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CONGRESSIONAL RECORD — SENATE

May 27, 1989

S.5805

Adams bore a family name synonymous with service to country. As a student, I moved with the Nation the passing of my dear friend and mentor, Claude Pepper. But I rejoice for having had this living legend as a colleague and coworker.

Although, when I interview how he would wish to be remembered, he responded:

As an honest, hardworking man, striving for the benefit of those in need.

Claude Pepper will surely be remembered for his dedication and sacrifice. And his service to the State of Florida.

The PRESIDING OFFICER. The Chair recognizes the Senator from the State of Washington.

ON THE OFFICIAL FUNDING OF RELIGIOUS BICOTRY

Mr. GORTON. Mr. President, seldom in public life does one encounter problems more vexing or consequential than those in which the interests of the state conjoin or run counter to the dictates of art or religion. It is not possible simply to render unto Caesar what is Caesar's and unto Christ what is His, for the sacred and the profane are as thickly interwoven as twistings and untwistings. They have been always and they always will be.

The difficulty arises partly because the language of politics is not deep enough to address profound questions of art and religion, and often when it intrudes upon them it extinguishes their lights. Though politics require definition, art by its very nature eludes and religion is often beyond it. Should a controversy also incorporate, as does the one I am about to address, questions relating to free speech, the limits of government, and sacrifice, the problem may appear intractable. This one, however, is not intractable, if the will to make distinctions overcomes the will to be outraged.

I shall tell you what happened.

First, Americans were taxed, which is no more surprising nor less certain than the raising of the Sun. Revenue came from a very number of households, individuals, and corporate entities. Like water flowing into the Mississippi after spring rains, it swelled to the muddy, omnipotent, self-perpetuating torrent that we call the Federal budget. If the federal budget grew like the budget, Denver would soon be under water. Instead of running randomly into the Gulf of Mexico, this river of money poured into the District of Columbia, where you and I divided it up and sent it back again. Not only was much energy wasted in the round trip, but by your actions many places that had been wet became untaxed.

Of this wealth collected from nearly every human being in the land, a certain portion went to the National Endowment for the Arts. Fair enough, I suppose. It was in turn divided up, of necessity, I admit, by people who are appointed rather than elected.

Though the acronym AWVA, or AVA-7, and was then entrusted to the Southeastern Center for Contemporary Art, or SECCA. Again, the acronyms have begun. SECCA then entrusted it to a five-member jury of artists and curators. This jury then chose 10 artists, each of whom received $10,000. The exhibition of his work, in the AVA-7 show in Los Angeles and several other cities. One of the ten artists, Andres Serrano, chose to exhibit a picture that he had submitted to the jury and that it had used as part of the basis for awarding him the fellowship. The picture is entitled "Piss Christ," so called because it depicts Jesus on the cross, submerged in urine. Mr. Serrano declared, that his next step would be to submerge the suffering Christ in semen.

Mr. President, I do not claim to have the most discriminating eye in the contemporary visual art. Given that one of the most generously reviewed exhibitions of recent times was the artist Judy Chicago's mixed media depictions of female genitalia served on dinner plates, and that one of the masterpieces of conceptual art, was minted in the artist's self, was thrown out of a window into a tremendous pile of horse manure, am I supposed to? I believe I speak for many artists and the common man and the uncommon intellect when I confess my indifference, at best, to these heroes.

They originate not only in nihilism but in the more innocent misconception that the great philosopher of aesthetics Benedetto Croce called the intellectualist error. A lesser philosopher put it this way, "If you've got a message, send it across the Pacific, in a jet plane, more thorough. "Confusions between the methods of art and those of the philosophic sciences," he stated, "have been frequent. Thus it is that the artists look to expand concepts to unite the intelligible with the sensible, to represent ideas of universals; putting art in the place of science." But this, what he called "the theory of art as supporting science," he rejected, for he believed that "Aesthetic consideration pays attention only and to the adequate expression, that is to say, to beauty." Croce writes of an artist who "may try to conceal his internal emptiness in a flood of words," in painting that dazzles the eye; or by heaping together aesthetic and social, moral, and political and arrest and astonish us."
This practice is no longer aberrant. It is a way of life, and sometimes one can hardly determine if a contemporary artist is contributing to the development of art or to the history of publicity. Mr. Serrano, dressed in a shiny green suit to the theater, to attract attention to the fact that he wrote plays. The stategem was so potent that it has worked its way through our century down to this day, and now you don’t have to bother about the plays.

