

May 27, 2007

Mr. Hank Brown
President, University of Colorado
Officeofthepresident@cu.edu
Patrick.Orourke@cu.edu

Re: *Ward Churchill v. Regents of the University of Colorado*

Dear President Brown:

On May 7, 2007 the P&T dismissal for cause panel sent its Final Report to you. Three of the five members recommended a one-year suspension and demotion to associate professor (*not* dismissal). On May 25, 2007 you sent your recommendation for dismissal directly to the Regents. You and the panel clearly do not concur on dismissal.

It is my contention that contrary to your letter to the Regents, Ward Churchill has repeatedly been denied due process of law in that the University has repeatedly tried to pick and choose which rules it operates under and has changed the rules of this process in midstream. Your actions in sending your recommendation to the Regents are reflective of that fact.

The Bylaws to the Faculty Senate Constitution state:

II.D.1.e.5(e). Post-hearing Procedures for Dismissal for Cause Proceedings

...

4. The President shall have 15 business days after receipt of the record of the case to decide how to proceed.
5. If the President and dismissal for cause panel concur that there are grounds for dismissal, that decision and all supporting documentation, including copies of the record of the case, shall be forwarded to the Board of Regents by the President.
6. If the President determines that there are not grounds for dismissal, the case shall be closed.
7. *If the President determines that there are grounds for dismissal and the panel does not concur, the President shall return the case, with explanatory comments, to the panel for reconsideration. Following reconsideration, but within 15 days of the panel's receipt of the President's response, a second panel report, addressing the President's response,*

shall be sent to the President, with a copy to the faculty member. After review thereof, if the President continues to find that there are grounds for dismissal, the President shall forward the President's recommendation, copies of the record of the case, and any subsequent written communication with the dismissal for cause panel to the Board of Regents.

...

[emphasis added]

Available at www.cu.edu/FacultyCouncil/documents/bylaws.html and www.colorado.edu/FacultyCouncil/bylaws.html. Text cited was posted as of May 25, 2007

On March 22, 2007 the Regents amended their policies to "streamline" the dismissal policy. Clearly, this was done in an effort to curtail the rights of Professor Churchill.

The new Regents Policy states:

5.I.C. Post-Hearing Procedures

.....

2. the Panel shall prepare its final report, and the hearing officer shall forward a copy of the record of the case to the president. . . .
3. The president shall review the case and decide whether to recommend dismissal to the Board of Regents.
4. If the president decides not to recommend dismissal, the case shall be closed.
5. If the president decides to recommend dismissal, that decision and all supporting documentation, including copies of the record of the case, shall be forwarded to the Board of Regents ("Board") by the president. The president's recommendation shall include the president's rationale. If the president and the Panel do not concur, the president's recommendation to the Board shall include the reasons for the president's disagreement with the Panel.
6. Within 10 days after the president's receipt of the record of the case from the hearing officer, the president shall forward to the Parties, the hearing officer, and the Committee Chair the president's recommendation for dismissal or decision to close the case. If the president recommends dismissal, the president's notification of the Parties, the hearing officer and the Committee Chair shall occur concurrently with the president's transmittal of the president's recommendation to the Board.

These changes are documented at <https://www.cu.edu/regents/Minutes/March2007Minutes.pdf>
New version posted at www.cu.edu/regents/Policies/Policy5I.htm

You used the old rule and took fifteen business days to respond. This is what the old rules (and still-posted By-laws) allow. The new rules, however, give you only ten days to respond. You have obviously "cherry picked" that part of the mixture of old and new rules that worked best for

you. After using the old rules to take your time in formulating a response you then, however adopted the new rules by jettisoning the requirement that if you do not concur with the Panel's decision, which you obviously do not, you must return it to the Panel for further proceedings. The new rules do not require that you return it to the Panel.

It is my contention that Professor Churchill has a due process right to have the University follow the rules in place upon which he relied when this witch hunt began. The Regents cannot lawfully change the due process Professor Churchill reasonably expected to exist when he was put into this termination process. For you to change the rules in the middle of the game is patently unfair however it appears to be a consistent pattern followed by the University.

Please note my objection to this abject denial of fundamental fairness and due process.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Lane". The signature is written in a cursive, flowing style with some loops and flourishes.

David A. Lane

DL/dzj

cc: Patrick O'Rourke