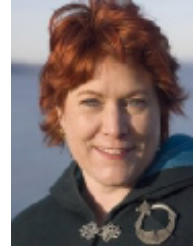


The Art Threat Level Today is Orange

Remain on Alert and Report Suspicious Activity

by **Cindy Ellen Hill, Esq.**



The police commissioner called it “unconscionable.”

The mayor called it “outrageous.”

A congressman called it “appalling.”

The Attorney General said it was “sinister.”

Obviously the light-board images of a cartoon character flipping the bird at passing traffic provoked response, evoked emotion, and inspired thought and conversation – the very essence of public art. But was it terrorism? Or First Amendment protected artistic expression?

In early 2007, Turner Broadcasting, through various subsidiaries, hired a third-party advertising company to run a guerilla marketing campaign promoting their late-night Adult Swim cartoon show “Aqua Teen Hunger Force.” Sean Stevens and Peter Berdovsky were two of many college students employed by the ad firm to mount the lit sign boards – about the size of a placemat, with little light bulbs protruding from them akin to the Hasbro child’s toy LiteBrite – in publicly visible locations around Boston. Similar campaigns went on in nine other cities around the U.S.

There was virtually no public reaction in the nine other cities, though officials in Philadelphia did briefly stop traffic to remove some of the devices that had been placed, without a permit, on a public highway abutment. In Boston, a citizen called to report that, given that the items

had D-cell batteries and wires on them, they could be bombs.

THE BOSTON RESPONSE

Boston city officials closed highways and bridges and shut off maritime traffic on the rivers that divide the city. They dispatched bomb squads to remove the devices from public and private locations. And Stevens and Berdovsky were placed under arrest, charged with felony placement of a hoax bomb, as well as misdemeanor disorderly conduct. When Assistant Attorney General John Grossman told the court that the devices were “bomblike” and “if they had been explosive they could have damaged transportation infrastructure,” tittering was heard in the courtroom gallery. The devices had been up and flashing in the city for over two weeks with no governmental response – way to go, Boston Police Department – so if they had “been explosive” it would have been all over but the shouting. Upon their release on \$2,500 bail, they continued their performance mode, telling the waiting hordes of paparazzi that they would only answer questions about 1970’s hairstyles. Young people hooted, older people raged.

A few days later, Jim Samples, the thirteen-year head of Cartoon Network, stepped down in response to the furor. Turner Broadcasting agreed to pay \$2 million in compensation for the bomb



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squad turnout, half to the City of Boston and half to Homeland Security. On May 11, 2007, prosecutors dropped the charges against the two young men after they had performed several dozen hours of community service and apologized.

The whole thing in hindsight seems silly. But if the criminal charges had continued against the two young men, might they have defended themselves on grounds of First Amendment protection of free expression? In this case, they'd have had a tough row to hoe. The devices were publicly displayed communications, but the image conveyed had primarily commercial content. Commercial speech – advertising – receives considerably less Constitutional protection than political speech and personal expression. The message conveyed was 'watch our tv show.' Advertising obviously contains significant artistic content, which should be protected as well as respected. But the real legal issue here would more

have been the question of why Turner Broadcasting didn't pay for billboard space or purchase permission from the city to use its highways and bridges for multi-million dollars worth of free advertising space. (The question of whether the ensuing panic was the result of the devices, or of the City of Boston's overly dramatic response, might also have come into play.)

FEAR AND THE FIRST AMENDMENT

Other surreptitious public art events in recent years have raised the question of art as terrorism more squarely within the realm of First

Amendment protections. In December 2002, a few months after New York had reflected on the first anniversary of the September 11th attacks, a School of Visual Arts freshman named Clinton Boisvert painted three dozen Federal Express boxes black, then painted the work "Fear" on them, and installed them in the busy Union Station, Manhattan subway stop before the morning commute as a project for one of his classes.

Despite the fact that the city was still on edge, it was still New York, and no one paid any attention to the boxes for several hours. Then, someone called police to complain about them. The bomb squad was dispatched. Subway trains were stopped and commuters compelled to leave the station and walk to other subway stops or take the bus, and that created a public hue and cry.

Boisvert was charged with reckless endangerment and disorderly conduct. The ACLU represented him, but

before the case could proceed to a First Amendment argument regarding whether the installation was protected speech – it was in a public location, and involved both actual and symbolical conveyance of political or expressive ideas – Boisvert pled guilty to the minimal charge of disorderly conduct, did five days of community service and wrote an apology to the police for the inconvenience. While the definition of disorderly conduct varies from jurisdiction to jurisdiction, at its core is usually the idea of “recklessly creating a risk of public inconvenience,” which anything that interrupts the flow of Manhattan subway commuters at rush hour could easily be considered to do, no matter how political, expressive, or artistic.

