

Ward Churchill's Twelve Excuses for Plagiarism

Thomas Brown

E-mail: drthomasfbrown@hotmail.com

Abstract

This article observes that Ward Churchill and his defenders have offered twelve different excuses for the plagiarism charges against Churchill. The excuses are contrasted with the established ethical standards governing American scholars. Each excuse is also compared against the available evidence in Churchill's case specifically. It is found that several of Churchill's excuses highlight ambiguities in the established ethical standards, indicating the need for further debate in the scholarly community in order to more precisely delineate the boundary between ethical scholarship and unethical scholarship. It is also found that the evidence of Churchill's plagiarism overwhelms any ambiguities, and that each of his twelve excuses fails to justify his plagiarism.

Ward Churchill is a professor of Ethnic Studies at the University of Colorado (CU). The national media skewered Churchill in January 2005 for comparing the 9/11 victims to a notorious Nazi. Gossip about Churchill's habits of plagiarism, fabrication, falsification, and various other penchants for misbehavior had circulated in the Indian Studies field for years. When the Colorado press began to get wind of it, Churchill was unconcerned. He told reporters that plagiarism would be a firing offense (Dodge, 2005). Then he challenged anyone to find problems with his own work.

Today, more than two years later, numerous examples of research misconduct on Churchill's part have come to light. More than twenty scholars on four different CU committees have heard

Churchill's case. All unanimously agree that Churchill is guilty of multiple counts of plagiarism, fabrication, and falsification. All agree that Churchill deserves serious sanctions for his misconduct. CU's president has recommended to the Regents that Churchill be fired.

Churchill's various acts of research misconduct include his plagiarism of two essays, one by Professor Fay Cohen, and another by a defunct activist group that called itself "Dam the Dams." Now that these plagiarisms have been discovered, Churchill has changed his mind about plagiarism, and thinks it should not be a firing offense after all. Churchill and his supporters have deployed at least twelve different excuses for his habit of plagiarism.¹

Excuse Number One: "I'm the real author."

When Churchill was charged with plagiarizing Rebecca Robbins and Annette Jaimes, he offered a novel defense: He had ghostwritten for both authors, and thus is entitled to reprint that material under his own name without crediting those authors. Jaimes (one of Churchill's ex-wives) denies that Churchill authored her work, but the passages in question do bear Churchill's stylistic tics and topical obsessions.

Churchill argues that what he did is not misconduct: "The onus of misconduct, if any, thus resides with those who've put *their* names on *my* work" [emphasis in the original] (Paine, 2007).

But the best test of a plagiarism defense in academia has to be whether or not a professor would ever accept such an excuse from a student. What if a professor catches Joe Student in apparent plagiarism from his classmate Janie, and Joe's excuse is: "It's not plagiarism because I wrote Janie's term paper for her"? That would mean an "F" for both Joe and Janie.

While most professors would agree that Joe engaged in unethical behavior, there remains the legalistic question: If Joe merely abetted a plagiarist, is he himself still technically guilty of plagiarism or not? A strict reading of the federal definition of plagiarism may absolve Joe (National Science Foundation, 2002):

Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

However, Joe's ghostwriting for Janie would still put him in conflict with the falsification dimension of the federal research misconduct regulations:

Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

The federal rules are currently silent on whether ghostwriting should best be classified as falsification or plagiarism. However, due to another ongoing academic ghostwriting scandal, Congress is investigating the question (Vance, 2007, p. A35). Editors of science journals already agree that ghostwriting is unethical (WAME, 2007).

Churchill's employer, the University of Colorado, addresses ghostwriting more directly, by specifying "Other Violations" that constitute research misconduct, besides fabrication, falsification, and plagiarism (1998):

Failure to comply with established standards regarding author names on publications.

Other serious deviation from accepted practices in proposing, carrying out, or reporting results from research[.]

Furthermore, when Churchill defended himself against plagiarism charges by claiming to have ghostwritten the works in question, he made himself vulnerable to new misconduct charges. Churchill had fabricated and falsified while ghostwriting for others (Brown, 2006, pp. 4-5; Wesson et al, 2006, pp. 23-24, 90-91). Churchill then cited his ghostwritten essays as evidence for arguments in essays that he published under his own name (Wesson et al, 2006).