Mr. Serrano, no doubt, wants publicity, and he is getting it. Indeed, I am giving it to him. His trick is to make his opponents, in their attempt to drown him, pour so much water into the lock that they raise up his boat. And then he tells them what he’s doing, mainly for the thrill of it, but also because it is certain to open the sluice for more. To quote Mr. Serrano, "I feel when people attack a work of art to such a great extent, they imbue it with a far greater interest than they and, in that, I’m flattered that they think it deserves such attention."

This declaration is obviously calculated to do to his critics what banderillas do to toreros: by tormenting them, weaken them, drive them wild.

I cannot think of a better response to this calculated provocation than to quote the consummate artist, William Shakespeare, to the effect: "You must suffer this indignation at something very similar."

"Why, look you now, how unworthy a thing you make of me! Hamlet says.

You would play upon me, you would seem to know, my stops, you would pluck out the heart of my mystery, you would sound me from the lowest note to the top of my compass!... do you think I am easier to be played on than a pipe? Call me, what instrument you will, though you can fret me, you cannot play upon me.

Now, you know my opinion of the tradition Mr. Serrano exploits, and you should know that my sense of vitriolism, gimmickry, shock, and mockery, works such as his have a tendency to disappear. But this is not a bullfight and he is not a matador. I know that the heart of his strategy depends on the overreaction of those who would by instinct and passion suppress his sacrilege as readily as they would defend their own children. For, indeed, he has assaulted that which they hold most holy, sacred, and dear.

But, no. I refuse to enter that trap, and will not allow him or his partisans to cloud his abuse by diverting the issue to that of freedom of expression. He has the right to display his picture. There is no question that he has that right. It is almost absolute. I would sell my grandmother, shoot my dog, with the gun, before I would fail to defend that right. On February 22 of this year, in my remarks concerning the Rusdhle affair, I made clear that I held to his position and that I do so in spite of what I believe is a vital and fundamental principle. And in the case of Mr. Serrano as is in the case of Mr. Rushdie, neither the transparency of his intentions nor the quality of his work can prejudice it.

Let us even assume, for the sake of argument, hypothetically, as a fiction, a contrived purely academic exercise, that his picture is a great work of art. Great works of art can be sacrilegious: not only in theory, but in fact. For example, Michelange- lo’s statue of Moses is fitted with an arm that那种 operations, and gen- erations of Jews have been stung by that, but the statute, without a doubt, is great art. So let us assume, for the sake of argument, that Mr. Serrano’s picture which is deeply offensive to Christians, is of the same caliber as Michelangelo’s Moses, which is deeply offensive to Jews. What is the role of the state in these matters? Does it serve such attention. It is of course necessary to accept that Michelangelo’s work can prejudice it. Neither subsidy nor censure are appropriate, for the state, with its univalued power, must not take sides in purely symbolic disputes. This judg- ment has honorable origins, a long his- tory, a basis in reason, and several il- lustrative parallels.

It would be relatively easy to preclude SECCA from receiving Govern- ment funds on other, more practical grounds. In this matter the layers of unaccountability are much like those of shell corporations established on is- lands that vanish at high tide. Passing from the constituent to the Treasury, to the NEA, to SECCA, through the panel of judges, to laureate, the money flows freely, with neither ob- struction nor delay, from citizen to Serrano. But what of traffic in the state’s coffers of unaccountability run the other way? No. At every step, as in the famous Thomas Nazi cartoon of the Tweed ring, some- one is pointing a finger at someone else and saying, "We can’t possibly interfere with the artistic choices made by our grantees." To cite part of a letter I received from the NEA, "This limitation reflects concern that Federal funds, of whatever kind, could result in government intervention in the substance of artistic projects."

