



Examining a First Amendment Court Case to Teach Argument Analysis to Freshman Writers at an Art College

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Abstract: By examining the arguments put forth by plaintiffs and defendants in art censorship cases, students in a freshman writing course become aware that argumentation and analysis play important roles not only in courts of law but also in the art world and in their own everyday lives as artists. This article discusses effective use of published information about a 1999 First Amendment case (*Brooklyn Institute of the Arts and Sciences v. City of New York and Rudolph W. Giuliani*). Guided by reading and writing assignments and a series of class discussions, students learn to analyze arguments on rights related to freedom of speech, art making and exhibiting.

INTRODUCTION

I rarely wonder what the Founding Fathers of the United States would think about freshman writing at an art college. But when students in my writing class begin analyzing rhetorical arguments in recent legal cases about works of art, I realize that we are grappling with freedom of thought and action as a natural right that James Madison and others, influenced by

the Enlightenment, attempted to resolve around the time of the Constitutional Convention in 1787. Though we may not need to debate again those early deliberations about freedom, we are committed to exploring the power of symbolic speech and the protections offered by the First Amendment to the U.S. Constitution.¹

For my students, the questions are: What did the framers of American thought and government tell us about individual

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rights that remains relevant to contemporary artists who are creating and exhibiting their works? Furthermore, if Madison, who proposed the amendments that were ratified as the Bill of Rights, attended my writing class today, what ideas about freedom of expression would he share with my students? And what would happen if Floyd Abrams, Rudolph Giuliani, and Julie Van Camp—the three individuals whose recent involvement with the First Amendment I discuss in this article—were to participate in this class with Madison? What arguments would be made about freedom of expression in relation to controversial art created and exhibited by contemporary artists?

We will never have answers to these questions, but by examining the arguments put forth by plaintiffs and defendants in art censorship cases, students become aware that argument analysis plays an important role not only in historical courts of law but also in today's art world and in their everyday life as artists.² At the Massachusetts College of Art and Design, where I teach a freshman composition course called "Written Communication," I ask students to examine, for their final essay project in the semester, a First Amendment court case involving freedom of expression in the arts.

In this article, I describe ways of teach-

¹ Eric Foner, *The Story of American Freedom* (New York: W.W. Norton & Company, 1999), 12-28; David Goldfield et al., *The American Journey: A History of the United States*, (brief ed.) (Upper Saddle River, NJ: Prentice Hall, 1998) chs. 7-8.

² *Argumentation* (from the Latin *arguere*, "to make clear") is a general term for a process that aims above all for clarity. Some arguments—such as logical, legal, scientific, and mathematical arguments—are discipline-specific. Arguments can also be explicit or implicit. Explicit arguments are part of expository writing practice. Implicit arguments are found in creative and religious works (visual, verbal, poetic, performative) where rhetorical strategies such as metaphor, analogy, and allegory refer to taboo topics. For example, the *Vietnam War Memorial* (1982), designed by Maya Lin, is a work of art that makes an implicit argument about one of the effects of war.

ing argumentation that art students find particularly relevant to their interest and involvement in the arts, and describe how students engage the challenges of analyzing rhetorical arguments while they develop as artists, scholars, and informed members of their community. The primary focus is on teaching rhetorical argumentation, and its secondary focus is on the case of *Brooklyn Institute of Arts and Sciences v. City of New York and Rudolph W. Giuliani* (1999), also known as the Brooklyn Museum case. Other American freedom of expression cases that my students study include Al Brandtner's *Patriot Act* (2005), a painting of an invented postage stamp that was part of the exhibition *Axis of Evil: The Secret History of Sin*; "Dread" Scott Tyler's art installation *What Is the Proper Way to Display a U.S. Flag?* (1985); the related flag desecration case of *Texas v. Johnson* (1989); and *Tinker v. Des Moines Independent Community School District* (1969), the landmark constitutional rights case that involved seventh- through twelfth-grade students who wore black armbands as expressions against the Vietnam War in 1965.

The 1999 Brooklyn Museum case addressed a First Amendment controversy over a public museum that exhibited art perceived to be unacceptable to some individuals and communities. There are seven numbered topic sections in this article. In the first section, I outline some details about the artists, the offending art, and my pedagogical approach to reading and analyzing argumentation using the Brooklyn Museum controversy. In the second section, "Teaching Argumentation," I lay out key concepts and strategies for learning to analyze rhetorical arguments. I also describe study guides that support that learning. In the following three sections, I examine selected texts by three authors (Floyd Abrams, Rudolph Giuliani, and Julie Van Camp) to show how each writer develops an argument and what strategies

readers can use to analyze it.

I focus my discussion of argumentation on four passages—two from a chapter called “The Brooklyn Museum Case” in Floyd Abrams’s book *Speaking Freely: Trials of the First Amendment* (2005),³ one from the chapter called “Be Your Own Man” in Rudolph Giuliani’s book *Leadership* (2002),⁴ and an excerpt from Julie Van Camp’s “Limits of Freedom of Expression,” a part of her educational website on First Amendment cases.⁵ In the last two sections of this article, I feature and then reflect on my students’ voices in excerpts from their reflections on assigned readings about art and the First Amendment while they learn to analyze rhetorical arguments. This is then followed by some concluding remarks.

1. THE BROOKLYN MUSEUM CASE

The case of *Brooklyn Institute of Arts and Sciences v. City of New York and Rudolph W. Giuliani*⁶ was triggered by an art exhibition—Sensation: Works by Young British Artists from the Saatchi Collection (1999-2000)—on view at the Brooklyn Museum. Rudolph Giuliani, mayor of the City of New York in 1999 and a former U.S. attorney general, was one of the leading figures in the case. The other prominent figure was Floyd Abrams, a distinguished First Amendment lawyer who is best known for his defense in *New York Times v. United States* (1971)—the Pentagon Papers case

³ Floyd Abrams, *Speaking Freely: Trials of the First Amendment* (New York: Viking, 2005).

⁴ Rudolph W. Giuliani with Ken Kurson, *Leadership* (New York: Hyperion, 2002).

⁵ Julie Van Camp, “Exceptions to Freedom of Expression,” in “Freedom of Expression: The First Amendment,” *Freedom of Expression at the National Endowment of the Arts*, <http://csulb.edu/~jvancamp/freedom1.html> (accessed May 19, 2010).

⁶ *Brooklyn Institute of Arts and Sciences v. City of New York*, 64 F. Supp. 2d 184, (E.D.N.Y. 1999), available at <http://www.ncac.org/art-law/op-bro.cfm> (accessed May 23, 2010).

that contributed to Richard Nixon’s resignation from the U.S. presidency.

The court case developed from tensions between the Brooklyn Museum and the City of New York two weeks before the scheduled opening of the exhibit on October 2, 1999. Giuliani was outraged by certain artworks that he had heard about and deemed unacceptable for public viewing. He also tried unsuccessfully to have the art removed prior to the opening of the exhibition. Finally, he demanded that the exhibition be canceled and, to punish the institution for noncompliance, threatened to withhold funding that had been allocated to the museum for expenses and maintenance.

In response to these threats and a growing list of policy-related allegations by City Hall, the museum hired a lawyer and sued the city. On September 28, 1999, the museum filed for an injunction against the mayor and his administration for violation of free speech and withholding funding. Abrams’s claim against the city included the relevant passage from the First Amendment that states that government cannot “prohibit expression of an idea simply because society finds the idea itself offensive or disagreeable.”⁷ One month later, on November 1, Judge Nina Gershon referred to the same protected speech passage in her closing opinion on the case, giving the museum a complete victory.

On September 30, 1999, two days after the museum filed, the city filed a suit in the New York State Supreme Court seeking to close the museum and evict the century-old institution from its premises. The basic claim from the Giuliani administration against the museum was that the art in the exhibit was “sick” and “disgusting” and that taxpayers should not have to pay to support shows that include offensive art. The primary culprit in Giuliani’s opinion, based not on seeing the art but on hearsay

⁷ Abrams, 199.

and tabloid reporting, was Chris Ofili's painting *The Holy Virgin Mary* (1996).⁸ According to the mayor, the artist had "splattered" animal dung on a holy image and thereby desecrated a religious icon. To top this outrage, Giuliani contends in the passage, the museum wants tax dollars to pay for exhibiting that work.

However, as my students learn from their research, nothing was "splattered" on the painting, and no one asked taxpayers to pay for the exhibition. Ofili, the artist, uses dried elephant dung as he might use any other art medium—in a controlled and purposeful way. In making a work of art, dried elephant dung combined with other materials expresses complicated ideas and feelings about cultural heritage, racial and gender stereotypes, the coming together of sacred and profane dichotomies, and the maternal body and its creative and regenerative potential.

