

## “Fake Indian: The Case of Ward Churchill”

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### Abstract

*This essay examines the controversy surrounding Mr. Ward Churchill, Professor of Ethnic Studies, University of Colorado at Boulder. Churchill contends that he was fired from his tenured position for his provocative polemic about the September 11, 2001, attack on the World Trade Center, in violation of his First Amendment right to speak freely. But the University charged him with egregious research misconduct. Early in the University's investigation into Churchill's alleged academic dishonesty, the important issue of his fraudulent Native American identity was deemed irrelevant and dropped from the deliberations. Yet, the question of his Indian identity was always in the background. This article discusses the crucial role that Churchill's status as a Native American played in the protracted public controversy and considers its meaning in the context of the invention of an American identity.*

**Key words:** Freedom of speech, First Amendment, academic freedom, ethnic identity, ethnic studies, research misconduct

*Cool and passionate is how some people would describe Ward Churchill. With his trademark wrap-around sunglasses, long graying hair parted down the center and blue jeans, he is the very picture of the “tenured radical” professor who holds authority in contempt. Expressing scorn for officials and advocating violence against oppressors have made Churchill a popular speaker on the college campus circuit. Paradoxically, until his 9/11 essay erupted across the nation in February 2005, Churchill was nearly invisible at his home institution, the University of Colorado at Boulder, the State's flagship institution of higher learning. He was known mainly by reputation and rumor, rarely participating in campus events – social, academic, or even political. Now the word is out that Ward Churchill is a charlatan who has cultivated an outlaw image, created a fake American Indian identity, and claimed the work of others as his own.*

### 1. “Little Eichmanns” in the WTC

Churchill's exposure as a fraud came in the wake of the criticism of “*Some People Push Back: On the Justice of Roosting Chickens*” (Churchill, 2001), a polemic condemning America as an imperialist nation that deserved to be attacked on 9/11 for its sins, past and present. “*Some People Push Back*” became the extreme left-wing equivalent to Reverend Jerry Falwell's extreme right-wing comment on the 700 Club telecast two days after 9/11 that the attacks were the fault of “the pagans, the abortionists, the feminists and the gays and lesbians who are actively trying to make that an alternative life-style” (Falwell, 2001).

Six weeks before Churchill was to participate in “Limits of Dissent,” a panel on prisons scheduled for February 3, 2005 at Hamilton College, Ted Eismier, Professor of Government at Hamilton College, made the campus community aware of his 9/11 essay. In his essay, Churchill gave a positive portrayal of the attackers, calling them courageous soldiers (members of combat teams, in his opinion,) rather than terrorists. At the same time, he gave a negative portrayal of those killed, calling them accomplices in the country's imperialist activities against Third World peoples rather than innocent victims. Finally, his polemic advocated additional attacks as the only way to make America change its wanton ways. For Churchill, such assaults were a form of “reality therapy” necessary to cure a “delusional” America.

What people found most objectionable was Churchill's comparison of the 9/11 World Trade Center victims to Nazis. The passage that particularly offends is:

As to those in the World Trade Center . . . Well, really. Let's get a grip here, shall we? True enough, they were civilians of a sort. But innocent? Gimme a break. They formed a technocratic corps at the very heart of America's global financial empire – the "mighty engine of profit" to which the military dimension of U.S. policy has always been enslaved – and they did so both willingly and knowingly. Recourse to "ignorance" – a derivative, after all, of the word "ignore" – counts as less than an excuse among this relatively well-educated elite. To the extent that any of them were unaware of the costs and consequences to others of what they were involved in – and in many cases excelling at – it was because of their absolute refusal to see. More likely, it was because they were too busy braying, incessantly and self-importantly, into their cell phones, arranging power lunches and stock transactions, each of which translated, conveniently out of sight, mind and smelling distance, into the starved and rotting flesh of infants. If there was a better, more effective, or in fact any other way of visiting some penalty befitting their participation upon the little Eichmanns inhabiting the sterile sanctuary of the twin towers, I'd really be interested in hearing about it. (Churchill, 2001)

Even to his supporters, Churchill had committed a monumental blunder when he compared the victims of 9/11 to Adolf Eichmann, the Nazi's "Chief Executioner" who was responsible for identifying and transporting people to the death camps. Realizing this, Churchill would later qualify his remarks but the damage had been done (Churchill, 2005).

