

Ex Ante

Vita Brevis Ars Æterna Est

Leonard Garment

Scene: an ancient steam room. A brazier of heated rocks, doused with water, sends up periodic clouds of vapor. Barely visible are figures of two men lying on adjacent tables, partially wrapped in sheets and being energetically scoured with birch branches by corpulent towel-clad attendants. As the steam momentarily dissipates, we recognize the scourees. One is Richard Nixon. The other is his old friend and political advisor Murray Chotiner, chewing on a soggy unlit Macanudo.

NIXON: My God, it's hot in here.

CHOTINER: Dick, there's no point complaining. It's even hotter everywhere else.

NIXON: I never thought I'd end up in a place where you have to go to the steam room to cool off.

A moment of silence, broken only by the sound of scraping birch branches.

NIXON: Go over this with me just one more

time, Murray. Are you sure you know exactly how you got here? I mean, how you died?

CHOTINER: For the fifth time, Dick, it was a simple auto accident. Nighttime, a sharp turn, a crash, and a couple of days later I was gone.

NIXON: I don't know. Something else had to be going on. I mean, of all the places in the world, don't you think it was a little suspicious that you got hit right in front of Teddy Kennedy's house on Chain Bridge Road?

Leonard Garment practices law at Verner, Liipfert, Bernhard, McPherson and Hand in Washington, D.C. The National Endowment for the Arts was part of his portfolio during his years of service to President Richard Nixon, and he co-chaired the commission established by Congress in 1989 to review the grant-making procedures of the NEA. This is not the first time Garment has encountered Nixon since the ex-President died in 1994. See *Life Inside a White House That Leaks Like the Titanic*, L.A. TIMES, Mar. 8, 1998, at M1. He is the author of *CRAZY RHYTHM: MY JOURNEY FROM BROOKLYN, JAZZ, AND WALL STREET TO NIXON'S WHITE HOUSE, WATERGATE, AND BEYOND ...* (Times Books 1997). The title of this article is a Flatbush variation on Seneca's classic "ars longa vita brevis" (art is long, life is short) that conveys the author's belief that the National Endowment for the Arts will live forever, despite what it and its beneficiaries sometimes do.

CHOTINER: I know what you mean. But really, this one was a coincidence.

NIXON: Did you see any strange lights in front of your car? Obstructions in the road?

CHOTINER: Dick, not everything is a conspiracy against you.

NIXON: Sorry, Murray. Can't seem to break the habit.

The door opens, sending a wave of even hotter air into the room. A third man, also sheet-wrapped, enters. The unsmiling attendants direct him to a table next to the first two and start scouring. The new guy peers through the steam, then sits bolt upright.

GARMENT: Mr. President!

NIXON: Len? Len Garment? Is that you?

GARMENT: Yes sir, Mr. President. And who's – Murray? Murray Chotiner?

CHOTINER: (*Grunts disapprovingly.*) You were expecting Mrs. Nussbaum? (*Turns to Nixon.*) An old radio joke, Dick.

NIXON: Well, I'm glad to see you, Len. Not that I ever thought I'd come across you down here. Some people, I'm not surprised. You know, half the old Kennedy Vietnam gang is down here – you should have seen the looks on their faces! – and places are already reserved for the rest of them. Can't think of a bunch that deserves it more. And they're still trying to blame it on me. But you, Len! After you spent all those years in the White House mixed up in one noble cause after another – Russian Jewish refugees, blacks, Indians, legal services, the arts ...

GARMENT: (*Clears throat.*) Actually, Mr. President, that seems to be why I'm here. All I

know is, I went to sleep peacefully a couple of nights ago, and suddenly I wake up and a huge Voice is bellowing at me. I could swear it was Paul Robeson. Anyway, the Voice says, "Three billion dollars? Your precious baby the National Endowment for the Arts has spent three billion taxpayer dollars on that – that *stuff?*" And all of a sudden here I am. I wonder how the Voice got that three-billion-dollar figure into His head.

CHOTINER: That I can tell you, Mr. Arts-and-Riots. You exited Earth just moments before the Supreme Court handed down its decision in that suit brought by Karen Finley, Ms. Chocolate, about whether Congress can make your Endowment pay attention to decency when it hands out money. The three billion was right there in the opinion.

NIXON: Actually, with matching Treasury and private funds ... (*Calculates.*) It's more like twenty billion dollars, Len. You may have succeeded in wrecking the whole goddamn culture.

GARMENT: (*Ignores the remark.*) How do you guys know about the decision down here?

NIXON: We get the newspapers, Len. It's part of the punishment. If you've been really evil, they only give you the *Washington Post*.

CHOTINER: I guess we know how *you* feel about it Garment. I'll bet you think it should be unconstitutional for Congress to presume to tell the Endowment how to spend our money.

