

A Service Learning Approach to Teaching Law through the Visual Arts

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Abstract

The purpose of this paper is to share empirical evidence of how changing the learning modality for undergraduate students from a traditional classroom lecture to a community based cultural service learning project provides cognitive, attitudinal and soul benefits.

Key Word: Legal studies, service learning, grant, museum, art, benefits

I. Introduction

The University of Massachusetts Lowell is a research institution numbering over 15,000 undergraduate and graduate students located in the former textilemill city of Lowell in the Commonwealth of Massachusetts. Like many other major colleges and universities in the United States it has begun to recognize the promising signs of positive outcomes from a community service approach to learning. The University encourages and supports faculty interested in integrating a collaborative teamwork and community involvement approach to teaching by providing small seed grants in the amount of \$1000 U.S. The purpose of this paper is to share my personal experiences from the grant seeking process including the rationale for changing the learning modality; the process of preparing students to step out into the non-profit arts' community to share in a participatory fashion what they have learned; and the service learning benefits recorded from members of the arts' community and student participants.

II. Changing the Learning Modality

A few years ago I sought to devise a more interactive and participatory classroom learning structure. Besides teaching law to undergraduate university students I have painted and exhibited fine art. Rather than continuing to teach traditional "black letter" law from a case text book sprinkled with anecdotal examples I decided to reorganize course material and teaching methodology. For the past three summer Olympic Games – Athens, Beijing and London - I have received commissions to create posters for the sport of Triathlon. Embedded in each of these posters, and the large oil paintings from which the posters are printed, are a host of issues related to contracts, licensing, assignments, publicity rights, limits of freedom of expression, trademarks, copyrights and fair use doctrine. My quest was to integrate the visual fine arts experience with the study of law.

The change in instructional strategies began the moment I brought materials to make art – paint, brushes, sketch books, etc. to class and then started demonstrating the creative process of making fine art. Keep in mind these students were not painters, photographers or graphic designers. They were undergraduates studying law. Students were encouraged to handle the brushes, smell the paint, and touch the canvases. Running through each of the works of art, though, were a host of legal issues. Similar to a more standard lecture where students are called upon to identify the key legal points after reading a case now students were asked to view the art and consider, for example, any intellectual property issues. Immediately, students recognized the 5-Olympic rings and asked – "Who owns these rights and can anyone use them?" "What about the words 'Triathlon' and 'Olympics' – are they protected, too?" Another student inquired, "Did the Olympic Committee dictate the size of the posters or the colors you used?" Quickly, someone else blurted out: "What can you do with them?" "Sell them?"

Give them away? "Who determines how many are made? And so it went. One question leading to yet other fascinating questions. All relevant to the active identification of real legal questions arising from commissioned works of fine art. Student course evaluations that semester consistently mentioned how much they learned and enjoyed this aspect of the course, which led me to research the literature regarding the benefits from active learning.

Professor Marian Diamond of the University of California at Berkeley, a neurobiologist and leading scholar in the field of brain research (she dissected part of Albert Einstein's brain), discovered the human brain can change structurally and functionally as a result of active and experiential learning.¹ In traditional classroom lectures where students were passive recipients of information she found less brain stimulation occurs than when students were exposed to interactive learning.² Her research leads one to believe students learn, remember and problem-solve better when fully engaged and engulfed in active, participatory learning modalities. Another study conducted by the International Center for the Enhancement of Learning Potential found connecting students to their "cultural roots" significantly stimulated artistic and informational capabilities.³ Interestingly, the Center's research went so far as to indicate when students are cut-off from cultural institutions and organizations they never fully develop their ability to make observations, interpret what they see and feel, and even assimilate information into something useful or meaningful.⁴

These research findings encouraged and solidified my desire to continue to enhance the active, participatory model for learning. Around the same time, I remembered receiving a phone call from the executive director/curator of The Whistler House Museum (Lowell, MA.). He had called asking for advice. His museum had lent the only impressionistic painting renowned abstract artist Arshile Gorky ever painted still in existence, *Park Street Church, Boston*, to the Guggenheim Museum in New York City. The Director had learned from an Internet search the Guggenheim had made a digital copy of the painting and was now selling poster and note card images of the Whistler's painting at the Guggenheim's bookstore. He, and his Board of Directors, was quite upset because The Whistler never contractually granted one of New York City's premier museums permission to create or sell reproduction or what the law calls "derivative" rights. Unfortunately, the answer rendered, which came about after posing this legal and financial dilemma to my students, was not exactly what the Director wanted to hear: the owner of a painting does not own the reproduction or copyrights unless this right is specifically assigned. No legal cause of action existed for The Whistler; however, the Guggenheim had not acquired permission from the copyright holder (Artist Rights Society⁵ administers the copyright on behalf of the Estate of Arshile Gorky) either so the note cards and posters were quickly removed. Not before, however, an online commercial poster website took its own picture of Gorky's painting the Guggenheim had posted, and it began selling unauthorized posters online!

