

NEWSLETTER

Colorado State University Chapter
American Association of University Professors (AAUP)

*Academic Freedom for a Free Society Vol. 2:3 Summer
Supplement (2009)*

SUMMER SOCIAL:

- *AAUP invites members to drop by AVO's from 4:30-6:30 p.m., Wednesday, July 15, for beer and conversation. Please come and bring a colleague. Beer is on Steve from 4:30-5:30 p.m.*

Local Affairs:

- **Arbitration initiative:** AAUP members Ray Hogler, Tim Gallagher, and Steve Mumme joined CSU Faculty Council President Richard Eykholt, incoming BOG faculty board representative Dan Turk, Associate Provost Alex Bernasek, and lead University Counsel Mike Nosler for a discussion of the University Counsel's views on the legality of pursuing an arbitration option under Colorado State law. Mike Nosler informed AAUP that his reading of the Attorney General's opinion on arbitration would prevent him from recommending such a measure to the Board should Faculty Council choose to endorse such a policy. AAUP's Ray Hogler respectfully disagreed with Nosler's position, pointing to Colorado State Supreme Court ruling to support the Chapter's argument that arbitration is legal and reasonable in the context of Colorado State law. After discussion, all parties agreed that a general discussion of the arbitration option in grievance reform should be taken up as a Faculty Council forum this fall. Stay posted for an announcement of this event. The AAUP thanks Richard Eykholt and Mike Nosler for their willingness to meet with AAUP on this issue.

- **Contingent (temporary) Faculty—Sue Doe on pending initiatives and Campus Equity Week. Dear All--**

I'm interested in your responses to this development. Several years ago our contingent faculty grassroots organizing group invited AFT to come speak with us. We were intrigued by their crash course in organizing, including their desire to create a full faculty union inclusive of tenure-line and contingent faculty alike. However, in time we hit the pause button

Feature Article

*Laura Connolly
University of Northern Colorado
Colorado State Conference Co-President*

**This issue features Laura Connolly's report on the National AAUP Conference last month in Washington, D.C.*

1. Capitol Hill Day

I met with the legislative assistants for five elected officials: Senators Bennet and Udall; and Representatives Polis, Salazar, and Markey. This was reasonably successful but I was left again with the same feeling I had after the last time I did this: our time is probably better spent focusing on policy at the state level. There just isn't that much that matters at the Federal level for higher ed – though we did talk about a couple of important issues. In particular, I pressed the importance of a Federal DREAM Act (this is the legislation that would require states to offer in-state tuition to all students who attend a state high for at least three years and who graduated from high school in that state – even if they are undocumented immigrants). We also talked a bit about No Child Left Behind – but right now, the focus at the federal level is on the economy and health care reform. Almost everyone told me there wouldn't be any movement on either of the other issues this year. So...though I continued to mention these other things, I started emphasizing how many of our contingent

because we did not think there was tenure-line support for the idea. Do I gather that today there may be more interest in the idea among senior faculty than we found back in 2004?

Relatedly, the CLA Adjunct Faculty Committee, on which several contingent faculty as well as I, Steve Shulman, and Pattie Cowell serve--and this is different from the Provost's Task Force--is planning Campus Equity Week, which is the last week of October. We have secured space in the library for an "exhibit" and have a reservation for plaza space for our usual information campaign, but we would like to do something more this year . . . and with AAUP support. We have two ideas that we would appreciate getting your feedback on: 1) a regional roundtable where we could bring together a cross-section of faculty and administrators for lunch and a discussion and 2) bringing a speaker to campus. As for speakers, an ideal person would be Eileen Schell (Syracuse U) whose Gypsy Scholars and Mother Teachers (2000) is among the most important theorizations of the adjunct faculty trend. Regarding a regional conference, we could certainly get folks from CU to come up here, I'm sure, as well as well as folks from UCCS (U of CO, Colorado Springs). I'm sure there are others who would be interested once a few had committed.

Do either of these ideas sound interesting to you? Do you have other ideas? Would the chapter be willing to help . . . in terms of labor and/or small amounts of funding?

Finally, I am happy to report that the Provost's Task Force Survey of Non Tenure Track Faculty, completed June 7, had a return rate of over 60%, with CLA and CVMBS responding at rates closer to 80%. I will be analyzing the data from the survey as I'm able this summer and I hope to produce a report by early fall semester.

