

First Amendment/Free Speech/Academic Freedom in relation to the Ward Churchill
Affair
Hamilton College Statement
March 3, 2005

Academic freedom and freedom of speech are the lifeblood of a college like Hamilton. Invitations to the campus are a routine part of open interchanges with scholars or other speakers on topics of interest to the college community. Freedom of expression on campus also includes the right of students to receive information and to consider the widest range of opinions. These freedoms are jeopardized when threats of force or violence shut down scheduled programs presenting controversial speakers or ideas.

As a practical matter, no college can invite to its campus every speaker with something to say. Hamilton, as a private institution, has the discretion to invite or not to invite any particular speaker. Although an invitation begins as a discretionary act, once the invitation has been issued and accepted access to the scheduled speaker becomes a right - - not of the speaker -- but of each member of the college community who wishes to hear and consider the speaker's views.

In exercising discretion about whether or not to invite a speaker, it is of course entirely appropriate to evaluate the quality of scholarship and the relevance of the speaker's positions to the topic of the particular program. It is not censorship for the College to seek out the most qualified and capable speakers. But some opponents of Ward Churchill did not appear to be seeking a substitute more qualified to espouse the same views. For them, it seems, the goal was to exclude entirely from the campus anyone holding Churchill's controversial opinions. To withdraw a speaking invitation, solely for that reason, is to submit to ideological censorship.

It is also important to remember that, however offensive or even deplorable Churchill's remarks about 9/11 may have been, those remarks were by currently recognized legal standards neither unlawful nor an incitement to violence. However hateful, they were essentially political speech of the kind that, as part of a sound liberal education, students must learn to confront intellectually and, if so inclined, to dispute. The only illegal acts in this situation were the threats of violence received by the College. Unfortunately, those threats imposed a lawless veto on the normal process of civil discourse and open debate on the campus and made it impossible to go forward with a previously scheduled program.

Some have argued that Hamilton College is a private institution and the First Amendment only applies to actions by the state. Technically, that is true. In theory, a private college or university could constitutionally be operated as a closed institution and systematic viewpoint censorship could be imposed on faculty, students and visiting speakers. But a school choosing that course could not expect to remain near the top of anyone's list of leading liberal arts colleges. By tradition, all great private educational institutions in this country have considered themselves bound by the spirit of the First Amendment and they

have looked to First Amendment principles when addressing issues of academic and intellectual freedom on their campuses.

Two classic statements of these guiding constitutional principles provide eloquent support for Hamilton's decision to defend academic freedom in the Ward Churchill controversy.

Supreme Court Justice Oliver Wendell Holmes once wisely observed: "If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought, not free thought for those who agree with us but freedom for the thought that we hate."

On another occasion, Justice Louis Brandeis famously reasoned: "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

These core first amendment principles are thus not only legally and constitutionally justified, they are also inherent in the educational mission of the College.

As Richard Brodhead, President of Duke University, recently observed in the context of a campus censorship controversy: "The protection of free speech is the protection of the notion that people can teach each other and learn from each other through the play of their differences. To disbelieve that is in some fundamental way to disbelieve in education itself; and if educational institutions refuse to stand up for this value, it is hard to imagine who will."