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DO WE HAVE A CHANCE AGAINST THE FAR RIGHT?*

JEWELLE GOMEZ**

“Is that a pistol in your pocket, or are you just glad to see me?”

This query and other witty ripostes from that 1930s mistress of innuendo Mae West incited the rage of Will Hays, the director of the office that administered the Motion Picture Production Code.¹ Hays preached the erroneous idea that the morality of America could be protected by establishing a uniform standard by which the merit of art could be measured.² With sweeping generalities, Hays codified the xenophobia and erotophobia that lurked in the hearts of the descendants of the Puritan settlers.³

Half a century later, conservative (and opportunistic) feminists decided that the way to protect abused and exploited women was to define what types of sexual activity and representations of sexual activity were

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1. In 1922 the Motion Picture Producers and Distributors of America appointed Will H. Hays director and gave him the task of cleaning up the industry by implementing a program of self-regulation. See Margaret A. Blanchard, *The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society—From Anthony Comstock to 2 Live Crew*, 33 WM. & MARY L. REV. 741, 778-82 (1992). Hays' appointment was a response to calls for federal oversight of the motion picture industry. See *id.*; see also MURRAY SCHUMACH, *THE FACE ON THE CUTTING ROOM FLOOR* 17-21 (1964) (describing the history leading to the adoption of the Motion Picture Code in 1930). For an excellent description of the Hays Office's persecution of Mae West, see GEORGE ELLS & STANLEY MUSGROVE, *MAE WEST: A BIOGRAPHY* 201-09 (1982). As a result of this persecution, the dialogue, plots, and characterizations in West's films were often changed significantly, see *id.*, and a representative of the Hays Office was usually on the set during production. See MAURICE LEONARD, *MAE WEST: EMPRESS OF SEX* 159, 172 (1991).

2. For Hays' own views of his work, see WILL H. HAYS, *THE MEMOIRS OF WILL H. HAYS* (1955). See also Will H. Hays, *Voices of a Free People* (July 12, 1939) (transcript available in New York Public Library).

3. As Ruth A. Inglis writes:

[f]undamentally, the complete Code is a moralistic document. The word “moral” or its derivatives appears in it twenty-six times. Valuable terms like “sin,” “evil,” “bad,” “right,” and “good” appear frequently. Although divine law is mentioned only once, the language and reasoning of the Code belong to moral philosophy rather than to social science.

RUTH A. INGLIS, *FREEDOM OF THE MOVIES: A REPORT ON SELF REGULATION FROM THE COMMISSION ON FREEDOM OF THE PRESS* 128 (1974); see generally *id.* at 116-52 (detailing the Code's provenance and reproducing many of its provisions).

harmful, and to help conservatives and right-wing Christians pass laws to prohibit the activities and images they deemed inappropriate.

Along with this missionary movement rode its eager teammates—racism, homophobia, classism, and misogyny. And Jesse Helms—bereft of the Cold War, defeated by the civil rights movement, staggering under the blast of fresh air demanded by antismokers—turned to the field conservative feminists had tilled for him, attacking art, lesbians, gays, and anything else within reach that he thought constituents who didn't live in the Castro district or the West Village would relish demolishing. Unfortunately, Helms' calculation might be correct, and if so, it's due largely to the insular nature of the political lives we—as lesbians, as gays, and as artists—have led.

With the sophistication of each succeeding year, the power to create the social change we witnessed in the '60s and '70s becomes more remote, something dismissed as kid stuff. The most radical change I experienced as each decade overlapped the next was an understanding that the interconnection of all issues is incontrovertible. The foes who attacked me as a black person, as a seeker of peace, as a woman, as a lesbian, and as a working person had many faces but were essentially saying the same thing. And the sooner we understand that reality, the stronger our movement will be.

The AIDS crisis has acted as a catalyst to unify our community and form a solid power base that can effect change. We have not glossed over but rather spotlighted the differences, difficulties, and frustrations facing lesbians and gay men: one group with a solid political philosophy—feminism; the other with a clearly defined issue—AIDS. Effective coalitions have been built, at least temporarily.

The artists among us now face similar challenges: how to move out into the political arena, articulate a clear position that has far-reaching ramifications, and make coalitions, without letting personal ambition or prejudice short circuit that effort. Yet ego and money are more openly related to the creation and marketing of art than in any other calling—except perhaps politics.

Lesbians and gays have always worked in the arts, on National Endowment for the Arts (NEA) panels, and in publishing. That hasn't helped nonwhite lesbians and gays get their work published however. Only recently, when it appears there are money and careers to be made from lesbian and gay art, have we formed professional associations and encouraged others in their fields.

