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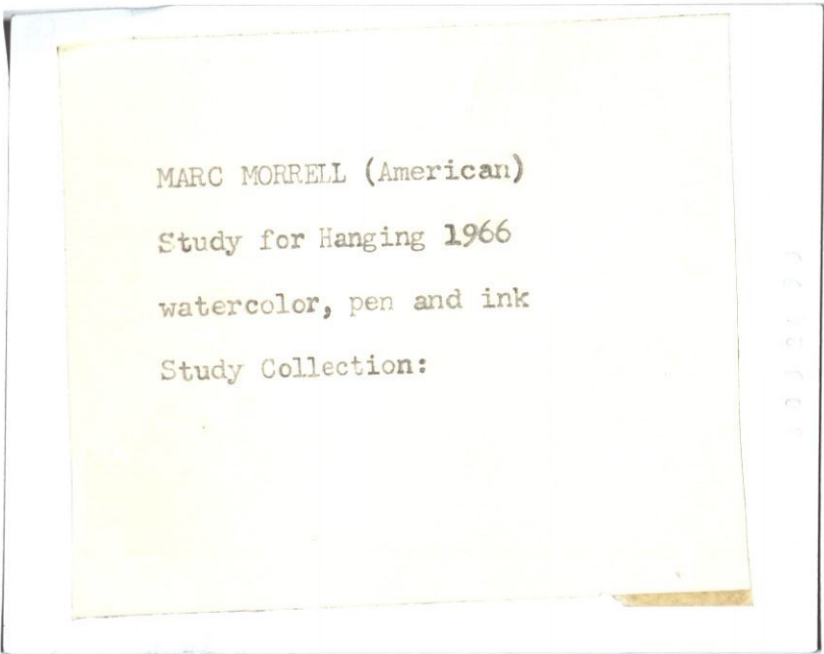
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## The Museum of Modern Art

To John Hightower MAY 05 1971 cc: Elaine Johnson

From Betsy Jones

Date May 3, 1971

Re Permission to exhibit the Marc Morrel Study for 'Hanging'

Dear John:

I have a copy of Walter Bareiss's letter to the Museum of December 31, 1970 covering his contribution towards the purchase of the Marc Morrel Study for 'Hanging' and stating that the work is to enter the Study Collection and is not to be exhibited without your and Mr. Paley's approval.

I should like to include this work for obvious reasons in the summer collections show, The Artist as Adversary and hope very much that approval can be granted for this use.

a welder  
I might add that it is not the only work in the show in which the flag is used: there is a poster by Gianakos, Send Our Boys Home, in which the field of stars is transformed into a flat black rectangle; there is also a print by Copley, all in black, in which the stars have been replaced by the word "Think"; there is the Benny Andrews painting No More Games (which has a figure draped in a flag-like banner). Then there is a wartime poster, Keep 'Em Rolling by Leo Lionni which has tanks coursing across the bars, and filling the field where the stars should be. It has also been slightly desecrated by having its proportions altered.

There are several other works which might offend some of our visitors. About 8 years ago the Bruce Conner Child was considered ~~an~~ acquisition. It was rejected on grounds that the humanitarian message was compromised by its sexual representation. It was promptly bought by Philip Johnson (a holding action for the benefit of the Museum -- he did the same thing for us with the Jasper Johns Flag which was turned down by the Board of Trustees as possibly offensive to patriotism) who has now given it to us. In the meantime, it has been put on public exhibition at the Whitney and elsewhere perhaps without, as far as I know, any problems.

I am also planning to include the Art Workers Coalition poster "And Babies?" which has already been shown at the Museum in Information. And there are several other prints and posters in which Lyndon Johnson is treated in less than flattering manner.

I don't believe any of these works, including the Morrel, is likely to bring any flak, but though I might mention them to you anyway.

Betsy

\* It was considered unsuitable for exhibition at the Museum at that time



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## The Museum of Modern Art

11 West 53 Street, New York, N.Y. 10019 Tel. 245-3200 Cable: Modernart

William S. Paley  
President

MAY 21 1971

Dear John:

In response to your letter of May eighteenth regarding the exhibition of the Morrel drawing, Study for Hanging, I do not think that I should express any view as to showing it on grounds of technical or aesthetic merit. Such judgments, I think, must be left to the professional staff of the Museum.