## ***2. Politicians and Pundits Weigh In***

Various politicians and pundits demanded that Churchill be cashiered for penning a treasonous rant. The public was outraged at an institution that seemed out of control and a campus culture that seemed sick. For a school already mired in a series of shameful scandals that began with the football team sex and alcohol recruitment affair, the Churchill controversy could not have come at a worse moment for the University of Colorado at Boulder (hereafter referred to as CU). CU officials were caught in a dilemma: if they ignored the public's demand that Churchill be fired, they would be subjected to unremitting political attack; if they fired Churchill for what he had written and said, they would be accused of infringing on his right of free speech and violating the principle of academic freedom. But something had to be done to stop the negative publicity that was adversely affecting the school. People in the Admissions Office began talking about the "Churchill effect" as parents began "voting with their feet" and sending their students anywhere but CU.

CU leaders dithered. Initially, they tried to end the controversy by compelling Churchill to resign his post as chairman of the Ethnic Studies Department, but to little avail. Another approach was to buy their way out. Until March 11, 2005, the Board of Regents was prepared to pay Churchill almost a half-million dollars to resign from CU. According to local press reports, the negotiations ended abruptly because of allegations that Churchill had committed plagiarism. The negotiations made a mockery of Churchill's claim that the controversy was about his right to speak. In the aftermath of the settlement debacle, some faculty and students thought that Churchill's willingness to accept "hush" money contradicted his statements that he was defending his right to free speech and fighting for academic freedom. Money would continue to be an issue throughout the controversy.

## ***3. Academic Crimes and Misdemeanors***

After the "hush" money fiasco, CU officials reluctantly moved forward with an investigation of Churchill. They hoped that once the controversy became an internal university matter, the public din would die down as everyone awaited the outcome. That was not to be. The investigation turned into a protracted process that was itself a source of contention from beginning to end, with all CU bodies and personnel dealing with the case being accused of potential conflicts of interest and bias for or against Churchill.

Then Interim Chancellor Philip P. DiStefano convened an ad hoc committee that Churchill immediately dubbed a "star chamber." On February 3, 2005, DiStefano began a preliminary review into Churchill's writings, statements, and conduct to determine whether he had exceeded the limits of constitutionally protected speech, that is, did he engage in "hate speech." Second, the review would look into allegations that Churchill was responsible for research misconduct, including fabrication and falsification of historical facts, and outright plagiarism, that had surfaced in the wake of the controversy. Finally, it would consider whether Churchill had misrepresented himself as an American Indian with the intention of enhancing his employment status and scholarly work.

In probing into whether Churchill had abused his right to free speech, the ad hoc committee divided the campus community and subjected the school to accusations of engaging in political persecution. As far as Churchill's supporters were concerned, the ad hoc committee was a caricature of the notorious House Un-American Activities Committee. At the end of their review, the ad hoc committee issued a "Report on Conclusion of Preliminary Review in the Matter of Professor Ward Churchill" (DiStefano, 2005). The report concluded that Churchill's essay was well within the bounds of free speech, political and otherwise. Even though the report cited instances from Churchill's writings and speeches that advocated violence, including the elimination of the United States government, these remarks were deemed abstract and failed to rise to the "level of inciting imminent and concrete violence." In other words, though Churchill's comments were full of hate, they fell short of being "hate speech."

The report, however, went on to say that there was a prima facie case that Churchill had committed serious research misconduct and referred the matter to CU's Standing Committee on Research Misconduct (SCRM), launching the next investigatory phase. On June 13, 2006, SCRM issued its report (Rosse et al., 2006), recommending that a panel of experts be convened to conduct a full-fledged investigation into only those allegations having to do with "plagiarism, misuse of others' work, falsification and fabrication of authority," while setting aside those having to do with Churchill's fraudulent ethnicity and copyright infringement because they were deemed inappropriate for further investigation under the definition of research misconduct.

