Ward Churchill Response to the University of Colorado Standing Committee on Research Misconduct

Allegations of "Ethnic Fraud"
May 16, 2005

This is by far the most infuriating allegation, for reasons that could comprise an entire treatise. Due to constraints of time, space and energy, however, I will only summarize a few of the many problems involved in its inclusion in this investigative process.

First, the imposition of this requirement that I "prove" my ethnicity amounts in effect to a bill of attainder, i.e., a law or rule effected with intent to target a single person. To direct such a requirement at me alone, making me the only faculty member, not just on this campus but in the University system who is required to "prove" his ethnic/racial pedigree in order not to be guilty of "research misconduct" for having signified his identity for publication purposes is not only flagrantly racist, but, I believe, flatly illegal, violating, among other things, the most fundamental constitutional requirements of due process and equal protection.

Since the moment I filled out my first application for employment at UCB—which was in 1978, *not* in 1979, as the Interim Chancellor's referral erroneously indicates at page 4—I have identified as an American Indian, and I have done so in compliance both with federal law and with University policy. In 1994, a formal investigation was conducted by the University on the basis of allegations by several individuals that I had had committed "ethnic fraud" by "misrepresenting myself as an American Indian." It was officially determined at that time that these accusations were groundless. Then-Chancellor James Corbridge also opined that such charges constituted inappropriate grounds for University action, in any event. And, as recently as February 12, 2005, Garnet Tatum, Director of UCB's Department of Equal Opportunity and, the last I heard, the individual most responsible for ensuring that the relevant law/policies are adhered to on this campus, was quoted in the *Daily Camera* to the effect that I was fully in line with both.

This, of course, raises two immediate issues. The first is that an investigation into my identity—itself illegitimate for numerous reasons—was already conducted and concluded in my favor. As discussed in more detail in the section entitled "On Malicious Allegations," the charges resulting in the 1994 investigation even emanated from the same sources as are currently being relied upon. Can the University launch an endless number of investigations into the same question? That fact alone makes this inquiry look much more like retaliatory harassment for my political speech than a good faith investigation into alleged misconduct.

Attempting to avoid this problem by reframing institutional policy to question my right to identify myself for purposes of scholarship in the same manner that I am legally entitled to identify for other purposes, including employment, is, to say the least, duplicitous. (And, one might note, raises serious questions about the legitimacy of the University's reporting practices with respect to issues of diversity and affirmative action.) Is the University really willing to take the position that different definitions of race and ethnicity will be applied for different purposes within the University? Who would decide

which standards apply for each "race" or "ethnic group" for which purposes, and how would they do so? And even if such a facially untenable policy were to be adopted, what would legitimize its being applied in an ex post facto manner, as is currently being attempted in my case?

Apparently, however, that is what is happening, and it raises yet another problem—the question of how I would go about "proving" who I am, in the event I were to decide to cooperate in this obscenity. On this score, my attorney, David Lane posed a series of entirely relevant queries to Interim Chancellor DiStefano regarding the standard to be applied almost as soon as I received a copy of his ad hoc committee's "Report on Conclusion of Preliminary Review of Professor Ward Churchill." Among other things, he asked

> Do you wish to use the Nazi standard for racial purity? Adolf Eichmann was required, by law, to determine that one was deemed a Jew if he or she had at least three full Jewish grandparents. Also legally to be regarded a Jew was someone who had two full Jewish grandparents and belonged to the Jewish religious community when the law was promulgated on September 15, 1935, or who joined later, or was married to a Jew then or later, or (looking to the future) who was the offspring of a marriage contracted with a Jew after September 15, 1935, or who was born out of wedlock after July 31, 1936, the offspring of extramarital relations with a Jew.

Are we having fun yet? If not, there here's another possibility.

> Do you wish to employ the standard adopted by the United States government for determining Japanese ancestry in order to qualify for internment in concentration camps during World War II? That was a standard much broader than the Nazi standard… For internment purposes, the "one drop" rule was used wherein anyone who had **any Japanese ancestry** was sent to the camps and had their property stolen by the United States (emphasis original).

Mr. Lane went on to inquire about the "one drop rule" as it was applied to blacks under American slave law, and the "1/32 test" used to define blackness in Louisiana as recently as the 1980s, but there is no purpose to pursue the matter here: Interim Chancellor DiStefano, after forty days, has not deigned to respond. Having set up this requirement for "proof" of my identity, he has defaulted completely on his obligation to clearly define what might comprise the necessary "evidence," thereby leaving you, the Standing Committee on Research Misconduct, to fend for yourselves.

