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AUTHOR Smith, Ralph R.; Moore, Dale

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ABSTRACT

In 1989, some Springfield, Missouri residents demanded cancellation of the Southwest Missouri State University (SMSU) theater department's production of Larry Kramer's play, "The Normal Heart," which they alleged to be obscene. Opponents purchased newspaper advertisements which charged that the publicly funded production promoted a "homosexual, anti-family lifestyle." They held a rally, which attracted approximately 1,200 demonstrators. SMSU's attorney argued that the First Amendment barred cancellation absent substantial government interest, and asserted that the play was not obscene. Play opponents did not raise constitutional arguments, but suggested that freedom without commitment to moral order amounted to a "free-for-all." Some proponents of the production used the occasion to further AIDS education, while others labelled the play's critics as bigots. An arson incident brought national attention to the controversy and accusations from both sides in the dispute. The university formed a committee to oversee security for the play's performances. Rhetorical strategies used by SMSU managed to divert attention away from the idea of public funding for allegedly immoral activities and toward the idea of free expression, while assuring the play's presentation. While AIDS awareness may have been heightened, gay rights issues were overshadowed by the controversy. (Forty endnotes are included.) (SG)

A PUBLIC UNIVERSITY'S DEFENSE OF FREE EXPRESSION: THE ISSUES AND EVENTS IN THE STAGING OF THE NORMAL HEART

Ralph R. Smith
and
Dale Moore

Department of Communications
Southwest Missouri State University
Springfield 65804

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Questions concerning public funding of the arts have received considerable attention in recent years. Many of these questions concern the issue of whether government financial support should go to art considered by a vocal segment of the population to be "obscene" or "indecent." The lion's share of attention has, of course, gone to federal funding of the arts, specifically to the limitations imposed on the National Endowment for the Arts by the Helms Amendment. Interest in applying moral criteria to public funding for the arts, however, extends beyond the federal level.

We propose to examine a case in which some members of the public demanded that a state supported university cancel production of a play because the play allegedly offended community moral standards.[1] In essence, proponents of cancellation advocated censorship, withholding state support from an artistic effort on purely moral grounds. After a brief summary of key events in the debate which followed this demand, we will examine the rhetorical strategies used by proponents and opponents of cancellation of the play, and review the University's activities to insure that the play could be produced in a hostile environment.[2]

Summary of Key Events

In the spring, 1989, the Department of Theatre at Southwest Missouri State University scheduled production of Larry Kramer's The Normal Heart for November, 1989. This play, first produced in 1984, depicts the effects of an unnamed, fatal,

sexually transmitted disease on a group of gay men. The play dramatizes the apathy of public officials and depicts the efforts of gay men to lobby for government programs to fight the disease. The play also encompasses a discussion of promiscuity within the gay community, and portrays the possibility of loving gay relationships.

In early October, 1989, Representative Jean Dixon of the 135th Missouri Assembly District (which includes parts of Springfield, where Southwest Missouri State is located) asked to meet with the University's president to express her opposition to production of the Normal Heart. Subsequently, Representative Dixon met with several University administrators. including the president. Unable quickly to affect cancellation of the play, she asked for and received a hearing at a meeting of the University's Board of Regents.

Meanwhile, the University requested from its attorneys a legal opinion on the issue, which opinion was forwarded to Dixon in letter form. At the Regent's meeting on October 20, one month before the play was scheduled to go on, Representative Dixon made a lengthy and emotionally charged plea for the University to halt the production. The Regents, relying on corporate counsel's opinion that they might be liable for damages should they cancel the production, simply refused to act on the matter.[3]

Following Dixon's meeting with the Regents, a community group formed to support the pro-cancellation position. This group, Citizens Demanding Standards, published newspaper

advertisements, held public meetings, and staged rallies. An anti-cancellation group, People Acting for Compassion and Tolerance, also held public meetings and candlelight vigils. Debate over the play became a leading issue at both the University and in the local print and electronic media.