- **Faculty Discipline.** Political Science professor Dimitris Stevis, a long-time AAUP member, has accepted a post on the CSU Faculty Council Discipline Committee. Dimitris deserves a wholehearted thanks from our AAUP. We need more members on key Faculty Council committees.
- **New Faculty Orientation.** AAUP will again have a desk at new faculty orientation, August 18, noon till 3 pm. Please consider

faculty do not have access to health care and how it would be good to have a provision in a health care reform bill that would address this. Most of the staffers were surprised to hear this was an issue for faculty – they have heard about problems in service and retail of people working two or more part-time jobs and therefore not having access to benefits, but didn't realize it affected a lot of faculty members too. So, I think that was a good message to get across.

2. *State Lobbying Meeting (sponsored by the Assembly of State Conferences)*

My colleague from UNC, Anne Toewe (who is VP of our Chapter) attended the meetings as well. We both went to the meeting on state lobbying, where people involved in doing this stuff shared ideas, experiences, etc. We got some good ideas there that I hope to tell you all about in person soon. One thing I took away from that was the thought that we might want to consider re-instating our Legislative Breakfast or do something else of that kind. A state-level Capitol Hill Day might be a good idea – or, if we can find the resources (both time and money) to have another research showcase luncheon or reception for legislators, I think that would be a really good idea. We should talk about this soon. I'd like to tie in the presentation of the Friend of Higher Education Award with that as well (we're having trouble connecting with Sen. Romer to schedule a presentation for this year). We need more visibility as well as giving legislators a chance to see the valuable work that faculty do.

3. *ASC*

The Assembly of State Conferences had two meetings – one an informational meeting for Presidents and Executive Directors of Conferences and the other a

joining Steve in this endeavor. See contact below.

State Conference/Around the State:

AAUP State Executive Committee: The State Conference Executive Committee will be meeting in August. Please forward your concerns to Steve Mumme and if you wish to attend please let Steve know.

Ward Churchill. As many of you already know, Judge Naves on Monday, July 6, overturned the jury finding that CU violated Ward Churchill's academic freedom in terminating his employment. Newspaper reports are attached below. This is a troubling opinion for various reasons, not the least because:

- *Naves' claims the CU Board of Regents enjoys quasi-judicial status exempting it from civil lawsuits, a claim which upheld would severely limit judicial remedies for state university professors.*
- *Naves appears to uphold the integrity of the CU academic integrity review process in Churchill's case, a process that has been effectively impeached by the CU AAUP Chapter and other nationally respected scholars.*
- *Naves appears to uphold the CU Administration's dismissal decision despite the fact it departs from AAUP good practices for remedies related to academic integrity.*
- *Naves' seemingly ignores the important academic freedom dimension of the case on which the jury keyed and which cannot be easily separated from the academic integrity elements of the case.*
- *The National AAUP has indicated it may become involved in this case in view of its broader procedural implications.*

AAUP Chapter contact:

Steve Mumme: smumme@colostate.edu

Phone: 970-491-7428 campus

Phone: 970-472-1322 home

ADDENDA: Press Reports on Ward Churchill

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

business meeting. I found the informational meeting more helpful – my big take-away from that one is how much our conference does with so few resources. Many state conferences (mostly those with a lot of collective bargaining chapters) have paid staff, including an Executive Director. We probably need three times as many members to even consider something like that (but it's a dream...). Let's all work on membership drives – and let me know what the Conference can do to help. I could run a workshop for those who might be interested.

Elections for new officers were held at the business meeting and the rest of the meeting was involved in presenting awards. I know awards are important and can be inspiring but there were so many, I found myself wishing I could sneak out early... The one award I wanted to see was the Tacey Award, which is "presented to an individual for outstanding service to a conference over a number of years." I had nominated Myron for this award, so I was wondering who could possibly have been more deserving! The winner was Lynn Tatum, who is president of the Texas Conference. I actually ended up having lunch with him the following day and he really has done a lot for his conference and is a really nice guy to boot. Not sure it is MORE than Myron has done but he was obviously a good selection too. Hopefully we'll get Myron in there next time!