The CU research misconduct committee observes that this behavior: "permits the author to create the false appearance that his claims are supported by other scholars when, in fact, he is the only source for such claims" (Wesson et al, 2006, p. 90). If you accept Churchill's claim that he had the right to reuse material he ghostwrote for Rebecca Robbins and Annette Jaimes without crediting them, then the plagiarism charge transmutes into a fabrication charge. Each of CU's faculty committees has unanimously found Churchill guilty of fabricating data by ghostwriting and self-citation (Wesson et al, 2006, p. 90). However, there remain the two additional charges of plagiarizing essays by Fay Cohen and "Dam the Dams", for Churchill never claimed to have ghostwritten these works.

Excuse Number Two: "I was just the 'rewrite guy'."

When Professor Fay Cohen complained that Churchill had plagiarized her essay and republished it in an edited collection, Churchill's new excuse was that he didn't actually plagiarize the purloined piece. He only rewrote it.

("But Professor, I didn't plagiarize Janie's term paper. I just 'rewrote' it!")

The book's editor was Churchill's wife of the moment, Annette Jaimes. Churchill says that Jaimes handed him what he calls "a cut-and-paste job," and asked him "to serve as a combination copy-editor and what among journalists is called a 'rewrite guy'" (Frank, 2005). Churchill claims that someone else unknown to him must have plagiarized Cohen—*before* he was given the plagiarized essay to "rewrite." Churchill suggests that his conniving ex-wife is at fault, and that she mistakenly gave him authorship credit for a work that he acknowledges to be plagiarized.

With no further information, Excuse Number Two might be convincing. Churchill only helped out with some copy-editing. How was he to know that the piece in question was plagiarized?

What Excuse Number Two fails to disclose is that Churchill had already published the very same essay by Professor Cohen only the year before, in a collection that he had edited under his own name. Churchill himself—not his wife—then solicited Cohen to republish the essay in the second collection. Cohen explicitly denied Churchill the right to republish her essay during a contentious telephone conversation.

So even if you buy Churchill's dubious scenario, in which his unscrupulous wife hands him a plagiarized essay to "rewrite," he proceeded with full knowledge that the work in question was plagiarized, and that the original author had forbidden him to republish her work.

Excuse Number Three: "Okay, so maybe I 'rewrote' it, but I didn't take credit for it."

In Excuse Number Three, Churchill came up with a new twist. Now, Churchill claims his "rewriting" was not plagiarism, because he didn't sign his real name to the essay (Wesson et al, 2006, p. 92, *passim*). Instead, the piece that Churchill "rewrote" from Fay Cohen's original essay is credited in the Jaimes book to the "Institute for

Natural Progress," an entity that appears to exist mainly in Churchill's imagination. According to Churchill, the credited plagiarist here is a non-existent entity. Thus Churchill is only the agent of his own invention, and that invention is the true culprit.

If Churchill had never taken credit for this plagiarism, is it still plagiarism? Certainly the victim of the plagiarism suffers the same damages, whether or not the perpetrator claims credit. And in this case, Churchill did claim credit for authoring the purloined essay, in his Faculty Report of Professional Activity for that year, noting that it was "for the Institute for Natural Progress." Churchill blames either an assistant or his scheming spouse for entering this bogus claim of authorship into his own Faculty Report (Wesson et al, 2006, p. 92). He's not really sure who wrote his personal report, but he knows it wasn't him. Cops call this the "some dude" defense:

Detective: "But we caught you standing over the corpse with a bloody knife in your hand. If you didn't do it, then who did?"

Suspect: "I don't know. Some dude."

An astute investigator would check out the suspect's alibi. It turns out that Churchill himself signed the Faculty Report of Professional Activity that claimed his authorship for the plagiarized essay. The CU Misconduct Committee wryly observes: "[I]t appears that Professor Churchill had, at the time of the Cohen article's misuse, a history of putting the name of the Institute for Natural Progress on work authored by others" (Wesson et al, 2006, p. 92). Because Churchill did take credit for the essay that he acknowledges to have been plagiarized, all of the CU committees have found Churchill guilty of plagiarism.

("But Professor, when I plagiarized Janie's term paper, I signed it with my nickname!")

Excuse Number Four: "But I cited the real authors."

In Excuse Number Four, Churchill argues that his appropriation of various essays does not constitute plagiarism because he did, after all, give a citation to the original authors (Wesson et al, 2006, p. 83).

("But Professor, when I plagiarized Janie's term paper, I did mention her in the footnotes!")