A. Community Based Partner

The non-profit Whistler House Museum, less than two miles from the University's campus, was both the leading fine arts museum in the area and the kind of cultural institution scholarly researchers suggested students could dig and plant their own "cultural roots." The building housing The Whistler was the birth place of noted artist James M. Whistler. The museum is home to many of his etchings. The focus of the museum is 19th, 20th and 21st century New England paintings along with an exquisite collection of Arshile Gorky paintings known as the Metzger Collection. Talented local artists have an opportunity to exhibit in the Parker Gallery, part of the museum, where art instruction is occasionally available.

As fate would have it, the University through the Center for Family, Work and Community began soliciting faculty proposals for Service Learning grants. The grant proposal requirements were modest, i.e., identify the community based non-profit organization, describe the project activities and timeline, flush out the course learning objectives, articulate a plan for measuring results, and submit a budget (maximum of \$1000 U.S.). While writing the proposal I contacted the executive director/curator for The Whistler and asked whether he and members of his fine arts' community including staff, visiting artists, collectors, directors-trustees, and local artists would benefit by having students lead two workshops on the key legal issues facing working professional artists and the arts community.

¹*Educational Leadership: How the Brain Learns*, www.ascd/publication/education-leadership/Nov.98/vol_56/num_03/The-Brains-Behind-The-Brain.asp., Visit, also, Center for Research and Education on Aging, Department of Integrative Biology, University of California at Berkeley for abstracts of Dr. Diamond's research on how enriching and varied experiences are critical for developing and boosting brain power.

²Id.

³ See: www.icelp.org/asp/ICELP_Pr. The Institute conducts theoretical and applied research on environmental systems and experiences that enhance learning. The Institute is linked to a Canadian research group. Collectively they have conducted research on expanding learning potential for over fifty years.

⁴ Id.

⁵ See www.arsny.com

He enthusiastically embraced the opportunity for his community of artists to ask questions about legal concerns and consequences they were facing. He suggested the workshops or gatherings take place at night and held at the Parker Gallery within the Whistler building complex. Over the summer we meet twice to formalize topics and objectives. He handled media promotion. Consistent with the students' semester system and the need to help them learn enough law to know when and what to answer, and when to concede it was an issue unresolved or unknown to them, we agree to offer the workshops mid-way through the fall semester. A week or so before the workshops began students visited the museum and chatted with the Director about some of the issues that may arise, which included questions like how to protect art in a digital world, what is a copyright and how is it different from a trademark, what are the benefits from licensing versus selling. It added to the excitement, anticipation and seriousness of the service learning project.

B. The Grant

The official name of the grant is the "Learn and Serve Service Learning Faculty Grant." A small committee of university faculty and administrators including the Dean of my college (Arts, Social Sciences and Humanities) reviewed and approved the grant. Besides identifying the non-profit collaborative organization the key points the evaluators were looking for were identifying both short and long term project objectives and devising a means for measuring outcomes. As for the latter, I learned after the workshops the Center issuing the grants has a survey for student participants, which I administered and will discuss further later. In hindsight I wished I had surveyed members of the arts community. I was unaware the Center had one available, but by then it was too late. A number of the participants emailed their thoughts so this anecdotal information will also be shared.

The short term objectives for the course were to insure students learned the basics of the law of intellectual property, contracts, privacy rights, First amendment protections for free speech in both an analog and digital world as they specifically impact artists and the fine arts community. The process by which they learned this material expanded from traditional reading, digital library searches and case analysis to also include an interactive, dynamic, collaborative community based experience requiring them at the end of the project to create specific hand-out brochures for each of the art-law topics. The community service learning aspect required them to work collaboratively, not competitively, to plan and organize workshop topics and manage the art-law discussions at the location of the non-profit organization so another short term objective was to develop communication and leadership skills with working adult professionals. The longer term objectives were multiple including enhance the local fine arts community through the students' service learning endeavor, identify and promote skills related to teamwork and community participation, gain knowledge through experiential learning rather than solely through abstract textbooks and lectures, encourage them to emotionally and intellectually see the value in caring about a problem, help other members of their local community solve that problem, and gain confidence in their own abilities to work with professional artists in a meaningful way.