National press attention was given to these events when the home of a leader of PACT was set afire and burned. Fire and police investigators concluded that the fire was the act of an arsonist.[4] No other significant acts of violence occurred, attributable, in part, to intense security precautions taken by the University. The play was staged to sold-out houses, and public concern with the matter diminished quickly, surfacing again briefly in the summer of 1990 during Dixon's unsuccessful primary campaign.

Analysis of the Rhetoric in the Debate

Two documents define the rhetorical position of pro- and anti-cancellation forces at the beginning of the debate over the Normal Heart. The first is the opinion of legal counsel to the University, sent in the form of a letter to Representative Dixon on October 17, 1989. The second is a full page newspaper advertisement which appeared on October 29, 1989 sponsored by the pro-cancellation Citizens Demanding Standards.

The central argument of University counsel is that "any decision by the University to prohibit production of the ... play would constitute a violation of the First Amendment rights of both students and faculty, and would subject the University to legal action for damages and injunctive relief." In support of

this position, counsel cited a series of decisions handed down by both the Eighth Circuit Court Appeals and the United States Supreme Court. While allowing that First Amendment rights could be limited by University officials, "to avoid a finding that the school acted unconstitutionally, the burden is on the University to establish that a 'substantial and reasonable government interest exists' to interfere with the right to receive information." The clear conclusion: No such interest appeared in this case.

Counsel for the University also argued that the Regents were bound by the Faculty Handbook to observe academic freedom, that the language in the play, while offensive to some, was not "prurient," and that the acts depicted in the play, e.g., "consensual kissing" and a pledging of faith to a relationship, were not in violation of Missouri statute.[5]

The effect of University counsel's opinion was twofold. First, from the official point of view, the opinion established that this was not a case of the University using public funds to support an objectionable activity. Rather, this was an instance of where the University, were it to cancel the play, which admittedly used public funds for its production, would likely violate the constitutional rights of the university community. Second, the opinion allowed the Board of Regents, University officials and citizens to take the position that, no matter how much they deplored pornography, obscenity or homosexuality, to act against the play would be illegal. Those opposed to cancelling the play could take a "respectable" position in

defense of free expression and academic freedom without having to discuss either moral or medical issues or, indeed, while deploring immoral behavior which the University did not have the right to prevent.

Proponents of cancellation, however, were not content to lose the contest on value-neutral constitutional grounds. On October 29, 1989, a full page advertisement, paid for by Citizens Demanding Standards, appeared in the Springfield News-Leader, the regional general circulation newspaper. The advertisement firmly snapped the issue back into the Helmsian frame of reference, asking in bold headlines "DO YOU WANT YOUR TAX DOLLARS TO PROMOTE HOMOSEXUAL. ANTI-FAMILY LIFE-STYLE?" The advertisement went on to ask "Why would these state employees and officials approve using your tax money to promote a homosexual political agenda in our university." The advertisers proclaimed that "The Homosexual Play, 'THE NORMAL HEART' . . . PROMOTES HOMOSEXUAL LIFE-STYLE AS NORMAL . . . ADVOCATES A MILITANT HOMOSEXUAL POLITICAL AGENDA. . . DEMONSTRATES IGNORANCE AS TO CAUSE AND PREVENTION OF A DEADLY VIRUS . . . [and] USES UNNECESSARY PROFANITY." Following a description and denunciation of the "homosexual political agenda" was an exhortation to let public officials "KNOW HOW YOU FEEL."[6]

The clear intention of the CDS advertisement was to place the issue in the context of government officials wrongly using public money to promote a radically immoral philosophy. As the president of Citizens Demanding Standards said, "What we are fighting is the use of public funds to promote a left-wing and homosexual political agenda."[7] Within this frame of

reference, University officials could not avoid the imperative to act by merely citing the First Amendment or by invoking academic freedom. The results of University inaction were dire: "This play will go on - More deviant plays will follow - You will pay for it."[8]