That lesbians, gays, and artists of all types have now risen up to fight the influence of Helms is extraordinary. AIDS, the pro-choice crisis, the total lack of competent health-care systems for women, and the rise in violence against lesbians and gay men are all consuming our energy. Our protest as lesbians, gays, and artists against Helms and our support of Harvey Gantt's senatorial bid helped make Gantt a strong contender for

what would have been the first congressional seat held by a black person elected from the South since Reconstruction.⁴ This makes me extremely proud, and the other struggles in which we're engaged seem more possible to win.

Hays was right to fear West. The liberating power of open sexual desire is at the heart of the lesbian and gay movement and has the potential to serve as the impetus for the total restructuring of this society. And Helms' blaming of art for society's ills is part of a long tradition of conservative scapegoating. When Lenny Bruce scared people with his satire, he was prosecuted for obscenity;⁵ when Paul Robeson refused to renounce his communist sympathies, his passport was revoked;⁶ when Billie Holiday was convicted on a narcotics charge, she was denied a cabaret license.⁷

It was not that long ago when the representation of lesbian relationships on stage was illegal in New York City.⁸ In his years as a

4. See Art Harris, *Harvey Gantt's Fight to the Finish; Courting Whites and Rivaling Helms in the Last Days of the Carolina Contest*, WASH. POST, Nov. 4, 1990, at F1. Gantt lost his bid to unseat Helms by a six percent margin. See Peter Applebome, *Helms Kindled Anger in Campaign, And May Have Set Tone for Others*, N.Y. TIMES, Nov. 8, 1990, at B3.

5. At one time, Bruce was arrested in West Hollywood three times in less than three weeks for "speaking obscene words in public." ALBERT GOLDMAN, *LADIES AND GENTLEMEN LENNY BRUCE!!* 388-91 (1974).

6. Robeson's passport was revoked in August 1950 on the grounds that his travel abroad would be "contrary to the best interests of the United States." MARTIN B. DUBERMAN, *PAUL ROBESON* 382-88 (1989). The passport was not returned until the summer of 1958, when the State Department capitulated to the mandate of *Kent v. Dulles*, 357 U.S. 116, 129 (1958) (holding that the Secretary of State was without authority to promulgate regulations denying passports to U.S. citizens on the basis of their political beliefs). See DUBERMAN, *supra*, at 463.

7. I and much of the black community felt that, when Holiday would not stop talking about segregation, her narcotics conviction was used as an excuse to deny her a cabaret license. See BUD KLIMENT, *BILLIE HOLIDAY* 82-103 (1990) (tracing Holiday's drug use and police treatment of her); see also Nat Hentoff, *The Real Lady Day*, N.Y. TIMES, Dec. 24, 1972, Magazine, at 9, 18 (stating that not all of Holiday's arrests on narcotics charges were legitimate).

8. In 1927, the New York Legislature amended the state's penal code by passing the Wales Padlock Act, ch. 690, 1927 N.Y. Laws 1731 (repealed 1965). The Act made it a misdemeanor to present plays "depicting or dealing with, the subject of sex degeneracy, or sex perversion," *id.* § 2, and took its name from the fact that local authorities were empowered to revoke the licenses of establishments where violations had occurred. See *id.* § 3. See also KAIER CURTIN, "WE CAN ALWAYS CALL THEM BULGARIANS": THE EMERGENCE OF LESBIANS AND GAY MEN ON THE AMERICAN STAGE 19, 100-102, 266-68 (1987) (describing the Act, its effects on lesbian roles in Broadway plays, and its ultimate repeal); ABE LAUFE, *THE WICKED STAGE: A HISTORY OF*

federal "special postal inspector," Anthony Comstock was responsible for more than 1200 arrests for obscenity before his death in 1915.⁹ The recent congressional vote reauthorizing the NEA was a dangerous compromise, leaving the funding that artists receive vulnerable to any community in any state that decides to make an example of someone and convict them of breaking obscenity laws.¹⁰ This returns us to the

THEATER CENSORSHIP AND HARASSMENT IN THE UNITED STATES 104-05 (1978) (discussing self-censorship of lesbian characters by the Shubert Theater Organization to avoid invocation of the Act).

9. Comstock was a self-appointed crusader who campaigned successfully for the enactment of federal legislation regarding obscene material. *See* Blanchard, *supra* note 1, at 744-60 (describing Comstock's activities).

