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June 17, 2005

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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 fr