4. Annual Meeting

The Annual Meeting was pretty straightforward this year. There wasn't much controversial on the agenda and I'm very happy to report that National seems to have gotten its act together. The treasurer's report looked good (not only is the organization on budget but looks like they might even come in under budget this

By [PETER SCHMIDT Chronicle of Higher Education](#)

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

year). The votes for censure and removal of censure were pretty easy as well – only one (to allow committee A to remove censure at Tulane once their administration follows through with steps proposed by a faculty committee at Tulane) generated a fair amount of discussion. In addition, I was very impressed with Gary Rhoades and, as mentioned above, I think he is very good for the organization. He is really focused on making sure the office is managed efficiently as well as working on ways to increase membership and support contingent faculty. There are two main proposals that were discussed in detail that we, as a conference, should pay attention to and weigh in on. The first is a proposal to restructure dues and the second suggests moving to all electronic elections with the option for state conferences to participate for free – here are the details:

- **Dues restructuring**

There are three objectives to this proposal, To quote the materials handed out, these are: “(1) to enable the association to expand membership; (2) to simplify and make the processes of dues collection from CB [Collective Bargaining] chapters and of dues disbursement to state conferences fairer; and (3) to ensure that within a small margin of error CB chapters will pay the dues they now pay, state conferences will receive what they are now due on a more timely, regular basis, and overall dues revenues from advocacy settings will remain basically the same.” They kept saying at the meetings that there are “over 600” different dues categories right now. While I tried to figure out the math on that (I

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

think it must be a bit of an exaggeration), I do agree that the current structure is confusing. One of the most important changes is that the new proposal will have a progressive structure, with those with higher incomes paying higher dues. While this is already in place to some extent – for "entrants" and part-time faculty – this would ensure that ALL members pay dues based on their incomes. The belief is that this will encourage more faculty to join and to renew their memberships. As an economist, I believe this is possible – many faculty have expressed surprise and dismay to me about the level of national dues – I think it would be perceived as more fair under the new system (even by those who would not end up paying lower dues, or may even pay more).

The proposal was not voted on this time – the plan is to gather more data to determine how best to implement this without reducing revenues to the organization. One thing they would like is if the state conference (or chapters) would be willing to provide salary data for members. This would help them determine the most efficient and equitable "salary bands" for the progressive structure. There was some resistance to providing this information, with some arguing that, at least in state institutions, this is public information and others stating that even so, members have a right to expect that their salary information won't be disclosed to national. In my mind it's a moot point since it wouldn't be very easy to get 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

data anyway (even in state institutions it takes some effort to look up everyone's salary) and I don't think we have the "person-power" to do it. However, if you feel differently, please let me know. I believe the intention is to have delegates vote on this proposal at next year's meetings.

- **Electronic Elections**

Another proposal that received a lot of attention is for the association to conduct national elections online from now on. They did this in the last election as a "pilot" and saved approximately \$60,000. It went very smoothly and there was a noticeable increase in participation in voting as well (though no explicit evidence was provided to show this was due to the election being online). The big thing here is that state conferences can "piggyback" on the national elections IF WE WANT TO. It would not cost us anything monetarily to do so since the company running the election charges by "voter" not by the number of candidates on the ballot. This would require that we time our elections to coincide with those of national however. They have offered to provide help to conferences in revising bylaws in order to do this if we like.

The main advantages of doing this are: (1) cost savings and (2) possible increase in interest and participation in elections. I don't think the cost savings are actually very big for us because we have tried to send the ballot for officers in conjunction with the mailing of a newsletter in recent years. This

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.

Ward Churchill Gets Nothing

July 8, 2009 Inside Higher Education

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.

means there is no additional cost for postage (which is the biggest cost of the mail-in election). The cost of printing ballots for the current state membership is approximately \$75. In addition, it might be a good idea to send a call for nominations out to the entire membership by mail about a month in advance (rather than our current hit-and-miss email calls). This could still go out with a newsletter but would also serve as a reminder that the election is upcoming. So, the main advantage would be possible visibility and participation. Not sure this would be much...but it may serve to make us look more professional too.

The disadvantage is that we would have to change our bylaws to conform with the national election cycle. I think their elections are in the spring while ours are currently in early October so this would entail some reorganization on our part.

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.

The University of Colorado won just about everything it wanted, and Ward Churchill lost just about everything he wanted, in [a ruling](#) Tuesday by a state judge in Colorado.