Unlike Giuliani, who condemned the artwork without ever seeing the painting and the alleged acts of "desecration," my students see *The Holy Virgin Mary* as an inspired and contemporary work. They see a large painting of a black Madonna in a bluish-green leaf-inspired gown against a sun-yellow background. They also see that the painting is leaning against the wall and that two fist-sized dung balls, encased in resin, are used as "feet" to raise the 8 ft. x 6 ft. painting two or three inches from the floor. A third dung ball is attached to the area where the Virgin's exposed right

⁸ The city's complaint also objected to Damien Hirst's animal corpses and Marcus Harvey's *Myra*, a portrait of the child-murderer Myra Hindley. Hirst's most discussed artwork in the Sensation exhibition was *The Physical Impossibility of Death in the Mind of Someone Living* (1991), a work that displays the corpse of a tiger shark in a steel and glass tank of 5 percent formaldehyde solution. *Myra* (1995), Harvey's offending image, is produced by tiny children's handprints. *Sensation: Young British Artists from the Saatchi Collection*, exhibition catalog (London: Thames & Hudson, in association with the Royal Academy of Arts, 1999), 93, 199, 87, 198.

breast has traditionally been depicted. To create the image, Ofili, a British-born artist of Nigerian heritage, used mixed media (including glitter and tiny paper cutouts showing women's body parts) to build up a richly textured image. Like many of Ofili's paintings that stand on dung-ball feet, this one is inscribed with key words from the title. On the left ball, the viewer reads "Virgin," and on the right one, "Mary."⁹

Organic circularity—repeated in the dung balls and in the tiny paper cutouts of flying buttocks and crotches that orbit around the Madonna like butterflies searching for nectar—is one of several visual patterns and themes that unify the image. Most art students are aware that sexuality and the representation of women's bodies in the arts are charged topics, but few of them would label an image of a bare breast or a carefully dried ball of dung as products of a "sick" mind. MassArt students learn about ancient and contemporary art that celebrates voluptuous female figures as well as artworks that incorporate fecal matter and body fluids.¹⁰

After the federal court hearing and oral arguments for and against the art in the exhibition, Judge Nina Gershon, on November 1, 1999, issued her legal opinion and court order. Against many protests from conservative lawmakers, some religious communities, and some members of the press, the court gave the museum a victory on every issue raised by the city's lawyers.¹¹ The judge's final court order

⁹ Ofili's dung balls, some critics of his work have argued, represent the artist's mixing of incompatibles such as bringing together the sacred and profane (Godfrey Worsdale, "The Stereotype"), in *Chris Ofili*, exhibition catalog (London: Southampton City Art Gallery and Serpentine Gallery, 1998), 8. In certain areas of Africa, elephant dung is regarded a sacred and regenerative material. Some critics emphasize Ofili's cultural roots as a source for his art. Ofili was born in England and raised there by Nigerian parents who are Roman Catholic.

asserted the well-defined but limited role that government officials play in relation to art that they find offensive:

There is no federal constitutional issue more grave than the effort by government officials to censor works of expression and to threaten the vitality of a major cultural institution, as punishment for failing to abide by governmental demands for orthodoxy.¹²

¹⁰ Well-known representations of voluptuous female figures, Paleolithic and contemporary, are *Woman of Willendorf*, ca. 28,000-25,000 BCE and *Woman I* (1950-1952) by Willem de Kooning. Images of Madonnas with one exposed breast include Roger van der Wyden's *Saint Luke Painting the Virgin* (1435-1440) and Jean Fouquet's *Madonna and Child* (part of a diptych) (ca. 1450). Perhaps the Madonna images most related to Ofili's, in terms of its postmodernist consciousness, are the bare-breasted Madonna in Cindy Sherman's *History Series* (1989-1990) of large photographs, <http://portrait.pulitzerarts.org/cube-gallery/sherman> (accessed June 26, 2010), and Renée Cox's *Yo Mama's Last Supper* (1996), a photographic work that Giuliani also wanted to remove from a Brooklyn Museum exhibition in February 2001, <http://renee-cox.org> (accessed June 4, 2010).

Artists who have referred to or used human bodily waste to make art include most famously Marcel Duchamp, who created *Fountain* (1917) using an overturned urinal; the Italian artist Piero Manzoni (1933-1963), who produced ninety sealed cans labeled *Artist's Shit* (1961) for sale and Andres Serrano, who made a photograph *Piss Christ* (1987) that shows a plastic crucifix immersed in urine. Penelope J. E. Davies et al., *Janson's History of Art: The Western Tradition*, 7th ed. (Upper Saddle River, NJ: Pearson, 2007), 12, 1041, 486, 493, 986.

Jonathan Fineberg, *Art Since 1940: Strategies of Being*, 2nd ed. (Upper Saddle River, NJ: Prentice Hall, 2000), 342; Marilyn Skokstad et al., *Art History*, 3rd ed. (Upper Saddle River, NJ: Pearson, 2008), 1183.

Kim Jones, also known as the Mudman, referred to his "turd in a jar" piece, which he brought to a panel discussion at the New Museum of Contemporary Art on February 3, 1986, in New York, as an artist's ultra "autobiographical statement." The panel was in conjunction with the museum exhibition *Choices: Making an Art of Everyday Life*. Angelika Festa, "Mudman in New York," *Drama Review*, 31, no. 4 (Winter 1987): 30-31.

Gershon supported her decision by pointing to the First Amendment's primary function, which she states is "barring government officials from invidiously discriminating against ideas they find offensive either to themselves or to members of the community."¹³ Gershon also argued in that concluding opinion by referring to the details that emerged: "The facts," she is quoted in the court record, "establish an ongoing effort by the mayor and the city to coerce the museum into relinquishing its First Amendment rights."¹⁴ She also referred to *Texas v. Johnson*, an important First Amendment case that was heard by the Supreme Court and helped establish a precedent for the Brooklyn Museum case ruling. Texas law had convicted the Vietnam veteran Gregory Lee Johnson for burning a U.S. flag, but the Texas Court of Criminal Appeals reexamined the circumstances and on June 21, 1989, reversed the conviction based on the First Amendment's protection of freedom of expression.

For the final court decision on *Texas v. Johnson*, U.S. Supreme Court Justice Brennan read the following statement, invoking

¹¹ Stephen B. Presser, professor of legal history and business law, argues that "the [Sensation] dispute should have been resolved in Mayor Giuliani's favor because he had partnership law and at least some constitutional law on his side." Stephen B. Presser, "Reasons We Shouldn't Be Here: Things We Cannot Say," in *Unsettling Sensations: Arts-Policy Lessons from the Brooklyn Museum of Art Controversy*, ed. Lawrence Rothfield (New Brunswick, NJ: Rutgers University Press, 2001), 52. Another argument against the court's November 1999 decision and in support of the city's appeal came from the Agudath Israel of America, a national orthodox Jewish organization situated in Brooklyn. On December 1, 1999, the organization filed an *amicus curiae* brief in support of the defendants' appeal. The organization's main claim against the museum was that it had failed to fulfill its educational mission by showing art that is offensive to some communities. See <http://www.jlaw.com/Briefs/Art.html> (accessed May 19, 2010).

¹² Judge Gershon, quoted in Abrams, 220.

¹³ *Ibid.*, 222.

the First Amendment:

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.¹⁵

Judge Gershon's final ruling on the Brooklyn Museum case on November 1, 1999, followed Brennan's 1989 invocation of the First Amendment, as did Abrams's on September 28, 1999, in his claim for protected symbolic speech in the Brooklyn Museum case.

For my students, these legal references turn out to be fascinating. For them, knowing and understanding the historical as well as rhetorical trajectory of the idea of freedom of expression—from the 1791 ratification of the First Amendment to the Brooklyn Museum Case in 1999—is a revelatory and empowering bit of knowledge that they can apply today and in their ongoing studies as artists.

2. TEACHING ARGUMENTATION

Based on the essays my students write early in the semester when we study rhetorical modes (such as cause and effect, definition, and comparison), they already know that a rhetorical *argument* is neither a quarrel nor a strictly pro-and-con debate. They know that argumentation is the process of making something clear to oneself and to others. Some people try to do

this by persuading an audience of the rightness of their point of view by gathering sufficient evidence, using sound reasoning, and presenting a logically necessary conclusion. Others, however, try to persuade undecided or uninformed individuals to support their views by distorting facts, insisting on one-sided or fallacious arguments, and using faulty logic to draw a conclusion.

To understand the purpose of arguments, students in my class develop and analyze different ways of arguing a position or point of view. We study a spectrum of arguments related to the Brooklyn Museum case, including those that examine many sides of an issue and those that promote narrow and self-serving principles.