This leaves us with yet another significant problem—that this is being raised as a question of "fraud." As David Lane has pointed out on several occasions, to establish that I have perpetrated a fraud, the University bears the burden of establishing, first, that I am not Indian and, second, that I knew I wasn't and deliberately misrepresented that fact. As discussed below, I meet all of the relevant federal standards of Indian identity, so the University can only claim otherwise if it invents and applies its own standard of "Indianness." (The Interim Chancellor's failure to respond to David Lane's very basic inquiry leads one to believe that perhaps the standard to be applied in this case is "looks like an Indian to a committee of randomly selected academics.") But no standard has yet been articulated. As it would be impossible for me to have falsely claimed to meet a nonexistent standard, it is disingenuous for this committee to even be inquiring into whether I committed the fraud being alleged.

One assumes that, regardless of who "looks like" or "acts like" an Indian to those with no experience in American Indian communities, the standard at issue must conform to applicable federal laws, policies and practices, if not those of the people in question. More outrageous than the Interim Chancellor's role in setting up this bizarre situation has been that of ad hoc committee member and Acting Dean of the Law School David Getches, a purported expert on federal Indian law. He, of all people, should have known —and in my estimation *did* know–where to look in order to obtain such clarity as can be found among the legal criteria defining American Indian identity.

The obvious reference is Felix Cohen's magisterial *Handbook on Federal Indian Law*, several editions of which Getches himself has coedited. I will quote briefly from a copy that I just happen to have near at hand.

> The term "Indian" may be used in an ethnological or in a legal sense. If a person is three-fourths Caucasian and one-fourth Indian, that person would ordinarily not be considered an Indian for ethnological purposes. Yet legally such a person may be an Indian. Racial composition is not always dispositive in determining who are Indians for the purposes of Indian law. In dealing with Indians, the federal government is dealing with the members or descendants of political entities, that is, Indian tribes, not with persons of a particular race… In fact, a person of complete Indian ancestry…may be considered a non-Indian for some legal purposes. Recognizing the diversity included in the definition of an Indian, there is nevertheless some practical value for legal purposes in a definition of Indian as a person meeting two qualifications: (a) that some of the individual's ancestors lived in what is now the United States before its discovery by Europeans, and (b) that the individual is recognized as an Indian by his or her tribe or community.

To have relied on *Cohen's Handbook*, or any of the scores of readily-available official publications that quote or closely paraphrase it, would have immediately foreclosed upon the "issue" of my identity. I am, by legal definition, an Indian.

As Dean Getches is the only federal Indian law expert on either committee, it seems fair to assume that he would be relied upon to provide this Committee with the appropriate background information. However, in the chart labeled "Allegations and Supporting Material" provided me by this Committee, neither Cohen nor any of these official sources are listed. Instead, in what appears to be a deliberate diversion, there is only a single law review article referenced—from amidst *hundreds* of possible selections—one having to do with the teaching of Indian law courses, and outlining the author's preferences as to who should be allowed do so. This provides a decided advantage to those wishing to challenge the validity of my identity by culminating in a "proposed definition of the term 'Indian'" which is much narrower than the current legal definition—yet the author himself also acknowledges that his proposed definition would not "suffice for all purposes, nay not even for law school recruitment and admissions purposes." Indeed, he "confesses" at one point that "a rational general classification of racial and cultural 'Indians' eludes" him. That being true, what possible clarification Dean Getches felt the ad hoc committee or anyone else might glean from the article is a bit mysterious.

We are thus, for better or worse, back to the relative bedrock of federal legal definitions, of which there are at least thirty-three in effect, supplemented by hundreds of additional definitions used by various Indian nations. Fortunately, this welter groups itself fairly naturally into four basic categories, all of them consistent with Cohen's more general formulation. These are: 1) self-identification, 2) community recognition, 3) tribal

enrollment, and 4) certification of degree of Indian blood. To "qualify" as an American Indian, a person does not have to meet all four criteria; fulfilling any one of them is sufficient for general identification purposes (e.g., census and equal opportunity counts). Based on information already in the public domain, I will briefly demonstrate how it is that I meet not one but *three* of the four basic criteria (and could meet the fourth, if I entertained the least desire to do so).

