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### Introduction

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# INTRODUCTION

KATHLEEN BANNON\*

**I**N 1965, LEGISLATION WAS ENACTED establishing the National Foundation on the Arts and the Humanities.<sup>1</sup> One of those who participated in the drafting of the act was Livingston L. Biddle, Jr., recently appointed Chairman of the National Endowment for the Arts by President Carter. The impressive increase of the Endowment's budget<sup>2</sup> over the years, and the evident interest of a number of administration officials, including Mrs. Joan Mondale, wife of the Vice President, reflects the growing support for and interest in the arts on the part of several Presidents and numerous members of Congress.

This interest and concern is shared by individual artists, lawyers and legislators nationwide. The articles included in this "Art and Law" symposium highlight a variety of issues, opinions and challenges affecting the arts today. I applaud the Cleveland State Law Review for the publication of these articles as a reflection of the developments in the complex field of arts law.

As the Program Officer of the National Endowment for the Arts, responsible for the training of a number of arts managers, I am aware of the impact of current and proposed arts law. However, I write not as a representative of the National Endowment and its official policies, but as a former professional ballet artist and an administrator in daily contact with professional arts managers nationwide.

Arts managers, like arts lawyers, generally realize the effect of the new Copyright Law, discussed by Mr. Koenigsberg in his article entitled, "The 1976 Copyright Act: Advances For The Creator." Managers are well aware of its immediate impact on educational institutions, public and commercial broadcasting companies and other entertainment industries with which they are involved. Individual artists, too, will realize the intended benefits of this legislation, with the able assistance of organizations of volunteer arts lawyers. Two such organizations, the Oregon Volunteer Lawyers for the Arts, Inc. and the Volunteer Lawyers for the Arts in New York, are represented by authors contributing to this symposium.

In other legislative areas, a number of bills have been introduced recently in Congress which address issues raised by Mr. Fishman in his article "The Emergence of Art Law." Proposed bills dealing with artists' estates,<sup>3</sup> gifts

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<sup>1</sup> National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. § 951 (1965).

<sup>2</sup> In its first year of operation (FY 1966), the Arts Endowment's appropriated funds were \$2,534,308.00. By Fiscal 1978, the appropriation had increased to \$137,500,000.00.

<sup>3</sup> H.R. 7896, 95th Cong., 1st Sess. (1977); H.R. 9218, 95th Cong., 1st Sess. (1977); H.R. 8872, 95th Cong., 1st Sess. (1977); to amend the Internal Revenue Code of 1954 as to the valuation of certain items created by the decedent during his life, for estate tax purposes. They allow for disregarding any amount which would not have been capital gain if such item had been sold by the decedent at its fair market value.

and income taxes<sup>4</sup> are now a matter of public record. Along these lines, Mr. Harrow's article "Reflections on *Estate of Rothko*: The Role of the Legal Advisor in Relation to the Artist" raises a number of interesting issues.

Speaking realistically, the "*droit commercial*" has as much to do with current interest in the arts as the "*droit moral*." Professor DuBoff's article "Auction Problems: Going, Going, Gone" reflects today's auction practices through which new records are constantly being set. One important question raised by this article is whether these prices are legitimate or artificially established.<sup>5</sup>

It is clear that there is much at stake for individual artists, arts organizations and society in general. Hopefully, the readers of this symposium will continue to examine and discuss the issues suggested by these articles, and I urge them to take an active role in "Art and Law."

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<sup>4</sup> H.R. 439, 95th Cong., 1st Sess. (1977). H.R. 9325, 95th Cong., 1st Sess. (1977). S. 1394, 95th Cong., 1st Sess. (1977); to amend the Internal Revenue Code of 1954 to allow a tax credit for certain contributions of literary, musical and artistic compositions.

<sup>5</sup> In March, 1978 in Washington, D.C., a buyer paid \$95,000 for a small Chippendale tea table, while a portrait was openly withdrawn from an auction because its reserve price of \$175,000 was not met. Washington Post, Feb. 26, 1978, § C (Living in Style), at 1, col. 1.