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## Street Graphics and the Law

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## Chapter 6: Street Graphics

### Street Graphics and the Law

William R. Ewald, Jr.\*

*It's hard to underestimate the taste of the American people.*

*H.L. Mencken*

There is ample documentation of this caustic Mencken statement throughout America along our streets and highways; a plethora of ground signs, roof signs, wall signs, snipe signs, window signs, sidewalk signs, and pole signs shouting garish messages, screaming for the attention of passing motorists.

Part of the charm of European cities is the absence of this visual blight. The architecture along its old, narrow streets is graced with signs that speak civilly, making their own contribution to “the sense of place.” Their sign regulations protect the surrounds of churches, public, and historic buildings, and those respected edifices are pervasive. Even beyond those special surrounds, most European entrepreneurs seem to have a pride and a culture which restrains them from attaching the sort of signs to their premises that most American businessmen would not hesitate to erect. Also, under European law, regulations, while explicit, are permitted some administrative flexibility, unlike regulations under constitutionally based American law.

Herein lies the design problem I was determined to resolve in 1971 when the Baltimore County Planning Commission retained my office to develop and draft a countywide sign ordinance.<sup>1</sup> Baltimore County surrounds Baltimore City on three sides like a wrench with

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1. An excellent Baltimore County architect had just failed with an ordinance which proposed twenty-one pages of regulations for gas stations alone! It was thrown out as being focused on just one commercial use.

the handle cut short on the north by the Pennsylvania border and open at its mouth to Baltimore's Harbor. Baltimore County is unusual in one particular sense: none of its communities are incorporated. Yet Baltimore County has all manner of commercial strips, town centers, apartments, light (Bendix) and heavy (Bethlehem Steel) industries, business parks, suburban sprawl, hamlets, and farm land.

Developing a sign ordinance for all of Baltimore County was an ideal test for the concept and system approach to sign regulation based on "performance-based" graphic designs. From the outset, it was obvious to the planning staff that the mishmash of legalisms collected in the typical sign ordinance would not suffice. Therefore, the land use, legibility, and perception of signs that is possible from a moving car, driving at different speeds and under different conditions, was accepted as the basis for the proposed new ordinance. This ordinance was intended to enhance "the sense of place" while effecting legible communication to persons in moving cars—all within the constraints of American law.

The Baltimore County assignment called for an astute attorney to partner with me on this combination graphic design, planning, and legal zoning challenge. I needed the scope, the flexibility, and the open mind of a respected zoning law authority noted for his drafting skills and well schooled in the constraints of zoning law and First Amendment free speech issues. The obvious choice to me was Daniel R. Mandelker, and we have partnered this graphic design approach to sign regulations ever since.<sup>2</sup> Unfortunately, Spiro Agnew, then County Supervisor, rejected the ordinance Dan and I crafted. However, the worth of what had been attempted by this pair of "pointy-headed intellectuals" caught the eye of Howard Cayton, the Director of the Department of Housing and Urban Development's (HUD) Demonstration Grant Program. He wanted to make the concept accessible nationwide.

HUD underwrote an expansion of my library research, field work in Europe, and Dan's further development and polishing of the ordinance, culminating in 1971, with the publication of the book and film, *Street Graphics: A Concept and a System*—through the aegis of

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2. See *infra* for a discussion of the two other ordinances that we worked on together: Columbus, Indiana, and Flagstaff, Arizona.

the American Society of Landscape Architects Foundation.<sup>3</sup> In 1972 *Street Graphics* won a HUD Special Design Award. It was republished in 1977 with supplementary financial assistance from the Urban Land Institute.<sup>4</sup> In 1988 the American Society of Planning Officials (ASPO) published the updated edition *Street Graphics and the Law*.<sup>5</sup>

*Street Graphics*, which brings graphic design to sign regulation, lives on as the accepted term for a sign ordinance that fosters the unique contribution signs in the street make to a community's regard of itself. *Street Graphics* respects the architecture of each property that they are related to; simultaneously, they provide an essential, individual, and effective identification and communication of each enterprise. *Street Graphics* is implemented within sensitive guidelines that enhance "the sense of place," the community; and each entrepreneur benefits from this "planned serendipity."

Every community in America has the legal right to take control of what is seen from its public rights of way and to encourage the manner of on-premise graphics it chooses, through comprehensive and internally consistent regulations that foster effective communication. This requires, however, a community consensus that registers with its city council. Skilled drafting, too, must meet the legalities involved, which leads us to the politics of sign ordinance regulations.

It is no secret that revising sign regulations is one of the most confounding and disagreeable—yet often deemed petty—kind of "business" that comes before a city council. To off-load this nuisance, city councils often turn to the Planning Director and tell him/her to "work things out with the Chamber of Commerce and report back"—after the obligatory, ill-attended public hearings (as if businesses owned the view from the public rights of way and signs on

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3. WILLIAM R. EWALD & DANIEL R. MANDELKER, *STREET GRAPHICS: A CONCEPT AND A SYSTEM* (1971).

