
Today's News

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Judge Rejects Ward Churchill's Plea for Reinstatement, Vacates Verdict in His Favor

By [PETER SCHMIDT](#)

A state court judge on Tuesday not only denied Ward Churchill everything he sought in his long-running battle with the University of Colorado system, but also negated the one victory the controversial scholar had won so far: a jury verdict holding that system officials had violated his First Amendment rights by firing him from a job as a tenured ethnic-studies professor in response to statements he had made.

Having presided over the four-week trial that led to the jury's April 2 decision that the university had illegally fired Mr. Churchill for academic misconduct, Judge Larry J. Naves decided to vacate the jury verdict on the grounds that the university officials named in his lawsuit were immune from such litigation.

Moreover, Judge Naves held, he could not appropriately order Mr. Churchill's reinstatement on the flagship campus, in Boulder, because the jury had found the professor undeserving of any significant compensation for damages—as reflected by its awarding him just \$1 for economic losses—and because the university system's lawyers had successfully made the case that returning Mr. Churchill to his old job would damage the university, its faculty members, and its students.

"I conclude that reinstating Professor Churchill would entangle the judiciary excessively in matters that are more appropriate for academic professionals," Judge Naves wrote.

In briefs and hearings leading up to his decision, Judge Naves said, he received credible evidence that Mr. Churchill's reinstatement would "create the perception in the broader academic community that the Department of Ethnic Studies tolerates research misconduct." Such a perception, the judge said, will very likely make it harder for the department to attract and retain new faculty members. "In addition," he wrote, "this negative perception has great potential to hinder students graduating from the Department of Ethnic Studies in their efforts to obtain placement in graduate programs."

On the question of whether the university would have owed Mr. Churchill pay in lieu of reinstatement if the jury's verdict had been upheld, Judge Naves refused to grant the professor even that much, saying that Mr. Churchill had not made a serious effort to find another job since his dismissal, in 2007.

The judge's ruling was a major setback for Mr. Churchill, who had been investigated for academic misconduct, found guilty of it by a series of faculty panels, and fired by the Colorado Board of Regents at a time when the university system was under tremendous pressure to fire him as a result of the uproar over an essay in which he had argued that the September 11, 2001, terrorist attacks were provoked by the United States' actions abroad.

Mr. Churchill's lawyer, David A. Lane, responded to Judge Naves's ruling by announcing plans to appeal. In a statement e-mailed to *The Chronicle*, the lawyer said, "The message in this ruling is that if your First Amendment rights are violated by the University of Colorado, don't look to Denver District Court for justice, because justice did not prevail in this instance."

Several university officials issued statements heralding the judge's decision. Bruce D. Benson, president of the University of Colorado system, said, "This ruling recognizes that the regents have to make important and difficult decisions" that should not be influenced by "the threat of litigation." The regents' chairman, Steve Bosley, said the ruling "affirms that in dismissing Professor Churchill, the Board of Regents did the right thing, in the right way, for the right reasons."

Philip P. DiStefano, chancellor of the Boulder campus, called the decision "a victory for faculty governance" in that it "reinforces the idea that faculty set the standard for academic integrity on our campus and all campuses across the country."

'Fruit of the Poisoned Tree'

Some prominent advocates of academic freedom said they were troubled by the judge's decision. Cary Nelson, president of the American Association of University Professors, issued a statement saying the "chilling effect of the judge's views could be substantial."

"The jury recognized that the university president's decision to fire Churchill was fruit of the poisoned tree—the public outrage over Churchill's extramural speech," Mr. Nelson said. In light of the jury's verdict, "it was the judge's responsibility to honor the jury's decision by reinstating him," he said. "The notion that Churchill was not damaged by his termination is absurd."

Greg Lukianoff, president of the Philadelphia-based Foundation for Individual Rights in Education, an advocacy group, said he could see how the finding of academic misconduct by the university's Privilege and Tenure Committee, and the jury's decision to award Mr. Churchill a nominal amount, had led to Judge Naves's ruling. Nonetheless, he called the ruling "a very odd, troubling, and hopefully entirely unique decision."

"No matter how people feel about Ward Churchill," Mr. Lukianoff said, "they should recognize that ultimately what the court is saying is that a professor was fired in violation of his free-speech rights, yet there is nothing to be done about it."

But Ada Meloy, general counsel to the American Council on Education, called the ruling "a great development for decisions made within higher education institutions," which "clearly understood the importance of shared governance within the university and the necessity that faculty members' judgments of their peers be respected."

Peter W. Wood, president of the National Association of Scholars, praised the ruling as reflecting a careful consideration of both the law and the circumstances of the case. "I am pleased," he said. "I think the decision is for the best."

Martin J. Katz, interim dean of the University of Denver's law school and an expert on employment law, said the ruling resembled many such decisions in that the judge offered "a number of alternative grounds" for reaching his overall conclusion, probably based on the assumption that his decision would be appealed.

The university had argued in briefs filed at the outset that its officials were immune from such litigation, but Judge Naves had put off that issue until after the trial. In accepting the university's argument in Tuesday's ruling, he characterized the regents as a "quasi-judicial" body and, as such, entitled to immunity from litigation for a decision reached after granting Mr. Churchill extensive due process.

"In this case, it is clear that the Board of Regents performed a quasi-judicial function and acted in a quasi-judicial capacity when it heard Professor Churchill's case and terminated his employment," Judge Naves wrote. It had based its decision, he noted, on a unanimous finding by the Privilege and Tenure Committee "that Professor Churchill engaged in 'conduct below the minimum standards of professional integrity,' which is one of the permissible grounds for dismissal."

His ruling granted quasi-judicial immunity to the officials involved in Mr. Churchill's decision and, on the basis of that grant, vacated the jury's verdict.

In holding that he could not appropriately have ordered Mr. Churchill's reinstatement, the judge said he could not issue an order inconsistent with the jury's "implicit" finding "that Professor Churchill has suffered no actual damages that an award of reinstatement would prospectively remedy."

"The jury," Judge Naves said, "determined only that the University did not prove that a majority of the Regents would have voted to dismiss Professor Churchill in the absence of his political speech. That is a very different question than whether Professor Churchill engaged in research misconduct, which remains the province of the University's faculty."

Plaintiff's Own Words

In several instances, the judge used Mr. Churchill's and his lawyers' words against him. Noting that the professor had said he could not accept the tenure committee's finding that he had violated appropriate standards of scholarship, Judge Naves said Mr. Churchill would probably dispute future judgments of his scholarship as well. Given the warning by his lawyer after the jury's verdict that university administrators "very well could end up in court" fighting charges of retaliation against Mr. Churchill "if they look at him cross-eyed," future litigation was likely, Judge Naves said.

The judge also said Mr. Churchill also had probably compromised his ability to work with campus employees with remarks such as a reference to the university as "a not very glorified vo-tech" and to the administrators and other witnesses who had testified against him during the trial as "a string of unprincipled liars."

Mr. Nelson, of the AAUP, said the judge's conclusion that Mr. Churchill could not be an effective employee after making such remarks "shows remarkable ignorance about what faculty members conventionally say about administrators and their impact."

In vacating the jury's verdict, the judge did not specify whether Mr. Churchill was still entitled to the dollar in damages.

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