Because the study of art opens up for examination all versions of reality—objective and subjective, clearly visible, slightly veiled or fully hidden—my students soon become interested in exploring various forms of argumentation. As artists, they understand that the choices we make—when painting an image, defining a sequence of dance steps, articulating thoughts and feelings, and lining up words, phrases, and sentences to illustrate an idea—express only certain personal and collective perspectives and morsels of truth.

For this reason, I teach a broad view of argumentation. I refer to but do not limit my students to Aristotle's three means of persuasion—logos, ethos, and pathos, which were his tools for rhetorical effectiveness. I teach rhetorical argumentation as a three-part sequence of statements that moves from a *premise* (assertion, claim, or stated position), to *evidence* (reasons with examples), and to a logical *conclusion*.¹⁶ For argument analysis, students pay attention to the structure of an argument, the writer's rhetorical moves, the supporting evidence, and the assumed audience. They read to understand how the structure and the

¹⁴ *Brooklyn Institute of Arts and Sciences v. City of New York*, 64 F. Supp. 2d 184, (E.D.N.Y. 1999), The First Amendment Claim, II. Irreparable Harm, para. 4, available at <http://www.naac.org/art-law/op-bro.cfm> (accessed May 23, 2010).

¹⁵ *Texas v. Johnson*, 491 U.S. 397, (1989) (No. 88-155), Justice Brennan in The Opinion of the Court, IV, para. 7, available at http://www.bc.edu/bc_org/avp/cas/comm/free_speech/texas.html (accessed May 23, 2010).

languages of argumentation—especially the logos and pathos—clarify the writer’s claim with pertinent facts and reasons. To guide this process of paying close attention, we study key passages from the assigned class texts by Abrams, Giuliani, and Van Camp and discuss those passages by referring to several study guides on reading and analyzing arguments.

To analyze specific text sections within a chapter, I support my students’ learning with four sequenced study guides—the “Reading & Discussion Guide,” the “Continuum of Making Arguments Guide,” the “Fallacies in Making Arguments Guide,” and the “Evaluating Evidence Guide.” We begin working on a text passage by using the “Reading & Discussion Guide.” For closer analysis, we proceed to the other guides, finishing with the “Evaluating Evidence Guide.”

The “Reading & Discussion Guide” for argumentation helps students understand the structure and purpose of a rhetorical argument.¹⁷ The guide also helps them to focus on a text and prepare for class discussion.

1. The “Reading & Discussion Guide” for analyzing the structure and purpose of an argument poses the following six questions: (a) What is the author’s position on a topic or issue? (b) How is the argument constructed? How many parts are there, and what is the logical sequence? (c) How does the

structure of the argument inform and persuade the reader? (d) If there are logical fallacies, point them out by name, using the class handout on “Fallacies.” (e) What is the most persuasive part of the argument? (f) What remains unclear or unconvincing to you? Explain.

To help students analyze passages within the context of rhetorical argumentation, I assign the following three guides on argumentation. Depending on the assigned readings, I assign one or two guides for homework, to be discussed during the next class.

2. The “Continuum of Making Arguments Guide” shows a spectrum of six types of arguments that range from truth seeking to extreme persuasion—exploring all sides of an issue, asking readers or audiences for input on issues, dialogic argument to seek common ground, classical argument aimed at a neutral audience, one-sided argument aimed at friendly and very supportive audiences, aggressive and one-sided arguments, and outright propaganda.

¹⁶ An expanded version of this three-part process of argumentation encourages writers to develop arguments by (1) posing a question that leads to exploring an issue, (2) making a definite claim or asserting a position, (3) providing reasons or offering examples to support the claim, (4) addressing historical precedent or previously held views, (5) considering potential objections or alternative interpretations, and (6) preparing for negotiations should there be a conflict. John D. Ramage et al., *Writing Arguments: A Rhetoric with Readings*, 7th ed. (Boston: Pearson Education, 2007), chs. 1-3.

¹⁷ I developed the “Reading & Discussion Guide” as an all-purpose and highly adaptable study guide with a few questions about a specific text. The questions about a text can be content-based, structural, factual, or interpretative. They can also be related strictly to literary style. Students can respond by hand-writing. The guide helps students focus on the tasks associated with reading, such as what kind of information they should be looking for in a text. The guide encourages interpretation, analysis, or critique of an author’s position, content, or style. In all cases, the students’ responses to the guide’s questions can initiate class discussion or prompt an essay topic. For more on the “Reading & Discussion Guide,” see Angelika Festa on “Teaching Critical Thinking to Freshman Writers by Engaging Contemporary Artists’ Work,” *Human Architecture: Journal of the Sociology of Self-Knowledge*, vol. 7, no. 1, (Winter 2009): 115-136.



Chris Ofili, *The Holy Virgin Mary*, 1996
96x72 inches, acrylic, oil, polyester resin,
paper collage, glitter, map pins and
elephant dung on linen
Courtesy Chris Ofili - Afroco and David
Zwirner, New York

3. The “Fallacies in Making Arguments Guide” draws attention to ten fallacies, which are arguments based on incorrect reasoning, including word shifts and logical errors, false beliefs, and invalid inferences. The ten fallacies are begging the question (restating a claim and passing it off as evidence), oversimplification, polarization, either/or, rationalization, hasty generalization, false analogy, loaded language, “straw man,” and slippery slope.¹⁸

4. The “Evaluating Evidence Guide” helps students to determine whether the evidence is appropriate, sufficient, current, and relevant.¹⁹

3. FLOYD ABRAMS'S ARGUMENT IN “THE BROOKLYN MUSEUM CASE”

Students begin to work on developing and analyzing arguments by reading the chapter on *Brooklyn Institute of Arts and Science v. City of New York* in Floyd Abrams's book *Speaking Freely: Trials of the First Amendment* (2005). For homework, I assign the entire chapter (“The Brooklyn Museum Case”), but for in-class close reading, we focus on two passages from the chapter.

¹⁸ “Loaded language’ is biased language” according to Dean Memering and William Palmer in *Discovering Arguments: An Introduction to Critical Thinking and Writing with Readings*, 2nd ed. (Upper Saddle River, NJ: Pearson Education, 2006), 248-249.

¹⁹ The “Continuum of Making Arguments Guide” is adapted from the “Continuum of Arguments from Truth Seeking to Persuasion” in Ramage et al., 10-11 (fig. 1.2). The “Evaluating Evidence Guide” is based on the section “Apply the STAR Criteria to Evidence” in Ramage et al., 110-111. The class handout “Fallacies in Arguments Guide” is adapted from “Fallacies of Argument” in Lester Faigley and Jack Selzer, *Good Reasons with Contemporary Arguments*, 3rd ed. (New York: Pearson Education, 2007), 51-52.

Armed with the four study guides and Abrams's text, my students and I sit around a large table taking turns reading the first page of his chapter on the case. The chapter's introduction sets the stage for the rest of the story, where plaintiff and defendant meet in the U.S. Court of Appeals for the Second Circuit in 1999 and debate whether “sick” and “disgusting” works of art can be exhibited in a public museum. Abrams begins with a two-sentence report on a 2002 opinion poll of college students who selected Rudolph Giuliani as the person in the world (after their parents) whom they saw as a role model:

When recent college graduates were polled late in 2002 about whom they wished to emulate most in the world, their first two choices were their mothers and fathers. The third was Rudolph Giuliani.

The masterful leader of New York City at the time of the horrors of September 2001, the Giuliani of those days was commanding yet empathetic, plainspoken yet eloquent. When *Time* chose him as its Person of the Year, it praised him for being “tender without being trite, for not sleeping and not quitting and not shrinking from the pain all around him.” Giuliani was Mayor of the World, *Time's* profile concluded, a view consistent with that of Queen Elizabeth, who knighted him only a few months later.

I knew a different Giuliani. Two years earlier, . . . I found myself confronted with an authoritarian Giuliani, a bullying Giuliani, a Giuliani deeply contemptuous of the First Amendment.

None of this came as a surprise to New Yorkers familiar with the mayor's prior conduct. While he had served the city well in many respects, . . . when it came to the First Amendment, a constitutional rule rooted in the idea that the freedom to criticize government and government officials is central to a free society, he was a constant problem, a frequent opponent, an enemy.²⁰

After reading this passage, I ask my students why Abrams might have decided to introduce his 2005 chapter with a reflection on Mayor Rudolph Giuliani's 2002 popularity among college students. Was this a random choice or a deliberate rhetorical strategy? Does representing a favorable side of his opponent support or impede the clarity and validity of Abrams's overall argument? Is this acknowledgment of the mayor's popularity Abrams's strategy to include an opposing view in his argument?