With SCRM's decision to discontinue any further investigation into some of the allegations, Churchill and his attorney, David Lane, claimed a victory of sorts, declaring that some of the charges had been "dismissed," as if it were a legal proceeding rather than an internal inquiry. Moreover, Lane tried to trivialize the remaining allegations by characterizing them as a matter of sloppy scholarship. Lane was particularly pleased with the recommendation to halt any further inquiry into whether Churchill had fabricated an American Indian identity, which he considered as the most offensive allegation against his client. As it will be discussed below, though the question of whether Churchill was a "fake Indian" or not had been dropped from CU's investigation and was never an official part of the subsequent legal proceedings, it was always in the background. Certainly, it was on the minds of his critics.

Months later, the SCRM experts issued their findings, "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" (Wesson et al., 2006). The experts unanimously condemned Churchill for research misconduct, specifically falsifying and fabricating data, plagiarizing the work of others, and failing to adhere to professional publication standards. Not surprisingly, based on its investigative committee's report, SCRM concluded that the severity as well as the repeated and deliberate nature of Churchill's violations placed him well below the minimum standards of professional integrity expected of CU faculty.

#### **4. Sham Scholar**

Before SCRM finished its investigation, the now defunct *Rocky Mountain News* (RMN) had completed its own parallel investigation into Churchill's work. On June 4, 2005, the RMN began publishing its "Churchill Files" series, making a compelling case that Churchill had perpetrated unethical acts and engaged in an egregious pattern of research misconduct (*Rocky Mountain News*, 2005). Indeed, he had made a career of it.

From a scholarly perspective, Churchill's falsification of history and mischaracterization of historical documents are the most damaging of his wrongdoings. In doing so, he adversely affects how people (scholars, students, and others) understand American Indian history, now and in the future. Specifically, Churchill falsely accuses the U. S. Army of perpetrating genocide against an American Indian tribe. He says that the army deliberately distributed diseased blankets to the Mandan tribe in 1837, causing a devastating small pox epidemic that killed at least 125,000 American Indians. Moreover, he says the army promoted the epidemic's spread by encouraging infected Indians to take refuge in their home communities and denied them the vaccine that could have saved them. According to the RMN's investigation, Churchill fabricated the entire episode. Existing accounts, including the ones Churchill cites, do not support his assertion. Instead, they attribute the spread of small pox to infected travelers who unwittingly spread it to the Mandan Indians.

Why Churchill accused the American army of committing genocide is unclear, involving as it does the question of intentionality. Russell Thornton, a Cherokee and well-known UCLA anthropologist, who was interviewed for the RMN series, provides a clue when he observes, "Churchill probably just wanted to have something more to holler about" (Vaughan, 2005).

Actually, genocide is the one thing that Churchill consistently “hollers” about; it is the one thing for which he is known. Within American Indian Studies, he is the most vocal proponent of the thesis that the U. S. government has deliberately committed genocide against the American Indian.

Both the SCRM and RMN investigations had arrived at similar conclusions that were, in a word, “devastating.” They presented overwhelming evidence that Churchill had engaged in serious research misconduct. The only question that remained was what sort of sanction should CU mete out. SCRM was divided as to whether Churchill’s transgressions were sufficiently serious to warrant dismissal, something that is rarely done in higher education institutions and then only as a last resort. Yet, on July 24, 2007, the Board of Regents voted eight to one to oust Churchill from the faculty. But the controversy did not end there.

### ***5. Its the First Amendment, Stupid***

Following his expulsion, Churchill filed a civil suit against the Board of Regents for violating his First Amendment right to free speech. Churchill essentially argued that he had been fired for writing his 9/11 essay rather than research misconduct. Furthermore, CU had launched an investigation into his scholarship in order to “trump up” charges against him. Churchill sued to be reinstated and awarded monetary damages for wrongful termination. Because this was a civil case, the burden of proof was on Churchill to prove to the jury by a “preponderance of evidence” rather than “proof beyond a reasonable doubt” that he was unjustly fired. Churchill managed to do just that.