1) Self-identification. It has become quite popular in certain circles to assert that I "invented" my identity as an American Indian, variously to "sell my art," "land a job" or "peddle my books." If so, I have no recollection of it, but I must have been an extraordinarily precocious child, blessed with an uncanny ability to foresee the enactment of Affirmative Action legislation decades in the future. While those pushing the "invention" story invariably claim to "know" that it occurred at some point during the mid-to-late 1970s, "high school classmates recall [that] Churchill mentioned having Indian heritage in the 1960s." That would have been the *early* '60s, because I graduated in 1965. Actually, since I went to school with the same group of 55 classmates in the small town of Elmwood, Illinois, from sixth grade on, their recollections could be dated from that point. I was in sixth grade in 1958-59, and was eleven years old. The truth is that I was brought up from as far back into my childhood as I can remember—two years of age—knowing that I was of American Indian descent. That was and is my family's understanding of itself. Even the uncle quoted in the *Rocky Mountain News* in March as being unhappy about my choosing to identify publicly as I do acknowledged in the same sentence that we *do* have native ancestry. Cohen, of course, listed that "some of the individuals ancestors lived in what is now the United States before its discovery by Europeans" as his first criterion. Hence, my self-identification as an American Indian is and has always been valid.

2) Community recognition. I'm not sure how anyone who was present at my speech in the Glenn Miller ballroom on February 8, 2005, saw it on C-Span, or even read about it/saw the photo spreads in the local newspapers, could have serious questions as to whether I'm recognized as being Indian by the Denver Indian community. (Unfortunately in the long history of the imposition of identity on American Indians, there's nothing new about three white guys operating out of Regent Hall deciding that they know more about "who's Indian" than do the Indians themselves, but that's a long story.) I've lived in this area for more than thirty years now, and have been a functioning member of the Indian community for the entire time. Any doubts that I was accepted by that community *as an Indian* should have been dispelled in 1994, when several "outsiders" claimed publicly that I wasn't. The response from the community threatened to overwhelm the letters section of the *Colorado Daily* for several weeks. Going back to Cohen: "that the individual is recognized as an Indian by his or her…community" is one way of meeting his second criterion.

3) *Tribal enrollment.* Largely as a result of unrelenting political/media pressure placed on this small and unoffending people over the past ninety days, the question of my enrollment status with the United Keetoowah Band of Cherokee Indians (UKB) has been distorted almost beyond belief. Some say that "the tribe's [*sic*] principal chief told CU that Churchill is an honorary associate member, not an enrolled member." David Yeagley, writing for David Horowitz's factually-impaired *Frontpage*, claims that "in 1996, all such memberships were revoked, and the records were destroyed. This,

according to Keetoowah tribal employee Marilyn Craig." Craig, if she actually said that, is completely contradicted by Ernestine Barry, a member of the UKB Membership Committee, who is quoted as saying that the Band "no longer offers associate memberships, although it didn't revoke any existing membership," including mine. One of my major detractors has even announced—triumphantly—that she's proven that I'm not enrolled in the Cherokee Nation of Oklahoma (CNO), which I've never in my life claimed to be.

Here are the facts. I was enrolled as an Associate Member of the UKB in May of 1994, after having been asked by Associate Member Shelley Davis (now Shelley Levine) to apply. This was done with the knowledge of then-Principal Chief John Ross. Contrary to recent statements by certain Band officials, apparently including Ross himself, I was issued a Roll Number (a copy of my Band card is attached). An Associate Membership is *not* synonymous with an Honorary Membership in the UKB. Chief Ross explained it at the time:

Ross said the US President [Clinton] was given "honorary" membership. *Associate Membership [is] for those of Cherokee descent* who cannot prove blood quantum or do not have one-quarter or more degree of Indian blood, a requirement for full membership in the band (emphasis added).

Hence, recent statements to the effect that I was never an "actual" member of the UKB and/or that it was not required that my genealogy be confirmed as a key ingredient in the enrollment process are simply false. Indeed, when objections were raised regarding my enrollment before the Band Council by a CNO member named David Cornsilk, who asserted that I was a "white man masquerading as an Indian," the UKB Membership Committee went back and vetted my genealogy for a second time. My Cherokee lineage was therefore confirmed by the designated Band genealogist not once but *twice*. Only *then* was I assigned a Roll Number and issued my Band Card (which remains valid as of May 15, 2005). Returning to Cohen one more time: "that the individual is recognized as an Indian by his or her tribe" is the other way of satisfying his second criterion.