We use the "Reading & Discussion Guide" to examine the structure and purpose of Abrams's argument. As expected, the questions posed by the guide initiate an informal class discussion on argument analysis, including the thesis statement and claim. The questions are about parts of the argument, the logical sequence, clarity, fallacies, and persuasion. As students work through the questions about the argument's structure, fallacies, and evidence, at least one student usually notices that Abrams makes two different claims in this passage and that the second one is really a counterclaim to the first one. The first claim addresses Giuliani's popularity and heroism after 9/11, and the counterclaim addresses the mayor's flaws as a public servant, especially in relation to artists and their First Amendment rights. For further analysis, we break the argu-

ment, stated on page 188 in his book, into claim, evidence, and counterclaim:

1. Abrams's first claim:

The masterful leader of New York City at the time of the horrors of September 2001, the Giuliani of those days was commanding yet empathetic, plainspoken yet eloquent.

2. Abrams's supporting evidence:

When *Time* chose him as its Person of the Year, it praised him for being "tender without being trite, for not sleeping and not quitting and not shrinking from the pain all around him." Giuliani was Mayor of the World, *Time's* profile concluded, a view consistent with that of Queen Elizabeth, who knighted him only a few months later.

3. Abrams's two-part counterclaim:

I knew a different Giuliani. Two years earlier, . . . I found myself confronted with an authoritarian Giuliani, a bullying Giuliani, a Giuliani deeply contemptuous of the First Amendment.

... when it came to the First Amendment, a constitutional rule rooted in the idea that the freedom to criticize government and government officials is central to a free society, he was a constant problem, a frequent opponent, an enemy.

After noting the rather simple structure of this argument, I suggest that the remaining forty-one pages of the chapter could qualify as supporting evidence for the author's counterclaim. But I also advise my students that as critical readers and think-

²⁰ Abrams, 188.

ers we should be vigilant about submitting to the authority of the text even when it is written by a prominent lawyer. To encourage my students to pose questions about the content of Abrams's arguments so far, I ask them to fact-check online some of Abrams's key sources and references (court proceedings, depositions, and art historical and legal precedents of art censorship).

After their research, most students are convinced that Abrams's evidence is accurate and therefore in the realm of "seeking truth." His reputable sources, attention to details, and acknowledgment of opposing opinions presented by the mayor and City Hall's administrators persuade my freshman readers that Abrams's arguments are valid and focused primarily on subject matter (the First Amendment) and secondarily on persuasion of his readers. His ideal audience seems to be educated and critically minded individuals who want to know the facts and are eager to learn more about freedom of expression in the arts and about what really happened in Brooklyn in the fall of 1999.

Later in the chapter, Abrams reports on the museum's motion for a preliminary injunction against Giuliani's suit against the museum. Oral arguments were held at 10 a.m. on October 8, 1999, in a courtroom filled with media reporters and the public. The request for an injunction was to protect the museum from being closed and evicted by City Hall. In his chapter, Abrams quotes the argument he made in court and where he argues in two modes or "voices" at once—one logical and the other a poetic mode:

Legally there is no doubt that art is protected by the First Amendment. There is no doubt that the art at the Brooklyn Museum is protected by the First Amendment. There is no doubt that this exhibition is protected by the First Amendment, and I don't understand the city [of

New York and Mayor Giuliani] to be disagreeing with a word that I just said.

What the city did here, though, to this protected speech is to punish the museum for carrying it; and another proposition that the city doesn't address is that you can't punish anyone for simply exercising their First Amendment right.²¹

This argumentative passage persuades with facts (about the First Amendment) and logic (about two related premises). It states that "art is protected by the First Amendment" and that "you can't punish anyone for simply exercising their First Amendment right." But Abrams's argument is also persuasive because his use of metaphor, rhythm, and the poetry of repetition impresses the court audience and readers with the music and drama of language. "Carrying it" describes metaphorically that the Amendment "carries" or upholds (holds up high) contested speech through the raging voices of nay-sayers. This metaphor creates an emotional image of opposing realities and a weighty yet precious message of protected rights that travels, is carried, and ultimately is safely delivered. What can be more persuasive to Americans familiar with the turbulent history of the First Amendment?

Abrams's method of persuasion works here by expanding his initial claim (the art in the museum is protected) and by repeating it in several oratorical formulations. Although critics could find fault in this passage because he does not develop his argument logically or by accruing evidence, he argues by restating First Amendment law in different ways that seem to be inarguable.

Checking the "Fallacies in Making Arguments Guide," students recognize

²¹ Abrams, 209.

that Abrams's passage can be interpreted as a logical fallacy called "begging the question" because it fails to provide adequate evidence for the claim. ("Begging the question" is a claim that is restated and passed off as evidence. As such it is a logical fallacy because it fails to advance the argument with actual evidence.)²² However, although these isolated chapter paragraphs offer an argument that, according to our "Evaluating Evidence Guide," appears to be insufficiently supported by evidence, the full text of the case shows that Abrams provided the court with extensive evidence of the City's First Amendment violations against the museum.

4. RUDOLPH GIULIANI'S ARGUMENT IN "DON'T LET CRITICS SET YOUR AGENDA"

"Don't Let Critics Set Your Agenda" is a two-page section in Rudolph Giuliani's autobiographical book *Leadership* (2002), which he coauthored with Ken Kurson, his long-time business partner and speech writer.²³ In the book, Giuliani reflects on his life, his legal career, and his work as a politician and civil servant. As a politician with a goal to win "hearts and minds" and elections, he develops the theme of leadership through a series of principles he has found useful in his life. One of those principles is "Don't Let Critics Set Your Agenda."

²² Faigley and Selzer, 52. The authors' example of begging the question is: "People should be able to use land any way they want, because using land is an individual right."

²³ Ken Kurson is a political consultant who was deputy communications director for Giuliani Partners, a political consulting company founded by Giuliani after he left office as mayor in 2001. Kurson coordinated Giuliani's unsuccessful presidential campaign in 2008. Terry Golway, "Politics: Well-Connected," *New York Times*, N.Y. Region, September 14, 2003, available at <http://www.nytimes.com/2003/09/14/nyregion/politics-well-connected.html?scp=1&sq=Terry+Golway&st=nyt> (accessed May 23, 2010)

Another principle—"Be Your Own Man"—is the title of the chapter that I assign my students for argument analysis because it contains Giuliani's only reference to the 1999 Sensation exhibition at the Brooklyn Museum. In that reference, Giuliani summarizes his position on art, the media, and the First Amendment.

Unlike Abrams, who in his chapter provides a first-person narrative of a recent First Amendment case, Giuliani reflects in his chapter on his personal and professional history with an emphasis on his political life. As a politician hoping to persuade readers to donate time, money, and votes, he offers uplifting passages on his past and future activities and his views on issues involving community concerns (such as local crime), the opposition's institutional mess-ups, his love for opera and baseball, his outrage against sacrilegious art and immoral practices in the city, the problem of homeless people who sleep in public parks, and the need for strong leadership.

Compared to Abrams's forty-page chapter on the Brooklyn Museum case, Giuliani's short passage in his chapter "Be Your Own Man" is a well-composed sound bite. As always, the former mayor offers his position in a strong and determined voice. He summarizes his argument on the Brooklyn Museum case and the First Amendment in one single paragraph:

My decision to reduce funding for the Brooklyn Museum of Art after it displayed sexually explicit cut-outs and a portrait of the Madonna defiled with elephant dung was hysterically opposed by the New York elite. The politically correct never envisioned that people could in good faith have a difference of opinion about whether public money ought to be used to desecrate a religious image. There was an important First Amendment is-

sue at stake. I believed that the mayor should never have the right to stop anyone from making a statement of any kind. People have a right to free expression. If they were to create offensive art on their own property, using their own funds, and someone were to attack them for doing it, the mayor would be obliged to protect them, and so would the police. But I believe there is a difference between protecting someone's right to desecrate a religious image and being required to fund that desecration using tax dollars from the very people it offends.²⁴

In this passage, Giuliani brings together two of his main grievances against the museum: (1) that it displayed in a public venue art that some people thought was offensive and (2) that it used taxpayers' money to pay for so-called obscene or otherwise unacceptable art.²⁵

In response to Giuliani's reaction to the artworks in the Sensation exhibition, especially to Ofili's *The Holy Virgin Mary*, my students begin a heated class discussion that energizes their small-group research on the painting, the artist, and the controversy. Relieved to learn that Ofili did not desecrate an image that Roman Catholics hold sacred, my students are disappointed that Giuliani characterized this culturally

and conceptually complex and visually rich work of art as unacceptable for public viewing. His attempt to censor the work suggests to them that he is uninformed and possibly uninterested in the aesthetic values and religious and cultural meanings expressed by Ofili's painting. Also, Giuliani's apparent disengagement from a serious study of works in the Sensation exhibition, prior to passing judgment, suggests to the students his disregard for the challenges offered to viewers of contemporary art.

