

The committee also looked at two passages, again appearing in several of Churchill’s works, in which he discussed what he considered to be the genocidal transmission of smallpox to the Indians, first by Captain John Smith in New England in 1614 and then in a lethal epidemic that began at Fort Clark, North Dakota, in 1837. Again, Churchill cited these episodes as part of his larger argument that the demographic mayhem that accompanied the expansion of European whites in North America was as deserving of the label *genocide* as anything the Nazis perpetrated against the Jews. In assessing this scholarship, the committee relied on a narrowly literal reading of Churchill’s statement that there was “circumstantial evidence” of the John Smith episode. It noted that the source he cited as supporting his statement that Smith had visited the Wampanoags in Connecticut did not use the word “Wampanoag,” even though, in fact, that source had mentioned a tribe of the Wampanoags, the Pokanoket.<sup>43</sup> The most exhaustive section of the report was its forty-four pages devoted to the Fort Clark epidemic that showed there were no documentary sources to back up Churchill’s statement that the U.S. Army had deliberately provided smallpox-infected blankets to the Mandans and their neighbors. Churchill had countered the charge that he had fabricated this story by claiming that he had relied on the Indians’ oral traditions. The committee admitted that such an attribution was plausible, but noted that, because he hadn’t cited those traditions in any of his publications about the epidemic, he was actually guilty of “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” and, in any event, he had “created myths under the banner of academic scholarship.”<sup>44</sup>

The committee paid less attention to the charges of plagiarism, actually dropping one of them because Churchill admitted that he had, in fact, written one of the essays he was accused of plagiarizing. While not plagiarism, the committee explained, such ghostwriting was, nonetheless, “research misconduct” because it constituted a “[f]ailure to comply with established standards regarding author names on publications” and because Churchill’s

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citations of that and other work he published under someone else's name were designed to make it appear as if it came from another scholar instead of himself.<sup>45</sup> The other two cases involved the appropriation in several publications of language from a pamphlet about water rights written by "Dam the Dams," a Canadian environmental group, and the unauthorized inclusion of an article credited to the Institute of Natural Progress, but actually written by Fay G. Cohen, in a volume edited by M. Annette Jaimes, Churchill's former wife. While Churchill did give Dam the Dams credit in the first reworking of its material, he did not later on, though he did cite the pamphlet in his footnotes and claimed that the editors of *Z Magazine* dropped the group's name from one version of the piece without his consent. Moreover, it is likely that the group, which apparently wanted him to draw attention to the water rights issue, did not mind having their information disseminated under his name; and, in any event, as the piece evolved, more and more of it was obviously written by Churchill. That was not the case with Fay Cohen's article; it was definitely plagiarized, though whether the offense had been committed by Churchill or by someone else was less than clear. Cohen had originally published the essay in a volume edited by Churchill; it was slated to reappear in the Jaimes volume as well, but for some reason Cohen decided to withdraw it. While denying that he was involved in plagiarizing the article, Churchill admitted that he had a hand in editing the Jaimes volume and that he was one of two main principals in the Institute for Natural Progress. The committee found the assertion "implausible," though one of Churchill's supporters noted that the essay, while obviously plagiarized, is much too "crude and unintelligent" to have been produced by Churchill.<sup>46</sup>

In its overall assessment of Churchill's scholarship, the committee insisted that it was the broader "patterns of misconduct," in particular the "pattern of failure to understand the difference between scholarship and polemic, or at least of behaving as though that difference does not matter," that convinced its members to charge him with "research misconduct."<sup>47</sup> It viewed Churchill's "shoddy and irresponsible work" as particularly serious because it was damaging to his associates, as well as to "the reputation of ethnic studies as a field and to the

University of Colorado as an institution."<sup>48</sup> Contributing to the committee's negative assessment was Churchill's attitude: he was "unwilling to acknowledge any serious wrongdoing" and insisted that "he has been singled out for unfair scrutiny by those who oppose his political views."<sup>49</sup> The committee, however, was not unanimous in its recommendation of sanctions: two members thought he should be suspended without pay for two years, two others thought a five-year suspension appropriate, and one supported dismissal.<sup>50</sup>

Although it was to take more than another year before the university finally managed to dismiss Churchill, the investigating committee's report seems to have legitimized that process in the minds of most academics. It was exhaustive; it gave Churchill ample opportunity to defend himself; and, above all, it was conducted entirely by faculty members.

A month after the investigating committee's report was submitted, the full Standing Committee on Research Misconduct delivered its verdict. It agreed with the investigating committee that Churchill's violations were not trivial, but rather extreme examples of research misconduct, particularly in this area of study. Providing 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. Scholars rely upon the accuracy of each others' work to create a cumulative and incremental basis for extending our understanding of events. When that foundation turns out to be based on intentionally fallacious and misleading information, the usefulness of subsequent information is called into question and the work of many scholars may be compromised.<sup>51</sup>

Like the investigating committee, the full standing committee was concerned about the "erosion of public trust" that Churchill's "deliberate" misconduct had contributed to and upset "that Professor Churchill is unable, or at least unwilling, to acknowledge legitimate critique. If he is unwilling to acknowledge the critiques, we are pessimistic that he is likely to change his behavior."<sup>52</sup> Again, like the investigating committee, the standing committee did not reach a consensus about sanctions; this time, "six of the voting members of the committee recommended dismissal, two recommended suspension without pay for a five-year term, and



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one recommended suspension without pay for a two-year term.”<sup>53</sup>

On June 26, 2006, interim Chancellor DiStefano made the expected announcement. “After conducting the due diligence [DiStefano] felt was necessary,” he had “issued to Professor Churchill a notice of intent to dismiss him from his faculty position at the University of Colorado, Boulder.”<sup>54</sup> Churchill and his supporters noted the procedural anomaly in DiStefano’s behavior in launching the initial charges against Churchill and then in making a final judgment upon them. “The lack of an uninvolved arbiter is troubling,” the Boulder AAUP chapter explained. “It appears to be a violation of due process that the Interim Chancellor acted both as plaintiff, in bringing the charges against Churchill, and as judge, recommending dismissal.”<sup>55</sup>