Churchill prevailed because he was fortunate to have a jury that was more concerned about First Amendment protections than violations of arcane academic standards and a legal team that presented his case effectively to that jury. As Mike Rosen observed in his April 10, 2009 column in the *Denver Post*, Churchill “may have won [his] case before it started with jury selection.” During the selection process, prospective jurors were asked questions that focused mainly on either the First Amendment or rights and responsibilities of CU employees. From the potential jurors who spoke up during the process, it seems that most of them were more concerned about the former rather than the latter issue. Indeed, as Glasscock and Rush reported in the now defunct *Silver & Gold Record* (March 12, 2009) several of them “acknowledged that they would enter the trial favoring Churchill because of their deep-seated beliefs about protecting First Amendment rights.”

As Rosen further observed, the jury that was eventually empanelled was “relatively young and impressionable, with none having a four-year college degree or a good understanding of the appropriate application of the First Amendment.” Bethany Newill, one of the six actual jurors, would beg to differ. In an interview with Michael Roberts in *Westword* (April 3, 2009), Newill agreed that they were indeed a “young crowd,” with the oldest being 36, but contended that they were not a “stupid crowd” and “didn’t have any problems understanding what was going on and what was being said” during the trial. Given the insightful questions jurors asked during the trial certainly some of them proved that they understood the proceedings.

The press coverage showed two contrasting legal styles in action. Churchill’s attorney, David Lane, engaged in “theatrics and flamboyance” while arguing that Churchill had been fired for his offensive essay, making the case a matter of the right to free expression rather than just wrongful termination. In his opening statement, Lane tried to make a martyr of Churchill, comparing his trial to the famous 1633 Galileo and 1925 Scopes trials. Churchill was portrayed as a scholar with an unpopular point of view who was being penalized for “speaking truth to power” like Galileo and Scopes. Lane’s primary strategy was to persuade the jury that all they needed to find for Churchill was the belief that his essay played a “substantial and motivating” factor in his firing. As proof he pointed to then Interim Chancellor DiStefano’s decision to investigate Churchill’s work to see whether there was grounds for termination, which he considered the case’s “smoking gun.”

CU’s lead attorney, Patrick O’Rourke, offered a dignified, some would say, boring as well as weak defense. He argued that Churchill had been justifiably terminated for deliberately engaging in research misconduct, focusing on Churchill’s having ghost-written essays for other scholars then citing them in his own work as if they constituted independent third-party sources. Churchill’s rebuttal was that it was a common scholarly practice in academe even though that was patently false. During the trial, Churchill successfully trivialized and obfuscated the allegations of research misconduct against him, chalking them up to differences of opinion and interpretation. Cutting through a rather dense exchange about academic rights and wrongs was one juror’s pertinent question: Would the allegations of research misconduct have surfaced without the 9/11 essay?

## 6. A Pyrrhic victory

Before the jury began its deliberations, Larry J. Naves, Denver District Court Chief Judge, who presided over the case, dismissed one of Churchill's claims, saying that past case law excluded CU's investigation into whether Churchill had abused his right of free speech as legally actionable. Naves also instructed the jury that for them to find for Churchill, they had to agree that he had proven the Board of Regents used Churchill's "protected speech activity as a substantial or motivating factor" in firing him. Nave's question in effect reiterated the point that Lane had made during and at the end of the trial when he asked those present: "Is there a rational human being in this courtroom who can look inside [their] hearts . . . and say that the 9/11 essay wasn't a part of CU decision-making?" (Glasscock & Rush, 2009)

The jury unanimously agreed with Lane, ruling in favor of Churchill. According to Bethany Newill, she and the other jurors at first thought that it was their responsibility to evaluate whether CU had made its case against Churchill for research misconduct. However, once they understood that all they had to decide was whether Churchill had been dismissed because for his 9/11 essay, they agreed in his favor. After ten hours of deliberation, they concluded that the Board of Regents had unlawfully fired Churchill for expressing his political beliefs.