The "Reading & Discussion Guide"

Disappointed in *Time's* "Mayor of the World," my students raise the following critical questions during our in-class analysis: What is Giuliani's argument against showing these artworks, especially Ofili's *The Holy Virgin Mary*, in a publicly supported museum? And what analytical tools are available to examine his one-paragraph argumentative passage? To address these questions, students reach for the four study guides on analyzing argumentation, beginning with the "Reading & Discussion Guide" questions. Applying those guides to Giuliani's one-paragraph passage, as they applied the guide to Abrams's two passages, students determine and evaluate his position on art in the Sensation exhibition, the use of public funding for the arts, the argument's fallacies, the level of persuasion, and the role of evidence.

Abrams's argument follows a logical structure that moves with few detours from premise to conclusion, except in his "Legally there is no doubt" passage, where he restates the argument rhetorically but without further developing it through hard evidence. In comparison, Giuliani's argument is nonlinear, fluid, and episodic. His assertions are passionately stated yet loosely connected. Lacking solid facts, valid and appropriate evidence, and logical and rational connections between

²⁴ Giuliani, 225-226.

²⁵ In November 1999, Judge Gershon settled in her final legal opinion Giuliani's allegations against the museum. She declared that the art was not "sick" and that federal money had not been used to produce the exhibition. She also ruled that the First Amendment protected the museum from City Hall's attempted punishment of the museum for its art exhibitions by withholding allocated federal funding for the museum's maintenance, security, and some educational programs. Tony Mauro, "As NYC Mayor, Giuliani Chose Order over Free Speech," <http://www.firstamendmentcenter.org/analysis.aspx?id=18789> (July 11, 2007) (accessed May 21, 2010).

sentences and ideas, a critical reader will remain puzzled and possibly unconvinced by Giuliani's argument. But some readers will be satisfied because for them, rational logic and factual evidence are secondary to celebrity endorsements and trust in the authority of self-defined leadership.

The "Continuum of Making Arguments Guide"

The "Continuum of Making Arguments Guide" helps students to understand the nuances between the two extreme positions in argumentation (seeking truth and persuasion) and to determine where along that continuum Giuliani's argument is located. Is he exploring several sides of an issue and seeking common ground? Is he laying out a truthful argument or serving up propaganda? Perhaps he is presenting a one-sided argument aimed at friendly audiences, such as conservative voters, long-time business associates, and loyal political supporters. Is his desire for popularity and votes influencing his judgment on the art in *Sensation*? Could he have argued against Ofili's work because he needed to satisfy voters and win his next political race?

Some students feel that Giuliani's argument is driven largely by the aims of persuasion and political self-interest rather than by truth seeking, but only one or two students label the passage as outright propaganda. Most students read his one-paragraph summary as a "one-sided argument." They assume his primary audience to be a group of friendly supporters who are already convinced by the mayor's charismatic self-presentation as an impassioned leader with integrity. These supporters require few reasons, little logic, and less factual evidence to be satisfied by his message. As his electoral base, they expect not the "real" Giuliani but the media-constructed image of a politician who invokes his constituents' fears, hopes, and

dreams. Like other politicians who write campaign books, Giuliani aims to build, with that one paragraph on the Brooklyn Museum controversy, positive links from himself to his political stakeholders, persuading them to adopt his point of view.²⁶

The "Fallacies in Making Arguments Guide"

Against this background, the "Fallacies in Making Arguments Guide" addresses the problem of using incorrect information to construct invalid arguments and of misusing or misinterpreting facts to reason incorrectly. Some of the rhetorical fallacies (oversimplification, hasty generalization, begging the question, loaded language, and "straw man") appear in Giuliani's paragraph.

The first observation about Giuliani's paragraph that my students make when we read it together in class is about his use of "loaded language." Students learn from class discussion about fallacies that "loaded language," according to Dean Memering and William Palmer, is "biased language." Employing words such as "defiled," "desecrate," "offensive," and "hysterically" to describe the issues relating to the Brooklyn Museum controversy assumes (incorrectly) that readers share with the former mayor the meanings of

²⁶ Giuliani began writing *Leadership* in the spring of 2001, after being diagnosed with prostate cancer and prior to the events of September 11, 2001. He might already have been planning his candidacy for the 2008 presidential election. Jill Abramson writes about some of the special features of campaign books with a focus on U.S. presidential elections in "The Making of the President, Then and Now," *New York Times Book Review*, March 21, 2010, <http://www.nytimes.com/2010/03/21/books/review/Abramson-t.html> (accessed June 26, 2010). Relevant to publications on the Brooklyn Museum controversy is Abramson's attention to the entertainment value that drives the campaign book market and the self-promotional content of books written by candidates.

those words. Also, as an in-class definition test confirms, words such as “defiled” and “desecrate” are imprecise, misleading, and pejorative. Without specific contextual elaboration, these words are loaded with negative connotations and too inflected with stereotypical views to forge working definitions or facilitate consensus, especially in reference to the Brooklyn Museum controversy. Though presumably intended to clarify and reconcile differences of opinion, Giuliani’s use of these words is a diversionary tactic that (similar to the rhetorical fallacy called a “straw man”) avoids the real issues by setting up a different but seemingly similar position that is easily rejected.

In addition to creating a diversionary situation, Giuliani employs the fallacy of oversimplification that in some cases overlaps with hasty generalization. (Oversimplification minimizes the complexity of a situation; hasty generalization rides on an overly broad claim with insufficient evidence.) Again, the argument is about the meaning of words and making a claim: Giuliani assumes that “the New York elites” and the “politically correct” share the same views about the Sensation exhibition and about public funding of the arts. In the paragraph, he writes that

My decision to reduce funding for the Brooklyn Museum of Art after it displayed sexually explicit cut-outs and a portrait of the Madonna defiled with elephant dung was hysterically opposed by the New York elite. The politically correct never envisioned that people could in good faith have a difference of opinion about whether public money ought to be used to desecrate a religious image.²⁷

²⁷ Giuliani, *Leadership*, 225-226.

In this passage, Giuliani makes an overly broad claim about two social groups. He speaks of members of the New York elite and the politically correct as if they had no palpable differences of opinion. Rhetorically, the result is an oversimplification that overlaps with a hasty generalization. Although there may be some shared values by members of these two groups, not all New York elites have views that are deemed politically correct, and not all opposed the mayor’s position on the Sensation exhibition. Notably, Philippe de Montebello, the director of New York’s Metropolitan Museum of Art at the time of Sensation and most certainly a member of New York’s elite, wrote an op-ed piece that appeared on October 5, 1999 in the *New York Times*. In that piece, he supported Giuliani’s charges against the Brooklyn Museum’s “aesthetic sensibility.” In de Montebello’s view, Giuliani “had shown astute critical acumen” by denouncing the exhibition.²⁸

Although a few of my students are persuaded by Giuliani’s argument that “politically correct” people have the same or similar views as “the New York elites,” most are not convinced.²⁹

²⁸ Phillippe de Montebello, “Making a Cause out of Bad Art,” *New York Times*, Op-Ed, October 5, 1999, sec. A, p. 25. (This piece has been removed from the NYT web archive.) Months later, when the political winds had shifted, de Montebello modified his position toward the art in Sensation and toward Mayor Giuliani.

²⁹ Kermit L. Hall, president of University of Albany, argues in his piece “What’s on the Horizon?” that the term “political correctness” is unhelpful in that it polarizes and creates divisions within communities. “Overview,” in “Free Speech on Public College Campuses,” <http://www.firstamendmentcenter.org/Speech/public-college/overview.aspx> (accessed May 23, 2010). Also see Philip Atkinson’s “Political Correctness,” which examines how the term emerged in the 1980s. <http://ourcivilisation.com/pc.htm> (accessed May 21, 2010).

The “Evaluating Evidence Guide”

Finally, using the “Evaluating Evidence Guide,” students evaluate the evidence of Giuliani’s argument for sufficiency, typicality or familiarity, accuracy, and relevance. This evaluation guide encourages students to think critically through the problems of rhetorical argumentation and analysis. The process helps them to understand that critical thinking, based on close reading, good research, and deep and appropriate analysis of the logic of argumentation are central to obtaining a thorough understanding of a complicated situation and to deconstructing anyone’s distorted declarations on an issue.