III. Preparing Students for the Learn and Serve Community Project

At the beginning of the semester students were informed this law class incorporated a service learning component with The Whistler House Museum. The vast majority of the students had no prior experience with any type of community based or even volunteering learning module. The course syllabus reflected the dates and location of the workshops and my expectations for them. Students knew every class leading to the workshop was important because classes met only one night a week and we had to "cram" diverse legal subjects into six or seven classes. Somewhat surprisingly, I learned most of the students had not visited a fine arts museum since middle school and none had ever heard of The Whistler House Museum. Age of the students ranged from 20 to 38 years; class gender breakdown was 60% male and 40% female. Early in the semester we scheduled a meeting with the museum's Director for a Saturday morning visit¹. Students viewed the museum's collection, surveyed the Parker Gallery meeting space where the workshops would take place, and chatted extensively about key topics and "flow" for asking and responding to questions. Informally, students decided amongst themselves who would lead the conversation on each of the assorted discussion topics.

The night of each workshop we all gathered beforehand at a local café for coffee and conversation and to serve as a "rehearsal" for that evening's "performance." As frequently happens when teaching a cultural legal course, two external factors influenced course material. Litigation was heating up between street artist Shepard Fairey and the Associated Press (AP) over the unauthorized use of a photograph.

The A.P. claimed Fairey copied all the original, creative expression in its copyrighted photograph of now President Obama without credit or compensation in his **HOPE** poster.⁶ Meanwhile, in a stunning announcement, Brandeis University's Rose Museum decided to deaccession one of the finest university collections of modern abstract art in direct contravention to the written wishes of many of its donors⁷. Both of these situations were truly monumental art-law topics that added to the crucible of material for class research and debate. As before in my active learning teaching mode, we literally reconstructed Fairey's **HOPE** poster from the original copyrighted photograph to the trademarked images and language on the poster to the color selection and finally to the silk screen process resulting in the poster. Once more, students engaged in interactive learning both about how Fairey created the poster and the attendant legal issues arising from the process and outcome including whether he "transformed" the original photograph sufficiently to create his own fresh and original copyrighted work of fine art. Relevant case law research to find similar factual examples was conducted via the library's LEXIS/NEXIS databases software system. For instance, students viewed the application of the fair use doctrine, an exception to copyright infringement along with parody, by examining artist Jeff Koons' two federal copyright infringement cases also involving the incorporation of copyrighted images into a sculpture⁸ and painting⁹. Another referenced example was Andy Warhol's famous silk screen depiction of Marilyn Monroe. Two intriguing legal issues arose: 1) whether Warhol's use of a 1953 publicity photograph from the movie *Niagara* violated the economic, reproduction and moral rights of the photographer;¹⁰ and 2) whether Warhol's use of Monroe's image violated her right of publicity.¹¹

Further controversial law and society issues arose when the class discussed Warhol's Campbell Soup images as a potential trademark infringement case, but was never pursued because the New Jersey based soup company delighted in the commercial exposure. Students read about the Rose's dispute regarding donor intent and whether the proposed auction might be a classic case of a material breach of contract promises as further examples of the range of issues they may confront in the workshops. Organized protests at Brandeis by students over the attempted sale of works by William deKooning, Franz Kline and Philip Guston among others led to queries about freedom of assembly and civil disobedience. The two evening Learn and Serve workshops were held at the Parker Gallery. The atmosphere was relaxed. An eclectic mix of art professional attended. The museum's Director and I introduced ourselves and spoke briefly about the genesis of the program and our respective roles. Individually, the students introduced themselves. Questioning began. They were precise and directly relevant to their personal experiences and needs. By far, digital related copyright, fair use, publicity rights, registering copyrights and trademarks were the issues of greatest concern during the first workshop. The second workshop was devoted to licensing, sales of works on and off-line, retention of copyrights even after a sale, moral rights and the Berne Convention, and artistic limits to freedom of expression. Students had prepared helpful brochures on each of these topics that were distributed to the participants. Each session lasted about two hours.

IV. Benefits from Service Learning

Extensive research on the subject of using art to teach academic subjects has demonstrated it results in improving understanding of content.¹²

⁶ Randy Kennedy, *Artist Sues the A.P. Over Obama Image*, Feb. 9, 2009, available at www.nytimes.com/2009/02/10/a3/design/10fair.html.

⁷ Randy Kennedy, *Lawsuit Filed to Halt Closure of Brandeis Art Museum*, July 27, 2009, available at <http://artsbeatblogs.nytimes.com/tags/rose-art-museum>.

⁸ *In Rogers v. Koons and Sonnabend Gallery, Inc.*, (960 F.2d 301, cert. denied 113 S. Ct. 365). The court held Koon's fair use argument failed when he purchased a notecard containing a black and white photograph entitled *Puppies*, deliberately tore off the copyright notice, and copied the image into a sculpture entitled *String of Puppies*.