The official University position came under direct attack by the proponents of cancellation when Dixon presented a petition to the University's president. Dixon said, "May I remind you, though, Dr. Gordon, that it is the taxpayer out here who pays your salary, and you're saying that you are going to teach whatever you please here and answer to no one." Gordon replied that "no amount of bribery will cause us to break the law."[9]

Other themes were elaborated for the next several weeks. Central to the cancellation strategy was to argue that the play encouraged immoral behavior and caused moral outrage in the community. As one leading cancellation proponent maintained, "We're not judging what goes on in our community by what goes on in Times Square, we're judging it by the public square."[10] To demonstrate that there was strong community opposition to the play, proponents staged a rally which attracted approximately 1200 people. The main speaker at this rally, Gene Antonio of the Texas-based Foundation for the Advancement of Truth, kept to one of the dominant theme of the proponents--homosexuality is evil. Antonio said of the gay lifestyle, "It's worse than sick--it's evil--we're talking about warfare here. . . . It's time we said to them 'No!' You don't spread your perverted filth in front of

my face."[11] In a subsequent appearance on the SMS campus, he stressed the other main theme that "taxpayers money should not be used to promote such pornographic filth."[12] As a further identification move the proponents also delivered a petition containing over 5,000 signatures to the University president demanding cancellation of the play.[13]

In addition, a number of related themes were floated. For example, the notion was raised by an attorney, a leader of the CDS, that production of the play was a form of sexual harassment. He advanced the theory that "sexual harassment is not just offering payment for sex or putting a hand on someone's knee. Any time a person uses sexually explicit language in the presence of someone who is offended, and the person objects and the language continues, that is sexual harassment."[14] This line of thought did not, however, play a significant role in the controversy.

Proponents of cancellation did confront First Amendment issues. The principal contention was expressed by Representative Dixon. "Freedom is rooted in moral order, and out of commitment to that moral order, freedom is established. If you establish freedom first without the commitment to moral order, you have a free-for-all." Clearly, in her view, production of the play represented a imbalance between freedom and her vision of order.[15] Another line of argument was that moral right was more important than freedom of expression. One proponent asserted that "the same old arguments are continually put forth by those who believe in an "anything goes" philosophy under the guise of

freedom of speech. This tired old argument has outlived its usefulness. . . It seems that the old argument of what is eternally right (or wrong) is still the best for us."[16] Another maintained that "what is at stake here is more than just the right of a few to exercise free speech. It is whether the actions of a few should be allowed to defile the whole. . . Can we not therefore logically conclude that it is also impossible to govern a university without God and the Bible."[17] An additional line of argument was that the University administration was hypocritical. One proponent argued that "this freedom of speech facade is very attractive, but it isn't as responsible as SMSU would like taxpayers to believe. It's true the University has the legal right to put on The Normal Heart, but it does not have the legal obligation to do so."[18] In similar fashion, another proponent argued that if the university's president "believes the play and homosexuality is good for the city of Springfield then he should stand up and be counted. If he disagrees, then he should also stand up and say it is wrong and quit playing politics."[19]

These arguments were not without effect. Several state legislators criticized the university for selecting a controversial play. One asked whether there was "a process where you can evaluate some of these things for community standards." Another suggested that SMS should "stick to producing 'classics' such as Shakespearean works and musicals like 'The King and I.'"[20]

Opponents of cancellation were, of course, a diverse

group, and their lines of defense served a variety of interests. Those who defended the official university position stressed the importance of free expression and academic freedom. The University's president stressed that "it would be a violation of the First Amendment's freedom of speech protection for students and faculty to cancel or censor parts of the play." He declined, however, to discuss his personal feelings about the play saying that he was "sensitive to the feelings of those who object to the play."[21] The editor of the regional newspaper strongly defended the First Amendment, arguing that taxpayer rights were not at issue. Instead, "there is nothing here more complicated than the cost of suppressing an idea. . . . The First Amendment protects absolutely or not at all. It defends freedom more fundamental than mere taste."[22]

This position was extended by an effort to use the occasion to further AIDS education. Seminars were held on AIDS prevention. Dr. Mervyn Silverman, who appeared at the seminar, argued that "community opposition to The Normal Heart is a step backwards in AIDS education in Springfield."[23] Silverman also attempted to separate AIDS education from the issue of homosexuality: "There are a number of politicians who are homophobic. AIDS is not their issue, homosexuality is. I say, don't use your homophobia, your fears, your anger about gays to get in the way of dealing with AIDS. They're totally different."[24] The effect of this was to extend the argument that the play was itself a legitimate form of AIDS education.