This is not say that Newill and the others had no opinion about the misconduct charges. In an affidavit submitted on July 7, 2009, on behalf of Churchill's later appeal, Bethany Newill said "A majority of the Jurors thought that the academic misconduct charges were not valid. We felt that procedures afforded to Churchill by the University of Colorado, before his termination, were biased. In fact, during our deliberations, we listed every witness that testified at trial, and determined that the majority of the University of Colorado's witnesses were biased and dishonest. The procedures afforded to Churchill by the University of Colorado, especially the P&T [Privilege and Tenure] Hearings and the hearing given by the Regents, were unfair and biased. Clearly, a majority of the people sitting on the various committees were biased against Churchill."

At the same time, the jury appeared to disagree with Lane about sending a message to CU by awarding Churchill significant monetary damages. Instead, the jury awarded him only \$1. For many, this made the jury's decision appear to be a compromise. Each side of course placed their own "spin" on the jury's decision to award Churchill essentially nothing for damages. Waving a dollar bill victoriously, Churchill proclaimed that it was never about money but rather the principle of free speech. His critics thought that a \$1 for damages was an indication of what the jury thought of his reputation as a scholar.

As is always the case, only the jury knows what their actual reasoning and motivation was and, except for Newill, none were saying. In comments to the *Denver Post* (April 4, 2009), Newill noted "Every Juror, except one, wanted to give Churchill some amount of money. In the end, the Jury compromised and gave Churchill \$1.00 because Churchill said that this case was not about the money, but instead that he wanted his job back . . . We found that Churchill did not suffer economic harm because he was paid for a year after he was fired. It was difficult for us to put a value on Churchill's emotional distress, and in the end, we listened to Churchill's testimony and hoped that the Judge would give him his job back or give him some compensation." Evidently, the lone juror who was opposed to financial compensation was adamant about it. Indeed, "she couldn't even stand to give [Churchill] a dollar . . . She felt that he ruined his own reputation and that when you put something out there, even though it is protected speech, there are consequences." Little did the holdout juror know at the time that her opposition, some would say principled opposition, to awarding Churchill any financial compensation would have consequences beyond the nominal award itself.

## 7. To Reinstate or Not, That is the Question

Churchill's victory proved to be short-lived. On July 7, 2009, about two months after the trial, Judge Naves presented his decision. Using the emerging legal doctrine of "quasi-judicial immunity," Naves ruled that because the CU Board of Regents performed functions similar to those of judges and prosecutors they were insulated from civil lawsuits, vacating the jury's decision, something that rarely occurs. Furthermore, he denied Churchill's request for reinstatement and financial compensation, citing the jury's symbolic award of \$1 in damages to Churchill as a significant part of his decision to deny him reinstatement. In his ruling, Naves wrote: "If I am required to enter an order that is 'consistent with the jury's findings,' I cannot order a remedy that "disregard the jury's implicit finding" that Professor Churchill has suffered no actual damages that an award of reinstatement would prospectively remedy."

Moreover, he concluded that the relationship between Churchill and CU was “irreparably damaged,” citing Churchill’s own statements describing CU as a “not very glorified vo-tec, a trade school” and its witnesses as a “string of unprincipled liars,” demonstrating his hostility to CU. Similarly, Naves used Churchill’s own words against him in the matter of financial compensation, referring to his remark that “he has not seriously pursued any efforts to gain comparable employment” and he had declined to pursue “a few job offers” that were offered to him. In short, Churchill had been hoisted with his own petard, a self-destructive practice that began long before he wrote his 9/11 polemic.

Subsequently, Churchill tried to appeal the district court’s decision but the Colorado Court of Appeals upheld Judge Naves’ earlier ruling. Afterwards, Churchill appealed to the Colorado Supreme Court, which agreed to hear the case and will probably adjudicate it in 2012. If Churchill also loses this appeal, his attorney says that he will take it to the United States Supreme Court.