Churchill appealed and, in accordance with the university’s regulations, took his case to the Faculty Senate Committee on Privilege and Tenure, which appointed a special five-person panel to hear the matter. That panel studied the transcript of the earlier investigation, re-examined the evidence, heard witnesses, and delivered its own seventy-seven-page report on April 11, 2007. Churchill had asked the committee to dismiss the charges against him on two procedural grounds: one, that the whole investigation was illegitimate because it was a “selective enforcement” precipitated by his constitutionally protected political writing about 9/11 and two, that the investigating committee’s behavior had violated his right to due process in several instances. While rejecting Churchill’s charges, the appeals panel did recognize that “but for his exercise of his First Amendment rights, Professor Churchill would not have been subjected to the Research Misconduct and Enforcement Process or have received the Notice of Intent to Dismiss presently at issue.”<sup>56</sup> Even so, it could not find enough evidence to prove that university’s motivations were “inappropriate.”<sup>57</sup> It also noted several irregularities in the investigation, such as the committee’s inability to provide Churchill with a clear explanation of the standards it was applying to his work and its failure to alert him to the committee chair’s hostile e-mail.<sup>58</sup> Ultimately, however, the tenure committee decided that the evidence for the lack of due process was simply too “ambiguous” for it to comply with Churchill’s appeal.<sup>59</sup>

With regard to the more substantive issues involved, the appeals committee was somewhat less ambivalent. Even so, it did not support all the findings of the standing committee's investigators. It did not, for example, consider Churchill's lack of precision with regard to the 1887 General Allotment Act to be something that "falls below minimum standards of professional integrity." "Indeed," it added, "academic debate seems a more appropriate method for deciding the question than disciplinary proceedings."<sup>60</sup> The panel also threw out the charges relating to John Smith's involvement with a seventeenth-century smallpox epidemic because of the ambiguity of the evidence that Churchill had, after all, claimed was "circumstantial." Nonetheless, it did agree with most of the previous investigators' conclusions, finding that Churchill had indeed fabricated some evidence; plagiarized or at least been "involved" with plagiarizing two papers; and misused sources, especially when he sought to pass off "as an independent authority a paper really written by himself."<sup>61</sup>

As their predecessors had been, the members of the appeals committee were split over the issue of sanctions and in their conclusions listed the arguments both for and against dismissing someone whom, they all agreed, had "demonstrated conduct which falls below minimum standards of professional integrity." Convinced that academic freedom and the good of the university would be protected by showing that Colorado "will not tolerate unethical conduct," two panelists recommended dismissal. Three opposed it and suggested that Churchill be reduced in rank and suspended for a year without pay. They were concerned about proportionality, believing that Churchill was guilty of "misbehavior, but not the worst possible misbehavior."<sup>62</sup> They also noted the conflicts within the fledgling field of Indian studies, and worried about the impact that dismissing such a prominent champion of one faction might have on that field as well as on the academic community as a whole. With that clearly ambivalent recommendation, the faculty's role in the Ward Churchill case came to an end. It would be up to the president and Board of Regents to make the final decision.

That decision was never in doubt. Hank Brown, who already had the Churchill case on his plate at the time he became CU's president, evinced no hesitations about recommending

dismissal; he even restored the two counts against Churchill that the appeals panel had deleted. “The university,” he told the regents in a letter dated May 29, 2007, “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.” His concern about maintaining “the integrity of the scholarly enterprise” inclined him toward the most severe punishment, since he believed that Churchill’s “severe” and “deliberate ... misconduct seriously impacts the university’s academic reputation and the reputations of its faculty.”<sup>63</sup> Not surprisingly, the regents concurred. By an 8–1 margin at their July 24 meeting, they decided that “the good of the university required dismissal because Professor Churchill engaged in repeated and deliberate conduct that fell below the minimum standards of professional integrity.”<sup>64</sup>

In all their official statements and press releases, both the regents and the president appropriated the language of civil liberties, faculty governance, and academic freedom. They emphasized that they were not punishing Churchill because of his “little Eichmanns” statement. “Like every citizen of the United States,” the regents explained, “he has the right to make controversial political statements.” It was his academic misconduct that was at issue. And here, both the president and the governing board stressed that their decisions were, in the regents’ words, “guided by the findings of three faculty committees, made up of more than 20 tenured faculty members from CU and other universities, which unanimously determined that Professor Churchill had engaged in acts of research misconduct, including fabrication, falsification, and plagiarism.” The president reiterated that point: “Three separate panels of more than 20 tenured faculty, from the University of Colorado and other universities, unanimously found” Churchill intellectually dishonest.<sup>65</sup> Not only did Churchill’s dismissal have a faculty imprimatur, but it was also consonant with academic freedom, which, the regents announced, “we have committed to ensuring that the university will promote and respect.”<sup>66</sup> Hank Brown made a similar point, noting in one of the several op-eds he produced at the time his belief that “[a]cademic freedom—the ability to challenge conventional views or put forth unpopular ideas—is fundamental to any university. But it does not excuse academic fraud and

intentional fabrication."<sup>67</sup>

Churchill's fate provoked little outrage either on the Boulder campus or anywhere else in academe. Although both the local Colorado chapter of the AAUP and the ACLU's Colorado affiliate protested the firing, few Boulder professors became involved. Churchill's abrasive personality had not endeared him to his colleagues and as one of them, who did feel that Churchill should not have been dismissed, told me, "There just isn't a lot of energy out there for us to mount the barricades for a guy [whom] everybody hates."<sup>68</sup> A handful of radicals supported him, at Boulder and elsewhere, but on the whole, most faculty members who had given any thought to the case did not see it as a serious violation of academic freedom. Once the quasi-judicial faculty committees took over and operated in accordance with the traditional procedures for dealing with professorial misconduct, it was hard to accuse Colorado of abusing Churchill's rights.<sup>69</sup> And, in any event, he had violated scholarly norms.