GARMENT: (*Sighs.*) Not exactly, Murray. I'll admit I had a hand in getting the Endowment on the road to that three billion dollars. But by the late 1980s, the agency was in trouble. It wasn't just the public scandal – Mapplethorpe, religion and all. Most of what the Endowment

was funding was fine but the big problems were with political correctness and a breakdown of quality control in the visual arts. So we had this steady stream of mediocre stuff and the occasional finger raised in the face of conventional taste to prove their independence. Naturally the conservatives in Congress were delighted to give the NEA's budget an annual shafting.

NIXON: Shafting? (*Chuckles.*) Haven't heard that word since 1962, but I still like it.

CHOTINER: Well I for one think they should abolish the NEA.

NIXON: Wrong, Murray. Never set yourself up as an easy target, a social neanderthal. The liberals love that.

GARMENT: At any rate, when the criticisms of the Endowment came to a head in 1989, Congress – you know Congress, Mr. President – they wanted to get the problem as far away from themselves as possible. So they set up an independent commission to recommend reforms, but mainly to tell them what kind of restrictions they could impose on the content of Endowment grants. They made me co-chair, with John Brademas. Now, Brademas –

NIXON: I know all about Brademas. When he was in Congress, he was the one who locked up my papers after I resigned. A viciously partisan junkyard dog of a liberal – (*Gets a grip.*) Highly intelligent, though. Go on, Len.

GARMENT: John and I disagreed about a lot of things, but we put together a panel of distinguished liberal and conservative constitutional lawyers and scholars – Ted Olson, Floyd Abrams, Henry Monaghan, Mike McConnell, Kathleen Sullivan – who pretty much agreed that if government was going to fund the arts,

it couldn't impose content restrictions on what it funded. Our report said that. But we also said Congress could affirm that the purpose of its art support was to benefit the people and should respect the country's diverse beliefs. A signal to those who wanted the Endowment to survive, warning them not to push the political paradox too hard. We thought that covered it – sex, religion, the works – without going over the constitutional line.

CHOTINER: The Supreme Court opinion said that Congress bought the Commission's idea.

GARMENT: Only partly. Congress kept the Endowment alive and adopted our wording about respect, but they added their own language saying the Endowment should take decency into account. That's the part I thought couldn't pass constitutional muster ...

NIXON: If you want subtlety, the last place to go is Capitol Hill ...

GARMENT: So I wasn't surprised when Karen Finley won her case against the Endowment in the District Court and the Court of Appeals affirmed. Now I suppose we have the Supreme Court saying that the amendment was unconstitutional – discriminating against particular viewpoints, void for vagueness, and all that.

NIXON: Actually, Len, there was only one vote for that position. This guy Souter. I think he's spent too much time up in the woods in New Hampshire. You should have known the Court wouldn't have granted cert unless they wanted to reverse.

GARMENT: You mean they upheld the amendment?

NIXON: Eight to one. O'Connor wrote the opinion for the Court.

GARMENT: How did they get *that* majority?

NIXON: Sleight of hand. A beautiful job. First, the majority said that awarding grants through competition isn't like administering a regulation or a criminal law, because with grants, you're already making all kinds of subjective judgments about the merits of applicants' views. Second, they said the amendment doesn't keep the Endowment from funding indecent or disrespectful art; it just says the agency has to *consider* decency and respect. So when you come right down to it, the majority's argument is that because the process is mush in the first place, a little more mush won't hurt.

GARMENT: They got eight votes for this?

CHOTINER: Nah, Scalia and Thomas just concurred in the judgment. Scalia saw right through the smokescreen – said the majority gutted the statute by ignoring the fact that Congress *did* mean to discriminate against certain views, and it's perfectly constitutional. It doesn't abridge anyone's speech, it just lets taxpayers decide how to spend their own money.

NIXON: No, no, no, Murray. Look, the Court was in a bind. The amendment says the Endowment should consider decency. If you look at it straight, like Souter and Scalia did, you have to choose free speech and call the amendment unconstitutional or choose democratic accountability and call it constitutional. You're trapped between decency zealots

and First Amendment crazies. Lots of votes for decency, lots of people in lots of places depending on public arts funding. I wouldn't want to choose sides in that fight.

But even apart from the flak, politicians should stay away from taking one side of disputes that can't be compromised. That includes the Supreme Court. If you want to see what happens when the Court forgets, look at *Roe v. Wade*. Endless goddamn chaos. So this Court took the Congressional directive about decency and read it as if it were just a phrase like the Independent Commission's exhortation about mutual respect. That's why they paid so damned much attention to your commission, Len.

CHOTINER: Please watch your language, Dick. Not that I mind. But you know you've been warned.

NIXON: Thanks, Murray. So the Court figured out a way to do the job. Rehnquist has finally gotten them into sensible shape. Wonder if he ever forgave me for calling him Renschburg on that Watergate tape.

GARMENT: Oh, I'm sure he understands that it was a mistake, a slip ...

NIXON: Like hell it was.

CHOTINER: Please, Dick ...

Steam thickens. Figures disappear. Voices continue. Endlessly. GB