Of course, if the amount of work that Churchill had appropriated was miniscule and duly cited, such action could be defined as "scholarship" rather than "plagiarism." Churchill's Excuse Number Four appeals to the fuzziness of the boundary between plagiary and scholarship, inviting the cursory observer to give Churchill the benefit of the doubt.

Excuse Number Four raises an important question: How much can you take from another author, duly cited, without committing plagiarism? Churchill's challenge here is that he is charged with plagiarizing extensive swaths of two essays, amounting to the majority of pages in the original. This degree of appropriation is unquestionably a transgression of an admittedly fuzzy boundary, and so all of the CU committees who heard Churchill's case have sanctioned him for plagiarizing both essays.

Excuse Number Five: "It's all the editors' fault.

For some reason they gave me authorship credit I didn't deserve."

The major weakness of Churchill's Excuse Number Four is that not only did he plagiarize the bulk of two essays, he also neglected to even cite the original authors in each of his multiple republications of the essay he plagiarized from "Dam the Dams." And so Churchill went to the well yet again for Excuse Number Five: His editors had given him full credit for an essay that

someone else had authored, before he came along and "rewrote" it (Wesson et al, 2006, pp. 83, 86). The editors in question have not yet publicly either confirmed or denied Churchill's accusation.

("But Professor, it was an incompetent editor who signed my name to Janie's term paper! I was so planning to tell you about the mistake, a couple years after graduation.")

If we stipulate for the sake of argument that Churchill's scenario is valid, Excuse Number Five raises interesting questions. Under what conditions could an editorial error excuse plagiarism? Does the beneficiary of such an error have a responsibility to correct the record, or to at least document his unsuccessful attempt to correct the record? Or is he immune from charges of plagiarism merely by not having himself proactively left the original author's name off? If he thus becomes immune from a charge of plagiarism, does he now have the right to take credit for the work that has fallen into his lap through editorial error?

Churchill assures us that he "wasn't especially happy" when his editors mistakenly gave him full credit for an essay originally published by the Dam the Dams group (Frank, 2005). Even if Churchill's story is true, it remains unexplained as to why Churchill was unable to request the journal's editors to publish a retraction and correction in a subsequent edition. When Churchill cited to his own plagiary in subsequent publications, he did not bother to correct the record then either, again retaining full credit (Wesson et al, 2006, p. 87). Because Churchill failed to take steps to correct the record, and continued to claim the plagiarized work as his own, CU's various committees were skeptical of Churchill's Excuse Number Five, and held him responsible for the plagiary.

Excuse Number Six: "But Churchill didn't plagiarize everything he's ever published. Only some of it!"

Excuse Number Six is advanced on Churchill's behalf by the tiny group of supporters that he has managed to retain. For these defenders, Churchill's repeated acts of plagiarism are "insignificant" compared to the larger body of work he has produced for which no prior authorship has yet been discovered (Morson and Vaughan, 2007).

What makes a given amount of plagiarism significant? What amount of plagiarism is acceptable over the course of an academic career? Churchill's defenders do not answer, and perhaps for good reason—plagiarism can be difficult to quantify. While CU found Churchill guilty of plagiarizing two essays—one by Fay Cohen, and one by "Dam the Dams"—Churchill's versions are not word-for-word transcriptions. He did do some amount of "rewriting."

The federal regulations on plagiarism do not allow for a free pass for just a touch of plagiarism. They do, however, require "a significant departure from accepted practices of the relevant research community" (National Science Foundation, 2002). Churchill's defenders are tacitly appealing to this ambiguity in scholarly ethics. However, it would appear that their appeal is not made explicit because a detailed accounting of the material that Churchill purloined would reveal how significantly he departed from accepted research practices and undermine their defense of Churchill. For Excuse Number Six to be persuasive, Churchill would need to show that other members of a relevant research community are accepting of such extensive appropriation of other people's work, by pointing to specific examples. Furthermore, it would be necessary to define the membership in "the relevant research community." Does this phrase refer to other Ethnic Studies professors? Or does it refer to Churchill's colleagues at CU?

The advocates of Excuse Number Six are not explicitly raising such questions at all. They are merely arguing that anyone who publishes as much as Churchill has is bound to plagiarize as much as he has. If Churchill's defenders were serious about this excuse, you might expect them to demonstrate their commitment by revealing which two entire essays they themselves had plagiarized, or at least document equivalent plagiarisms by other members of their research community who had received no sanctions. However, to date, Excuse Number Six has not been accompanied by evidence.

