



Artist Invokes the Law to Save His Art

Controversy over painting pits muralist against school officials.



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On March 5th of this year, artist Sam Kerson filed an appeal against a court ruling that allows the Vermont Law School (VLS) to permanently conceal a pair of murals — titled *The Underground Railroad: Vermont and the Fugitive Slave* — behind a wall of acoustic tiles. Kerson painted the two 8' x 24' panels in 1993 to highlight the state's history of opposition to slavery and to recognize the efforts of both Black and white Americans across the country in the service of freedom. Now is a moment when the call to reckon with America's grim past is urgent, and particularly vocal on college campuses, so why cover the murals?

Back in 2020, soon after the murder of George Floyd, two students, Jameson Davis and April Urbanowski, pointed out that a “group of BIPOC students ... felt the mural to be inaccurate and dispiriting — so much so that a few decided not to study or interact with that part of campus.” In response, then-Dean of VLS, Thomas McHenry, announced that the law school no longer wanted the murals:

The depictions of the African Americans on the mural are offensive to many in our community and, upon reflection and consideration, we have determined that the mural is not consistent with our School's commitment to fairness, inclusion, diversity and social justice.

Because the murals are painted directly onto the walls and cannot be removed, the school first decided to paint over them but finally settled on covering them with acoustic panels that would hide the artwork without destroying it.

Kerson objected. In December of 2020, he filed a suit against VLS in the District Court on the grounds that permanently covering the murals constituted a violation of the Visual Artists Rights Act, a federal law passed in 1990 that protects a piece of artwork “from intentional distortion, mutilation, or other modification which would be prejudicial to [the artist’s] honor or reputation” during the lifetime of the artist. But in October 2021, District Court Judge Geoffrey Crawford ruled in favor of VLS, allowing the school to entomb the murals permanently. Explaining the rationale behind the ruling, Crawford distinguished between publicly defacing a work of art and removing it from view. He said that covering the murals without damaging them was akin to a museum removing a painting and putting it into storage.

Legal scholars’ opinions on Crawford’s judgment differ (see [here](#)), but, as an historian and an educator, I take issue with him equating the covering of the murals permanently with mere storage. This comparison reveals a fundamental misunderstanding of the purpose of public art. True, the murals are in the custodial care of, and are displayed at, a private institution, and therefore are not strictly public art. Nevertheless, a modern mural, by virtue of its large-scale form and placement in common space, is intended to be viewed by a broad audience. The artist made the mural with the explicit aim of engaging the public, even if the public in this case is limited to those on the VLS campus.



Inspired by the sociopolitical commentary of Mexican muralists, Kerson has used his art to contend with historical violence by revealing the power of resistance and human resilience. He and his wife Katah have used their art as a means to draw attention to various injustices, including the massacre of indigenous populations, the barbarity of the death penalty, ravages of modern war, human rights violations around the world and the tribulations of refugees forced from their homelands. As the two note in their book *Exodus*, which features work on human migration to Europe, they believe their role as artists is to bear witness, to document and record suffering and oppression. When Kerson painted *The Underground Railroad*, he wanted to force viewers to reckon with America’s atrocities and honor its achievements, in particular the achievements of those who defend human rights — appropriate aims for art in the setting of a law school.

At a moment when college and university campuses demand recognition of current injustices, it is ironic that art attesting to the inequities of the past is under attack. Adding further irony, Davis and Urbanowski, the students who objected to Kerson's murals, acknowledged that the artist's intention was to celebrate both Black and white Americans who struggled to end slavery. But, they reasoned, "not all intentions align with interpretation."

Davis and Urbanowski objected to both the style and the content of Kerson's art. The "depictions of Black people are completely inaccurate," they maintained. "Regardless of what story is being told, overexaggerating Black features is not OK and should not be tolerated. White colonizers who are responsible for the horrors of slavery should not also be depicted as saviors in the same light." But art is not about accuracy — after all, a number of the white people in the mural are painted with green skin. Furthermore, art by definition resists a single interpretation. These students would do well to heed the words of Oscar Wilde: the moment that a spectator of art tries to "exercise authority" over an artwork "he becomes the avowed enemy of Art and of himself."

By insisting on a narrow interpretation of the murals, by refusing to see both the context in which the artwork was made and for what purpose, the students are dictating that a creative work be read in only one way. And by effectively effacing the murals, the students are denying others an opportunity to engage with the art and to respond to it themselves. It seems likely that objections are driven by the kind of flat identity politics now ascendant on college campuses. To what extent is student discomfort driven by the fact that Kerson is white? Would it be different if the artist were Black? Does it matter that African American painter Kenny Hughes was part of the team that helped Kerson? Or that Florynce Kennedy — a civil rights attorney and feminist activist, and also African American — graced the unveiling of the mural back in 1993 and delivered a speech?

Even more disappointing than the student objections, is that the school has capitulated to their demands rather than emphasizing the value of the murals as a means to engage seriously and meaningfully with social justice issues. The VLS board of directors and senior administrators have reneged on the school's responsibility as an institution of higher education to cultivate historical literacy and equip students with the necessary skills to analyze and discuss difficult material. In an email in support of retaining the artwork, Robin Lloyd, a Vermont filmmaker and activist, got it exactly right:

An educational institution, especially a law school, should understand the danger of such a decision — removing public art that has been endorsed and created through a community process, merely because it may offend a certain group.

Perhaps the Second Circuit Court of Appeals will overturn the decision by Judge Crawford and remind VLS that it is faltering in its primary mission. It is charged with teaching critical

thinking skills to budding lawyers, who will fight the future struggle for social justice. Are we to believe that retroactive censorship is a value that aligns with that struggle?

** An earlier version of this piece was published in The New Voice, the Newsletter of the United States Free Speech Union.*



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