

August 8, 2006

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Re: *Ward Churchill v. University of Colorado*

Gentlemen:

My client, Ward Churchill, and I are in receipt of Professor Lodwick's e-mail indicating that the funds you are required to expend in the defense of Professor Churchill are "not available as their provision is not currently authorized by Board of Regents policy."

Please clarify for us whether, in your estimation, the University of Colorado is violating its own rules in this regard, as it seems entirely clear that under the Rules by which we are proceeding, the following is self-evident:

II.D.1.e.5(d) Conducting Dismissal for Cause Hearings

1. Upon receipt of the dismissal for cause case, the Committee Chair will ask the Parties to elect an informal or a formal hearing. The hearing shall be informal unless either Party elects a formal hearing in writing within 15 business days of the request from the Committee Chair. In the event that either Party elects a formal hearing, *the university shall contribute up to \$20,000 of the reasonable fee of an attorney for services directly related to the representation of the faculty member in a dismissal for cause case, so as to facilitate the proceeding and to ensure that the faculty member's case is effectively presented.* Invoices shall be submitted to the Committee Chair for determination of the amount of reasonable attorney fees to be paid.

Professor Churchill and I have previously agreed to this provision of the Rules and I have indicated that I would be happy to submit invoices to the Committee Chair. Therefore, we are puzzled by the fact that even though the University of Colorado is obligated by its own rules to insure that Professor Churchill be provided with funds for counsel in this, the most important matter in his entire professional career, these funds are not going to be made available.

When you say the funds are not available pursuant to “Board of Regents policy” please direct me to the policy to which you are referring. Professor Churchill and I were under the impression that we were operating by the rules and policies set forth in the Faculty Senate Bylaws. Indeed, there has never been any mention by you of any secret Regents policies under which we are operating. In order to insure fairness to Professor Churchill, I must insist that you provide me with any and all such secret, unknown “Regents policies” under which we are proceeding as well as the authority mandating that these policies supersede the Rules regarding the Privilege and Tenure Committee’s work, of which we are aware.

It appears from your correspondence that you are determined to proceed with the P&T process even though you are violating your own rules of fairness and due process. If you are determined to continue with the P&T process even though you have chosen to violate Rule II.D.1.e.5(d), please set forth a listing of all of the various other rules you have promulgated in order to provide a fair process for Professor Churchill which you intend to either violate or ignore. It would be helpful, perhaps, if you would also inform me of which of your rules for fairness you intend to honor.

As I’m sure counsel for the Committee understands, due process is defined “...in the first instance by the regulations under which [the professor] held tenure. Substantive due process is triggered only if those rights are dealt with in an arbitrary or capricious manner.” *Brenna v. Southern Colo. State College*, 589 F.2d 475, 477 (10th Cir. 1978). Professor Churchill’s tenure is subject to the Rules cited above – not by any secret Regent “policies.” You are on notice that by following the secret policy of the Regents, in derogation of your own rules, you are depriving Professor Churchill of his ability to adequately defend himself from the charges against him. The cases are legion expounding upon the importance of the right to counsel in such proceedings. Indeed, by adopting the cited Rule, the University acknowledges the primacy of this right. The Rule requiring the University pay for counsel is an acknowledgement that no professor generally has the wherewithal to effectively fight for his or her job against the might of the institution. By denying Professor Churchill the right to pay for counsel, you are essentially denying him the right to counsel unless he can find someone willing to represent him free of charge. This should cause concern among all tenured professors within the University of Colorado. Indeed, I would urge all members of the P&T Committee to boycott this process as it plainly flies in the face of fundamental fairness.

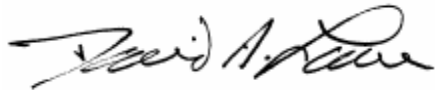
Lest you think me motivated by greed, I have pledged most of the P&T money to the ACLU of Colorado as a charitable contribution on behalf of Killmer, Lane & Newman, LLP, my law firm. If you are certain that the University of Colorado will in fact pay any

invoices I submit, and you are willing to sign a personal guaranty of such payment, I will proceed with the defense of Professor Churchill. Otherwise, as counsel for Professor Churchill, I hereby demand that the P&T process immediately cease until such time as the University of Colorado is willing to abide by its own rules.

As you know, in my opinion the process to date has been nothing but retaliation by the University against Professor Churchill for his First Amendment protected speech. The fact that you believe you are not obligated to follow your own rules for due process is excellent evidence of this fact. This is compounded by the fact that you believe that you may proceed through the process and pick and choose which rules you wish to follow and which ones you wish to disregard when clearly the course which you must pursue is to simply table the P&T process until such time as the University of Colorado is able and willing to abide by all of its own rules.

I am considering taking the University to court on this issue if you wish to proceed with the P&T process in derogation of your own rules of fairness and due process. Please advise me of your position on whether you are prepared to follow the Rules you are obligated to follow not later than August 18, 2006.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Lane". The signature is fluid and cursive, with the first name "David" being the most prominent.

David A. Lane

DL/dzj