("But Professor, my plagiarism of Janie's term paper shouldn't count against me, given that I've written a lot of other term papers before and since!")

Excuse Number Seven: "But other people have gotten away with plagiarism!"

In Excuse Number Seven, Churchill turns his focus to the penalty phase. This shift in tactics appears to be a tacit attempt to establish that his appropriation of other people's work is—in the language of the federal regulations on research misconduct—not "a significant departure from accepted practices of the relevant research community," by pointing out that other guilty parties have received lesser sanctions.

In January 2005, before Churchill's plagiarism came to light, Churchill told the press that plagiarism would be a firing offense. Now, caught in the act, Churchill complains that authors such as Stephen Ambrose and Doris Goodwin have also been found out as plagiarists, and yet were "rewarded" (Frank, 2005). Churchill neglects to disclose that Goodwin paid to settle a plagiarism lawsuit, was dismissed as a commentator for the PBS Newshour program, was pushed off the Pulitzer prize board, had speaking engagements at universities and academic conferences with-

drawn, and was extensively chastised in the press for her plagiarism by academic historians.

Once again, for Excuse Number Seven to be even remotely persuasive, Churchill would need to point to other members of his own research community who have committed transgressions of the same magnitude, and who were given lesser sanctions by the same authority that is judging Churchill. In other words, Churchill would need to show other CU scholars or other Ethnic Studies professors who plagiarized nearly two entire essays, who engaged in serial acts of fabrication and falsification, and who escaped serious sanctions.

Ambrose and Goodwin are not relevant comparisons to Churchill. Both Goodwin and Ambrose had left the academy before their plagiarism was exposed. Neither had to answer to the authority of a tenure review or research misconduct panel. Ambrose defended his plagiarism by conceding that his books are not scholarly, a view widely shared by academic historians. Goodwin acknowledged her ethical violations by paying a monetary settlement to one of her victims, by changing her research and writing methods to avoid future replications of her plagiarism, and by promising to publish a corrected version of her plagiarized books. Neither Ambrose nor Goodwin were also found guilty of accompanying their plagiarism with serial acts of fabrication and falsification.

But ultimately, Excuse Number Seven evades the central issue: How should the academy define norms of ethical scholarship, and arrive at appropriate sanctions for serious violations of those ethics? Debates over ethical violations such as Churchill's are necessary for a vibrant academy to persist and thrive. The institution must have an ongoing process for establishing and revising the profession's norms. Certainly a discussion of sanctions should be part of that ongoing revision, but a debate over sanctions cannot be divorced from the debate over definitions of

culpability. The current discussion about Churchill's culpability is part of this essential process. When the academy neglects to police its own members, that function is taken over by popular media. The result is a distracting focus on the sensational and scandalous.

("But Professor, Janie got caught plagiarizing in another class, and she didn't get an F!")

Excuse Number Eight: "It's okay to plagiarize from people you once worked with."

Excuse Number Eight is advanced on Churchill's behalf by scholars who excuse Churchill because some of the victims of his plagiarism: "once worked collaboratively with Professor Churchill" (Gupta et al, 2007).

Number Eight raises the question of the ownership of intellectual property that is produced through collaboration. If Churchill claims part-ownership in the disputed works, then he would not be guilty of plagiarism. He would only be guilty of failure to share credit with his collaborators. This is clearly a lesser offense in academia. It is even a common practice in some research communities, where faculty supervisors routinely claim work performed by graduate students and post-docs as their own. Thus Excuse Number Eight harks back to Excuse Number Four: "But I cited the real authors." According to Number Eight, if Churchill had been more diligent about citing his collaborators, then the charge of plagiarism would vanish.

What degree of contribution to the collaborative effort would Churchill need to make in order to justifiably claim authorship credit without plagiarizing? Once again, the federal regulations are silent on this question.

The "Dam the Dams" group had gone defunct many years before Churchill plagiarized their essay. This raises the question of whether col-

laboration is possible with a non-existent entity. Churchill claims that a person who he mistakenly took to be a member of "Dam the Dams" gave him the original pamphlet, and so Churchill was entitled to make use of the pamphlet in any way he saw fit.