Since there seemed to be no solution within the academy, Churchill decided to seek reinstatement through the courts. At the time of his suit in June 2006, only one of the six experts on academic law whom a Denver journalist canvassed thought Churchill might succeed on First Amendment grounds. The others, all highly respected and knowledgeable legal scholars, explained that because the judiciary recently had been deferring to university administrators when academic freedom was at stake, Churchill would probably lose his case.<sup>70</sup> Ordinary citizens, however, took a different position. On April 2, 2009, a Denver jury unanimously decided that Churchill's firing had been an illegitimate violation of his First Amendment rights, precipitated by his "little Eichmanns" statement. Although five of the six jurors also wanted to award a generous financial settlement, they ultimately compromised on a dollar, rationalizing their action on the grounds, as one juror later explained, that Churchill's attorney "kept saying this wasn't about money, and in the end, we took his word for it."<sup>71</sup> Three months later, however, Judge Larry Naves vacated that verdict, ruling that Colorado's regents were immune from litigation. He also claimed, in a statement that underlined the law professors' earlier conjecture, that "reinstating Professor Churchill would entangle the judiciary excessively in

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matters that are more appropriate for academic professionals.”<sup>72</sup>

Because an appeal is in the works, the case obviously will drag on for years. One thing, however, is clear: Churchill would not have been fired had Colorado’s politicians not called for his scalp. He had not faced a legitimate inquiry into his scholarly misconduct; despite all the trappings of academic due process, politics drove the investigation. All the committees involved recognized that fact, but pursued the inquiry anyhow. Because the case is still being litigated and none of the panel members can speak about it, we do not know what motivated them. It is possible—and here the author can only guess—that at least some were impelled to carry out the investigation by a combination of concern for the university and a sense of responsibility for the maintenance of professional standards. Perhaps if they had adopted a broader perspective, they might have taken a different position. In any event, one can certainly question the severity of the sanction. Churchill did not have to be dismissed. Plagiarists and charlatans remain on other faculties. A few years ago, an eminent historian at the University of Chicago published a graduate student’s paper under his own name. His punishment: no graduate teaching for five years.<sup>73</sup> After historian Joseph Ellis was exposed for having lied to his classes about serving in Vietnam, Holyoke College put him on unpaid leave for a year, revoked his chair, and barred him from teaching about the Vietnam War.<sup>74</sup>

Whatever their rationale, the actions of Colorado’s faculty committees may have deleterious consequences. It is only by construing academic freedom in the very narrowest of procedural terms that we can conclude it was not violated. The case was tainted from the start. To put it bluntly, because of outside political pressures, an unpopular and outspoken professor, who may have been guilty of scholarly misconduct, was fired from a major American university. Admittedly, there was no way that his colleagues could have saved Churchill’s job. Hank Brown and the trustees would have fired him no matter what the faculty panels recommended. Still, had the committees either refused to investigate or, at the least, suggested a more lenient punishment, they could have offered a stronger defense of free speech and academic freedom. And, at the present moment, such a defense is, alas, much needed.

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In many respects, the crackdown on civil liberties after 9/11, while not as directly devastating to the academic community as that of the early Cold War, may be as damaging in other ways. True, we have not seen anything like the widespread purges of political undesirables that afflicted the nation's faculties in the late 1940s and 1950s. On the other hand, McCarthyism occurred during the golden age of academe, when American colleges and universities were expanding and the professoriate was held in high esteem. The situation today is very different, with institutions competing for resources in an often-hostile political climate that cuts little slack for universities or their faculties. While many of the problems that confront the academic community today are the result of deeper structural changes within the world of higher education, the heightened concern for national security that accompanied the Bush administration's war on terror has worsened those problems and created new ones.

There have been political firings. Ward Churchill, though the most notorious, is not the only controversial professor to lose a job during the current crisis. The first dismissal, and in many respects the most predictable, was that of computer scientist Sami al-Arian at the University of South Florida. Al-Arian was a Palestinian nationalist, whose outspokenness and questionable associations not only got him fired, but also led to five years of incarceration, a botched federal prosecution, and a pending deportation from the United States. At no point in its dealings with al-Arian did the USF administration seriously try to formulate charges of academic misconduct or take him before a faculty committee. It suspended him and barred him from campus after an appearance on *The O'Reilly Factor* led to a media blitz in the fall of 2001, and it dismissed him when the federal government launched its prosecution in the beginning of 2003.<sup>75</sup>

The denial of tenure to DePaul University political scientist Norman Finkelstein in June 2007 also violated the traditional form of academic freedom. Much hated in certain Zionist circles for his aggressive attacks on the defenders of the Israeli occupation of Palestine, Finkelstein was,

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nonetheless, a good teacher and a competent, although highly polemical, scholar. His department had voted him tenure by a 9–3 margin, as did a collegewide faculty panel in a 5–0 vote. But outsiders intervened, especially the Harvard Law School professor Alan Dershowitz, who sent large packets of material to everyone involved. Thus, when the decision reached the administration, the dean weighed in against Finkelstein. Admitting that there were no problems with his teaching or the content of his scholarship, Dean Charles Suchar claimed to “find the personal attacks in many of Dr. Finkelstein’s published books to border on character assassination,” which, he declared, is “inconsistent with DePaul’s Vincentian values, most particularly our institutional commitment to respect the dignity of the individual and to respect the rights of others to hold and express different intellectual positions.”<sup>76</sup>

