

State as Censor,
Part 2

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Political and Social Commentary:
Nelson v. Streeter

- ✧ Can art which casts politicians - especially beloved ones - in a negative light be censored?
- ✧ Harold Washington, Chicago's first Black mayor, died suddenly of a heart attack in November 1987, shortly after re-election.
- ✧ The Black community in Chicago greatly revered him.

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Nelson v. Streeter

- ✧ A poster was made showing a smiling Harold Washington in the company of Jesus Christ floating over the Chicago skyline, with the caption "Worry Ye Not."
- ✧ David Nelson, a student at the School of the Art Institute of Chicago, did not think Washington deserved deification, and made a painting, titled *Mirth and Girth*, that showed Harold Washington wearing a white bra, G-string, garter belt, and stockings.

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Mirth & Girth – David Nelson, 1988



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Nelson v. Streeter

- ✧ Nelson got the idea from a rumor that Washington had been wearing women's undergarments when he was taken to the hospital after suffering the fatal heart attack.
- ✧ *Mirth and Girth* was shown in an exhibition of student work at the Art Institute and quickly aroused strong protests. Security guards were posted to protect it from a crowd of angry students.

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Nelson v. Streeter

- ✧ The school received angry phone calls, and school officials asked Nelson to remove the painting. He refused.
- ✧ The Chicago city council responded in amazing ways. First, they passed a resolution threatening to cut off funding for the Art Institute unless *Mirth and Girth* was removed and an apology was made.

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Nelson v. Streeter

- ✧ Alderman Henry Jones went to the Art Institute; Jones “brandished a gun” and removed the painting from the wall, placed it on the floor facing the wall, and left. A student put it back up.
- ✧ 3 other Aldermen arrived, took the painting down, and tried to carry it out. They were stopped and escorted to president Anthony Jones’s office.
- ✧ By the time the painting arrived at Jones’s office, it had a one-foot gash in it, but it is uncertain who did that.

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Nelson v. Streeter

- ✧The Aldermen wrapped the painting in brown paper to prevent further viewing of it, and one Alderman threatened to burn the painting in President Jones’s office. The police dissuaded him from doing that.
- ✧The police superintendent was called and he ordered the police to take the painting into police custody; a police officer, accompanied by the 3

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Nelson v. Streeter

- ✧Courts sometimes can’t resist comments in amazing cases like this one:
 - ✦ “Chicago had replaced Boston as the censorship capital of the United States.”
- ✧*Mirth and Girth* was kept in custody until the next day when it was released (according to the court, “on its own recognizance”) to David Nelson.

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Nelson v. Streeter

- ✧ The painting was not repaired, as its damaged condition was an important part of the lawsuit commenced by Nelson.
- ✧ Nelson sued for violation of his civil rights in the removal and damage to the painting.
- ✧ The Aldermen and the City of Chicago asserted that they are immune from liability because they were acting as public officials.

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Nelson v. Streeter

- ✧ The Court again:
 - ✦ The city does not own the Art Institute, and its officials have no more right to enter it uninvited and take the art off its walls than they would have to enter a private home and take "offensive" art off its walls.
- ✧ The city argues that they took down the painting to avoid violence by an angry mob, but this was a hypothetical concern (and the city officials were actually the mob, in this case).

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Nelson v. Streeter

- ✧ The Court:
 - ✦ There was no mob. There were angry people at the Art Institute — not least the aldermen, who should have been setting an example of cool self-restraint rather than threatening to seize and destroy private property.
- ✧ In this case, Nelson had no intention to incite a mob to violence with his artwork.

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Nelson v. Streeter

✧ The concern about violence in Chicago over art was a “faint prospect,” according to the court:

- ✦ Burn down Chicago over a painting? Paris maybe, but Americans have never taken culture that seriously.
- ✦ First Amendment rights are not subject to the heckler’s veto. The rioters would be the culpable parties, not the artist whose work unintentionally provoked them.

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Nelson v. Streeter

✧ Ultimate result: case settled, with Nelson receiving \$95,000 in damages plus his attorney’s fees incurred in the lawsuit.

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Violence, race, and art

- ✧ The Nelson case had racial elements, but was not a clear-cut case in that respect.
- ✧ Another case: David Hammon painted a mural of Jesse Jackson with pink skin, blond hair, and blue eyes, with the caption, “How Ya Like Me Now?”
- ✧ His point: Jackson would have been president by now had he been white.

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Hammon mural

- ✧ 10 African American men destroyed the mural with sledgehammers within hours after it was displayed.
- ✧ The artist had an interesting response:
 - ✦ "I'd like to see the pieces of the portrait stay, along with the sledgehammer. They both represent the anger felt by Blacks."
 - ✦ Jesse Jackson made a comment along similar lines.

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Cuban Museum of Art v. City of Miami

- ✧ Cuban Museum of Arts and Culture was a non-profit organization that leased space from the City of Miami.
- ✧ Organized in 1981, and opened in October 1982.
- ✧ Operated as a cultural resource without controversy until 1988.

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Cuban Museum of Art v. City of Miami

- ✧ Museum held a benefit auction to raise funds.
- ✧ Some of the work offered for sale included that by "controversial" Cuban artists, defined as those those who had not renounced the Castro regime, some of whom were still living in Cuba and some in the U.S.