But even if Churchill had been assigned intellectual property rights to the pamphlet in full, he would still have an obligation to share credit with the pamphlet's original authors. The claim here is analogous to a student who purchases a term paper online, and then argues that she does not need to credit the original author because she owns the copyright. The CU Investigative Committee found that Churchill did have an obligation to fully credit the original "Dam the Dams" authors, and found him guilty of plagiarism.

Churchill did collaborate with Fay Cohen, editing a published collection that contained Cohen's essay. Professor Cohen strenuously objected to Churchill's initial edits of her essay. When Churchill requested Cohen's essay for the second collection, she refused him permission. Having collaborated with Cohen once, Churchill would surely still retain his rights in the essay produced during that collaboration, even though the collaboration had ceased. The issue here is whether editing a collection of essays written by other authors would give Churchill the right to reuse those essays without permission. However, since Churchill acknowledges that Cohen's essay was indeed plagiarized after she denied permission to republish, that question is mooted. Thus a determination of Churchill's culpability in plagiarizing Cohen now turns on how convincing you find his Excuse Number Two—that he only "rewrote" Cohen's essay, and that some unknown dude must have plagiarized it.

("But Professor, it was okay for me to plagiarize Janie's term paper because she and I once worked together on a project on the same topic!")

Excuse Number Nine: "I, like, did it on behalf of 'The Movement,' man."

Churchill's Excuse Number Nine is that some of his plagiarism was published in venues that he sees as: "explicitly political. 'Movement work,' so to speak. And the rules in that arena are very different than they are in academia, or even in the realm of commercial publishing" (Frank, 2005).

Churchill appears to have borrowed this line of argument from one of his defenders, CU Professor Tom Mayer (2005):

The Dam the Dams group, from which Churchill supposedly plagiarized, was part of a broad new left movement for social change, a movement in which I also participated. Movement people did not conceive the world in terms of property rights, nor were they obsessed with using publications to chalk up status points. Thus the ethics of citation within the new left movement differed substantially from standard academic protocol.

Mayer's point is that there are certain circumstances, such as in "The Movement," where you can freely appropriate other people's work without meeting the definition of plagiarism. Are there such circumstances available to faculty at a research university? The federal regulations on research misconduct do not specify a circumstance in which it is permissible to appropriate another person's work without giving credit.

What if a professor were to segregate his "Movement" writings from the work he produces to fulfill his job requirements? Would he then be free to ignore the accepted attribution standards of his research community, as long as he were not publishing for the benefit of that research community? This is an ethical question that has yet to be fully debated. One strategic problem would be determining how to distinguish be-

tween "Movement" writings and scholarly writings. This is particularly problematic in Churchill's case. Churchill was hired because of his notoriety as a polemicist in the arena of American Indian ethnic nationalism. Also, the university believed Churchill's dubious claim that he was an Indian himself, and hired him under a diversity program. Churchill was then tenured without serving the usual probationary period, even though he lacks the requisite academic credentials.

Given that Churchill was hired primarily for his public image as an American Indian agitator, rather than for his scholarly accomplishments, is it fair to hold him to scholarly standards for ethical research? The CU Investigative Committee took note of this conundrum in its report, observing that Churchill was essentially hired so that his "Movement work" would increase the university's own notoriety.

Still, CU's research misconduct policies apply to all faculty who conduct research, and make no exceptions for diversity hires such as Churchill. Churchill himself did attempt to make the distinction between "Movement work" and research. He divided his CV into separate sections for "Scholarship" and "Polemic." However, Churchill listed his plagiarized publications under "Scholarship," which undermines Excuse Number Nine (Wesson et al, 2006, p. 95).

("But Professor, I'm sure Che Guevara wouldn't care that I plagiarized his writing and turned it in to you under my name. Because I was so doing it out of solidarity with oppressed workers and people of color. Viva la revolucion!")

Excuse Number Ten: "Holding me responsible for my research misconduct constitutes academic double jeopardy."

Churchill brought in Eric Cheyfitz as a defense witness in Churchill's appeal hearing at CU to offer Excuse Number Ten. Cheyfitz, from his

vantage point as an English professor, has managed to discern a hitherto unknown legal doctrine (Pascucci, 2007):

Once a university has reviewed your work and then [to] suddenly charge you with research misconduct ... is the academic version of double jeopardy.