Two of Giuliani’s repeated improprieties throughout his one-paragraph argument under discussion are making factual errors and using the fallacy of begging the question (restating a claim and passing it off as evidence). An example of begging the question is Giuliani’s failing to provide sufficient evidence that Ofili’s painting desecrated a religious icon. Stating that there was desecration is not providing evidence.

An example of a factual error is found in Giuliani’s paragraph where, in reference to Ofili’s *The Holy Virgin Mary*, he claims, without mentioning the artist’s name, that taxpayers’ money was used to desecrate a religious image that then was exhibited and paid for by those who were offended. As my students know from reading the court records on the legal case, no public money was used to pay for the Sensation exhibition, and no American tax dollars paid for its alleged desecration. To put to rest Giuliani’s charge against the museum about public funding of the art in Sensation, Judge Gershon stated in her final opinion to the court that “The City has not in fact provided the funding—some \$2 million—to cover the various expenses involved in presenting the Sensation exhibition.”³⁰

One of the many lessons my students learn from these often competing arguments is that the combination of critical and logical thinking, thorough research, and clearly reported facts is the beginning of genuine engagement with the subjective and objective worlds. That combination of ingredients is at the center of Julie Van Camp’s examination of “Exceptions to Freedom of Expression.”

5. JULIE VAN CAMP’S ARGUMENT IN “EXCEPTIONS TO FREEDOM OF EXPRESSION”

Julie Van Camp is a philosophy professor and prelaw adviser at California State University at Long Beach who maintains an extensive website called *Freedom of Expression at the National Endowment for the Arts*.³¹ Within the section called “Freedom of Expression: The First Amendment,” I assign the text selection on “Exceptions to Freedom of Expression.” This text of several pages draws attention to the construction and analysis of arguments in daily life and to the complexity of issues that underlie freedom of expression cases brought before the courts. Her study of First Amendment rights mediates between Abrams’s focus on the rigors of legal logic and Giuliani’s partisan positions on controversial ideas.

Van Camp examines the six exceptions to First Amendment protection cases—defamation, causing pain, fighting words, incitement to crime, sedition, and obscenity—and asks questions about exceptions

³⁰ *Brooklyn Institute of Arts and Sciences v. City of New York*, 64 F. Supp. 2d 184, (E.D.N.Y. 1999), The First Amendment Claim, III. The Museum’s Likelihood of Success on its First Amendment Claim, para. 18, available at <http://www.ncac.org/art-law/op-bro.cfm> (accessed May 27, 2010).

³¹ *Freedom of Expression at the National Endowment for the Arts*, <http://www.csulb.edu/~jvancamp/intro.html> (accessed May 21, 2010).

that may or may not apply in certain historical cases. Her method of argumentation is structured more like a Socratic dialogue or an informal question-and-answer session than a conventional syllogism model or an argument of persuasion. As she notes in "Exceptions to Freedom of Expression": "Rather than merely reciting the list of established exceptions, it is important to understand the rationale for making exceptions to free speech protection under the Constitution." She draws attention to the contextual and interpretative complexities of the evolving law on freedom of expression. She also acknowledges in her examination of the law and its everyday application that "the value of free speech sometimes clashes with other important values in our culture."

The following excerpt from Van Camp's site is from her section on "Incitement to Crime," one of the six exceptions to freedom of expression:

It is a crime to incite someone else to commit a crime, and such speech is not protected by the First Amendment.

If a budding rap group proposes to perform a work which includes the exhortation to "kill white" or "kill the cops" or "rape the babe," could that be incitement to a crime? Such records have been sold by commercial organizations, of course, yet there are no reported arrests of those artists or record companies for incitement to a crime. Should such rap lyrics be considered incitement to crime or is the causal relationship to any actual murders or rapes too tenuous?

A novel criminal defense has arisen, claiming that such music somehow compelled the defendant to commit the crime. In Austin, Texas,

Ronald Ray Howard, charged with the capital murder of a state trooper, claimed in his defense that "... he learned to hate police officers from years of listening to rap music with violent anti-police themes ..." (*New York Times*, June 10, 1993, p. A10). Is this an acceptable defense? Why or why not? (The jury convicted him, reaching a verdict in 35 minutes.)

The recent attention to violence on television is largely a debate over whether such televised violence is a *cause* of actual violence, such that persons who exhibit violent shows should be held responsible. If society wants to discourage violence on television, is it because such depicted violence is clearly a cause of actual violence? Are there other reasons why society might still feel justified in restricting this depiction?³²

Van Camp's argument is informed by the law but also by concerns that relate to everyday practices within sociohistorical contexts. In the Socratic dialogue method, the teacher typically asks a series of questions, and through the process of thinking and formulating answers the student arrives at the desired insight. With this method of argumentation—a form of inquiry that leads to self-critical reflection—questions about right and wrong and about truth and error are acknowledged with the promise of further investigation. Such promise may lead to small-group discussions, dialogue between opposing factions, thoughtful negotiation, or mutual confessions of ignorance and a reexamination of basic qualifiers such as truth, justice, and reason.

³² <http://www.csulb.edu/~jvancamp/freedom1.html> (accessed May 21, 2010).

By evaluating evidence, students begin to learn that these analyzing and synthesizing skills—close reading, breaking into smaller pieces to understand the whole, and anticipating the effects on the reader—are essential to college reading, writing, artmaking, informed citizenship, and fair and honest governance. Perhaps most important, should students encounter a freedom-of-expression challenge related to their own creative work, their skills in writing and analyzing arguments and in researching precedent and information on First Amendment issues will help them to understand and protect their rights.

Van Camp is committed to analyzing and clarifying the evolutionary and contextual frames of the First Amendment by keeping in mind historical realities, legal precedents and sociopolitical concerns when examining a case. Her model suggests an opportunity for dialogue among my own students as they reflect on their writing, artmaking, and freedom of expression.

6. STUDENTS' REFLECTIONS ON ASSIGNED READINGS

The following text excerpts from reflections written by Liam, Kaitlin, Vanessa, and Beata on assigned class readings offer insight into freshman writers' processes and results as they learn to analyze the effective reasoning of rhetorical arguments within the context of a First Amendment court case on art censorship. These reflections show a variety of learning outcomes resulting from their study of the argument analysis discussed in this article.

I assigned this reflection to understand better how my students viewed their own learning process for effective reasoning in rhetorical argumentation, as well as to learn to what extent they had developed their ability to read and examine closely arguments about freedom of expression. I

also hoped to learn how these students integrated into their thinking the idea that art is an imaginative activity and a social and cultural component of everyday life that is subject to personal exploration, public debate, celebration, and censorship.

The assignment question for this in-class and open-book reflection was: "Which of the main class texts by Floyd Abrams, Rudolph Giuliani, or Julie Van Camp was most important or most influential to your thinking about argumentation, artists, and the First Amendment? Explain your choice of writer and text, and provide supporting evidence for your position." My students wrote this final assignment for the semester on the last day of this freshman writing class.

Liam's Reflections on Floyd Abrams's "The Brooklyn Museum Case" (excerpt)

Of the three major texts we read in the [essay] unit on artists and the First Amendment—written by Floyd Abrams, Julie Van Camp, and Rudolph Giuliani—the most important and influential to me was that by Abrams. His writing is the most thorough and descriptive and the most relevant to me both as an artist and as a citizen of the United States of America. Abrams's main point was that Giuliani, in his dislike for an art exhibit and specifically a single piece of art, tried to bring down an entire museum. He was wrong in trying to do this both in the eyes of the law and those of common sense.

Abrams's text and the case he discusses made two very interesting things clear to me. Art, as a concept and in terms of individual pieces, is extremely difficult to discuss in legal terms, and despite or perhaps because of this, people will try to target and disrupt art and artistic displays for personal reasons, whether because they have a political agenda or because they are genuinely disgusted by the art. Whenever there is a legal case about art, it generally has to do with the First Amendment,

which is about free speech. Unfortunately, art is a very hard thing to define, and it is nearly impossible to tell whether a piece is making a genuine statement or the artist is just trying to cause a scene, if not both. Because art is so much about freedom of expression, there is no way to impose legal standards on art without moving its very core. As Abrams noted in his chapter, “There is no standard. They’re making it up as they go along. They are doing the best they can, but they cannot articulate any standard, let alone a constitutional one, that would govern [art] in this city if the mayor and the city have their way here” (Abrams, 218).

Intent is a very important part of legal discussion regarding the First Amendment. For example, Chris Ofili’s *The Holy Virgin Mary* was intended as a religious piece, bringing together the symbolism of Christianity, the Virgin, and African tribes to whom the elephant is an important cultural icon. This piece is very challenging to interpret legally, however, and it was very easy to present *The Holy Virgin Mary* as trying to desecrate religion—a form of speech that would not be protected by the First Amendment.