DePaul’s president, the Reverend Dennis Holtschneider, echoed the same concerns about civility when he rejected Finkelstein’s tenure bid after the University Board on Promotion and Tenure voted 4–3 against the controversial scholar. Noting his “ad hominem attacks” on other scholars, Holtschneider explained that Finkelstein’s failure to fulfill his academic “obligations to ‘respect and defend the free inquiry of associates,’ ‘show due respect for the opinions of others,’ and ‘strive to be objective in ... [his] professional judgement of colleagues,’” disqualified him from the faculty.<sup>77</sup> Again, as in the case of Ward Churchill, the university strove to present the tenure denial as a professional rather than a political matter, claiming that the rejection of Finkelstein showed that “academic freedom is alive and well at DePaul,” because its faculty and students “adhere to professional standards of academia and respect the dignity and worth of each individual.”<sup>78</sup> As many critics of the decision noted, not only did the administration overrule the favorable verdicts of the two faculty groups that had the most responsibility for tenure decisions, but it also couched its opposition to Finkelstein in the language of collegiality, a highly suspect category that, as the AAUP has explained, sometimes conceals illegitimate personal or political agendas.<sup>79</sup> Of course, one can argue that Finkelstein was asking for trouble by intervening in the highly fraught debate over Israel and Palestine in such a belligerent manner. But someone’s style, however unfortunate, should not be grounds for expulsion from

academe if the individual's teaching and scholarship hold up. Moreover, since Finkelstein's sojourn at DePaul was apparently without incident, he might well have received tenure had not the current war on terror heightened the emotional intensity of and attention to anything that dealt with the Middle East.

Other post-9/11 dismissals have received less attention, mainly because most have affected contingent faculty members who, like CUNY's Susan Rosenberg, fired from John Jay College after her troubles at Hamilton College, lack the procedural protections of tenured and tenure-track faculty members. Thus, for example, the CUNY administration forced Mohammed Yousry from his position as an adjunct lecturer at York College in April 2002 after he was indicted in connection with the case of attorney Lynne Stewart, for whom he had served as a translator, and a Chicago municipal college fired a part-time lecturer in computer programming when it learned he had been convicted in Israel of supporting Hamas.<sup>80</sup> There have also been a few dismissals of opponents of the Iraq war, like that of the first-year English instructor at a small school in North Carolina who talked about the war in class.<sup>81</sup> Academics who question the destruction of the World Trade Center have also come under attack. These are the so-called "9/11 deniers," conspiracy theorists who claim that the whole business was staged by the Bush administration so that it could invoke a national emergency to implement its right-wing agenda. Although the universities of Wisconsin and New Hampshire have—so far—protected their controversial faculty members, Brigham Young University forced a physics professor into early retirement. On the whole, however, given the emotional intensity of the war on terror, as an AAUP special committee examining academic freedom in 2003 admitted, "Incidents involving outspoken faculty members have been fewer than one might have expected in the aftermath of so momentous an event as September 11. Moreover, with few exceptions ... the responses by college and university administrations to the events that have occurred have been reassuringly temperate."<sup>82</sup> This relative paucity of politically inspired dismissals suggests that academe may well have learned at least some lessons from the purges of the McCarthy era.

Even so, academic freedom has been violated in less striking ways. Take speakers' bans, for



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example. During the height of the Cold War, universities routinely prevented Communists and other political undesirables from speaking on campus. A similar uptick occurred after 9/11. Not only was Ward Churchill barred from Hamilton College and elsewhere, but such controversial individuals as filmmaker Michael Moore were also denied academic platforms. Many of these cancellations involved people who wrote about or came from the Middle East, especially if, like Norman Finkelstein, they criticized Israeli policies. Thus, for example, St. Thomas University in Minnesota tried to call off a speech by South African Nobel laureate Bishop Desmond Tutu, only to reverse the ban after a massive outcry.<sup>83</sup> Columbia faced a similar outcry in 2006 when it cancelled an appearance by Iranian president Mahmoud Ahmadinejad on the grounds that it would create too many “logistical” problems and would not “reflect the academic values that are the hallmark” of a Columbia event. The following year, the university relented and invited Ahmadinejad to campus, only to have President Lee Bollinger directly attack the Iranian leader before letting him speak.<sup>84</sup> As the attempt to cancel Bishop Tutu’s presentation reveals, the current speakers’ bans are reaching highly respected individuals as well as marginal ones. Criticize America’s ties to Israel and, as such mainstream scholars as Chicago’s John Mearsheimer and Harvard’s Steven Walt have discovered, speaking engagements get cancelled.<sup>85</sup> Sometimes the censorship comes in the form of demands that controversial speakers be “balanced” by someone with an opposing view. Thus, when former President Jimmy Carter was scheduled to speak about Palestine at Brandeis, university authorities—unsuccessfully, it must be noted—tried to force him to share the platform.<sup>86</sup>

The most recent outbreak of cancellations had little to do with the content of the cancelled lectures and everything to do with the Republicans’ attack on Barack Obama for having associated with a once-notorious sixties radical. Although William Ayers had long since eschewed the violence of his Weather Underground career and established himself as a respected professor of education at the University of Illinois–Chicago, several institutions rescinded his speaking engagements. Citing security concerns and, in one case, its desire not to upset the family of a Boston police officer whose 1970 murder a local radio host had incorrectly

linked to Ayers, the University of Nebraska–Lincoln, Boston College, and Georgia Southern University cancelled his appearances. Not every school caved in; Millersville State University in central Pennsylvania defied the demands of several state legislators to call off Ayers’s lecture, though it did make arrangements with the local emergency response unit to patrol the campus.<sup>87</sup>

For universities to clamp down on controversial speakers indicates not only a serious lack of confidence in the ability of their students to handle conflicting ideas and a less than solid commitment to the intellectual freedom they supposedly espouse, but also an inability or unwillingness to resist outside pressures. What makes the recent situation so worrisome is that the organized pressure groups that have sought to silence speakers they dislike have also tried to impose their own political agenda on curricular matters as well. They have not, however, succeeded. Although the academic community has not always protected controversial faculty members from outside pressures, it has displayed more backbone when it comes to the classroom. Administrators at the University of North Carolina, for example, refused to drop the book about the Koran that had been assigned as summer reading for its incoming first-year students in 2002, even though the school faced a lawsuit and considerable pressure from state legislators.<sup>88</sup>