As to the effect of the proposed exhibition as a whole -- which, as your letter points out, might help restore perspective but which also might be an irritant -- I do not feel qualified to pass judgment. Again, I believe that this aspect must be left to you and your associates on the staff.

With regard to the specific matter of showing the work which you mention, I think that we must give considerable thought to the situation into which we might be getting ourselves. As I recall, after the Radich Gallery was convicted of a misdemeanor for exhibiting the sculpture for which the drawing was a study, the conviction was upheld by the New York State Court of Appeals and sustained by the action of the United States Supreme Court, when the latter by a 4-4 vote, with one abstaining, declined to review the case. If the Museum exhibits this picture, it seems to me very possible that, even if the police do not act on their own initiative as in the Radich case, in the present emotional context surrounding the flag, someone might file a complaint, to which we will either have to yield or be prepared to finance long litigation, asking in essence for reconsideration of a specific issue under circumstances almost identical with those considered only three months ago at the highest judicial level.

Assuming that we had the time, the money and the need to test at this time the freedom of the Museum to show any work it considered of significance, I doubt that this would constitute the ideal or even a very promising test case. Certainly, I think that we should

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seek the opinion of legal counsel so that we are absolutely sure of what we are getting into and what our prospects would be. If, however, the terms of the gift of the Morrel work to the Museum require the approval of its exhibition by me as President, I could not under the present circumstances give such approval, because I could not encourage setting off a possible series of events that could result in long and expensive litigation at a time when our resources are already strained to the breaking point. I am also convinced that, if we enter a legal contest to establish a clear principle of a basic freedom, we ought to choose subject matter that has not already -- and very recently -- been pressed up to the highest court without success.

Sincerely yours,



Mr. John B. Hightower  
Director  
The Museum of Modern Art  
11 West 53 Street  
New York, New York 10019

May 19, 1971



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May 18, 1971

Mr. William S. Paley  
Chairman of the Board  
Columbia Broadcasting System  
51 West 52nd Street  
New York, New York 10019

Dear Bill:

According to the conditions of Walter Bareiss' gift to the Study Collection of Marc Morrel's drawing, Study for 'Hanging', the Director of the Museum is supposed to check with the President to see if it is all right to exhibit the work. You may recall that the actual sculpture, for which this is the study, was one of the works involved in the Radich Case. Since Betsy Jones would like to use it in her forthcoming exhibition, "The Artist as Adversary", I am attaching a photograph of the drawing to see if you have any objections to exhibiting the work.

Betsy plans to show a number of works that utilize the flag in some way. They include:

- A painting by Benny Andrews, No More Games
- A poster by Leo Lionni for the U.S. Army Division of Information, Keep 'Em Rolling
- A poster by Cristos Gianakos, Send Our Boys Home
- A construction by Kojima Nobuaki, Untitled

The only works among the group that have not been exhibited at the Museum in the past are the newly acquired Benny Andrews' painting and the Marc Morrel drawing. Consequently, I see no reason to expect difficulty during Betsy's forthcoming show. However, the whole flag issue has become such a sticky one lately - as the center spread from the May issue of Civil Liberties indicates - that it raises questions if not difficulties. Part of the objective of the exhibit will be to give historical perspective to these works which have acquired a symbolic dimension beyond their actual visual image. I would hope that the exhibition might diminish the volatile impact that some of these works have created recently by showing them within an historical framework. As we know, many works utilizing the flag in recent years have been used as irritants against those who display flag decals as political emblems. If the intention of the exhibition succeeds, the works will be seen in a context that shows there have been precedents in the past for similar works.

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Mr. William S. Paley

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May 18, 1971

Since we have had no trouble in the past whenever works of this sort were exhibited, ordinarily I would not anticipate any now, but times have changed. Nevertheless, I thought you should be forewarned in case you have any questions.

Best regards,

John B. Hightower  
Director

JBH:ehh

enclosures

cc: Walter Bareiss  
Henry Allen Moe

bcc: Betsy Jones  
William S. Lieberman



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*Artist as  
Adversary*

THE ROCKEFELLER UNIVERSITY PRESS

New York 10021

July 22, 1971

Mr. John Hightower, Director,  
The Museum of Modern Art  
11 West 53rd Street  
New York, N.Y.

Dear Mr. Hightower:

Earl Ubell has been trying to reach you by phone on my behalf. Since he has probably not yet spoken with you, I will outline the problem briefly.