4. WILLIAM R. EWALD & DANIEL R. MANDELKER, *STREET GRAPHICS* (1977).

5. DANIEL R. MANDELKER & WILLIAM R. EWALD, *STREET GRAPHICS AND THE LAW* (1988); WILLIAM R. EWALD, *STREET GRAPHICS* (video) (1988). I relinquished the initial author position to Dan Mandelker because most of the revisions made were in his legal analysis section of the book, including his discourse on the freedom of speech challenge. At this time a video copy of the film was also offered. Both are still available from the ASPO.

private property are not a community concern). When this tact is taken, unless there is an articulate constituency vociferously concerned with the community's architecture, history, aesthetics, and future, the *Street Graphics* approach to fight the visual blight of typical on-premise signs is doomed.

This is exactly what occurred in Columbus, Indiana (pop. 33,000) in 1990. The planning commission retained me to make a street-by-street graphic analysis but what public hearings we had were small. The local newspaper, beholden to its disgruntled local merchant advertisers, rebuffed my offer to illustrate and explain the concept of the proposed ordinance in its pages.

Chamber of Commerce members, and a shrill local designer, seemed to speak for the entire community when they claimed that *Street Graphics* regulations infringed on private property rights and freedom of speech! There was only the planning staff to speak for the performance-based controls, which assured clear communication between businesses and approaching motorists, simultaneously giving free reign to unique graphic design and, in the process, enhancing the community. The ordinance, as proposed, was hooted out of existence and an ordinance quickly substituted that, in my eyes, legalized visual rape. The Columbus City Council had rid itself of the nuisance. No one spoke for the community, only for the businessman.

A stranger driving into this remarkable little city today will see it as typical. None would guess, with its mishmash collection of signs along its public rights of way, that Columbus, Indiana, is home to a treasure trove of over 100 structures designed by America's greatest contemporary architects. Both Saarinen, I.M. Pei, Skidmore Owings and Merrill, Dinkaloo, Pelli, and the other greats were all on Irwin Miller's list to design buildings used by the public in Columbus: from churches to country clubs, from banks to libraries, from schools to Cummins Engine world headquarters—which was the reason Miller, as its president, came forward with this concept and paid the architects' fees when they built in Columbus. Miller reasoned that for Cummins world headquarters to remain in Columbus it had to become an attractive community and a very special place. Great architecture was seen as a means to this end.

My personal addition to this design assignment for Columbus was

to attract the interest of some of this country's great graphic designers—from Paul Rudolph to Ivan Chermoeff. They were eager to make their *Street Graphics* design contribution to Columbus, once the ordinance was passed. They all knew this famous little city. The world knows Columbus, Indiana, for its collection of great contemporary architecture but not, alas, for its *Street Graphics*.

When I broached the *Street Graphics* concept to Mr. Miller, he seemed not to believe it was that complicated a subject. Furthermore, his staff was clearly reluctant to take a stand on sign regulations, apparently shy of the potential for complaints of paternalism and interference with local businessmen and sign designers—most likely a side effect of the great architecture he had single-handedly brought to his community from the outside.

Dan Mandelker prepared the explicit, internally consistent ordinance I had drafted in design terms, tuned explicitly, and in detail, to each commercial street in Columbus. His ordinance adroitly avoided any *legitimate* “freedom of speech” or “infringement of property rights” challenge, and Dan still wishes he had had more opportunity to personally defend it in Columbus. Persuasive as he can be, I do not believe that would have made the difference.

Columbus' remarkable architecture is the singular gift of a remarkable man, not the expression of the community. There was no constituency for community aesthetics when it came to *Street Graphics*. Signs are signs and they belong to and are the personal right of businessmen in Columbus, apparently, even though no property can be seen, let alone approached in Columbus, except from its public rights of way. Columbus, world famous for its collection of great contemporary architecture, lost its chance to match that with great on-premise graphics.

Dan and I fared better in Flagstaff, Arizona (pop. 55,000) in 1996. For a long time I ranked this gateway city to the Grand Canyon as one of the country's ugliest, smothered as it was with signs. Tourism seemed to bring out the worst in its businessmen. Shortly after Flagstaff had cleared the endless clutter of billboards along the railroad slicing through the center of town, I was brought in by the

planning commission.<sup>6</sup> Of course, I reached for Dan, and together we drafted general guidelines which included preservation of historically significant signs along Highway 66 and elsewhere in town. The small and competent planning staff factored these suggestions into the ordinance that the City of Flagstaff drafted and passed—to the benefit of the city's future.

Probably the greatest influence the *Street Graphics* concept and model ordinance has had is in how it has been adopted and adapted by new towns, large-scale private developments, small cities, and downtown sections of larger cities, such as Memphis. Twenty-nine years later the book is still available from ASPO, all 207 pages of it: details, charts, drawings, text, photographs, and legal analysis along with a fifteen-minute video which summarizes the concept. All of which would not have the authority is still enjoys without the singular contributions of Daniel R. Mandelker.

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6. The City had previously acquired RR rights-of-way from the County to terminate billboard leases. National Advertising sued the City in U.S. District Court. The parties settled the matter out of court. One of the settlement terms was that National Advertising would have six years to remove their signs. National agreed to remove all its billboards, wherever located in the City.