Loyalty oaths have returned. In 2006, the Ohio legislature passed a law requiring all new state employees, including teachers at its public colleges and universities, to sign a statement that they do not belong to or support any organization identified as terrorist by the U.S. State Department.<sup>89</sup> At the same time, older oaths that had been ignored for years were suddenly resuscitated. In the midst of its investigation of Ward Churchill, the University of Colorado discovered that he had not signed the required loyalty oath, nor had many other faculty members. That oath, instituted in 1921 when the Ku Klux Klan ran the state government (and coincidentally tried unsuccessfully to eliminate all Catholics and Jews from the faculty), was revived in 1951 at the height of the McCarthy era and used to fire a few nonconformists. In the late 1960s, while similar oaths were being invalidated by the Supreme Court, Colorado

managed to revise its wording enough to pass judicial scrutiny. As a result, all faculty members were required to swear or affirm “that I will uphold the Constitution of the United States and the Constitution of the State of Colorado, and I will faithfully perform the duties of the position upon which I am about to enter.” Perhaps because it was so harmless, the oath soon fell into desuetude and few administrators even knew of its existence. Still, it was on the books, and, fearful that the state’s attorney general might crack down on the Boulder authorities if they did not enforce it, the administration ordered all faculty members who had not yet taken the oath to do so.<sup>90</sup> A similar oath requires California teachers to swear to “defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic.” Its recent enforcement led to the dismissal and threatened dismissal of two pacifist instructors.<sup>91</sup>

A particularly problematic campaign has been the attempt of the conservative activist David Horowitz to impose his so-called Academic Bill of Rights on the nation’s institutions of higher learning. Although it seems to have fizzled out, at its peak in 2005 and 2006, about twenty state legislatures were considering the measure (some still are), and some of its language, albeit much watered down, almost made its way into the reauthorization of the federal Higher Education Act. Designed to promote “intellectual diversity” on the nation’s campuses, it called for universities to ensure that faculty, syllabi, and course offerings were balanced and that instructors presented all points of view on a subject, a requirement that critics feared might force evolutionary biologists to teach intelligent design or historians, the virtues of slavery. In its rhetorical support for academic freedom, the Academic Bill of Rights cleverly played upon the liberal value of tolerance as well as the postmodern notion of the relative nature of truth. It also operated on the assumption that most colleges and universities were dominated by tenured radicals who indoctrinate their classes and mistreat their conservative students. But, what neither Horowitz nor his allies seemed or wanted to understand is that, even if America’s faculty members are more to the left than their fellow citizens (and they probably are), they do not bring their politics into their classrooms. And, with only a very few exceptions, they never

did. None of the professors fired for political reasons during the McCarthy era was ever accused of abusing the classroom, nor were Ward Churchill and Norman Finkelstein. Even so, the myth of the doctrinaire instructors persists. It got some exposure in Pennsylvania where the legislature formed a special committee to investigate Horowitz's charges, only to discover no—I repeat, no—examples of classroom bias. In fact, Horowitz actually had to admit that he lacked evidence for his tales of left-wing abuse. "It seems to me we may be overblowing this problem," one of the legislative committee members commented. "I don't have streams of people coming to me."<sup>92</sup>

Undaunted by his failures in Pennsylvania and elsewhere, Horowitz went on to publish a book in which he listed the "101 most dangerous academics in America."<sup>93</sup> As one might expect, most of those miscreants taught in fields like ethnic and women's studies, or studied Islam and the Middle East. Here, Horowitz's efforts blended with those of right-wing Zionists like Daniel Pipes, whose Campus Watch Web site purports to monitor the supposedly biased academics in Middle East studies, or the Boston-based David Project, which circulated a videotape in the fall of 2004 documenting the allegedly abusive behavior of members of Columbia's Middle East and Asian Languages and Cultures Department. In the immediate aftermath of 9/11, ACTA put out (and then retracted) a similar list of professors whose hate-America rhetoric, the organization claimed, put them completely at odds with the rest of the country. There is, as both Joe McCarthy and the editors of *U.S. News & World Report* well knew, nothing that gets as much attention from the media and the public as a list. Nonetheless, I doubt that Horowitz, Pipes, and the others expect the men and women they named to lose their jobs; most, after all, are tenured and many are eminent. Rather, the function of these campaigns is to delegitimize the work of mainstream scholars, especially those in Middle East studies who do not support the Israeli hard line.

They have had some success. In the beginning of 2003, for example, Senator Rick Santorum introduced legislation to cut off federal funding to universities that allowed their faculty members, students, and student organizations to openly criticize Israel. While Santorum's

initiative quietly faded from view, a more serious congressional attempt to regulate Middle Eastern studies got underway. At a June hearing, a Hoover Institution scholar convinced a subcommittee of the House Education and Workforce Committee that the late Palestinian literary critic Edward Said had cast such a spell over the field that just about every center of Middle Eastern studies subscribed to “post-colonial theory” and displayed an “extremist bias against American foreign policy.” Worse yet, not only were these centers engaging in the trendy theorizing that marked so much of the nation’s academic discourse, but they were also discouraging their students from entering the nation’s public service. Accordingly, the committee and then the full House signed onto a measure that would create an outside advisory board to supervise the federal funding of area studies centers under Title VI of the Education Act.

Although H.R. 3077, as the measure was called, never got to the Senate, its unanimous adoption by the House reveals how readily the nation’s political elites have accepted a right-wing Zionist scenario about Middle Eastern studies.<sup>94</sup>

That the academy’s conservative critics may have more traction within the public sector than the private one shows something about the nature of the current threat to academic freedom: much of it comes from the federal government. During the McCarthy era, the universities handled much of the repression, firing, and blacklisting alleged Communists whom the FBI and congressional investigators had identified. There are few such cases today. Instead, individual academics and, in some cases, whole fields are hampered by official constraints imposed in the name of national security. While not in most cases politically motivated or violating academic freedom in the traditional sense of term, these measures, like the heightened secrecy and visa restrictions that have been imposed in the aftermath of 9/11, interfere with people’s research. Whether intentionally or not, they have the effect of limiting what professors can study, teach, and publish. Moreover, by hyping the dangers of terrorism and implementing an unnecessarily repressive internal security program to deal with them, the Bush administration created a political atmosphere that offered support to extremists like Horowitz

and Pipes.