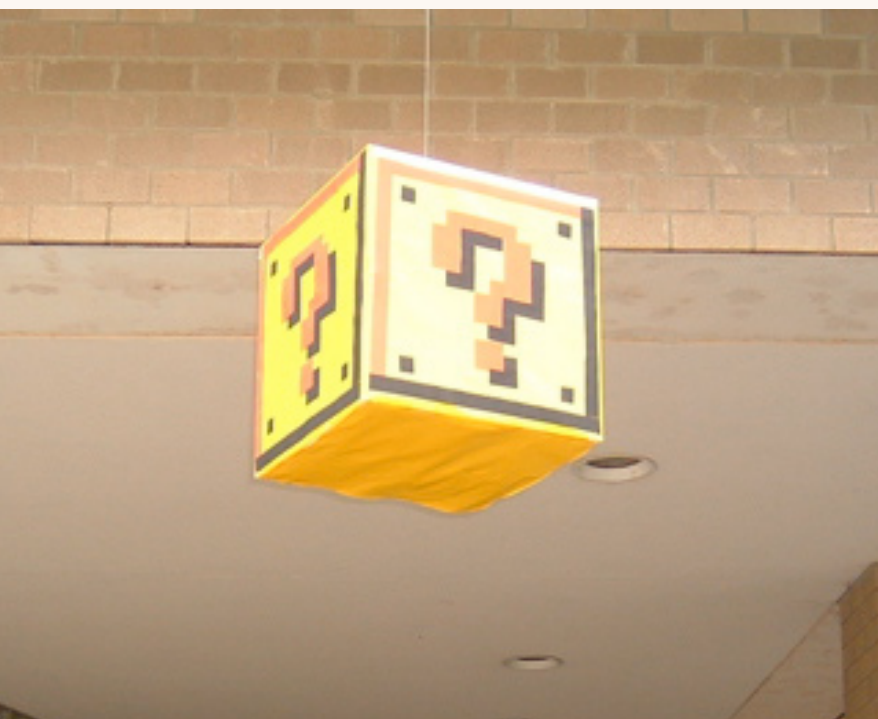
More recently, an anonymous guerilla public artist called Poster Child (see [here](#)) encouraged others to create cardboard boxes covered with wrapping paper embossed with a question mark – an icon from the popular Super Mario Brothers video game. Unlike the Boston light-

device caper, however, this was not a Super Mario Brothers advertisement, but rather a concerted effort to raise awareness of how public spaces are so often used for commercial purposes, but so rarely used to promote art. In other words, the question-marked boxes were intended to attract attention and foster global public discussion on a cultural and political subject. The Poster Child website shows photos of the boxes created and installed (often by throwing pairs of them over utility lines, like kids do with sneakers) around the United States as well as in the Netherlands, Canada, England, and even South Korea.

But in early 2006, the citizens of Ravenna, Ohio apparently panicked and called out the bomb squads when five high school girls installed the boxes around their town. Criminal charges of bomb hoax were threatened. Once the project was explained, however, overwhelming community support led prosecutors to decline to press charges.

WHEN ARTISTIC PROVOCATION CROSSES CONSTITUTIONAL BOUNDS

Art is valuable to our society because it provokes reaction and inspires response. It becomes a focal point for shared community, because everyone talks about it. Ironically, the light-board scare in Boston served many highly-valuable purposes, including serving as an impromptu terrorism exercise so bizarre that no emergency services committee could have dreamed it up on their own. The Fear Boxes and Question Boxes fostered public discussion about what constitutes art, who can use public spaces for what purpose, and helped to bond citizens over the age of thirty in head-shaking over what goes on in the



A question box up at Oberlin College

wacky minds of creative youth these days.

Springing artwork on an unsuspecting public is not a new phenomenon, nor is it limited to visual and installation media. Orson Welles' famed 1938 radio play *War of the Worlds* inspired mass hysteria in the United States as residents of New York and New Jersey raced to evacuate, believing they were truly under alien attack. And in December 2006, a fictitious "news" broadcast by a public television station in Belgium announced that Dutch-speaking Flanders had seceded from Belgium and the King and Queen had fled the country, caused widespread panic and sent embassies around the world scrambling to react. In each case, a disgruntled public expressed its ire and decried the broadcasts as unethical journalism. But nobody got arrested.

The U.S. Supreme Court has repeatedly held that speech that is merely offensive is protected by the First Amendment. But speech that inspires fear is on dangerous ground. In the oft-cited example, shouting "fire" in a crowded theater is not First Amendment protected speech (unless, of course, there is really a fire). Spray painting "I'm going to kill you" or "this building will be blown up in five days" on the side of a public building has a high degree of certainty to be considered threatening speech rather than art, no matter how tastefully and colorfully lettered.

But when interpretation of a public artwork is highly subjective, such as in the cases of the Fear and Question Boxes, it's hard to say if it's a threat and thus out in the cold without its First Amendment coat on. 🎨

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