Cheyfitz has yet to disclose the hidden authority that forbids a university from charging a professor with research misconduct if said professor is tenured. The federal regulations governing research misconduct fail to mention that tenure constitutes a free pass against plagiarism charges.

Is there an argument to be made here on the basis of elementary fairness, if nothing else? It would seem unfair to promote a professor for a body of work, and then fire him for the same body of work. However, that argument from fairness assumes that the university was aware of the misconduct issues when it conducted the tenure review. If the misconduct had not come to light during tenure review, or if the misconduct postdated the tenure review, then Excuse Number Ten fails not only on legal grounds, but also fails in terms of an informal appeal to fairness. In Churchill's case, both exceptions to Excuse Number Ten are in place. The university did not have knowledge of Churchill's research misconduct at the time of his tenure review, and Churchill continued to engage in misconduct after being tenured.

("But Professor, you didn't realize that I plagiarized Janie's term paper until the second time I turned it in to you. That's academic double jeopardy!")

Excuse Number Eleven: "I never made any profit from 'rewriting' other people's work."

Eric Cheyfitz also voiced Excuse Number Eleven in Churchill's defense. Having totally reconceptualized the doctrine of double jeopardy, Cheyfitz now undertakes to do the same for plagiarism. Cheyfitz insists that: "You can't call

something plagiarism unless you can tell there was intent to defraud or intent to gain" (Pascucci, 2007). According to Cheyfitz's logic, if Churchill managed to successfully cover up his intent to defraud or gain, you lack the evidentiary basis to label his actions as plagiarism, even if he did plagiarize. Cheyfitz specifies a new type of plagiary, in which the seriousness of the offense depends not on the offense itself, but instead on the amount of evidence for the perpetrator's intent. For Cheyfitz, if the perpetrator is sufficiently crafty in hiding his intent to gain, then you can't accuse him of plagiarism, even if the evidence of his plagiarism itself is abundant. Cheyfitz's new conception of plagiary is totally unconcerned with any harm that may fall to the victim of the plagiarism, or to the scholarly record.

Cheyfitz asks: "Why would he do that intentionally? To make a lot of money? I don't see him selling the movie rights to these essays" (Dodge, 2007). While Churchill may not be making movie money, there is little doubt that he did intend to gain from his serial plagiarism. He was hired and promoted on the basis of his claimed publications. He garnered paid speaking engagements on the basis of his publications. He earned monetary profits on his books. He assigned his own books for the courses he taught, and sold the books to students out of his office, bypassing the campus bookstore.

("But Professor, when I 'rewrote' Janie's term paper, I had no intent to gain anything, other than an undeserved 'A' in your class!")

Excuse Number Twelve: "Holding me responsible for my plagiarism violates my right to free speech!"

Churchill complains that CU began its research misconduct investigation only after people were outraged at Churchill's insults to the 9/11 victims, when he submitted that they were loathsome Nazis—"little Eichmanns"—who deserved what they got when the towers fell. According to

Churchill, the university's investigation is merely "pretextual"; that is, they can't fire a tenured professor for being merely obnoxious, and so they are using the research misconduct charges as a "pretext" (Churchill, 2007).

Churchill's Number Twelve is the one that has garnered him the most sympathy by far. Few observers would want a university or any other institution to fire people on pretextual charges. Thus an evaluation of Excuse Number Twelve must also consider Excuse Number Seven: "But other people have gotten away with plagiarism!" If the University of Colorado or another "relevant research community" did routinely apply lesser sanctions to plagiarists, then that would constitute evidence that Churchill is being fired for more than his plagiarism (and his fabrication and falsification). It would be evidence of a pretextual sacking.

To bolster his Excuse Number Twelve, Churchill has raised examples of leftist academics who were fired with apparent political motivations, and raised examples of rightist academics who received lesser sanctions for their research misconduct (Frank, 2005). Churchill argues that any sanctions that CU imposes on him are tainted by political bias. Churchill's argument is persuasive only to the extent that you are willing to trust Churchill's self-serving, anecdotal approach to sample selection, which excludes all cases that contradict his hypothesis.

While Churchill's defense is unconvincing, it nonetheless invokes the most important principle at stake in the Churchill controversy, and the one that garners the most concern from other academics. Churchill and his supporters argue that the academy should protect the free speech rights of people from all different perspectives—even from people who indict terror victims as equivalent to Nazis. While such support for politically unpopular free speech is admirable in principle, the logical outcome of protecting outrageous professors from political persecution by

immunizing them from research misconduct investigations is problematic. Outrageous speech would become a shield that permits a professor to commit research misconduct without fear of sanction.