10. Congressional debate was sparked in the spring of 1988 in response to a National Endowment for the Arts (NEA) grant that had been awarded to artist Andres Serrano. *See* Allan Parachini, *Endowment, Congressmen Feud Over Provocative Art*, L.A. TIMES, June 14, 1989, § 6, at 1. In an NEA-sponsored exhibit, Serrano displayed a photograph of a plastic crucifix submerged in a jar of urine. *See id.* The debate intensified after the works of photographer Robert Mapplethorpe were sponsored by a group funded by the NEA. *See id.*

In response to these controversial works, several members of Congress introduced legislation. For example, Rep. Dana Rohrabacher proposed an amendment that would have abolished the NEA. *See* 135 CONG. REC. H3637 (daily ed. July 12, 1989). In addition, Congress' most vocal critic of the NEA, Sen. Jesse Helms, proposed an amendment that would have placed content-based controls on material that received NEA grants. *See* 135 CONG. REC. S8806 (daily ed. July 26, 1989). This proposal would have forbidden NEA funds from being distributed for works that included "obscene or indecent materials . . . ; material which denigrates the objects or beliefs . . . of a particular religion . . . ; [or] material which denigrates . . . a person, group, or class of citizens on the basis of race, creed, sex, handicap, age, or national origin." *Id.* Helms, however, withdrew his amendment, and Congress eventually passed a rider to the 1990 fiscal year appropriations bill that prohibited the use of federal funds to promote material which, in the judgment of the NEA, could be considered obscene. *See* Department of the Interior and Related Agencies Appropriations Act of 1990, Pub. L. No. 101-121, § 304(a), 103 Stat. 701, 741.

To enforce § 304(a) of the appropriations bill, the NEA established an "obscenity pledge," which required applicants to certify, in advance of their grants, that they would not use government funds to promote material that could be considered obscene. *See* William H. Honan, *Advisory Council Asks Endowment Not to Make Artists Sign a Pledge*, N.Y. TIMES, Aug. 4, 1990, at 13. The NEA's promulgation of this policy sparked vigorous opposition from the artistic community, *see id.*, and the "pledge" was later struck down by one court as unconstitutional. *See* *Bella Lewitzky Dance Found. v. Frohnmayer*, 754 F. Supp. 774 (C.D. Cal. 1991) (holding that the "pledge" was unconstitutionally vague and violated the First Amendment).

The "pledge" died a natural death with the close of the 1990 fiscal year. *See* Karen de Witt, *New Fiscal Year Ends Anti-Obscenity Pledge*, N.Y. TIMES, Oct. 31, 1990, at C16. By this time, Congress had concluded that the NEA deserved further life. *See id.*

Comstock era.

No matter what our level of personal interest in sexually explicit art, leftist art, or art in general, every attack like this one eventually is aimed directly at the lesbian and gay community. For every effort made to shut our mouths, we must redouble our efforts to talk louder—and not just in our own little circle. And lewd innuendo ain't bad either.

(reporting the NEA's reauthorization for another three years). However, the 1990 reauthorization included a new provision, popularly known as the "decency clause." *See* Arts, Humanities, and Museums Amendments of 1990, Pub. L. No. 101-512, § 103(b), 104 Stat. 1963 (codified at 20 U.S.C.A. § 954(d) (West 1990 & Supp. 1993)). This clause allowed the NEA to suspend grant payments if award recipients did not file interim reports certifying that their works incorporated "general standards of decency and respect for the diverse beliefs and values of the American public." *Id.* § 954(d)(1). In addition, § 954(d)(2) directed the chairperson of the NEA to promulgate regulations indicating that "obscenity" was "without artistic merit, [was] not protected speech, and [should] not be funded." *Id.* § 954(d)(2).

Substantially adopting the definition of obscenity given in *Miller v. California*, 413 U.S. 15 (1973), the statute states that:

The term "obscene" means with respect to a project, production, workshop, or program that—

(1) the average person, applying contemporary *community standards*, would find that such project, production, workshop, or program, when taken as a whole, appeals to the prurient interest;

(2) such project, production, workshop, or program depicts or describes sexual conduct in a patently offensive way; and

(3) such project, production, workshop, or program, when taken as a whole, lacks serious literary, artistic, political, or scientific value.

Id. § 952(l) (emphasis added).

Thus, under the "decency clause," an artist whose work is judged obscene by any United States court, *see id.* § 952(j)-(l), could be required to refund all money received from the NEA as part of the grant for that work. *See id.* § 954(h) (1990).

Like the obscenity "pledge," the "decency clause" was struck down. *See* *Finley v. National Endowment for the Arts*, 795 F. Supp. 1457, 1476 (C.D. Cal 1992) (holding the clause unconstitutionally overbroad); *see also* William H. Honan, *Decision is Appealed on Decency Standard*, N.Y. TIMES, Apr. 6, 1993, at C14. Congress has taken no action since the NEA reauthorization of 1990 and subsequent court decisions. Telephone Interview with Neil Sigmon, Staff Assistant, House Appropriations Committee, Subcommittee on Interior and Related Agencies (Jan. 19, 1994).