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Cuban Museum of Art v. City of Miami

- ✧ A list of participating “controversial artists” was sent to the media, and the conservative elements of the Cuban community who are adamantly anti-Castro became incensed.
- ✧ The museum board debated their course of action, and elected to go ahead with the auction.
- ✧ One painting by a “controversial artist” was purchased and burned in the street outside the auction site.

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Cuban Museum of Art v. City of Miami

- ✧ Someone exploded a bomb beneath the car of the V.P. of the museum. She was then asked to resign but refused.
- ✧ In response, about a dozen museum board members who were opposed to connection with “controversial artists” resigned. Those who remained board members were vilified as communist sympathizers.

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Cuban Museum of Art v. City of Miami

- ✧ City of Miami city government became involved after being pressured by the Cuban community to take action against the museum.
- ✧ A “watchdog” committee was formed to investigate the museum in every respect, but could find no financial or other improprieties.

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Cuban Museum of Art v. City of Miami

- ✧ After a few years of controversy and political discord, the city commission voted to terminate the lease in March, 1991.
- ✧ The museum brought a lawsuit alleging that the lease termination was in retaliation for their exercise of First Amendment rights in exhibiting “controversial” artists.

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Cuban Museum of Art v. City of Miami

- ✧ One complication here was the Trade with the Enemy Act making it illegal to engage in trade with anyone in Cuba, but that act had been amended after passage to prevent First Amendment restrictions.
- ✧ Court found that the museum’s exhibition of art by the Cuban “controversial artists” was fully protected by the First Amendment.

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Cuban Museum of Art v. City of Miami

- ✧ Also found that the city decision to terminate the lease was in retaliation for the museum’s exhibition of the “controversial” work, and thus a violation of the First Amendment.
- ✧ Important point: in this case of political expression under the First Amendment, the threat of, and actual occurrence of violence by those who disagree with the protected expression is not sufficient reason to restrict First Amendment rights.

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Cuban Museum of Art v. City of Miami

- ✧ The museum was denied money damages, but the court ordered that the lease could not be terminated.
- ✧ Unfortunately, the museum won this battle but lost the war: the donor base dried up and the museum was out of business by 1999.

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Implications of Cuban Museum

- ✧ Political speech is treated more gingerly than other types of expression: normally, the threat of violence is a factor, but for political speech, there is more protection.
- ✧ The First Amendment extends to the artist and to the museum that is exhibiting the work.

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Brooklyn Institute of Art v. City of N.Y.

- ✧ The Brooklyn Museum, as it is commonly known, arranged to show an exhibit: "Sensation: Young British Artists from the Saatchi Collection"
- ✧ The exhibit included *The Holy Virgin Mary* by Chris Ofili, which included elephant dung among its materials.

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The Holy Virgin Mary, Chris Ofili, 1997.



Brooklyn Institute of Art v. City of N.Y.

- ✧ Brooklyn Museum was established in Brooklyn with the same organization as the Metropolitan Museum of Art in New York: was a joint partnership between the city and a group of private citizens.
- ✧ The city leased land, constructed facilities, and gave continuing support while the museum organization owned the collections and managed the museum's programs and activities.
- ✧ Now all are under the city of New York.

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Brooklyn Institute of Art v. City of N.Y.

- ✧ The director of the museum and a curator saw the exhibition at the Royal Academy in London and decided to try to bring it to the the Brooklyn Museum.
- ✧ They discussed the exhibit and planned to bring it to Brooklyn with the museum board through 1998 and 1999. The mayor and his cultural affairs commissioner both have representatives on the museum board, who voiced no objections to the exhibition.

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Brooklyn Institute of Art v. City of N.Y.

- ✧ The exhibit was scheduled to open on October 2, 1999. The mayor saw the exhibition publicity, learned about the content, and went into full attack mode on September 22, 1999.
- ✧ He objected to many pieces (e.g. Damien Hirst's pigs in formaldehyde), but the focus was *The Holy Virgin Mary*.

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Brooklyn Institute of Art v. City of N.Y.

- ✧ Mayor Giuliani threatened to cut off all funding for the museum and to evict them from the museum buildings.
- ✧ He also threatened to replace the museum board of trustees for mismanagement.
- ✧ The opening of the exhibit went on as planned, and the museum brought a lawsuit to compel the city to continue to fulfill its obligations to the museum, while the city filed an action for ejection of the museum from the property.

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Brooklyn Institute of Art v. City of N.Y.

- ✧ The action for ejection was not the smartest move, as the city was also alleging that the museum was not being threatened with irreparable harm!
- ✧ Giuliani's argument was that public money should not be spent to support art that was "offensive" in desecrating religion.
- ✧ The court pointed out that public money was not being used for direct support for the exhibition -- that was covered by private sponsorships.

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Brooklyn Institute of Art v. City of N.Y.

- ✧ The court affirmed the right of the Brooklyn Museum to hold exhibitions under the First Amendment, and the prohibition on government interference with that expression of ideas even if the ideas are “morally improper,” “offensive,” “disagreeable,” or “even dangerous.”

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Brooklyn Institute of Art v. City of N.Y.

- ✧ Threats to suppress funding for the exhibition and to evict the museum from its property are equivalent to suppression of the public expression.
- ✧ Giuliani repeated the threats to the media numerous times, and brought legal action to eject the museum, so the suppression of First Amendment freedom was real and apparent.

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