("But Professor, certainly any student as deliberately offensive as I am must be automatically inoculated against all charges of plagiarism!")

In order to make certain that he really is abhorrent enough to get the free pass on his research misconduct, Churchill added a few more choice words about the 9/11 victims in a speech last year (Crowell, 2006):

You do remember the incident which the terrorists overpowered the stewardess on the aircraft and tweezed her eyebrows with his tweezers, until she screamingly submitted to fly the plane into a building. Remember that one? Tweezers. Tweezed into submission.

The challenge for the University of Colorado has been to isolate Churchill's political speech from his research misconduct, and treat the two domains separately. CU holds that the principle of academic freedom preserves Churchill's right to mock the murder of the 9/11 flight attendants. CU draws the line, meanwhile, at research misconduct.

But if CU is not punishing Churchill for his speech, then why did CU never charge him with research misconduct until after his essay caused a media firestorm? Doesn't the timing of CU's investigation indicate its pretextual nature?

While Churchill's copious manifestations of personal corruption have been known in Indian Studies and Indian activist circles for years, it seems that no one ever filed a formal complaint of plagiarism with CU. In early 2005, during the brouhaha over Churchill's 9/11 commentary, the Colorado media rounded up various obscure exposés by Churchill's academic critics and

threw them in the university's face. The university was then compelled to investigate.

Churchill and his defenders argue that it was too late. Turning the principle of probable cause backwards, Churchill holds that now that the university has evidence of his misconduct in hand, it cannot investigate. If the university wanted to investigate, it should have done so *before* the evidence of his misconduct came to its attention. According to this line of argument, Churchill's insults to the 9/11 victims have effectively inoculated him from ever being held responsible for his research misconduct, whether committed in the past, present, or future.

Churchill has not explicitly held that there should be a statute of limitations on investigating research misconduct, but his line of argument here does raise that question. Should there be a statute of limitations on research misconduct, and if so, what would the results of such limitations be? Would scholars only be made immune to sanctions if their misconduct is sufficiently ancient? If so, how old must the offense be before the miscreant gets a free pass? What if the miscreant scholar caught in the act after the statute of limitations expires then refuses to acknowledge his culpability—as Churchill has done? If so, can he continue to request raises and promotions based on his illegitimate accomplishments? Can he continue to cite his own illegitimate publications? The proponents of Excuse Number Twelve are silent on these issues. Instead, they focus on the potential "chilling effect" on free speech that might arise from CU's investigation of Churchill so soon after the media firestorm.

Churchill's own principled support for free speech appears to end at the tip of his nose. He has been prosecuted in federal court for obstructing Italian-American pensioners from marching in Columbus Day parades. Churchill holds that his Ninth Amendment right to be offended by a Columbus Day parade somehow supersedes the elderly paraders' First Amendment right to gather and celebrate.

Churchill and his supporters have filed spurious research misconduct complaints as retaliation against at least six professors who have criticized Churchill's research misconduct (myself included). Churchill even demanded that my university remove evidence of his research misconduct from my personal web page.

Nonetheless, I still support Churchill's First Amendment rights—even if he doesn't return the favor—because the principle of academic freedom is crucial for a well-functioning academy. Thus Excuse Number Twelve appears to be the sole source of what support Churchill still has remaining within the academy. Of Churchill's faculty colleagues at CU, 199 signed a newspaper ad on his behalf in February 2005 when the scandal broke. By July 2007, Churchill could find only four CU colleagues willing to sign a university grievance protesting his imminent firing. The cause of this dwindling support is the CU community's increasing awareness of the full extent of Churchill's plagiarism, fabrication, and falsification. There may also be distaste for making a free speech martyr out of a man who himself appears to be attempting to intimidate other professors in the CU community into silence, by filing spurious misconduct charges.

Churchill did manage to draw a handful of signatories for an advertisement published in the *New York Times* on April 12, 2007. The ad copy was composed by retired professor Richard Falk, and Reggie Dylan, "a contributing writer for *Revolution* newspaper" (the Communist Party's official organ). Falk and Dylan shamelessly misrepresent the facts and circumstances surrounding the CU faculty committees' investigation into Churchill's research misconduct. Much of their ad criticizes the Iraq War, and argues that Churchill's firing somehow derives from global politics. But the NYT ad does not even attempt to defend Churchill on the issue of plagiarism.