## **8. Identity Theft**

Judge Naves said his decision was a matter of law and the earlier decision by President Brown to dismiss Churchill a matter of CU rules regarding professional integrity. True enough. Left unsaid but underlying the entire episode was Churchill’s assertion of being an American Indian. This was after all the foundation upon which he built his reputation as scholar and activist. Being unmasked as a fake Indian made Churchill a “bad actor” in the eyes of many, placing him beyond the pale. Since revelations about Churchill’s fraudulent racial identity may have made the crucial difference in the development and outcome of the controversy, it is worth considering why and how he acquired it.

Bedeviling Churchill’s life and career has been his fraudulent claim to being an American Indian. It was one of the allegations that SCRM had earlier dismissed and that Lane highlighted as the most offensive allegation against him. Proving that Churchill had fabricated a false ethnic identity to gain greater credibility as an ethnic studies scholar is much more daunting than proving he had fabricated scholarship. But for those wanting to understand how Churchill managed to gain a privileged position at CU, his claim to Native American ancestry needs to be explored and explained. It is central to his career as an ethnic studies scholar and as a radical American Indian Movement activist. Indeed, it is the essence of his public persona.

For years there were rumors about Churchill’s false Indian ancestry. Churchill has claimed to be three-sixteenth or one-sixteenth Creek and Cherokee. On those occasions when questions about Churchill’s “Indian” background were raised on campus, there were two basic responses from local Native Americans. While acknowledging that he was a fake Indian, some thought that it was acceptable because of his American Indian Movement activism and willingness to speak on and write about the atrocities that had been committed against American Indians. The other response was that the “joke” was on the whites, especially those who were foolish enough to hire him. Actually, it was the faculty of color in CU’s Ethnic Studies department who hired him, though the upper-level white administrators were clearly complicit in his employment and promotions.

Churchill’s claim to American Indian ancestry is no joking matter, however. In “An American Holocaust? The Structure of Denial,” an essay published in 2002, in *Socialism and Democracy*, an online publication of the Research Group on Socialism and Democracy, Churchill explains his interest in the “genocide” of American Indians is a personal as well as a professional matter:

This brings up a personal hook in addition to my intellectual motives. It comes with the fact that I am myself of Muscogee and Creek descent on my father’s side, Cherokee on my mother’s and am an enrolled member of the United Keetowah Band of Cherokee Indians. I’m also married to an Ojibwe woman of the Lynx clan, from the Onegaming Reserve in Northwestern Ontario. The truth is, although I’m best known by my colonial name, Ward Churchill, the name I prefer is Kenis, an Ojibwe name bestowed by my wife’s uncle. So there’s that, and I suppose it speaks for itself.

Churchill’s most implacable foes are members of the American Indian community who take the matter of identity (and its misuse) quite seriously. Churchill’s “identity” is a very important issue to many American Indians, arguably, the most important, since it speaks to the issue of national sovereignty and the right of American Indians to determine who is a member of their tribes. In his rebuttal of the allegations against him, Churchill argued that he has fulfilled three of the four criteria for determining American Indian ancestry: self-identification, community acceptance, and tribal affiliation.

He noted that Evelyn Hu-Dehart, Chair of the Ethnic Studies department, had investigated a similar complaint in 1994 and found it without merit. She argued that the controversy surrounding his Indian heritage was a matter of politics in the Indian community. Since Hu-Dehart was intimately involved in his employment and later promotion to full professor, she clearly had a conflict of interest. Hence, her conclusion about Churchill's ethnicity is suspect.

Churchill makes three different claims to his identity as an American Indian. His strongest contention is "self-identification," which anyone can do, usually without penalty. In 1994, when Churchill's fraudulent ethnicity was brought to the attention of CU officials, they declined to pursue the matter saying that it was university policy to accept a person's race or ethnicity as self-proving. A weaker claim to American Indian ethnicity is his membership in the American Indian Movement, one of the ethnic-consciousness movements to emerge out of the Sixties era. Among the American Indian activists who support him is Russell Means, who conferred the status of "brother" on Churchill.