The case of University of Buffalo professor Steven Kurtz exemplifies these problems. A conceptual artist who uses biological specimens to protest against things like genetically modified food, Kurtz ran into trouble when his wife died of a heart attack in May 2004. The local law enforcement officials who responded to his 911 call spotted the petri dishes and laboratory equipment at the house and notified the FBI. The Feds showed up in full bioterrorism regalia, impounded Kurtz's artworks, and, after discovering that the materials he was working with were harmless, indicted him for mail fraud along with Robert Ferrell, the University of Pittsburgh biologist who had supplied the bacteria Kurtz was using. Since the culprits' main crime was that they planned to use bacteria intended for research for artistic purposes, the government's actions seems arbitrary in the extreme. Ferrell, who was suffering from cancer, was so devastated physically and emotionally by the case that he took a guilty plea. Kurtz, however, faced a four-year ordeal before the trial judge finally threw out the charges against him. There may have been political reasons for the government's refusal to drop the case. The Critical Art Ensemble to which Kurtz belongs is a collective enterprise that explores what it calls "the intersections of art, technology, radical politics, and critical theory" by using the paraphernalia of the laboratory to produce performance pieces and installations that question the corporate and military control of biotechnology and challenge the mystification of science.<sup>95</sup> Were Kurtz an apolitical landscape painter, it is hard to imagine that he would have been so relentlessly prosecuted, though it is also possible that the Justice Department simply can't admit it goofed.

Bizarre as the experiences of Steven Kurtz may be, they are, alas, not unique. As the case of Texas Tech professor Thomas Butler reveals, the government's panicky response to 9/11 not only damages people's lives and careers, but can actually be counterproductive with regard to national security, not to mention destructive to scientific research. Unlike Kurtz, Butler was a Republican, not a radical. A medical researcher, he had dedicated his career to eradicating infectious killer diseases like cholera and bubonic plague. Butler got into trouble when he

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discovered that some vials containing plague germs were missing from his laboratory in January 2003. When he couldn't find them, he notified his superiors, who then contacted the authorities. The prospect that potential terrorists might have gotten their hands on Butler's bacteria threw the FBI into high alert. Even though there was no way the materials could be turned into a weapon, the bureau was taking no chances. Having failed to find the source of the previous year's anthrax attacks, its credibility was at stake and it was under enormous pressure to solve the plague case. After hours of interrogation, a sleep-starved Butler caved in to a polygraph-wielding agent and confessed that he must have inadvertently destroyed the vials. "I told him destruction was not something that I remembered," Butler later explained, "but he told me it must have happened. And he convinced me, because I wanted to believe him."<sup>96</sup>

His confession was only the beginning of Butler's ordeal, however. In the aftermath of 9/11, the government had imposed stringent restrictions on the handling of dangerous bacteria known as "select agents." Butler had been doing field work in Africa at the time and was unaware that his usual methods of transporting plague germs were no longer legal. Plus, he was already embroiled in a nasty battle with the Texas Tech administration over the funding of his grants. Perhaps as a way of warning other scientists to be more careful about working with such materials, the government decided to prosecute him. Accordingly, the Justice Department threw the book at him, indicting him on sixty-nine counts of mishandling dangerous substances and defrauding his university, with a maximum sentence of 469 years in prison and \$17 million in fines. Though the jury acquitted him of the charges with regard to the plague vials, it convicted him on the financial ones. Not only did he have to repay Texas Tech more than \$250,000, but he served two years in prison and lost both his job and his medical license.<sup>97</sup> His fellow scientists were outraged. Butler's work with cholera victims in Bangladesh had led to a breakthrough that had saved literally millions of children's lives. Here was an important scientist, who had done nothing wrong, being punished because, as the Bush administration's top bioterrorism advisor noted, "they wanted to make an example of him," even though "it has only succeeded in making the country less safe by losing the services of a good scientist."<sup>98</sup>

In other ways as well, Washington's heavy-handed treatment of the nation's scientists has been astonishingly counterproductive, reminding those with long memories of the harassment inflicted on J. Robert Oppenheimer and his colleagues in the 1950s. The regulations governing the use of "select agents," for example, became so burdensome that some investigators simply stopped working with them. Even before 9/11, the government had been monitoring dangerous pathogens; the Patriot Act expanded that regulation to dozens of rather commonplace agents. It also increased the paperwork required for using them and barred specific groups of people from working on them, including nationals from unfriendly countries like Iran, Syria, and North Korea, as well as American citizens who had been convicted of a crime, used illegal drugs, or had been dishonorably discharged from the military. Complying with these regulations and others that were later imposed by other federal agencies might become so onerous that, a committee at the Massachusetts Institute of Technology noted, "At some point, MIT may rightfully decide that on-campus research in areas governed by these regulations is no longer in its interest or in line with its principles." Nor was this speculation; scientists elsewhere have given up work in the field.<sup>99</sup> Moreover, the regulatory burden has spread from obviously sensitive subjects into fields like architecture, community development, environmental planning, geography, housing, landscape architecture, and urban design.<sup>100</sup>

The government's heightened secrecy has created additional obstacles to research. One of the Bush administration's earliest responses to 9/11 was to increase the classification of documents. Reversing Clinton's policy of encouraging openness, the Bush regime drastically curtailed access to information about its activities by, for example, allowing such federal agencies as the Agriculture and Health and Human Services departments the right to classify documents—and they have used it. One federal official estimates that at least 50 percent of the material that is currently being withheld "really should not be classified." Unclassified materials are also harder to obtain. In October 2001, the attorney general released a memo decreeing that Freedom of Information Act requests should be denied whenever possible. Similarly, the government sought to expand the vague category of "sensitive but unclassified"



information that could also be withheld from the public. Agencies ranging from the Department of Homeland Security to the Agriculture Department complied at once. Previously available documents were yanked from public Web sites; and, in many cases, researchers found themselves unable to obtain basic government data about public health or environmental hazards on the grounds that such information could be of use to terrorists.<sup>101</sup> The Obama administration has pledged to roll back its predecessor's secrecy, but it is always easier to close files than to open them.