Because surely a man with Twelve Different Excuses must be twelve times as innocent as a man with only one excuse, right? Unfortunately,

Churchill's academic supporters are either unaware of his first eleven Excuses for plagiarism, or don't care. The pro-Churchill petition signers jump past them, and go right to Excuse Number Twelve. Even if you don't buy the first eleven Excuses, that last one just might stick to the wall if Churchill is lucky in his ongoing lawsuit against CU.

("But Professor, you wanted to let Ward Churchill get away with plagiarism! Why not me?")

REFERENCES

- Brown, T. (2006). Did the U.S. Army distribute smallpox blankets to Indians? Fabrication and falsification in Ward Churchill's genocide rhetoric. *Plagiarism* 1 (9): 100-129.
- Churchill, W. (2007, May 28). Ward Churchill response to CU Pres. Hank Brown's recommendation to dismiss. Retrieved July 2007 from <http://insidehighered.com/news/2007/05/29/churchill>
- Crowell, G. (Producer). (2006, July 4). Video footage of Churchill speech at Baltimore's Mid-Atlantic Radical Book Fair. (Available from Grantastic Designs, Inc., Walking Eagle Productions, 180 S. Western Ave., #274, Carpentersville, IL, 60110)
- Dodge, J. (2005, February 10). Churchill call's CU's review 'a hunting expedition.' *Silver and Gold*.
- Dodge, J. (2007, March 29). P&T report slated to go to President Brown next week. *Silver and Gold*.
- Frank, J. (2005, July 18). An Interview with Ward Churchill: Accusations and smears. *Counterpunch*. Retrieved July 2007 from <http://www.counterpunch.org/frank07182005.html>
- Gupta, V., LeCompte, M., Levitt, P., Mayer, T., Perez, E., Yellow Bird, M., Cheyfitz, E., Facio, E., Walter, M., Baca, L., Romero, B. (2007, May 10). *A Filing of Research Misconduct Charges Against the Churchill Investigating Committee*. Retrieved July 2007 from <http://wardchurchill.net>

- Mayer, T. (2005, June 9). The vendetta against Ward Churchill. *Colorado Daily News*.
- Morson, B. and Vaughan, K. (2007, May 19). Churchill defenders' sources questioned: Embattled prof's backers misrepresented writings. *Rocky Mountain News*.
- National Science Foundation. (2002, October 1). Research Misconduct. *Code of Federal Regulations* 45 CFR, § 689.1. Retrieved July 2007 from <http://www.nsf.gov/oig/resmisreg.pdf>
- Paine, J. (2007, June 12). Blog post quoting from leaked University of Colorado Privilege and Tenure Committee report to President Hank Brown, p. 63. Retrieved July 2007 from http://www.pirateballerina.com/archives/archive_2007-m06.php
- Pascucci, M. (2007, March 14). Professor's essay sparks free speech debate, *Cornell Daily Sun*.
- University of Colorado (1998). *Misconduct in Research and Authorship*. Retrieved July 2007 from <https://www.cu.edu/policies/Academic/misconduct.html>
- Vance, E. (2007, May 25). House faults Purdue for research review. *Chronicle of Higher Education*.
- WAME (2007, July 10). *WAME Policy Statements*. Retrieved July 2007 from <http://www.wame.org/resources/policies>
- Wesson, M., Clinton, R. N., Limon, J. E., McIntosh, M. K., Radelet, M. L. (2006, May 9). *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*. Retrieved July 2007 from <http://www.colorado.edu/news/reports/churchill/download/WardChurchillReport.pdf>

NOTES

- ¹ In the interest of full disclosure: In June 2005, Churchill filed a spurious research misconduct complaint against me, because my faculty web page contained evidence of Churchill's fabrication of smallpox blanket genocide against the Mandan Indians in 1837. I published that research in *Plagiarism* in June 2006. My superiors read Churchill's complaint and immediately decided that it did not warrant any response.

Thomas Brown published his analysis of Churchill's fabricated smallpox blanket genocide in *Plagiarism* 2006, "Did the U.S. Army Distribute Smallpox Blankets to Indians? Fabrication and Falsification in Ward Churchill's Genocide Rhetoric."