⁹ *Blanch v. Koons* (467 F.3d 244). A few years later a different court determined Koon's had sufficiently transformed a copyrighted fashion photograph of a woman's feet and shoes to avoid copyright infringement when the image was only part of a collage of other pairs of dangling feet.

¹⁰ www.edu.warhol.org/aract_icms, retrieved November 22, 2011.

¹¹ Rebecca F. Ganz, *A Portrait of the Artist's Estate as a Copyright Problem*, 41 LOYOLA OF LOS ANGELOS L. REV. 739 (2009); The United Kingdom's view on the publicity rights is reviewed at Charlette Waelde, *Marilyn Monroe, Posh Spice, and Me Personality, Property and Privacy* (2002), found at www.era.lib.ed.ac.uk, retrieved November 22, 2011. Canada's view on publicity rights especially for deceased celebrity icons is discussed at: Leslie Chung, *Some (Still) Like it Hot: Marilyn Monroe's Publicity Rights Sold for Millions*, IPilogue, January 28, 2011.

¹² Edward B. Fiske (ed.), *Champions of Change: The Impact of the Arts on Learning*, The President's Committee on the Arts and the Humanities.

Certainly, a critical aspect of this interactive experiential learning method was to insure students could identify legal issues from fact patterns, critically reason and apply what was learned to evolving real life fine art situations. This way of learning has the potential to structurally and functionally change the human brain. Further research indicates this on-hands service learning experience can lead to remembering and solving problems better than traditional classroom instruction. The interpersonal interactions between the students and legally unsophisticated working professional artists in need of constructive advice can give students a sense of purpose and place. Researchers tell us there are three principal measurable outcomes: **cognitive** (learning skills, apply knowledge, improve academic performance, and solve problems creatively); **attitudinal** (develop confidence and self-esteem from helping others, better attendance, and feel good about making a difference); and **soul**(community benefits, build “soul” capital between the university and museum, interact with community members in a positive manner, friends are made, find and feel respect for those who are different).¹³

In general, I do not use any form of standardized testing to measure and compare what and how well students learned from semester to semester. My best gauge of cognitive gains is what I observed – nearly 100% attendance every class, collaborative peer review learning as illustrated by the team work based art law brochures, and impeccable handling of sometimes difficult and complex legal questions from the community participants. The attitudinal and soul outcomes were measured by the modified “Community Service Attitude Scale Survey” the Center provided at the conclusion of the service learning project. This Survey did ask students whether this service learning class helped them meet course objectives, which included gaining knowledge and applying it skillfully, and overwhelmingly they answered in the affirmative. Visiting a museum was viewed as a wonderfully fun experience, too. The results of the survey in summary demonstrated the following: 1) on the whole their service learning project showed them that can have an affirmative impact on helping their community solve problems; 2) helping others in a meaningful manner is part of their citizenship requirement; 3) groups can effectively solve problems; 4) they are willing to engage in service projects in the future; 5) increased confidence in working comfortably with adults; and 6) this experience helped them feel more a part of the university and the local fine arts community.

A second aspect of the survey asked the students how they felt about certain activities before and after they completed the community project. As one would expect and hope, across the board students believed this experience improved their ability to create a plan of action to solve community based problems, organize and run a workshop, express their views publicly, find and examine research related to the issues at hand and, finally, apply what they learned. The attitudinal changes were not particularly dramatic simply because so many of the students expressed sincere confidence in working in groups and with adults even before the project. About 20% of the class were former military enlistees and therefore had significant group and leadership experience.

The participants - museum board members, photographers, painters, graphic designers, an arts’ conservator, gallery directors, directors of local cultural institutions - were not formally surveyed. All who attended acknowledged the beneficial aspects of program. Many of them voluntarily emailed and wrote platitudes like: “fascinating,” “thoroughly enjoyed wonderful discussions,” “impressed by UMASS students,” and “information is something all artists and collectors should be aware of.” The Director of the museum informally asked the participants what we could do to make the workshops better. They asked for more programs on subjects like “how technology protects and usurps legal rights,” “creating web sites,” and “free speech art issues.” Universally, they loved the art law brochures. Overall from my perspective this small seed grant allowing for a community service partnership between a local non-profit museum and undergraduate legal studies’ students was marvelously beneficial on multiple levels: as an innovative instructional pedagogy especially for the study of law that can serve as an example for other faculty members; students learned to think critically and creatively; students developed confidence in their communication skills; students learned how to reason analytically and help professional artists solve real law related problems; and the community garnered respect for how talented, gifted and service oriented our students are.

¹³ Dean Keith Simonton, *Creativity: Cognitive, Personal, Development, and Social Aspects*, Vol 55 (1) American Psychologist 151-158 (Jan. 2000).