Scientists have also been forced to withhold information. For years, the Defense Department and other national security agencies had been trying to keep people in fields like cryptography and optical engineering from publishing the unclassified results of their research. The scientific community resisted more or less successfully, obtaining a directive from President Reagan in 1985 ordering that "the products of fundamental research remain unrestricted." The war on terror changed the rules. The heightened pressures for secrecy were particularly intense in the field of biotechnology. Facing what they felt was a genuine threat of federal censorship, many journals voluntarily complied with Washington's demand that they keep potentially sensitive information from their pages. In February 2003, the editors of more than twenty major journals in the life sciences issued a statement that expressed their concern about "the potential abuse of published information," and recommended the creation of special procedures for vetting "papers that raise such security concerns." Similarly, the National Academy of Sciences suggested that universities monitor research in those areas that might have applications to bioterrorism.<sup>102</sup> Such restrictions, whether they stem from federal regulations or self-censorship, directly contravene the openness that makes scientific communication, and thus scientific progress, possible.

The government's repressive treatment of foreign students and scholars has created additional problems for the academy. Tightened security procedures have not only made it more difficult for these people to gain entry into the United States, but once here, federal regulations have discriminated against some of them on the basis of their country of origin.

Imposing what are known as “deemed” export controls, authorities have barred students and scientists from nearly two dozen countries from undertaking certain kinds of research, handling certain kinds of materials, or gaining access to certain kinds of technology. While the need to prevent potential terrorists from gaining access to dangerous pathogens is obvious, these restrictions are overly broad, outdated, and extend to technologies and materials that are readily available in other countries.<sup>103</sup> And, in any event, such screening can best be done on an individual basis rather than by imposing a blanket prohibition that bars even opponents of those hostile regimes from working in a sensitive laboratory. Other types of regulations are similarly onerous. A truly remarkable Treasury Department ruling tried to prevent American journals from editing submissions from people who lived in the allegedly “terrorist” nations of Cuba, Iran, Syria, Sudan, and North Korea on the grounds that such editorial assistance would constitute trading with the enemy. And there are now provisions in place requiring grantmakers to ensure that none of their funds go to anyone on a long list of alleged supporters of terrorism.<sup>104</sup>

The war on terror also allowed the State Department to reintroduce the ideological exclusions that had been common during the McCarthy era. Of course, because the government refused to explain why it barred these people, we actually don’t know why it kept out a Greek economist; a Bolivian historian with a Georgetown Ph.D.; a European Islamicist with a named chair at Notre Dame University; the deputy vice chancellor of research, innovation, and advancement at the University of Johannesburg; and sixty-five Cuban academics invited to attend the annual meeting of the Latin American Studies Association in 2004. But, since most were left-wingers or critics of American foreign policy, it is likely that their politics were at issue.<sup>105</sup> Those bans may now be easing. Although the Obama administration initially sought to maintain its predecessor’s exclusions, in January 2010 it finally relented on the high-profile cases of the Islamic scholar Tariq Ramadan and the South African administrator Adam Habib.

Even more damaging to the academic enterprise than the politically motivated exclusions of individual scholars was the overall tightening of the visa process for all overseas applicants.

Unexplained rejections and delays were common, and foreign scholars and students who visited their homelands between semesters risked being barred when they tried to return to the United States. Although the situation has eased somewhat over the past few years, the new visa regulations and delays kept many students out of the United States, while deterring unknown numbers of others from applying. The problems are worse for students and scientists from some twenty-five mostly, but not entirely, Muslim nations. In many cases, people from these supposedly “sensitive” nations have to undergo full security clearances before their visas are approved. Moreover, once here, foreign students and scholars have to comply with the federal government’s onerous reporting requirements, as do the schools where they matriculated or worked. In the aftermath of 9/11, Washington pressed the academic community to speed up the implementation of its computerized tracking system for foreign students, the Student and Exchange Visitor Information System or SEVIS, as it is called. Required to keep the government updated on the whereabouts and academic progress of these students, college and university officials found that the glitches and delays in SEVIS caused problems for both the institutions and the individuals involved.<sup>106</sup>

There have been several high-level studies of the impact of these burdensome requirements on American higher education. Because of the academic community’s dependence on foreign students (especially in the sciences), cutting off the supply can lead to serious problems. In the short term, there will be fewer applicants, reduced tuition revenues, and a shrinking supply of potential teaching assistants. In the long run, since nearly a third of the graduate degrees in science and engineering go to foreign nationals, such visa restrictions threaten the very future of American science. Moreover, Washington’s thoughtless and insensitive treatment of foreign scholars and students can only be counterproductive. Not only does it alienate the nations and individuals whose support and goodwill will be vital in an increasingly globalizing world, but it prevents American academics from engaging in that unconstrained exchange of ideas upon which the life of the mind depends.

Of course, the obstacles to free inquiry caused by secrecy, visa delays, and even ideological-

speaker bans may pale into insignificance in the face of the present financial crisis. Will the current and, no doubt, future fiscal cutbacks force American faculty members into a defensive stance where they flee from all controversy; or will the passing of the Bush administration and advent of the Obama one encourage them to fight more vigorously for their own freedom of expression and that of their colleagues? Let us hope it is the latter.

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## Endnotes

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<sup>5</sup> Joseph Thomas, "Safety vs. Free Speech," *Colorado Daily*, February 7, 2005, Hu-DeHart papers.

