



February 23, 2005

By mail and facsimile: (262) 472-1518

Jack Miller, Chancellor
University of Wisconsin-Whitewater
800 W. Main Street
Whitewater, WI 54190-1790

Re: Speech by Ward Churchill

Dear Dr. Miller,

The ACLU of Wisconsin has been following the controversy surrounding a speech to be given by Ward Churchill on March 1, 2005, at UW-Whitewater. On February 10, 2005, you courageously resisted public pressure to suppress controversy and reaffirmed the University's commitment to allowing Professor Churchill to speak. Yesterday, the Wisconsin Assembly passed a resolution that condemned Professor Churchill's comments about the victims of the September 11, 2001 attacks and urged you to cancel his speech at Whitewater.

Although we have some concerns about the "stipulations" you attached to Professor Churchill's speaking engagement, we write now to support your decision to allow Professor Churchill to speak. We urge you to continue to uphold the value of free speech and resist the Assembly's effort to chill the "uninhibited, robust, and wide-open" debate on public issues that is essential to a functioning democracy. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). We understand that many people are deeply offended by Professor Churchill's views on the terrorist attacks. However, under our Constitution, that is no excuse for suppressing speech. "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds that idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397 (1989).

Although you and many others feel that Professor Churchill's comments about the victims of the September 11 attacks were crude and insensitive, the First Amendment must protect such controversial speech if it is to have any meaning. Mild and innocuous speech needs no such protection. As the Supreme Court has said, "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects. . . . [T]he alternative would lead to

standardization of ideas either by legislatures, courts, or dominant political or community groups.” *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

In a free society, the appropriate response to offensive speech is to speak out against it, not to censor it. You have recognized this in organizing the panel discussions about Professor Churchill’s message. While it is incumbent upon the University to ensure the safety of its students, employees and guests, opponents of Professor Churchill’s speech must not be permitted to wield a “heckler’s veto” with threats of disorder. We recognize that it may be a difficult balance, but you must strive to protect the free speech rights of both supporters and opponents of Professor Churchill. Professor Churchill must be allowed to speak and his audience must be permitted to listen. Protestors should be given a reasonable opportunity to express their opposing views and to convey those views to those who attend the speech. Additional security may be necessary to accommodate these competing demands, but the need for such security should not be used as a justification for stopping the speech.

Once again, we urge you to continue to protect free speech rights on the Whitewater campus. The ACLU of Wisconsin remains prepared to take appropriate action to protect free speech rights.

Sincerely,

Laurence J. Dupuis
Legal Director

cc: Brian Mattmiller, churchill.response@uww.edu
Patricia Brady, University of Wisconsin, Office of General Counsel
Rep. Steve Nass, Wisconsin Assembly