



Foundation for Individual Rights in Education

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June 17, 2005

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Dear President Rawlins:

As you can see from our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, voluntary association, freedom of speech, and religious liberty on America's college campuses. Our webpage, thefire.org, will give you a greater sense of our identity and activities.

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FIRE has grave concerns about a recent incident at Washington State University (Washington State) that demonstrates a serious misunderstanding among students and administrators regarding freedom of expression protected by the First Amendment to the U.S. Constitution. We understand that an April performance of a controversial student production, *Passion of the Musical*, resulted in several student protests and public debates about free speech on campus. While Washington State has recognized the expressive rights of both the students involved in the performance and the students involved in the protests, Washington State allowed, encouraged, and enabled some protesting students to engage in an unconstitutional "heckler's veto" over the views expressed in the production.

This is our understanding of the facts according to student reports, articles from *The Daily Evergreen* and the Moscow-Pullman *Daily News*, documents from Washington State administrators, and a video recording of the production. Please inform us if you believe we are in error. On the evening of Thursday, April 21, 2005, the final performance of *Passion of the Musical* took place in the Cooper Union Building Auditorium on Washington State's campus. According to Chris Lee, the writer and director of the musical, the student production deliberately "plays on sexuality, race, sex, [and] creed" and was "meant to make [the

audience] think about what is offensive and what is a joke,” with the ultimate goal of increasing student interest in and awareness of musical theater. The production had been widely publicized as being potentially “offensive or inflammatory to all audiences,” and as such, students involved in the musical denied admission to individuals under the age of 17.

On the evening of April 21, two groups decided to protest the performance of *Passion of the Musical*. According to Washington State’s own report, a group of Mormon students peacefully protested outside of the auditorium, while an organized group of about 40 student protestors attended the performance with tickets purchased by Intercultural Student Development Coordinator Brenda Maldonado of Washington State’s Office for Campus Involvement (OCI). During the course of the production, these students stood and loudly shouted “I’m offended” and other remarks. They also threatened other audience members and the cast, occasionally with violence. These outbursts forced the student performers to stop and alter the play a few times during the production, and led cast members to fear for their safety.

At one point during the performance, Lee asked over a microphone that the protestors, who had disrupted the show numerous times, be removed from the audience by campus security. Campus security refused to fulfill this request, allowing disruptive students to continue protesting in the audience. In fact, according to the *Daily News*, campus security went so far as to “ask” Lee to censor part of the production by changing the word “black” to the word “blank” in the song “I Will Do Anything for God, But I Won’t Act Black” in order “to avoid a possible riot or physical harm.”

On Friday, April 22, Lee and Erik Johnson, his assistant director, met with the director of Washington State’s Center for Human Rights (CHR), Raul Sanchez, university Vice Presidents Michael J. Tate and Charlene K. Jaeger, and OCI Director Richard Kelley to express their concerns that OCI and the protestors may have violated university policies and infringed on Lee and his cast’s expressive rights. CHR subsequently undertook an “investigative inquiry” and decided that no violations had taken place.

CHR’s May 13, 2005, report on this inquiry summarized the facts of the case and claimed that the nature of the April 21 production gave protestors in the audience the right to protest vocally during the performance of the musical. The report claimed that Lee provoked and encouraged the protests by his “taunts,” thereby giving the play the “qualities of a public forum” and justifying the protestors’ disruptions as protected expression. Among its findings, the report stated:

After approximately 20 minutes, Mr. Lee, you interrupted the play from the stage and threatened to subject the protestors to ejection and arrest. This further taunted the protestors, who responded by increasing the frequency and loudness of their statements of offense, which, in turn, triggered some members of the audience, who were not protesting, to angrily tell the protestors to be quiet.

Not only does the assertion that the play created a “public forum” reflect a ludicrous and complete disregard for actual case law, but it is a rejection of the virtually universal understanding that plays are performances in which one group, the cast, artistically expresses itself to the audience. CHR’s erroneous assertion that the play constituted a “public forum” is also irrelevant, since even in a true public forum no one has the right to shout down another’s expression.

Indeed, Washington State’s actions during this controversy display an alarming disregard for the fundamental principles of free expression in our society. Rather than protect the rights of *Passion of the Musical*’s cast to engage in controversial expression, Washington State defended the disruptive behavior and even censored the cast’s expression in order to placate noisy and threatening protestors whose organized protest the university itself abetted and encouraged. Washington State’s actions have effectively institutionalized a “heckler’s veto” on its campus by giving the power to censor student speech to members of the student body who are the least tolerant of controversial expression and the most willing to unlawfully obstruct others’ rights to free speech in order to exercise their own. The university’s tremendously disappointing response to the disruptions provides an incentive for students to disrupt and react violently to any events featuring views they find offensive in order to suppress the expression of those views. The adoption of such a policy in society at large would result in a downward spiral towards mob rule, and should never govern an educational institution whose purpose is to be a center of open and free inquiry and expression.