I ask you, is a $15,000 fellowship, a traveling exhibition, and the imprima- tur of and association with the Nation- al Endowment for the Arts something that is neutral? Is it of no effect? If it is, what is its purpose? And if it is, as anyone can see, the promotion and ad- vocacy of a work other than another, of his work and of his philos- ophy, of his style and approach, how can providing support be less than "intervention in the substance of artistic projects" than would be withdrawing support?

The Government and its compensat- ing agents choose. They must choose: they have no other means of accomplishing the distribution. And to make the choice, they must have criteria and they must exercise judgment. If the people who provide funds for this program—the taxpayers—are spurred to exercise their judgment and proffer their criteria, it is to be criticized as interven- tion, whereas if the judges and the Government are told that if the citizenry has predilec- tions, leanings, principles, convictions, an aesthetic, they must be held in abeyance for fear of intervention. But if the judges have predilections, lean- ings, principles, convictions, an aes- thetic, they may be exercised, for that is freedom of expression.

The scheme I have outlined, or rather, the revocation of the principle that the bureau- racy wields more power than those who have empowered it. It depends upon an inequality in the flow of fund- ing and accountability, an inequality that is sustained in contradiction and inconsistencies that are so obvious as to be surreal.

Where is the consensus for "Piss Christ"? Is there anyone in this body who will stand to declare that Ameri- cans should subsidize religious bigot- ry? Is there anyone who will declare that this is not religious bigotry? What will the NEA pay for next? A mockery of the Holocaust? A parody of slave ships? A comedy on the decla- ration of the American Indian? A satire of the massacre in the Katyn Forest?

To those who might say that for the Government to remain disengaged is to limit freedom of expression, I say that to assert this is merely to transform high principles into stepping stones that lead to the public trough. The illus- trative parallel is the argument that if the Government does not nurture people like Mr. Ser- rano it is therefore opposing them. This view, I submit, is a self-serving belief of those who does not exist; namely, that the state owes all things to all people and has neither the discretion nor the moral right to abstain from any facet of activity or to restrict any petitioning that the Government chose 10 and rejected 490. So much for the myth that it cannot bring its discretion to bear.

To the contrary, government re- quires, above all, and almost always, discretion. The least of the examples I can think of is that Mr. Serrano was competing with 500 other artists. The Government chose 10 and rejected 490. So much for the myth that it cannot bring its discretion to bear.

My view is founded on the conviction that good government is a matter of restraint and dis-cretion. By the kind of encouragement the NEA allowed to the creator of "Piss Christ," the state usurps its citizens’ independence and self-sufficiency and therefore the power and effectiveness of the
Government, itself, which derives its virtue from the consent and national sovereignty of the people. Interference by the Federal Government in the Australian Parliament in the exercise of the Constitution is not only contrary to the spirit of the Constitution, but also contrary to the national sovereignty and national life of the nation, and the principle of democracy, in politics, and, in this case, in a theological dispute, for no matter how poor and despicable Mr. Serrano's argument, it is nonetheless at least symbolic of a serious argument, and the Government of the United States should not take sides in religious arguments. Here, by subsidizing one of the parties, it has done so, and that is what we should not do.

We have in the Constitution a direct prohibition of established religion. By immediate inference, this means that we cannot diminish one religion, lest another, the one unburred, rise out of the ashes to become dominant.

If art and religion are to be free of state influence, then they must indeed be free of state influence. If they are not to be free, then they cannot depend on subsidy. As for the religious bigotry here in question, a system will always exist; and it is not the business of the Government of the United States to root it out. But neither is it the business of the United States to support it. Though Mr. Serrano and SECCA may enjoy near perfect liberty from constraint, they cannot expect the privilege of requiring government assistance to which they desire non-interference, for that is tyranny. I propose that the Government of the United States withdraw from the question entirely, that it separate itself, its influence, its resources, its finances, from SECCA and Mr. Serrano, allowing them the near perfect liberty to reflect upon what they have done; liberty unimpaired by further U.S. Government support.

Mr. President, I propose that the NEA deprive SECCA of Federal funding for a period of five years, and until such times as it is obvious that SECCA is administered responsibly. Many in this country are unable to take such a momentous step, this Congress should expressly prohibit NEA from providing such support.