This brings me to the second thing I learned, which is that there will always be people who do their best to bring down a piece of art, an artist, or even an entire show, generally for personal reasons. These people may or may not be right in doing so, but the case still stands that as an artist it is very easy to draw the ire of the public by displeasing one person. Whether this person is following that course to further a specific public or political image or just because he or she is actually offended or enraged by the art does not matter so much as the fact that art, especially that with prevalent political and religious viewpoints, can be a risky thing to make and show publicly.

Despite the staggering amount of controversy and legal gray areas surrounding art, it is certainly a worthy endeavor, and I, for one, will continue to make art even if faced with such obstacles.

Kaitlin’s Reflections on Rudolph Giuliani’s Involvement in the Brooklyn Museum Case (excerpt)

The truth is, Ofili never meant to offend Catholics—he is Roman Catholic himself—but rather to show what was valuable in another culture. While gold and diamonds may be considered valuable by Western culture, in some parts of Africa elephant dung is a much more valued resource. The dung is used to create housing. The people who live in this society have a much greater need for elephant dung than for gold, and thus, by showing the Virgin Mary with such a substance, Ofili is not trying to deface her image but rather show her worth by depicting her with an important natural substance. Furthermore, the tiny images of female reproductive organs are not intended to offend but rather to emphasize the idea of reproduction and motherhood. Ofili states, “The picture is simply a hip-hop version of highly sexualized old-master paintings of the same subject” (Peter Plagens, “Holy Elephant Dung!” *Newsweek*, October 4, 1999, 71).

Giuliani refused to back down from his demand for the removal of the painting from the exhibition. He even refused to see the painting; he just assumed the painting was offensive. His basic refusal to understand another culture and a painting that depicts aspects of such a society nearly crushed an artist’s right to free expression. [About] Giuliani’s demands, *Newsweek* stated: “If the mayor acts on his intentions, it will set a precedent that could cripple museums across the country” (71, note). When the trial began, Giuliani’s teammates used arguments with fallacies to persuade the judge. They used hasty generalizations to try and claim how offended Catholics and other Christians were by this painting. As the class handout from *Good Reasons with Contemporary Arguments* by Faigley and Selzer states, “Hasty generalization is a broad claim made on the basis of a few occurrences.”³³ Giuliani claimed

too hastily that all Christians would be offended by this artwork.

One surprising and also rather confusing counterargument that the mayor's team made during the trial was to compare the work of Ofili with Michelangelo's statue of David. When asked, members of that team responded that the statue was not child-appropriate but still a work of art worthy of public viewing. Giuliani and the City of New York eventually lost their case against the Brooklyn Museum, and Ofili's artwork was allowed to stay in the exhibition for the duration of the show. This case was important for artists and the First Amendment because it highlighted the question of whether or not an artist should be allowed to show art in public, even if it offends a group of people.

Vanessa's Reflections on Julie Van Camp's "Exceptions to Freedom of Expression" (excerpt)

Julie Van Camp's "Exceptions to Freedom of Expression" was the most important text I read out of the three readings also including Floyd Abrams's and Rudolph Giuliani's. Van Camp's writing was the most interesting and important work I studied because it touches upon many different cases involving the First Amendment. In her writing, Van Camp describes the exceptions to freedom of expression and the difficulty in deciding the correct balance between right speech and wrong speech under the First Amendment. It was fascinating to study the fine lines between what kinds of First Amendment cases pass in court and which ones don't.

I understand that the different forms of exceptions to the protections of the First Amendment are very important regulations that were made to protect American citizens. Guidelines within the First Amendment allow people to express themselves with a significant amount of freedom without creating too much controversy. If every kind of expression were

legal, there would be chaos. I didn't know much of anything about the connection between artists and the First Amendment except that art was a form of free speech. After studying these exceptions, I realize that if I decide to pursue a career in the visual arts, I too may have to deal with the exceptions to the freedom guaranteed by the First Amendment. I learned that art that is too controversial can result in long court cases.

Aside from being a visual artist, I have thought about studying and practicing art therapy. This amendment is important to keep in mind no matter what profession I may take up in the future. Artists are protected by the First Amendment so that they can express themselves in many ways, but the exceptions can get them into trouble. For artists, freedom can be both a friend and an enemy. I now realize I may have to deal with other situations in court that I could possibly defend using the First Amendment. My work may fall under one of the exceptions of freedom of expression, but I know I can defend it with the understanding of the First Amendment that I now have.

Beata's Reflections on Julie Van Camp's "Exceptions to Freedom of Expression" (excerpt)

On October 20, 1990, I was born into the harsh environment of a dying Soviet Union. The country was in shambles, food was scarce, supplies were rare, and people were starving. At two o'clock in the morning my mom would get in line at the local grocery store, just so she could buy a stick of butter.... Two and a half years later, my entire family picked up and left in search of a better life. That is exactly what we found in Massachusetts. Now I am eighteen and am blessed with amazing opportunities. My parents have enough money to live in a gorgeous house in a suburban town, and no longer worry about the next stick of butter. Those are the thoughts that have gone through my head whenever I have thought about life in the United States of America. This country, my

³³ Faigley and Selzer, 51-52.

country, is known for its foundation.... I have always smiled blindly at the Constitution and at the rights I believed I had, without ever actually studying the First Amendment. That is, until I read the analysis of freedom of expression by Julie C. Van Camp.

I was most moved by Van Camp's examination of the First Amendment right to freedom of expression—her seven-page essay on "Exceptions to Freedom of Expression." It was revolutionary for me in the sense that I now have a much better understanding of the First Amendment.

In my opinion, this piece is revolutionary in its microscopic analysis of the First Amendment. Van Camp broke down the six exceptions to our freedoms, thoroughly researching and analyzing each one as a separate body. She explained defamation, causing panic, fighting words, incitement to crime, sedition, and obscenity. She did not just recite the Constitution. Instead she wrote out, word by word, what each exception represents, why it was created, and its effects on the world of today. The reason why she decided to go through with such an intense undertaking is clear in the text.... Van Camp disagrees with ignorance. She wants United States citizens to understand their rights, and understand why certain things are viewed as exceptions to the rule. She is promoting knowledge. She believes that people like me should not smile blindly at the sight of the Constitution, but rather understand what they are looking at.

After reading "Exceptions to Freedom of Expression," I was completely blown away. I had never allowed myself, whether intentionally or accidentally, to sit down and learn about the freedoms I have and deserve as a U.S. citizen. Coming from my background, I just always assumed that everything was wonderful, or at least a world away from my family's life in the Ukraine. When I started growing into myself as an artist, I once again assumed that my freedoms were protected, and that no matter what I was inspired to create it would be viewed as art and not as insult or injury. But when I read Van Camp's essay, my

mindset changed. The [author] altered my understanding of the First Amendment, as well as its connection to art.

She did this in two ways. The first thing I realized after reading "Exceptions" and thinking about it thoroughly was that I had no idea what was really going on in the First Amendment to the Constitution. I felt ridiculous and dissatisfied with myself for a few days. How could I let one of the most important parts of the Constitution—the Bill of Rights—completely pass over me for all these years? This only motivated me to push forward and learn as much as I could about the country I live in.

The second way in which Van Camp influenced my thoughts was through her explanation of obscenity, the sixth exception to freedom of expression. Before reading this exception I had assumed that art was untouchable. It is my firm belief that any artist should be able to showcase his or her work, and again, I assumed that the First Amendment agreed with me. But I was wrong. In the First Amendment, obscenity is judged on "whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value" (Van Camp, 4). When I read this sentence, my jaw dropped. To me it means that politicians and government officials are judging art and deciding whether it is "acceptable" or not. To an artist, this is comparable to the sound of nails screeching down a chalkboard.

7. REFLECTING ON STUDENTS' REFLECTIONS

When Beata first read Julie Van Camp's "Exceptions to Freedom of Expression," something revolutionary happened to her. Her body and mind revolted in response to an internal alarm warning against the presence of authoritarian guidelines for determining the merits of a work of art. She had just learned that art was not "untouchable" after all. It was time to rethink her assump-

tions about art and freedom of expression under U.S. law.

Beata's reference to the screeching sound of fingernails scraping across a slate blackboard is a familiar image of extreme physical and psychological distress. This unnerving sound is her metaphoric response to the government's and politicians' guidelines that currently determine obscenity under the First Amendment.³⁴ Her visceral response to who and what determines the definitions of obscenity under U.S. law shows that she has begun the work of analyzing the legal arguments related to freedom of expression. In her vivid recollection of the hardship and deprivation she experienced during her childhood in the Ukraine, she demonstrates her ability and commitment to examine critically and passionately her own thoughts and experiences of what constitutes freedom of expression.