It was brought to my attention last week that your exhibition, *The Artist as Adversary*, contains a piece by Carlos Irizarry which he calls "My Son, the Soldier." The first of several panels in the piece, as well as the title, are the creation of another artist. The image has been photographed from a poster by Daniel Schwartz, which is itself a stylized photograph of a sculpture head by Mr. Schwartz. The poster was created in 1968 and appeared in a magazine piece on war protest posters that year. (Mr. Irizarry's work is dated 1970). Mr. Irizarry has changed the ground color and superimposed a kind of bar-like design.

My husband is in Italy for the summer casting sculpture which is why I am presuming to write you on his behalf. I was certain you would want to know about this strange matter. Your museum wields enormous influence. I'm sure you can understand how I feel. I think you should know, also, if my husband's name is not familiar to you, that he has been showing in New York for 15 years, at the Davis Galleries, Hirschl & Adler, and most recently at Babcock.

I am leaving New York to join my husband next Thursday. I would be very grateful if you could find the time to speak with me before then since I have been informed that the curator who mounted the exhibition is on vacation. I can be reached here at my office, 360-1166 or 360-~~1166~~ 1420, or a message can be left with my secretary, Miss Wright. Or may I call you?

Sincerely,

*Judith N. Schwartz*  
Judith N. Schwartz

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I's springs wh of mags + relay of  
color. - 1/2 of long series

(X) Picasso + of youngest wh  
th y of not

Carlos Izarra

1970 6135 98th St. Apt 3C

Rego Park

opened Gallery Puerto Rico 1969

Puerto Rican Gallery  
43 E. 80



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July 13, 1971

Mrs. Starke Meyer  
Program Assistant for the Visual Arts  
Office of the Chairman  
National Endowment for the Arts  
Washington, D. C. 20506

RE: Grant # A71-0-397

"The Artist As Advocate"

Dear Mrs. Meyer:

John Hightower has asked me to send the enclosure to Nancy Hank's letter to him regarding the a

I am enclosing our interim report to the Endowment of this exhibition's catalog, as requested. The photographs are being taken this week, of which we will submit the time of our final report, as well as two copies for your permanent record.

If you require any additional information, I will be glad to send it to you. I know that everyone concerned with the exhibition as well as Mr. Hightower joins me in expressing appreciation to the Endowment for helping to fund this exhibition.

Sincerely,

Charles T.  
Director of

CTH/an

cc: John B. Hightower ✓



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BOB: 128-R0024

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES  
NATIONAL ENDOWMENT FOR THE ARTS  
WASHINGTON, D.C. 20506

## GRANT FISCAL REPORT AND CASH REQUEST

PLEASE READ INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING THIS FORM.

1. NAME AND ADDRESS	GRANT NO.	GRANT AMOUNT	DATE OF REPORT
The Museum of Modern Art 11 West 53rd Street	A71-0-397	\$5,000	July 13 1971 Month Day Year
TYPE OF REPORT <input checked="" type="checkbox"/> INTERIM <input type="checkbox"/> FINAL			

REPORTING PERIOD	STARTING	ENDING
19, 1971	July 13, 1971	July 13, 1971
Day Year	Month Day Year	Month Day Year

EXPENDITURES (FOR USE ONLY)		GRANTEE EXPENDITURES	
Changes	Grant Budget	Current	Cumulative
		\$12,645.	\$12,645.
		1,746.	1,746.
		23,700.	23,700.
		\$37,911.	\$37,911.
		\$37,911.	\$37,911.

REQUEST	AMOUNTS
Museum of Modern Art Exhibition Program Funds	\$32,911.

1971 Ending	July 13, 1971
Month	Day Year
\$	\$37,911.
\$	-
\$	\$ 5,000.

Final and exact figures on expenditures  
of the exhibition on September 27, 1971.  
Submitted within the 90 days period specified.

true and correct, and that all expenditures were and/or shall be

(Date) July 13, 1971
Telephone AC 212-956-7502
Director of Painting and Sculpture
(Date) July 13, 1971
Telephone AC 212-956-2641

(FOR USE ONLY)  
Available in view of program accomplishments to date.  
Grant for the Visual Arts

