

MORNING BREW

# Littwin: Jury sees clearly what CU overlooked

**By Mike Littwin**

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The jury got it exactly right. In fact, the jurysix men and women, tried and true — clearly understood what the leaders of our state's flagship university could never quite grasp.

The jurors figured out that this case was not really about Ward Churchill. The case was, from the very beginning, about the University of Colorado and its unwillingness to do the right thing, meaning the hard thing, when it mattered most.

The case was about what happens when the mob wins, when a grandstanding governor trumps academic freedom, when talk-radio noise gets mistaken for the sound of truth, when university leaders cower in fear.

The jurors sat for weeks in Denver District Courtroom 6, and, after hearing all the testimony, they got it. Yes, they got it exactly right.

They didn't care about Churchill. They gave him a dollar. Churchill pulled out a dollar bill and waved it around the courtroom because he didn't care about the money either. For Churchill — and for CU — what will matter is when he walks back into a classroom (once the judge presumably rules that Churchill gets his job back), followed by TV cameras that will record yet another public CU humiliation.

After the trial, Churchill's lawyer, David Lane — who may get hundreds of thousands of dollars in attorney's fees from CU — said that CU's leaders had hidden under their desks while the mob howled outside the campus gates.

The jury agreed. The jury didn't, however, buy Lane's concept that Churchill was a martyr. That may have been why Lane never made a real case about money to the jury. He didn't want to confuse things. The remedy here wasn't to make Churchill rich; it was to make CU pay, but in more essential ways.

And so we went back to 2005, when Churchill hysteria was in full bloom, when we were arguing not only whether the essay was protected speech but whether Churchill's speech was inciting violence wherever he went. Nobody at CU had seemed to notice these violence-inciting tendencies before the world of talk radio took them up, but, by then, every word Churchill had said or written needed investigating.

And it was only coincidence — this was essentially CU's case — that eventually entirely unrelated charges would be brought against Churchill.

Give the jurors credit. They saw through it all. There's the great line about juries, that we are tried by people not smart enough to get out of jury duty. But this jury had to pass several difficult tests.

The jurors had to fight through all the minutiae. They had to fight through some brain-numbing testimony. They had to stifle yawns, and laughter, when the CU regents — who represent a great testament to our democracy — mostly testified that, whatever they might have said at some earlier point, they really cared only about protecting the sanctity of academia from the likes of Ward Churchill.

For those who now blame CU attorney Pat O'Rourke for not being tough enough on Churchill, I wish they had seen what he had to work with. For example, he had a regent, Tillie Bishop, who, remarkably, testified that he

didn't know what the "Little Eichmanns" essay had to say about 9/11 victims.

Lane asked if Bishop meant that, for all he knew, Churchill had compared the victims to Boy Scouts. Bishop's answer: "Yes."

Case closed. Game over. OK, I guess former CU president Betsy Hoffman's testimony that Bill Owens had threatened to cut off state funds from the university if she didn't fire Churchill immediately was even more damning, but it wasn't nearly as entertaining.

And when the jurors heard the case against Churchill, they must have been surprised by how underwhelming — and less than entertaining — it all seemed. Let's agree, Churchill broke rules, stretched the truth, was a fabricator and at least a minor-league plagiarist.

But I'm guessing the jurors — who didn't speak to the media after the verdict — had to wonder whether all those years spent chasing Churchill weren't just a little disproportionate. Was this, as Lane said during the trial, all you got?

I kept waiting for CU to come up with a list of tenured professors who had been fired for similar misdeeds. Maybe no one ever committed Churchill-like misdeeds. Or maybe CU just doesn't often (or ever) fire professors for academic misconduct.

I kept waiting to hear why CU never seemed to care about Churchill's transgressions before his essay on Sept. 11. There had been longstanding complaints about Churchill's research, but no one had ever acted on them. CU officials say they had never heard them, which, of course, would be damning enough.

And so you had a trial in which CU had to make the case that, say, an unsupported Churchill footnote — alleging that John Smith had tried to kill off Indians with smallpox — was the reason it fired him.

Churchill wrote his controversial essay the day after 9/11. Nobody seemed to notice it for three years. And when the public did notice, the outcry was only, in part, about comparing some victims to Adolf Eichmann — and what Churchill meant by that. The essay also came at a time when the "liberal" professoriate was a hot issue. Although Churchill, a radical, scoffs at mere liberals, he was a ready symbol in what would be one more battle of the recent culture wars.