Judge Larry J. Naves ruled that the University of Colorado Board of Regents had "quasi-judicial immunity" when it voted to fire Churchill from his tenured position teaching ethnic studies, after faculty panels found that he had committed multiple instances of research misconduct. Naves vacated an April ruling by a jury in the case that found that

Churchill had been inappropriately fired. Based on that ruling, Naves could have ordered Churchill reinstated or ordered Colorado to pay him -- issues that would have been moot given that Naves vacated the jury's decision. But Naves went on and said that, even based on the jury's findings, Churchill was not entitled to his job back, or to any money.

Court Upholds Dismissal of Colorado Professor

New York Times: July 7, 2009

DENVER — Three months after a jury ruled that [Ward L. Churchill](#), a former [University of Colorado](#) professor, was wrongfully terminated for his political views, a judge on Tuesday refused to give him his job back.

[Enlarge This Image](#)



David Zalubowski/Associated Press

Ward L. Churchill at the University of Colorado in Boulder, Colo.

Chief Judge Larry J. Naves of Denver District Court ruled that the university's regents were effectively acting as judicial officers when they voted to dismiss Mr. Churchill in 2007 after a faculty committee concluded that he had committed academic fraud. As a result, Judge Naves found, the regents were legally protected from Mr. Churchill's effort to reverse their ruling.

Mr. Churchill's lawyer, David Lane, said he would

appeal the decision.

“To me, this is judicial activism in its worst form,” Mr. Lane said. “What is really a shame here is that a jury said Ward Churchill’s free speech was violated, and yet Judge Naves goes on for almost 50 pages, saying in so many words, ‘Too bad.’”

Mr. Churchill, an ethnic studies professor, caused an uproar when he referred in an essay to some victims of the Sept. 11 terrorist attacks as “little Eichmanns,” and argued that that was the true reason he was terminated. He filed a wrongful-termination suit, and after a trial earlier this year, a jury found that his political views played a substantial role in his dismissal. But in his 42-page ruling, Judge Naves said the jury’s decision to award Mr. Churchill only \$1 compelled him to deny reinstatement.

“If I am required to enter an order that is ‘consistent with the jury’s findings,’ I cannot order a remedy that ‘disregards the jury’s implicit finding’ that Professor Churchill has suffered no actual damages that an award of reinstatement would prospectively remedy,” Judge Naves wrote.

Judge Naves also said that Mr. Churchill’s rejection of the faculty committee’s conclusion that he had engaged in academic misconduct had made it difficult to return Mr. Churchill to campus.

The ruling is a clear victory for the university, which also faced the prospect of having to pay Mr. Churchill for the years he might have taught there, an option Judge Naves also rejected.

“At the moment, we feel very satisfied,” said Bronson Hilliard, a university spokesman. “There was an important principle at stake here, and that is academic integrity, which is at the heart of everything we do in research and teaching. We feel very gratified at the outcome.”

The decision on Tuesday is at least a temporary conclusion to a tumultuous case that has lasted nearly five years.

When Mr. Churchill’s controversial essay first appeared in 2001, it attracted little notice. In it, he described some workers at the World Trade Center as “little Eichmanns,” referring to [Adolf Eichmann](#), who has been called the architect of the Holocaust.

By 2005, however, the essay had spread over Web sites,

provoking outrage. Shortly after, scholars came forward, accusing Mr. Churchill of plagiarism in his research on American Indians.

In May 2006, a faculty committee at the university found serious problems with Mr. Churchill's scholarship. A year later, the regents dismissed him and Mr. Churchill filed his lawsuit.

After the jury's verdict, Mr. Churchill's lawyers asked Judge Naves to order reinstatement, and at a hearing last week, they argued that returning him to his job would be logical, based on the jury's findings. Patrick O'Rourke, a lawyer for the university, countered that Mr. Churchill's return would harm the institution.

Faculty members and administrators testified for both sides, some arguing that Mr. Churchill was a critical voice on campus and others saying that his return would set a terrible precedent.

After the initial controversy surrounding Mr. Churchill, faculty members leaped to defend his right to free speech, but that support eroded after the accusations of research misconduct.

Scott Robinson, a Denver trial lawyer and analyst who has followed the trial, said he was not surprised at the ruling, given that courts have shied from interfering with university decisions. By the same token, Mr. Robinson said, it was difficult to equate regents with judges, as Judge Naves had, particularly when in this case the regents publicly denounced Mr. Churchill at the outset of the controversy.

"This is an extraordinary case which is going to result in some sort of extraordinary final ruling," Mr. Robinson said.