Weakest of all is his claim to tribal affiliation, specifically membership in the United Keetoowah Band (UKB) of the Cherokee Indians. The group has disavowed its association with him. Churchill notes that in May 1994, he was enrolled as an "associate member" of the UKB and has a band card No. R7627, and to prove this, he has a videotape of the tribe council debating who can define an Indian. In spring 2005, however, the UKB said: "All of Churchill's past, present and future claims or assertions of Keetowah 'enrollment' written or spoken, including but not limited to biographies, curriculum vitae, lectures, applications of employment, or any other reference not listed herein, are deemed fraudulent by the United Keetowah Band" (Brennan, 2005). Moreover, the UKB said: "Mr. Churchill was never able to prove his eligibility in accordance with our membership laws, but was to be honored because of his promise to write our history, and his pledge to help and honor the UKB." The UKB has stated that Churchill was not eligible for tribal membership due to the fact that he did not possess a Certificate of Degree of Indian Blood (CDIB), which is under the jurisdiction of the U.S. Department of the Interior/Bureau of Indian Affairs.

Apparently, the one standard Churchill does not claim to have met is the most meaningful – an identifiable Indian ancestor. His family has long maintained that there was an Indian ancestor, specifically Joshua Tyner, a supposed descendant from the heroic Cherokee warrior Tushali who was killed resisting soldiers who were forcibly removing his family from their home as part of the infamous exodus called the "Trail of Tears."

### ***9. Ethnic Shopping***

Most of the discussion surrounding the Churchill controversy has been on his fraudulent research rather than on his fraudulent ethnic identity. Perhaps it is because such a discussion would involve an examination of his personal motives that are difficult, if not impossible, to determine. Challenging though it is, intention is an issue worth considering since it might shed light on why and how Churchill chose to masquerade as an American Indian, the unmasking of which sealed his fate.

One of the questions to be asked is what alternatives did Churchill have? Coming from a reportedly "broken" Midwestern family, with modest educational attainments and ordinary life experiences, little could be expected of him in mainstream society. Instead of accepting this fate, he evidently decided to go West as so many have done before him and transformed himself into someone better. Taking advantage of the Civil Rights movement and the new opportunities it created for all people of color, Churchill went "ethnic shopping." The Federal government facilitated this by allowing people to declare their own race or ethnicity on the census, a practice that was adopted by various institutions for employment purposes. In his 1978 University of Colorado job application, Churchill marked "X" next to the "American Indian or Alaskan Native" category and in the accompanying resume he identified himself as "Creek/Cherokee (uninvolved)." Among the people of color communities, the Native American community was the most accessible to Churchill racially because of its long history of intermarriage with whites. It was a shrewd career move.

In the West, Churchill insinuated himself into Denver's Native American community and participated in the American Indian Movement. Even a person with his modest background would be appreciated in the Native American community, providing him with opportunities that would be unavailable to him otherwise. By self-identifying himself as an American Indian with a college education, he was able to obtain a position as an administrative assistant in the Native American Equal Opportunity Program at the University of Colorado, Boulder, which in turn strengthened his claim to being an American Indian.

Between his professed American Indian identity and the paucity of educated American Indians, Churchill was able to become a lecturer and writer on Native American Studies on the Boulder Campus. In 1983, he edited *Marxism and Native Americans* for South End Press, and at the end of the book, claimed to be “Creek/Cherokee . . . director of Planning, Research and Development for Educational Opportunity Program at the University of Colorado/Boulder, and . . . co-director of the Institute of Natural Progress.” With one stroke, Churchill had fraudulently promoted himself from an administrative assistant to the director of the EOP and declared himself a co-director of an organization that never existed except in his own mind.

Identifying himself as an American Indian had the added advantage of automatically conferring on him the status of a warrior. In the popular imagination, American Indians are not only the original Americans but also the original guerrilla fighters. To enhance this part of his identity, Churchill claims to be one of America’s elite soldiers who been trained as a paratrooper and served with a Long Range Reconnaissance Patrol unit that had fought the North Vietnamese in the highlands of Vietnam. He also says that his fellow soldiers referred to him as “Chief” and was ordered to serve as point while on patrol even though he was larger than most men and made a larger target. Moreover, he claimed to have been transformed by his wartime experiences in Vietnam. To refute allegations that he advocated violence, on the Ethnic Studies Department website Churchill posted a January 31, 2005 statement that said, “As a U. S. soldier in Vietnam I witnessed and participated in more violence that I ever wish to see.”