6/21/71-9/27/71 Total Payments

Att: John B. Hightower, Director

2. EXPENDITURES		Approved Grant Budget
A. Salaries and Wages		\$15,556
Fringe benefits if direct cost		\$ 2,177
B. Supplies and Materials		
C. Travel		
D. Special		
E. Other		\$33,045
Total Direct (A thru E)		\$50,778
F. Indirect Costs		
TOTAL COSTS		\$50,778

3.	A. Matching funds received to date
----	------------------------------------

B. Funds requested are to cover anticipated expenditures for the period Starting June 21 Month Day
---

C. Anticipated expenditures from grant and matching for the above period
D. Total estimated cash balance on hand at end of current period
E. Total cash requested from the Endowment

4. REMARKS:  
Please note: This is an interim report  
will not be available until after the  
A final report of expenditures will be

AGREEMENT & CERTIFICATION: I/We certify that the foregoing information  
incurred solely for the purposes of the above-numbered grant.

AUTHORIZING OFFICIAL: John B. Hightower, Director  
(Name and Title)  
Signature

PROJECT DIRECTOR: Betsy Jones, Associate Curator  
(Name and Title)  
Signature

Administrative Approval: (FOR NAME)  
This request is APPROVED in the amount of \$ \_\_\_\_\_ and is re  
(Name and Title) Mrs. Starke Meyer, Program Ass  
Signature  
Allotment No. Grant P



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Hans van den Houten

Richard L. Palmer

cc: JH, RK, WG, FS, CH,  
BJ, RP, ARTIST AS ADVERSARY file

July 12, 1971

National Endowment for the Arts grant for THE ARTIST AS ADVERSARY

Dear Hans,

I am attaching for your information a copy of the National Endowment's letter to John Hightower of June 28 regarding final details of their \$5,000. grant to THE ARTIST AS ADVERSARY exhibition. Also attached is a copy of the General Grant Provisions which I thought you would want to have on file. At Charlie Hesse's request, and after discussing the form with Franz Skryanz, I filled in the Grant Fiscal Report and Cash Request on an interim basis so that it may be submitted with the other papers necessary to enable the Endowment to forward the funds to the Museum.

You will note that one provision of the grant requires that we submit a final accounting of project expenses within 90 days after the grant period expires. This means that we will have to have our report in before December 25, 1971.

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**The Museum of Modern Art**

cc: Harriet Schoenholz  
Liz Shaw  
Charles Hesse

To John Hightower

From Betsy Jones

Date June 16, 1971

Re Grant from the National Council on the Arts

Dear John:

The notification from the National Council on the Arts of the possible award of \$5,000 to fund The Artist as Adversary asked that no public announcement be made until it had been approved by the Chairman. It said we would be notified "probably by mid-June." The press release is about to go out and the catalogue is about to go into production. Though the release can be supplemented with another one if we get the grant, acknowledgment should certainly appear in the catalogue--probably on the title page.

The preliminary notification came to me, but I have not received any further word. If no one else has received the final notice, I wonder whether we might telephone Tom Leavitt. (Perhaps he is in town since his Russian show just opened at Brooklyn.) I'm not sure what is the last moment at which we could add it to the catalogue, but am asking Harriet Schoenholz by this memo to let me know. We should also know exactly what ~~the~~ wording they wish us to use. (I can't tell the Council from the Endowment without some guidance.)

Bea



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*Paley  
Artist as Adversary  
Radich*

May 21, 1971

Mr. William S. Paley  
Chairman of the Board  
Columbia Broadcasting System  
31 West 52nd Street  
New York, New York 10019

Dear Bill:

In discussing the Morrel drawing for Betsy Jones' exhibition 'The Artist as Adversary' with Arthur Tourtallot and Dick Koch, I think it best to withdraw the work for exhibition during the show. In the unlikely event that a case should develop from the exhibition, having the Morrel drawing as part of any new evidence submitted to a court would almost certainly require the court to accept the prior judgment of the Court of Appeals. Since the Morrel sculpture, if not the drawing, was specifically mentioned in the Radich Case, there is no question in my mind that any defense we presented no matter how much new material was contained would be compromised by the Morrel drawing.

So saying - it's out; all else mentioned in my earlier letter to you remains in.