Proponents of cancellation, not finding this an

acceptable defense, took the position that the play "confirms, condones and reinforces the lifestyle that will ultimately lead to the death of these people."[25] The play, in the view of another proponent, "with its vulgar language and acceptance of -- immoral lifestyle, serves no good purpose. It is degrading, repulsive and detrimental."

People Acting with Compassion and Tolerance argued that opponents of the play were essentially bigots. Fundamental to this line of defense was the use of individuals and experiences outside the community. The function of this defense was to present proponents of cancellation as parochial moralists who would not be acceptable outside the legendarily conservative Ozarks, the "buckle of the Bible belt."[26] The campus newspaper raised this issue bluntly, roundly condemned what it regarded as the region's parochialism, asserting that the community's attitude could be summarized as "Come here, shut-up, and get out--or stay and join us."[27] This attitude was echoed in the community, one of whose members characterized the anti-play forces as "book-burning, play-banning bigots."[28]

Celebrity alumni of the university, notably Kathleen Turner, John Goodman and Tess Harper were quoted in support of the production.[29] The argument was made, most dramatically by Larry Kramer, the play's author, that his piece had been performed throughout the United States without protest.[30] In addition, some outside groups became involved in the controversy. Most notably, the Speech Communication Association passed a resolution supporting the stance of the administration. This

resolution received publicity in the community.[31]

Naturally, the involvement of outsiders did not have much effect on proponents of cancellation. Representative Dixon said of Turner, "What else would we expect when you see the immoral productions that are coming out of Hollywood today. We've seen the devastation of immorality on the lives of these actors and actresses."[32] Essentially, then, on one front the issue was drawn between allegiance to an asserted local community standard versus accepting a more liberal national community standard.

Largely lost, and almost but not entirely absent from the discussion, were advocates of gay rights, present at a PACT rally through a spokesman for the Metropolitan Church of Wichita, Kansas, through the appearance on the campus of individuals wearing ACT-UP tee-shirts, and through a small off-campus rally for gay rights.[33] However, the theme of gay rights was not taken up by the larger groups who limited their advocacy to free expression and tolerance.

The arson incident was an event which became important to the opponents of cancellation. In essence, the fire represented the fear that moralists were unleashing destructive confrontation on the community. As one opponent of cancellation remarked, "This violence is a natural outgrowth of the hatred and prejudice" of anti-play advocates.[34] The university's student newspaper reinforced this theme, asserting that "Citizens Demanding Standards didn't know what they were doing when they stirred up this issue. Maybe they didn't understand what hatred

and ignorance can do. Now they do. Now they all do."[35] Opposition to the play could incite the radical anti-play advocates to acts of violence. National media attention from the networks and Cable News Network drawn by the fire realized the "Chamber of Commerce" fear that southwest Missouri could be portrayed as atypically parochial and intolerant. Proponents of cancellation, however, were not left without reply. Representative Dixon advanced the notion that pro-play forces had set the fire themselves, and that there was evidence that the inhabitants of the house were satanists. This position, however, seems to have strained credulity and created adverse reaction.[36]

Securing Free Expression

In the main, however, no other reported acts of violence occurred. This may be attributable to an extensive and expensive effort of the University to maintain security. Though the president of the University asserted before a legislative committee that the cost of security for the play was $3,966.00, the actual cost was clearly much more.[37] The university actions to "protect the speaker" were, in part, an extension of its position that the University was not engaged in an artistic production so inflammatory that it should be cancelled. By maintaining the peace, the University was essentially reinforcing its argument that it had no reason to interfere with the production.