The truth is far simpler. Churchill’s military records indicate that he was drafted in 1966, trained as a light vehicle driver, serving in a truck convoy unit based in Cam Ranh Bay. As such, he was part of a military unit that provided logistical support. Beyond that, he served as a public information specialist, writing and editing the battalion newsletter and writing news releases. In short, Churchill was a non-combatant rather than the “Rambo” he portrayed himself as.

Even though Churchill’s effort to transform himself into an American Indian warrior has been for naught, he appears to be reinventing himself again – this time into a defender of free speech and academic freedom. He continues to speak on the college lecture circuit, though these days it will be about his “struggle” to defend his as well as everyone else’s First Amendment rights. That would be the final irony of the controversy since Churchill’s activist credentials are based largely on his efforts to abolish Denver’s Columbus Day celebration. Accusing Christopher Columbus of committing 500 years of genocide against American’s indigenous peoples and arguing that Italian Americans have no right to celebrate him as a native son, Churchill and the Colorado American Indian Movement have regularly disrupted the city’s annual Columbus Day parade.

### **10. Concluding Comments**

Though the resolution of the Churchill controversy has been protracted and problematic, the process had several salutary effects. Most important it focused national and even international attention on freedom of speech, which is a First Amendment right of the United States Constitution as well as a human right recognized by the United Nations’ Universal Declaration of Human Rights. As the controversy unfolded, it reminded people of how precious it is and what is required to protect it, even in the case of those like Churchill who abuse it regularly. CU had its day in court but failed to persuade the jury that when it fired Churchill it did so solely because of academic dishonesty. When the jury found in Churchill’s favor, they implicitly affirmed freedom of speech and reprimanded CU for infringing on his rights. The jury, however, left unaddressed Churchill’s deceitful behavior.

It would take Judge Naves to reconcile the demands of both the law and justice. He allowed the case to go forward to what now seems to be its inevitable conclusion: Churchill’s winning his civil suit. More significant, the case upheld a priceless principle – freedom of speech. Afterwards, Judge Naves determined that the law sustained Churchill’s dismissal from CU, supporting the school’s decision to expel a faculty member who had been found engaging in fraudulent behavior. All in all, it was a judicious outcome to a controversy that has rocked Colorado for several years. Another beneficial result was CU’s investigation into Churchill’s professional improprieties. Various CU committees as well as other interested parties, including the media, gathered the evidence necessary to prove conclusively that Churchill had engaged in a discernible pattern of research misconduct. For years, Churchill had fabricated and falsified historical facts, plagiarized the work of scholars, and committed many other academic crimes and misdemeanors – all of which he did without regret. In finally firing him, CU showed that neither freedom of speech nor academic freedom could shield tenured faculty from being held accountable for their dishonest behavior.



Unfortunately, CU did this belatedly and therein lies an important lesson. Perhaps school officials were reluctant to act sooner against Churchill to avoid being perceived as persecuting a faculty of color for doing research on the mistreatment of his racial group. Even raising questions about the legitimacy of Churchill's declared ethnicity might be interpreted as a form of racial discrimination. Officials were apparently prepared to set aside the school's values and standards to avoid igniting a firestorm of racial protest.

Yet allowing Churchill to violate its core values of academic integrity and truthful scholarship was shortsighted since it eventually led to serious consequences not the least of which was sully the reputation of the school and many of its members. CU officials would have been better advised to deal with Churchill early and equitably the way they would have any faculty who had committed a similar transgression, and to do so without consideration of race.

Finally, the Churchill controversy was more than a tawdry affair of a professor engaging in research misconduct. The Churchill controversy was also about how different social groups interpret First Amendment rights. Perhaps most important, it provided insight into another aspect of the hydra-headed problem of race in America – one of our most persistent national issues.

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