Best regards,

John B. Hightower  
Director

JBH:ahn

cc: Walter Bareiss  
Henry Allen Moe

bcc: Betsy Jones  
Dick Koch  
Bill Lieberman



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## The Museum of Modern Art

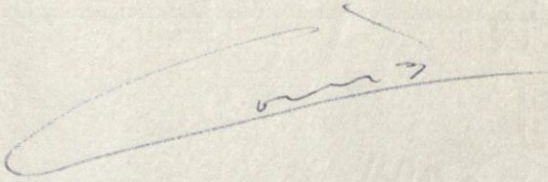
To John Hightower  
From Mildred Constantine  
Date May 5, 1971  
Re

Here are the photographs of the items we discussed this morning, all of which are in the Museum of Modern Art's collection with the exception of the one by Mark Morrel which is in our Study Collection. Each item here has been on view, and the posters published by the Museum of Modern Art with the exception of the Morrel.

A bit of history for your information with regard to the Jasper Johns flag. In 1959 we were offered for our consideration four works by Jasper Johns, one of which was his great painting of the flag. Although it was recommended by the collections committee, it was turned down by the trustees - Ralph Colin being the motivating force here - as perhaps being too cynical a portrayal of the flag, and of course without any regard to the esthetic qualities of the work. In order to save it eventually for the Museum's collection, it was purchased by Philip Johnson who has promised it eventually to the Museum. For this reason, I am including the lithograph which we acquired in '62 rather than the painting which we still do not formally own.

Please let me know if there is anything more I can provide for tomorrow's hearing.

enclosures





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## JOHN HIGHTOWER-DIRECT

- ① Name- Address- Current Occupation
- ② Educational and Professional Background
- ③ I am correct in assuming <sup>and not</sup> that you did not attend the Exhibition - Did you fail to attend it because you did not believe it to be a serious artistic exhibit - What percentage of the exhibits occurring in NYC are you able to attend.
- ④ Have you viewed the two items which the prosecution has introduced into evidence in this case
- ⑤ Do you consider the works to be serious attempts at artistic expression. - Why
- ⑥ Would ~~your~~ your opinion be any different if the works in question were designed to place the American flag in a favorable light
- ⑦ Have you had an opportunity to view the work which Sam Weiner submitted to the Exhibition in question
- ⑧ Have you as Director of the Museum of Modern Art authorized the display of ~~art~~ works of art



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bearing an American flag motif. Do any such works currently hang in the museum.

② Could you identify the works

③ How long have they been exhibited.

④ Have you ever experienced the slightest of decorum in the museum as the result of exhibiting American flag art.

⑤ If dependants are held criminally responsible for the works at issue in this case, ~~and~~ would, such a conviction reflect your display of art at the Museum of Modern Art - Would you feel personally threatened, potentially criminally responsible, for all works exhibited by the museum. ~~Would~~ <sup>might</sup> you, therefore, refrain from exhibiting certain items because of a potential criminal sanction.

⑥ During the many years that the Museum has exhibited flag art, has any comment ever been made ~~or~~ <sup>by</sup> the New York County District Attorney's Office. Have you ever been threatened with prosecution.



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(14) You are, I take it, something of an authority on ~~the~~ the display and exhibition of art

(15) Is it a relatively common practice for independent artists to ~~and~~ arrange for non-commercial exhibitions in ~~private halls~~ simply in order to permit their works to be shown ~~and for their benefit~~

(16) Are such independent shows an important avenue for, as yet, undiscovered talent to be brought to public attention

(17) ~~At~~ In your experience, do the young artists who arrange for such an independent exhibition ever attempt to exercise censorship or control over the ~~on~~ works of contributors - would you characterize this absence of censorship or control as a "custom of the trade" in independent exhibitions

(18) Would you call the annual Greenwich Village sidewalk show an example of such independent shows

(19) Do the organizers of the Greenwich Village show attempt to exercise any degree of censorship or control over the contents of the displays

(20) If the organizers of such independent shows are held

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criminally responsible for their content, what is your  
opinion as to the future of such independent  
shows?



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OCT 20 1970

Wilder Green

Charles Hesse

October 21, 1970

National Endowments Aid to Special Museum Exhibitions

I read with great interest Brian O'Doherty's letter to John and your memorandum in response, and I concur with your suggestions.

The exhibitions that immediately come to mind for which we should consider seeking support from the National Endowment are: "The Artist As Social Critic", "The Automobile", and possibly Bearden & Hunt.

I would also like to plan with you to meet with O'Doherty or anyone else connected with the Endowment on this.

cc: John Hightower

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ARTIST AS ADVERSARY