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<sup>9</sup> Jon Sarche, AP, "CU President Hoffman resigns" *Rocky Mountain News*, March 7, 2005; Hu-DeHart, handwritten memo, n.d., Hu-DeHart papers; John Aguilar, "Churchill trial Betsy Hoffman testifies via videotape," *Daily Camera*, March 14, 2009, [http://www.dailycamera.com/ongoing-coverage/ci\\_13115898](http://www.dailycamera.com/ongoing-coverage/ci_13115898) (accessed February 14, 2010).

<sup>10</sup> For some examples of the hostility toward Churchill on the part of the American Indian Movement, see its Web site at <http://www.aimovement.org/>.

<sup>11</sup> Robt. A. Williams, Jr., statement in "Dear Friends and Colleagues," by Natsu Saito, March 21, 2005, Hu-DeHart papers.

<sup>12</sup> "Controversial professor landed tenure without usual review process," *Associated Press*, February 16, 2005; Jefferson Dodge, "Churchill's personnel files released by CU-Boulder," February 24, 2005; and Michael Pacanowsky to John Waite Bowers, et al., January 10, 1991, all in Hu-DeHart papers.

<sup>13</sup> Kevin Flynn, "Churchill's 'Indian' Claim to be probed," *Rocky Mountain News*, March 25, 2005, Hu-

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<sup>14</sup> Dodge, "Churchill's personnel files"; Charlie Brennan, "Ward Churchill: A Contentious Life," *Rocky Mountain News*, March 26, 2005, Hu-DeHart papers.

<sup>15</sup> Kim Castleberry, "Department familiar with conflict," *Daily Camera*, February 19, 2005, Hu-DeHart papers.

<sup>16</sup> Andrea O'Reilly Herrera and Abby Ferber to Pres. Hoffman and Interim Chancellor DiStefano, February 11, 2005. See also "An Open Letter from the Department of Ethnic Studies, University of Colorado at Boulder to the Board of Regents, President Betsy Hoffman and Interim Chancellor Phil DiStefano," April 25, 2005, both in Hu-DeHart papers.

<sup>17</sup> "An Open Letter from the Department of Ethnic Studies"; Arturo Aldama, et al., "Dear Colleagues and Comrades," July 31, 2006, Hu-DeHart papers.

<sup>18</sup> Carlos Munoz, Jr., "Dear Friends and colleagues," March 17, 2005, Hu-DeHart papers.

<sup>19</sup> Anne D. Neal, foreword to "How Many Ward Churchills?" by American Council of Trustees and Administrators, May 2006, <https://www.goacta.org/publications/downloads/ChurchillFinal.pdf> (accessed February 14, 2010).

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<sup>27</sup> Fred Anderson, interview with the author, January 9, 2008; Christine Yoshinaga-Itano to Hu-DeHart, February 10, 2005, Hu-DeHart papers.

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<sup>29</sup> "Report on Conclusion of Preliminary Review."

<sup>30</sup> "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 16, 2006, 100, <http://www.colorado.edu/news/reports/churchill/download/WardChurchillReport.pdf> (accessed February 14, 2010). For a useful précis of the case from one of Churchill's supporters, see Eric Cheyfitz, "Framing Ward Churchill: The Political Construction of Research Misconduct," *Works and Days* 51–54 26–27 (2008–09), digital copy in the author's possession, courtesy of Ward Churchill.

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<sup>40</sup> Jefferson Dodge, "Debate over Churchill case persists," *Silver & Gold Record*, March 29, 2007, Hu-DeHart papers.

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<sup>42</sup> "Report of the Investigative Committee," 27.

<sup>43</sup> "A Filing of Research Misconduct Charges Against the Churchill Investigating Committee," Vijay Gupta, et al. to Hank Brown, et al., May 10, 2007, Hu-DeHart papers, also accessible at [http://wardchurchill.net/files/misconduct\\_charges\\_letter\\_and\\_supporting\\_docs.doc](http://wardchurchill.net/files/misconduct_charges_letter_and_supporting_docs.doc) (accessed February 14, 2010).

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<sup>45</sup> "Report of the Investigative Committee," 89.

<sup>46</sup> "Report of the Investigative Committee," 93; Tom Mayer, "The Plagiarism Charges Against Ward Churchill," [http://wardchurchill.net/files/mayer\\_on\\_plagiarism\\_charges\\_0607.pdf](http://wardchurchill.net/files/mayer_on_plagiarism_charges_0607.pdf) (accessed February 14, 2010).

<sup>47</sup> "Report of the Investigative Committee," 96.

<sup>48</sup> "Report of the Investigative Committee," 97.

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<sup>57</sup> "Panel Report Regarding Dismissal for Cause," 11–12.

<sup>58</sup> "Panel Report Regarding Dismissal for Cause," 19.

<sup>59</sup> "Panel Report Regarding Dismissal for Cause," 32.

<sup>60</sup> "Panel Report Regarding Dismissal for Cause," 38, 45–46.

<sup>61</sup> "Panel Report Regarding Dismissal for Cause," 38, 65–66, 70.

<sup>62</sup> "Panel Report Regarding Dismissal for Cause," 76.

<sup>63</sup> Scott Jaschik, "The Ward Churchill Endgame," *Inside Higher Education (IHE)*, May 30, 2007, <http://www.insidehighered.com/news/2007/05/29/churchill> (accessed February 14, 2010).

<sup>64</sup> "Statement from University of Colorado Board of Regents," <https://www.cusys.edu/regents/communique/churchill-reg-stmt.html> (accessed February 14, 2010).

<sup>65</sup> Hank Brown, statement, <https://www.cu.edu/content/inside-higher-ed-july-30-2007> (accessed February 14, 2010).

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<sup>83</sup> Anna Weggel, "A Minnesota University's Decision Not to Invite Archbishop Tutu as a Speaker Brings Disappointment," *CHE*, October 4, 2007; Weggel, "Minnesota University Regrets Its Failure to Invite Archbishop Tutu to Campus," *CHE*, October 11, 2007, <http://chronicle.com/article/University-Regrets-Snub-to-/74/> (accessed February 14, 2010).

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