4) Certification of Degree of Indian Blood. I have, based upon my understanding of my family history, always identified myself as being "one-sixteenth Indian by descent." After my enrollment in the UKB, the elder who served as Band genealogist at the time informed me that his own calculations indicated that my "blood quantum" might be "as high as three-sixteenths," and inquired as to whether I'd like him to do the additional work necessary to confirm my quantum—as opposed to my lineage—and qualify me for the issuance of a federal Certification of Degree of Indian Blood (CDIB). I thanked him politely and declined, saying that confirmation of my Cherokee ancestry was all I desired. What I didn't say to him is that I can imagine no more repugnant practice than that of the government's issuing "pedigree slips" to human beings. Actually, there *is* something worse, in my opinion, and that is for *anyone* to find the practice in the least acceptable. Let's just say that I have a strong aversion to the stench of both nazism and apartheid.

One other gross inaccuracy in the Interim Chancellor's referral requires correction before I close this section of my response. At page 4, he states that, "At times [Churchill] has claimed ancestry in three different tribes." Since the Interim Chancellor cites nothing to support this assertion, and by way of illustration offers quotes from me "claiming"

ancestry among only two peoples—Cherokee on my mother's side, Creek on my father's —it is difficult to know what he means. Perhaps he is under the misimpression that Cherokee and Keetoowah Cherokee are two different peoples, but, if so, he is simply demonstrating the depth of his ignorance. It is also possible that he is under the misimpression that because I once appended the term "Métis" to my tribal affiliation, I was thereby claiming ancestry among the Canadian people known by that name. If so, he is mistaken. I was using the term in the sense of its literal meaning, which is "to be of mixed race and culture." It was a gesture towards "truth in advertising," no more.

In any event, to conclude, I have taken the "nonadversarial" approach of sharing information with the Committee that is, in my view, well beyond its legitimate prerogative to request. I've done so in hopes that you can be in some sense comfortable with what I'm going to say next. That is that, having "shared," I wish to return to my original position, as articulated in my April 24 communication to Dr. Rosse. I no more want the Standing Committee on Research Misconduct to issue a statement holding that I *am* an American Indian than I am prepared to accept a conclusion that I am *not*. This is because it is not your place, that of any other University committee, or the institution itself, to decide one way or the other. As I stated at the outset of our interaction, your rendering of even the most favorable "verdict" in my case would establish a precedent that I consider to be extraordinarily dangerous. The *only* conclusion I'm willing to accept on this particular allegation is that it is simply inappropriate for the University to "investigate" such matters.

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Addendum to "Ethnic Fraud" Response:
May 23, 2005

As you may be aware, since I submitted my response to this Committee on May 16, there has been another flurry of media coverage regarding the position(s) of the United Keetoowah Band of Cherokee Indians (UKB). Since the news coverage has, as usual, been garbled, I attach for your files (i) a statement of the UKB which I became aware of on May 17; (ii) my response of May 18; and (iii) the UKB's revised statement of May 19, 2005.

It was entirely predictable, given the media's relentless quest to discredit me, that inclusion of this "allegation" in the current inquiry would generate intense pressure on the UKB.
And, indeed, the UKB Band office has been barraged by reporters who were not satisfied with the UKB's initial–and honest–statements that I was an enrolled Associate Member. A small and already understaffed office, they have also been subjected to an organized e-mail campaign of harassment, apparently receiving thousands of e-mails of the sort the Ethnic Studies Department and I have received since this "investigation" began. The ability of the Band office to provide services to the community, indeed its ability to function at all, has been severely compromised and, undoubtedly, they have been led to fear that their federal recognition–and, therefore, funding– will be jeopardized as a result of this

"controversy."

Thus, it should come as no surprise that their initial statement was an obvious attempt to say whatever was necessary to get out from under this pressure. They declared my statements regarding membership to be "fraudulent" and condemned my remarks regarding 9/11. This forced me to respond with evidence that their attempt to thus rewrite history was itself fraudulent and, in light of that, they were forced to issue a subsequent statement which retracted virtually all of their initial claims. As you will see, their second statement acknowledges that I was, indeed, enrolled as an Associate Member, acknowledges that such membership requires evidence of genealogy, no longer makes any claim that such membership was rescinded, and no longer makes any claim of fraud on my part. They still "fudge" on the relationship between honorary and associate membership, but I have clear evidence that these were distinct classifications.

So, we are back to the fact that my representation of my status was, and always has been, accurate. The media and the University will now undoubtedly continue with "business as usual," oblivious to the very concrete and, perhaps, irreparable harm done to the Band and to my relationship with it which results directly from the University's persistence in its utterly unconstitutional investigation into my ethnic identity.