In Beata's understanding, the Supreme Court's guidelines for obscenity suggest that government officials and politicians are equipped to evaluate the merits of an artist's work. That thought triggers her flashback to life in the former Soviet Union and raises a question. Having escaped one oppressive regime, does she now, in the U.S., face similar governmental oversight and bureaucratic evaluation of aesthetic

expression? Against this background and guided by that question, she develops in her reflection on Van Camp's website piece an argument for freedom of artistic expression. As a basic component, she insists that any evaluation of artistic merit must be made by art practitioners and scholars knowledgeable about the arts.

Whether government officials can legitimately determine the validity of controversial art was precisely the thorny point that Judge Gershon and Attorney Abrams raised against the former mayor and the City of New York in November 1999.

Liam takes up a related part of the controversy about definitions of art and freedom of expression. His analysis of "standards" in the arts—an issue Abrams raises in his chapter—leads him directly to the problem of defining art and aesthetic merit under the law. Less interested than Beata is in who judges merit, Liam flatly refuses the idea that standards for art can be set. To him, art is an imaginative activity that is outside legal definitions and standards. To explain his perspective, he refers to Abrams on defining art: "There is no standard. They're making it up as they go along." Abrams argues in court against Deputy Mayor Lhota and City Hall's lawyer Leonard Koerner. Both of these civil servants aimed to impose their own standards on artworks in the Sensation exhibition. Encouraged by Abrams's study of the legal issues and his survey of art censorship, Liam goes further: "There is no way of imposing legal standards in art without moving its very core." For him, the core of art is "intent"—an idea born from his own experience and clarified by his reading of Abrams's chapter.

Liam understands that intent is at the center of an artist's creative act and the artwork's communication with an audience or viewer. Yet he also acknowledges that artistic intent is "very challenging to interpret legally." For example, how can

³⁴ The obscenity case *Miller v. California* (1973) involved the conviction of Marvin Miller, who had been mailing unsolicited books, pictures, and films containing sexually explicit material. Chief Justice Burger delivered the final opinion to the Court, including in his analysis guidelines for defining obscenity that aimed to be sensitive to community standards. Notably, Justice Douglas, a dissenting voice in the case, pointed out that neither the Constitution nor the Bill of Rights mention "obscenity" (David M. O'Brien, *Constitutional Law and Politics*, 2nd ed. Vol. 2. New York: W.W. Norton, 2005, 444-449). The guidelines for the trier of fact for obscenity are available at Julie Van Camp's website section on "Exceptions to Freedom of Expression." The guidelines for obscenity include such language as "average person, applying community standards," "sexual conduct defined by state law," and "as a whole, lacks serious value."

Mayor Giuliani pass judgment on a painting he has never seen? Given this challenge, the question of who should develop art standards remains unanswered. Liam's own response to this question is profoundly reasonable and realistic: "There will always be people," he writes, "who do their best to bring down a piece of art, or an entire show, generally for personal reasons." Undeterred by potential assaults on his own free expression, Liam remains optimistic about making art as he states in his reflection:

Despite the staggering amount of controversy and legal gray areas surrounding art, it is certainly a worthy endeavor, and I for one will continue to make art even if faced with such obstacles.

For Kaitlin, the most important part about studying the Brooklyn Museum case is that "it highlighted the question whether or not an artist should be allowed to show art in public, even if it offends a group of people." With a focus on Giuliani's involvement in the case as recorded in Abrams's chapter, she conducts a critical analysis of the mayor's rhetorical arguments, his violation of the First Amendment, and his marginalization of contemporary artists and art institutions. Similar to Beata's position, Kaitlin's analysis warns against distorted facts parading as truth, and uninformed and ideologically blinded individuals making policy decisions.

She begins her analysis of Giuliani's role in the Sensation controversy with the dramatic strength of a screen-writer. "The truth is," she argues, "Ofili never meant to offend Catholics—he is Roman Catholic himself—but rather to show what was valuable in another culture." Following this statement of truth, she lists Giuliani's flawed rhetorical arguments and his unfounded attacks against the Sensation exhibition. Her list includes his factual

errors and errors of omission, as well as his misconceptions, misinterpretations, fallacies of hasty generalization, rhetorical contradictions, and illogical and convoluted comparison between Michelangelo's sculpture of *David* and Ofili's painting of *The Holy Virgin Mary*, briefly discussed by Abrams. Citing Giuliani's damning judgment of Ofili's painting as "sacrilegious" despite the fact that he chose not to view it, Kaitlin tacitly invites readers to add "willful blindness" to the mayor's failures in responsible leadership.

In that critical vein, she argues that Giuliani's refusal to communicate constructively his concerns about the art in the museum caused him to lose the court case and miss an opportunity to learn about contemporary artists' visions and use of materials, such as Ofili's Afro-motifs and elephant dung. In her assessment, "Giuliani's basic refusal to understand another culture and a painting that depicts aspects of such a society nearly crushed an artist's right to free expression." Her insight calls on government officials to learn the many meanings a work of art can have within a sociocultural context.

Similar to the critical analyses that Kaitlin, Liam, and Beata offer, Vanessa addresses her concerns about the relationship between artists, freedom of expression, and uninformed and self-serving policymakers. After studying Van Camp's "Exceptions to Freedom of Expression," Vanessa has three main concerns: (1) that "for artists, freedom can be both a friend and an enemy," (2) that "a balance between right speech and wrong speech" may be difficult to maintain, and (3) that the exceptions to freedom of expression "can get artists into trouble" by involving them in long court cases.

In light of the Brooklyn Museum controversy about rights to freedom of expression, Vanessa is concerned about the complicated relationships between working artists and institutions charged by

governments and politicians to create official definitions and standards. Couched within her discussion of those often competing agendas is Vanessa's informed commitment to art as a self-reflexive and socially engaging activity—not as a form of control over others or a retreat from society, but as speech, communication, inquiry, education, and transformation.

As Vanessa looks forward to a career as visual artist or art therapist, she reflects from a position of strength on what she learned in these few weeks of coursework and how she can apply it to her work in the arts. This introduction to artists' rights with a focus on rhetorical arguments has prepared Vanessa for some of the challenges that she may encounter in her work as an artist or therapist—work that is deeply rooted in freedom of thought and expression. In particular, Van Camp's "Exception to Freedom of Expression"—together with class discussion, research, and writing projects—has informed Vanessa about artwork that may be contested by individuals or groups. But the information she has absorbed and the analytical skills she now possesses give her the knowledge and the confidence to discuss with any potential critic the merits of her own work as a visual artist or art therapist. At once determined and realistic about making art under the First Amendment's protection, Vanessa confirms in the final sentence of her paper: "My work may fall under one of the exceptions of freedom of expression, but I can defend it with the understanding of the First Amendment that I now have."

For me, on this last day of my freshman writing class, the emerging image is James Madison packing up the notes he has been making while visiting my class. He is nodding his head as if in agreement with the students who just left the classroom and with the laws and policies that have developed since the summer of 1769. It was then, at age eighteen, that he left his home in the

Virginia Piedmont to attend the College of Princeton in New Jersey. Soon to be a freshman there, he traveled on horseback and by ferry the three hundred miles. With him were two travel companions and a slave. Now, with folded notes under his arm, the mature Madison steps into the hallway and quietly closes the classroom door behind him. He is unsure about the details, yet hopeful that the timeless, creative and sometimes revolutionary genius that helped him compose and push through the First Congress those early amendments—later the Bill of Rights—will continue to support the liberating work for freedom of expression in the United States.

CONCLUDING REMARKS

The extraordinary drama of the Brooklyn Museum's art censorship case—where the rhetorical skills of artists, lawmakers, politicians and the media collide, are tested and for a brief time resolved—is only one element that makes teaching this material to freshman writers at an art school engaging. Most compelling to my students in this particular study of a First Amendment case is learning recent and historical arguments about freedom of expression and exceptions to that freedom. From this perspective of regulated freedom, and of art as potentially contestable territory, students such as Vanessa, Beata, Kaitlin, and Liam are eager to study the arguments put forth about art in public spaces. They want to learn the specialized language and understand the competing sociopolitical agendas that emerge and influence an art exhibition such as *Sensation*. But as they study to analyze and reason effectively when making arguments about art and freedom of expression, it becomes clear to me that they are also eager to enter the free space of their imagination and expression, where personal judgment and experience mingle with language, form, color, sound, and tactile materials to produce a work of art.

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