Indeed, numerous plays and musicals contain subject matter or performances that many would find offensive. The well-known play *Corpus Christi* features a gay Jesus, *The Prime of Miss Jean Brodie* includes nudity, and *Angels in America* discusses homosexual sex. *The Pillowman*, currently on Broadway, centers on the murders of children. The very famous *West Side Story* portrays a number of violent Puerto Rican gang members. Would Washington State allow audience members who might be offended by these characterizations or performances to disrupt a play to the point at which the play’s director would be forced to halt the performance and call for the disruptive audience members to be removed?

To make this misunderstanding of the right to freedom of expression worse, it also appears that university officials knowingly facilitated the organized student heckling by providing those students with free tickets to the show. A university purchase order form with Richard Kelley’s signature of authorization clearly shows 40 tickets purchased on the day of the event by OCI. According to *The Daily Evergreen*, Kelley claimed that “the tickets were purchased with private donations and not state or student funds.” Regardless, Ms. Maldonado, the same administrator who met with the student protestors prior to the show and acquired the tickets for them, is quoted in *The Daily Evergreen* as saying, “I don’t want students to have to pay to support a program that is obviously racist and homophobic.” Such university involvement in paying for organized hecklers to attend what they refused to pay for themselves demonstrates a conflict of interest that implicates the university as being directly responsible for the heckling of Lee’s show. According to Lee, administrators also told him that they were aware of the organized protest prior to the

show. These factors lead us to conclude that the university knowingly supported students' plans to disrupt and censor the play.

In addition, as president of the university, you were quoted in newspapers as defending the protestors' behavior as having "exercised their rights of free speech in a very responsible manner by letting the writer and players know exactly how they felt." The persistent and repeated disruption of an artistic performance does not constitute responsible behavior, and should not be treated as such. Nor is it the "exercise of free speech." In addition, OCI Director Kelley was reported to have said that "because a student organization put on the play, it could not be censored," but that "the line...would have been crossed had the play provoked physical violence"—another indication that it is Washington State's policy to give violent students a heckler's veto over expression.

CHR's report also implied that the disruptive protestors' reactions were somehow justified by their perception of Lee's being "a black man" who is a "traitor" to his people. Whether or not this perception exists, it provides no legal justification for the method of protest that the students chose during the evening of April 21.

The report concluded that:

You are not free to shield yourself behind the label of playwright or actor, and assume no responsibility for the consequences of your words and deeds. **No one should seek to censor you, but it is not unreasonable to expect you to act more responsibly in anticipating public reactions to your theatrical productions.** [Emphasis added.]

Lee did anticipate a public reaction to his production. However, he did not and was not required to anticipate that a group of 40 students with admission paid by the university would censor his expression by their loud and ongoing protests, that they would disrupt other audience members' ability to watch the production, that campus security would request that Lee alter lyrics to prevent a "riot" by the protestors, or that the protestors would "increas[e] the frequency and loudness of their statements of offense" after Lee requested that they be removed. The university should have been able to determine that the protestors' behavior was an unreasonable "consequence" of Lee's words and deeds.

FIRE is categorically committed to seeing this situation through to a just and moral conclusion. To this end, we request your administration's written assurance to your students and to FIRE that any theatrical production or other protected student expression will be allowed to proceed unhindered by faculty, administrative staff, or other students; that no "heckler's veto" will be permitted to obstruct such expression; and that no university policy or contrivance will be used to infringe upon the expression of protected speech by any student at Washington State.

Please spare Washington State University the embarrassment of supporting behavior that violates its students' constitutional rights. We urge Washington State to show the courage to admit its error, renounce its mistaken defense of students' heckling, and publicly assert that students' right to free speech, no matter how offensive, is to be respected—not subject to suppression and censorship. Washington State should affirm that all of its students can exercise their basic legal, moral, and human rights without fear of unlawful obstruction by other members of the community.

Because of the importance of this matter and the rights of Washington State students that are at stake, FIRE requests a response by 5 p.m. on Friday, July 1, 2005.

We look forward to hearing from you.

Sincerely,



Robert L. Shibley
Program Manager

cc:

Robert C. Bates, Provost, Washington State University

Charlene K. Jaeger, Vice President for Student Affairs, Washington State University

Michael J. Tate, Interim Vice President for Equity and Diversity, Washington State University

Sally Savage, Vice President of University Relations, Washington State University

Raul Sanchez, Director, Center for Human Rights, Washington State University

Richard Kelley, Director, Office for Campus Involvement, Washington State University

Brenda Maldonado, Intercultural Student Development Coordinator, Office for Campus

Involvement, Washington State University

Chris Lee