If you want to take anything from the verdict, something worth more than a buck, anyway, it's that six jurors decided this: However hard academic freedom is, if you want to be a real flagship university, you can't hide from it — under a desk or anywhere else.

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Not to worry, when Ward Churchill comes to join us at Concordia University on April 15, like magic we will turn that \$1 award into many times that amount. In the meantime, the University of Colorado (CU) is obligated to pay Churchill's legal fees, which at the moment are estimated to be in the hundreds of thousands of dollars. In addition, Churchill is now entitled to back pay, and in 30 days Judge Naves will rule on whether Churchill should be reinstated in his former position. I would expect CU will go deep into its pockets to try to buy Churchill out of his position, not to have its administrators and a number of their faculty have to eat humble pie on a daily basis.

Much more important than financial sums, however, as a testament to the discredit of CU and its politically motivated firing, is the jury's historic verdict today. It is not at all a situation where a lawyer lost the case for CU: all of the Big Eichmanns who ran the university, and the Little Eichmanns who served on the faculty committees, paraded through the court, are the ones who lost the case for CU, because it never had more than a political case to begin with. Their statements were weak, contradictory, often mendacious, and most importantly, validations of Churchill's case. Their so-called investigation into Churchill's research misconduct

often amounted to little more than a laughable series of jejune and assessments that were frequently self-contradicting.

These remain the key points to Churchill's victory, and they are now settled:

1. Were Ward Churchill's freedom of speech rights violated and did the University act inappropriately? YES.
2. Was Ward Churchill wrongfully fired? YES.
3. Did the University have enough reason [i.e., "research misconduct"] to fire Churchill otherwise? NO.

Trying to suppress dissent and freedom of speech will be much more costly to CU than any single financial sum. Churchill's victory will stand as a strong message to any other university that allows itself to be manipulated, or led, by a gaggle of hystericons.

For more, see:

<http://openanthropology.wordpress.com/2009/04/02/ward-churchills-victory-is-our-victory/>

— Maximilian Forte Apr 3, 05:36 PM #

## *A Courtroom Victory for Ward Churchill and Academic Freedom of Speech*

### **Hooray for Juries!**

By DAVE LINDORFF

**A** group of 6 ordinary people in a Colorado courtroom saw through the McCarthyite political tactics of the University of Colorado officials and Colorado politicians who conducted a witch

hunt against tenured professor and long-time Native American activist Ward Churchill, saying with remarkable clarity and sense that he never would have had his tenure revoked and been fired by the university had it not been for his unapologetic left-wing politics and writings.

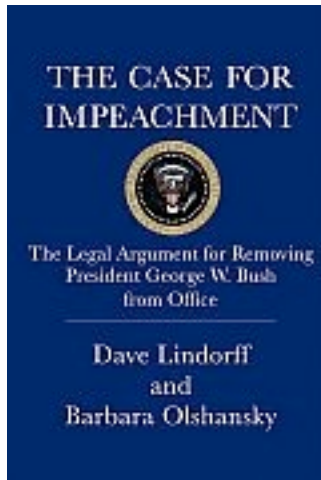
It was an enormous victory for academic freedom and for the First Amendment protection of freedom of speech.

It is unclear at this point what the split was on the jury on the issue of damages, which ultimately resulted in a symbolic award of \$1 dollar. There was a letter from the jury to the trial judge, Denver District Court Judge Larry J. Naves, during deliberations, asking whether they could replace one juror if they couldn't get a unanimous agreement on the \$1-dollar award, but when told that was not possible, they reached that decision unanimously.

A university spokesman, Ken McConnellogue, tried to argue that the low damage award was "some vindication" for the university's action in firing Prof. Churchill. The Boulder school is now fighting Churchill's effort to be reinstated in his job, where he had been chairman of the school's ethnic studies department.

McConnellogue claims that because it was a faculty committee that had been instrumental in his firing, an order by the court reinstating him to his position would "probably draw a sharp reaction."

The idea that somehow a dispassionate group of faculty members at the university had reviewed Prof. Churchill's scholarship and



determined he had plagiarized and falsified his research is simply nonsense.

There may possibly have been a time when faculty committees reviewing tenure decisions were independent scholarly bodies unswayed by administrators—though given the history of blacklists and firings of tenured professors during the 1950s, I doubt it--but in any event those days, real or imagined, are long gone. Over the past several decades, the concept of academic self-governance has been fatally eroded at most universities. At many institutions, administrators routinely override hiring decisions reached by faculty committees, and all kinds of pressures are brought on individual faculty members to reach decisions that are desired by administrators.