The University was ill-prepared for the controversy over The Normal Heart. The University was, of course, prepared

to handle routine matters through its Offices of News Services, University Relations and Security. Thus, by the end of October, 1989, the administration was defending itself and responding to a crisis management situation without the benefit of any plan.

An ad hoc committee was quickly formed to map out the contingencies, strategies, and positions that would guide official University policy. This committee was chaired by the Vice President of Administrative Services. The core committee included the Assistant to the President, the Directors of Security and Physical Plant Management, the Support Services Coordinator, the Department Head of Theatre, a representative from the Springfield Police Department, and the Director of University Relations. From time to time, other administrative members were brought into the deliberative process for special advice or service.

This committee was not charged with deciding whether the play should be cancelled. That decision had already been taken. The charge was to provide inconspicuously an environment which would allow the play to be performed as normally as any other production. In reality, the committee was preparing for the worst case scenario.

The committee developed a set of guidelines for coping with the crisis. These guidelines concerned (1) monitoring rumors; (2) restricting demonstrations and crowd control; (3) protecting the participants in the play; (4) preventing disruption of the event by bomb threats.[38]

Prior to the performances, both the committee and the

University's Security Office were in contact with local law enforcement officials and the Federal Bureau of Investigation. These sources were monitored largely to track down information on the possible appearance on campus of "extremists." Information was received that "skin-heads" and members of ACT-UP were both likely to demonstrate. Though this information proved not to be true, the possibility of violent demonstration remained a constant threat.

Southwest Missouri State has a policy of restricting demonstrators, picketers, and protesters "to the sidewalks adjacent to the University premises." During the period of controversy, this policy was strictly enforced. The only major meeting on campus, a rally in favor of the production, was held in an in-door arena so that maximum security could be provided. The organizers of this rally were strongly encouraged not to carry through with a plan for a march. The administration believed that such a march might lead to clashes with anti-play forces.

Following the arson on the PACT leader's home, protection was provided to all participants in the play. This included housing the play's director and the actors in a hotel near campus, along with providing them special security.

Efforts to prevent disruption of the play were the crucial element of the security measures. Bomb threats could have caused cancellation of each performance. To prevent this "minority veto," every effort was made to secure the facility in which the play was held. Prior to each performance, the

building's offices and classrooms were cleared of all personnel and students not associated with the play. The building was searched by bomb detecting dogs before each performance. Entry to the building was only by security badge or ticket. There was only one entrance to the auditorium, manned by security personnel equipped with a metal detector. Actually, the metal detector never functioned, but the appearance of high security was maintained.

Three bomb threats were received by the University. However, the auditorium was not cleared, because adequate security measures had already been taken.

The University's plan for coping with the Normal Heart controversy did not include a comprehensive system of media relations. The press was not allowed to attend rehearsals because the director believed that they would be disruptive. Media relations was handled through normal University channels, coordinated by the Office of University Relations. No special efforts were taken to give press coverage a special spin.[39]

There was an effort to contact directly all individuals who wrote letters either protesting or supporting production of the play. The University received over 3,500 letters objecting to the play, and nearly 6,000 in support. The University president replied to these letters with 9,494 signed letters. In these letters, he came very near to a genuine First Amendment defense of the play, quoting Holmes admonition that "the stifling of advocacy . . . rings the death knell of a free society . . . It signals a lack of faith in people, in its supposition that

they are unable to choose in the marketplace of ideas."[40]

Conclusions

From the perspective of the University, its approach to the crisis was successful. It managed to deflect attention from the issue of taxpayer support for allegedly immoral activities to the question of free expression. Consequently, University officials were able to dominate the moderate central ground and make the opposition appear radical. The University was also able to prevent incidents which would have interfered with the production. The strategy used, though costly because of security measures and possible loss of donations from some contributors, was therefore a success.

Proponents of cancellation may well have appeared immoderate. Representative Dixon's loss of a Republican primary in August, 1990, against a moderate opponent, may signalize success in isolating the pro-cancellation forces. However, one cannot help but suspect that those who defended the First Amendment so vigorously might not be reluctant to do so with any frequency.