REPORT ON NATIONAL EMERGENCY WITH RESPECT TO IRANIAN TRANSACTIONS—FROM THE PRESIDENT RECEIVED DURING RECESS—PM 46

Under the authority of the order of the Senate of January 3, 1989, the Secretary of the Senate, on May 23, 1989, during the recess of the Senate, received the following message from the President of the United States, which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:
I hereby report to the Congress on developments since the last report of November 15, 1988, concerning the national emergency with respect to Iran that was declared in Executive Order No. 12170 of November 14, 1979, and matters relating to Executive Order No. 12513 of October 29, 1987. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa-8. This report covers events through March 28, 1989, including those that occurred since the last report under Executive Order No. 12170 dated November 15, 1988. That report covered events through October 1, 1988.

1. Since the last report, there have been no amendments to the Iranian Assets Control Regulations, 31 C.F.R. Part 555 (the "FACRs"), or the Iranian Transactions Regulations, 31 C.F.R. Part 560 (the "ITRs"), administered by the Office of Foreign Assets Control ("OFAC"). The major focus of licensing activity under the ITRs remains the importation of certain non-fungible Iranian-origin goods, principally carpets, which were located outside Iran before the embargo was imposed. The U.S. government benefit accrued to Iran after the effective date of the embargo. Since October 1, 1988, FAC has made 583 licensing determinations under the ITRs.

Numerous Custom Service detentions of Iranian-origin goods (including carpets, caviar, dates, pistachios, and gold) have taken place, and a number of FAC and Custom investigations into potential violations of the ITRs are pending. Several of the seizures have led to forfeiture actions and imposition of civil monetary penalties. An indictment has been issued in the case of United States v. Behram Tohtir, which is now pending in the United States District Court for the District of Vermont.

2. The Iran-United States Claims Tribunal (the "Tribunal"), established by the Iran-United States Claims Settlement Agreement of January 19, 1981 (the "Aigiers Accords"), continues to make progress in arbitrating the claims before it. Since the last report, 22 awards were made, for a total of 418 awards. Of that total, 308 have been awarded in favor of American claimants; 193 of these were awarded on agreed terms, authorizing and approving payment of settlements negotiated by the parties, and 115 were adjudicated on the merits. The Tribunal has dismissed a total of 25 other claims on the merits and 58 for jurisdictional reasons. Of the 29 remaining awards, two represent withdrawals and 27 were in favor of Iranian claimants. As of March 28, 1989, awards to successful American claimants from the Security Accounts Management Trust Fund established in the settlement bank were $97 million; the Settlement Bank contained $420 million. As of March 28, 1989, the Security Account has fallen below the required balance of $500 million 25 times. Each time, the security account, as required by the Aigiers Accords, by transferring funds from the separate account held by the New York Settlement Bank in which interest on the Security Account is deposited. Iran has also replenished the account once, when it was necessary to replenish the Security Account records, for a total of 26 replenishments.

The most recent replenishment as of March 28, 1989, occurred on March 22, 1989, in the amount of $100,000, bringing the account balance up to $500,011,034.15. The aggregate amount that has been transferred from the interest account to the Security Account is $824,685,899.35. The amount that the United States of America, through the December 3, 1989, was $128,220,936.82 (the U.S. account covered events through October 1, 1988).

3. The Tribunal continues to make progress in the arbitration of claims of U.S. nationals for more than $250,000 each. Over 68 percent of the nonbank claims have now been disposed of through adjudication, settlement, or voluntary withdrawal, leaving 169 such claims on the docket. Of these claims, the progress of which has been slowed by their complexity, are finally being decided, sometimes with sizable damage awards to the U.S. claimant. Since the last report, nine large claims have been decided: One U.S. company received an award on agreed terms of $10,800,000.

4. The Tribunal continues to process claims of U.S. nationals totaling less than $250,000 each. As of March 28, 1989, a total of 382 small claims have been resolved, 82 of them since the last report, as a result of decisions on the merits, awards on agreed terms, or Tribunal orders. One contested claim has been decided since the last report, raising the total number of contested claims decided to 24, 15 of which favored the American claimant. These decisions will help in establishing guidelines for the adjudication or settlement of similar claims. To date, American claimants have also received 56 awards on agreed terms reflecting settlement of claims.

The Tribunal's current small claims docket includes approximately 185