Administrators at many schools have aggrandized the power to veto unpaid and sabbatical leaves, to assign heavier teaching loads, to over-rule tenure decisions, etc. In addition, administrators determine or have the final say on raises, which increasingly are based upon ill-defined and hard to challenge “merit” considerations. All of this makes faculty members on critical committees such as the one which was assigned to investigate Churchill’s scholarship, extremely vulnerable to administration pressure—the more so when powerful political figures like the state’s governor and members of the state legislature, who have made clear their desire to see Churchill sacked, are added to the mix.

The academic committee impaneled to investigate him claimed that Churchill had plagiarized articles, but in truth the works they referred to which Churchill had quoted in some of his work were things he had himself written earlier, either anonymously, or with other writers. He was, in other words, being accused of plagiarizing from himself.

As Tom Mayer, a professor in the Sociology Department at the University of Colorado, wrote in a paper titled: "The Plagiarism Charges Against Ward Churchill," the faculty committee accusations against Churchill were "largely discredited" by a number of respected independent scholars, and the committee's own report was larded with "errors of omission and commission." He writes that the faculty "Report of the Investigative Committee" itself "improperly converts legitimate scholarly controversies into indictments of the positions taken by Professor Churchill." Mayer adds that the three specific cases of alleged plagiarism condemned by the faculty investigative committee, had appeared in writings that were never intended to be scholarly or to be used for his academic advancement, but rather were rather part of Churchill's voluminous body of political writings. (Mayer goes on to say that even in those three cases, the accusations of plagiarism are "without compelling force.") Moreover, all three examples, he notes, were over 14 years old, and the charges about them had been circulated by his critics for over a decade, with no one at the university taking any action "until he became a political pariah."

The jury, as if often the case, saw through the political subterfuge to the root of the problem, which was that Churchill's body of writing (much of which has been groundbreaking, such as his 1988 book "Agents of Repression", co-authored with Jim Vander Wall, and his 1992 book "Fantasies of the Master Race"), which includes 14 books and 150 publications, would never have been subject to investigation, had it not been for the climate of political repression that followed the 9-11 attacks. His political difficulties arose in the wake of his publication in 2003 of a book-length essay on 9-11, titled "On the Justice of Roosting Chickens:

Reflections on the Consequences of U.S. Imperial Arrogance and Criminality.” That essay argued that some of those who died in the Twin Towers, rather than simply innocent victims, had been “a technocratic corps at the very heart of America’s global financial empire.” Provocatively calling such people “Little Eichmanns,” Churchill had claimed that their financial machinations had led to death and suffering around the world, and thus to the attack on the US.

It was inflammatory language coming at a time when the American public was being inflamed by demagogues in Washington and a flood of media propaganda and jingoism, but it was also a correct assessment of the role of Wall Street financial firms, as has been made all the more apparent by the recent financial crisis. (In fact, had Churchill written the same thing today, and included American homeowners and workers in his list of the victims of those financial technocrats, the resulting level of public outrage might have been a good deal less—as witness the death threats reportedly being made these days against the recipients of AIG bonuses.)

In fact, it wasn’t publication of Churchill’s 9-11 tract that got him in trouble. It was the workings of the right—most notably former ’60s fringe leftist-turned-right-wing agitator David Horowitz—who began dogging Churchill in 2005. Horowitz, whose own scholarship is a shameless Swiss cheese of errors and plagiarism, has been conducting a well-funded (courtesy of such right-wing outfits as the Olin Foundation) one-man campaign of smearing and “outing” academic leftists on American campuses, made Churchill a poster child for his absurd charge that universities have become dens of leftism.

It is now up to Judge Naves to decide whether to order the University of Colorado to reinstate Prof. Churchill.

He should do so, though it remains to be seen whether he will have the same political courage shown by those 12 jurors. If he does, he will order reinstatement.

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## Jury Says Professor Was Wrongly Fired

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By [KIRK JOHNSON](#) and [KATHARINE Q. SEELYE](#)

Published: April 2, 2009

DENVER — A jury found on Thursday that the [University of Colorado](#) had wrongfully dismissed a professor who drew national attention for an essay in which he called some victims of the Sept. 11 attacks “little Eichmanns.”

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David Zalubowski/Associated Press

Ward Churchill, who was a tenured professor at the University of Colorado, left, walked with his lead attorney David Lane out of the courtroom after a jury ruled that he was wrongly fired by school administrators, on Thursday.