While the First Amendment proved an effective strategic defense, its use might actually have a chilling effect on challenging artistic productions at state supported schools. Incidents of this kind could, unavoidably, limit free expression. Cancellation opponents may have signaled that the First Amendment is to be celebrated but not invoked.

Proponents of AIDS education were doubtless incidental beneficiaries of this incident. However, there is no evidence

that advocates of gay rights were able to use the occasion to influence public opinion.

In general, then, this successful defense of free expression leaves us with questions of how the First Amendment can be defended in this context without damaging the expression it was designed to protect, and of how discussion of substantive issues such as AIDS prevention and gay rights can proceed without being overshadowed by equally vital issues of procedure.

ENDNOTES

1. This case could also be placed in the context of "offensive "expression." See David S. Tatel, Martin Michaelson, and Daniel B. Kohrman, How the First Amendment Applies to Offensive Expression on the Campuses of Public Colleges and Universities. Washington: American Association of State Colleges and Universities, 1990.

2 For a more complete description of the events summarized in this case study, see Larry Rottmann, "The Battle of The Normal Heart," Academe, 76 (July-August, 1990), pp. 30-35. This entire issue is devoted to studies of academic and artistic freedom.

3. Tape Recording, Board of Regents Meeting, Southwest Missouri State University, October 20, 1989.

4. News-Leader, November 16, 1989, p. 1.

5. Letter from Ransom A. Ellis, Jr. to Honorable Jean Dixon, October 17, 1989.

6. News-Leader, October 29, 1990, p 11A

7. Southwest Standard, November 3, 1989, p. 1.

8. News-Leader, October 29, 1989, p. 7A.

9. News-Leader, November 15, 1989, p. 13A.

10. Southwest Standard, November 3, 1989, p. 1.

11. News-Leader, November 14, 1989, p. 6A.

12. Southwest Standard, November 17, 1989, p. 2.

13. Southwest Standard, November 17, 1989, p. 1.

14. News-Leader, October 31, 1989, p. 1A.

15. Jean Dixon, "Play Uses Freedom of Speech Irresponsibly," News-Leader, November 12, 1989, p. 7B.

16. News-Leader, October 29, 1989, p. 7A.

17. Letter to the Editor, News-Leader, October 29, 1989, p. 8A.

18. Southwest Standard, November 3, 1989, p. 6.

19. Letter to the Editor, News-Leader, October 27, 1989, p. 8A.

20. News-Leader, November 18, 1989, p. 1A.

21. News-Leader, October 18, 1989, p. 9A.

22. News-Leader, November 2, 1989, p. 4A.

23. The Southwest Standard, November 17, 1989, p. 2.

24. News-Leader, November 16, 1989, p. 7A.

25. News-Leader, November 5, 1989, p. 1B.

26. A local columnist wrote on the tradition of censorship in the region. Mike O'Brien, "SMS Play Controversy is Only the Latest Local Crusade," News-Leader, November 5, 1989, p. 6B.

27. Southwest Standard, November 3, 1989, p. 5.

28. Letter to the Editor," News-Leader, November 12, 1989, p. 7B.

29. News-Leader, November 2, 1989, p. 1A.

30. News-Leader, November 1, 1989, p. 1A.

31. News-Leader, November 20 , 1989, p. 6A.

32. News-Leader, November 9, 1989, p. 1A

33. News-Leader, November 15, 1989, p. 1A. News-Leader, November 20, 1989, p. 1A.

34. Southwest Standard, November 17, 1989, p. 1.

35. Southwest Standard, November 17, 1989, p. 3.

36. News-Leader, November 17, 1989, p. 8A.

37. News-Leader, November 16, 1989, p. 8A.

38. "Policies and Procedures for The Normal Heart, Internal SMSU document, November 11, 1989.

39. Christine L. Bryant, "A Crisis Management Case Study: The Normal Heart. unpublished essay, 1989.

40. Rottman, "Battle of The Normal Heart," pp. 33-4.