

<p>COLORADO COURT OF APPEALS 2 East 14th Avenue, Suite 300 Denver, Colorado 80203</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Appeal from the Denver County District Court The Honorable Larry J. Naves Case No. 06-CV-11473</p>	
<p>Plaintiff-Appellant: WARD CHURCHILL</p> <p>v.</p> <p>Defendants-Appellees: THE UNIVERSITY OF COLORADO, THE REGENTS OF THE UNIVERSITY OF COLORADO, a Colorado body corporate</p>	
<p>David A. Lane, Atty. Reg. No. 16422 Darold Killmer, Atty. Reg. No. 16056 Qusair Mohamedbhai, Atty. Reg. No. 35390 KILLMER, LANE & NEWMAN, L.L.P. 1543 Champa Street, Suite 400 Denver, CO 80202 Phone Number: (303) 571-1000 Fax Number: (303) 571-1001 E-mail: dlane@killmerlane.com</p> <p>Robert J. Bruce, Atty. Reg. No. 17742 LAWLIS & BRUCE, L.L.C. 1875 Lawrence Street, Suite 750 Denver, CO 80202 Phone Number: (303) 573-5498 Fax Number: (303) 573-5537 E-mail: robertbruce@lawlisbruce.com</p> <p>Attorneys for Plaintiff-Appellant</p>	<p>No.</p>
<p>NOTICE OF APPEAL</p>	

1. Trial Court Information

Trial court: Denver County District Court

Trial court judge: Honorable Larry J. Naves

Appellant: Ward Churchill

Trial court case no: 06-CV-11473

2. Nature of the Case

A. Procedural history and nature of the controversy. Professor Ward Churchill had been employed by the University of Colorado since 1978. In 1991 he was hired as a full-time associate professor, with tenure, in the Department of Ethnic Studies at the Boulder campus. In late January 2005 the local, and subsequently national, media launched an extensive campaign highlighting one phrase of an essay in the nature of an op-ed piece which Churchill wrote as a reaction to the events of September 11, 2001. It was published on an obscure internet website on September 12, 2001 and was barely noticed for over three years. As a result of the controversial, but protected speech, two governors, including Colorado's former governor Bill Owens, publicly demanded that Churchill be removed from his professorship at the University of Colorado, while three state legislatures, the University of Colorado Board of Regents and Interim Chancellor Philip DiStefano all issued formal written denunciations of his views.

In response to the unprecedented outcry against Churchill over the 9/11 essay he wrote, the Defendants-Appellees vowed to examine every word ever written or spoken by Churchill in an effort to find some excuse for terminating his employment. Over the next year, every word of Churchill's scholarship was examined by various committees handpicked by the Defendants-Appellees. It was alleged, among other things, that Churchill had engaged in "academic fraud and misconduct" in some of his scholarly writings; that he had engaged in plagiarism in other

writings, and that he had violated professional standards of “conduct which falls below minimum standards of professional integrity” in other writings. University President, Hank Brown, took the various reports of the various committees and on June 7, 2007 recommended to the Regents of the University of Colorado that they terminate Churchill from his tenured position at the University of Colorado. On July 24, 2007, the Board of Regents terminated Churchill’s employment, allegedly based upon the academic misconduct, fraud, plagiarism and violating professional standards.

The very next day, on July 25, 2007, Churchill sued Defendants-Appellees for numerous claims, which included retaliatory termination in violation of his First Amendment rights. A jury trial commenced on March 9, 2009, and on April 2, 2009, the jury unanimously declared that the University of Colorado and its Board of Regents retaliated against Churchill for his political speech, and thereby violated his federally protected rights under the First Amendment to the United States Constitution. The jury awarded Churchill one dollar in damages. On July 7, 2009, the trial court vacated the jury’s verdict by granting Defendants’ Motion for Judgment as a Matter of Law. Despite the fact that the court entered judgment for the defendants, thus mooted any pending motions for reinstatement, the trial court nevertheless took pains to deny Churchill’s Motion for Reinstatement of Employment.

B. Judgment or order being appealed. July 7, 2009 order granting Defendants’ Motion for Judgment as a Matter of Law, and denying Churchill’s Motion for Reinstatement of Employment.

C. Whether the order resolved all issues pending before the trial court. No. Defendants-Appellees are pursuing costs against Churchill.

D. Whether the judgment was made final pursuant to C.R.C.P. 54(b). Yes.

E. The date the judgment or order was entered. The order granting Defendants' Motion for Judgment as a Matter of Law, and denying Churchill's Motion for Reinstatement of Employment was entered by the trial court on July 7, 2009.

G. Date any motion for post-trial relief was filed. On July 21, 2009, Churchill filed a Motion to Amend Judgment concerning the order granting Defendants' Motion for Judgment as a Matter of Law, and denying Churchill's Motion for Reinstatement of Employment.

H. Date any motion for post-trial relief was denied. The July 21, 2009 Motion to Amend Judgment is currently being briefed and pending before the trial court.

I. Whether an extension was granted to file the notice of appeal. No. This Notice of Appeal is timely filed within 45 days after the district court ruled on the parties' post-trial motions.

3. Advisory Listing of Issues on Appeal

A. Did the district court err by granting Defendants' Motion for Judgment as a Matter of Law?

B. Did the district court err by denying Churchill's Motion for Reinstatement of Employment?

C. Did the district court err by failing to award Churchill any equitable remedies?

D. Did the district court err by entering a directed verdict for Defendants-Appellees on Plaintiff's claim for First Amendment retaliation based on wrongful investigation?

E. Did the district court err by failing to instruct the jury on any of Churchill's proposed jury instructions, which includes but is not limited to, instructions on pretext, academic freedom, and subordinate theory liability?

F. Did the district court err in its pattern of incorrect evidentiary rulings in favor of Defendants which resulted in inadmissible evidence to be considered by the jury?

G. Did the district court err in its pattern of incorrect evidentiary rulings by consistently permitting defense counsel to ask leading questions during direct examinations?

H. Did the district court err by limiting evidence and testimony concerning the American College of Trustees and Alumni?

I. Did the district court err by limiting expert testimony and evidence from Derrick Bell?

J. Did the district court exhibit undue bias against Churchill?

K. Whether an award of costs for Defendants-Appellees is proper?

L. Did the district court err in its rulings and findings in violation of the First Amendment to the United States Constitution?

M. Did the district court's rulings and findings violate Churchill's federal and state rights to a jury trial and to due process of law pursuant to the United States Constitution Amendments VII and XIV; Colorado Constitution article II, sections 23 and 25?

N. Did the district court err in its rulings and findings that deprived Churchill of his statutorily and federally and state constitutionally protected rights?

4. Whether Transcripts Will Be Necessary

A. Whether a transcript is necessary. Yes. A complete trial transcript will be required, plus a transcript of all pre- and post-trial hearings.

B. Names of the court reporters. Kathy L. Davis and Lisa Reed.

C. Approximate length of transcript. 5,000 pages.

5. Whether a Pre-argument Conference is Requested

Yes.

6. Counsel for the Parties

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7. **Copy of Orders**

A copy of the following is attached: July 7, 2009 order granting Defendants' Motion for Judgment as a Matter of Law, and denying Churchill's Motion for Reinstatement of Employment.

Respectfully submitted this 13th day of August 2009.

KILLMER, LANE & NEWMAN LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Notice of Appeal** was filed with the Court and served via LexisNexis File and Serve on August 13, 2009 to the following:

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