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[Jury Gets Case of Fired Professor](#) (April 2, 2009)

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Pool photo by Mark Leffingwell

Ward Churchill, left, and his attorney David Lane after closing arguments in Churchill's civil suit against the University of Colorado in Denver on Wednesday.

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But the jury, which deliberated for a day and a half, awarded only \$1 in damages to the former professor, [Ward L. Churchill](#), a tenured faculty member at the university's campus in Boulder since 1991 who was chairman of the ethnic studies department.

The jurors found that Mr. Churchill's political views had been a "substantial or motivating" factor in his dismissal, and that the university had not shown that he would have been dismissed anyway.

"This is a great victory for the First Amendment, and for academic freedom," said his lawyer, David A. Lane.

Whether Mr. Churchill, 61, will get his job back, and when, was not resolved. Mr. Churchill's lawyers said they would ask Judge Larry J. Naves of Denver District Court to order reinstatement, in light of the verdict.

A spokesman for the university, Ken McConnellogue, said administrators would oppose the request. Reinstatement, Mr. McConnellogue said, would probably draw a sharp reaction among many faculty members, because a faculty committee was instrumental in his firing.

The verdict by the panel of four women and two men — none of whom wished to be interviewed by reporters, court officials said — seemed unlikely to resolve the larger debate surrounding Mr. Churchill that was engendered by the case. Is Mr. Churchill, as his supporters contend, a torchbearer for the right to hold unpopular political views? Or is he unpatriotic or — as his harshest critics contend — an outright collaborator with the nation's enemies at a time of war?

The jury seemed at least partly undecided on what to think about the man at the center of the fight, whose essay made him a polarizing national figure.

While the panel agreed with the argument that an environment of political intolerance for Mr. Churchill's views was a factor in his firing, Mr. McConnellogue, the university spokesman, contended that its decision to deny him financial damages also sent a message — that Mr. Churchill was not necessarily a figure to be revered, either.

“The jury's award is some vindication,” he said.

Mr. Churchill, wearing sunglasses in the hallway outside the courtroom, said the size of the award did not matter. “I didn't ask for money,” he said, “I asked for justice.”

The case has been seen as a struggle between freedom of speech and academic integrity, and it revived the longstanding debate about whether hate speech deserves protection by the First Amendment.

But the monthlong trial mostly focused on Mr. Churchill's academic work. The jury had to decide whether he had plagiarized and falsified parts of his research, particularly on American Indians, as the university contended in dismissing him. His lawyers described the search for professional misconduct as simply a pretext for a foregone decision to get rid of him.

On Sept. 12, 2001, Mr. Churchill wrote an essay in which he argued that the United States had brought the terrorist attacks on itself. He said that some of those working in the World Trade Center on Sept. 11 were not innocent bystanders but "formed a technocratic corps at the very heart of America's global financial empire." He described the financial workers as "little Eichmanns," a reference to [Adolf Eichmann](#), the Nazi who has been called the architect of the Holocaust.

The essay garnered little notice at the time but gradually seeped through the Internet, coming to light in 2005, and then creating an uproar.

In their closing arguments on Wednesday, lawyers for each side urged the jury to focus on the First Amendment.

Mr. Lane, Mr. Churchill's lawyer, said his client had been a spokesman throughout his academic career for disempowered people and causes — a trait, Mr. Lane said, that never made Mr. Churchill popular with people in power. "For 30 years, he's been telling the other side of the story," Mr. Lane said.

What the university did in firing Mr. Churchill, he told the panel, was political payback, a rigged inquiry into his work that was a "charade of fairness."

The university's lawyer, Patrick O'Rourke, asked the jury to think about standards. The pattern of academic misconduct, Mr. O'Rourke said, was not in doubt.

"There's the real university world, and there's Ward Churchill's world," he said. "Ward Churchill's world is a place where there are no standards and no accountability."

Mr. Churchill, he said, was using the Constitution as a smokescreen. "You can't take the First Amendment and use it to justify fraud," he said.

Around 3 p.m. on Thursday, jurors asked the judge questions about damages.

First, they asked whether it was possible to award no damages. A few minutes later, they asked whether, if all but one jury member could agree on a dollar amount, that person could be replaced by another juror. (The answer was no.)

The jury then resumed deliberations for about an hour before returning its verdict in Mr. Churchill's favor.

*Kirk Johnson reported from Denver, and Katharine Q. Seelye from New York.*