Graffiti Abatement and Grant Opportunities

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Introduction

In October of 2011, at the World Jurist Association (WJA) Biennial Congress, the authors first presented this paper as a comprehensive look at graffiti vandalism in the US and at guidelines to shaping the municipal response. October, 2011, was a dark time for budgets and services in many US municipalities.

Now, one year later, most local governments are no closer to financial recovery than they were then. Disappointing revenues, increased service demands and high prices for essentials, such as fuel, continue to exert pressure on the ability of communities to respond to needs, including those presented by quality of life crimes.

One constant and, in some cases, increasing drain on many municipal budgets is illegal graffiti. It has an impact on public works (abatement), police (enforcing vandalism ordinances), municipal attorneys and courts (prosecuting and adjudicating the accused), and the juvenile justice system (administering penalties and attempting to rehabilitate youth).

Consequently, the authors of this paper have chosen this opportunity to provide much of the basic primer on graffiti vandalism and comprehensive policy guide set forth at the WJA Congress, but also to expand on the issue of graffiti abatement, a constant in almost everyone's anti-graffiti program, update this paper and offer an extensive guide to potential sources of financial help in meeting the needs of your graffiti and other youth crime-related programs.

The Beginning

The illegal graffiti with which governments deal today is vastly different from that of ancient history and of earlier days in the US.

Many believe the beginning of truly American graffiti was the ubiquitous appearance of the phrase, *"Kilroy was here,"* greeting US troops wherever they traveled in World War II. The New York Times[1], in 1946, and the Boston Globe, in a November 20, 1962

[1] "Transit Association Ships a Street Car to Shelter Family of 'Kilroy Was Here'," *The New York Times,* December 24, 1946. Web <nytimes.com/archives> Retrieved 9-8-2011.

article/obituary, attributed the phrase to a James J. Kilroy, who went to work as an inspector at the Fore River, Massachusetts shipyard on December 5, 1941, two days before the attack on Pearl Harbor.

The story, as related by Mr. Kilroy in a contest to discover the origin of the famous graffiti, is that riveters working on the ships were paid at piecework rates, their progress measured by a chalk mark made at the end of each shift. Soon, some riveters discovered that they could increase their pay by simply moving the chalk mark from the previous shift, thereby changing the count.

Mr. Kilroy curtailed this practice by replacing the inspector's chalk mark with a more difficult-to-replicate crayon message, "*Kilroy was here*." Throughout the war, Mr. Kilroy worked on a number of heavy ships and a greater number of troop carriers, leaving multiple marks on each, sometimes in sections later sealed and opened only for repair or infrequent service.

Kilroy was here "went viral" before there was an Internet. GIs copied the phrase virtually everywhere they went and it wasn't long before a graphic was added, a man with a long nose peering over a wall. Some researchers attribute the graphic to the British or Australians, as it resembles popular cartoon characters from both countries.

Mr. Kilroy went on to serve as a Boston City Councilor and as a Massachusetts State Representative. The authors have no information regarding his views on graffiti vandalism.

America's next national experience with graffiti would begin in the late 1960s and early 1970s, starting in major cities and moving across the country as an underground "art" movement, changing and growing to this day, with a substantial segment considering disrespect of authority and violation of the property rights of others as essential parts of their culture.

Today, graffiti "art" has been embraced by commercial galleries and in national advertising, with a substantial assist from the media. Graffiti, both legal and illegal, has a huge presence on the Internet and graffiti "tagger" subculture has proliferated into the smallest American hamlets.

Illegal Graffiti

While all that might seem quite overwhelming to a local government seeking to keep its property and that of its citizens free of unwanted defacement, it need not be. At this point, it would be prudent to set forth some definitions to give perspective on the issue and to lay a safe path through the minefield of "art vs. crime."

To begin, we need answer only one question to label a mark on public or private property as "illegal graffiti" or "graffiti vandalism." Did the person making the mark have permission to do so from the property owner or from an authorized agent of the owner?

Absent that permission, the mark is considered vandalism and illegal. Later in this paper, we offer a more detailed ordinance definition, but, for planning purposes, this is the important distinction.

Municipal governments addressing the graffiti issue often must first soldier through some interesting, but largely irrelevant issues. These usually include the charge that the government is abridging the right of free speech; or that it is restricting youthful artistic expression.

The wise move is to define the playing field along those simple lines – Did the person making the mark own the property or have a valid permission to mark on it?

The right to free expression does not include the right to use the property of another as a canvas for that expression. The graffiti's artistic value or lack thereof is not at issue.

Motivation and Proportion

For planning purposes, there are also some valuable definitions regarding specific forms of graffiti that can help simplify the dialogue and retain focus on the real policy issues for a municipal government: protecting the rights and property of its citizens, and maintaining clean and orderly public spaces.

To begin, the large, colorful, mural-size graffiti, referred to as "aerosol art," rarely presents a serious problem for municipal graffiti abatement teams. Referred to as "pieces," an abbreviation of "masterpiece," these works are the examples most often cited by proponents of graffiti art. They are also the only form appearing to have artistic expression as the primary motive.

However, in terms of crime scenes, locations from which illegal graffiti must be removed, this form of graffiti is estimated to constitute only between five and ten percent of such sites. The planning required is substantial, as is the time needed to execute. Pieces do not possess the hit-and-run quality essential for the rapid accumulation of sites requiring clean up.

Gang graffiti is a more prevalent form. It has little to do with artistic expression, existing primarily as a communications tool. Gang graffiti marks the boundaries of the gang's claimed jurisdiction, or "turf;" carries threats to other gangs or individuals; and sends coded business communications, such as time and place of drug transactions. Gang graffiti, estimated at between 10% and 15% of overall graffiti vandalism early in the decade, is reported to have accelerated to about 25% of graffiti volume in some cities. The layman can easily identify gang graffiti by its workmanlike block letters, usually devoid of artistic touches.

Finally, the third major type of graffiti is known as "tagging," wherein a vandal puts up his unauthorized "tag" on some surface. The "tag" is usually the stylized initials of his or her name, sometimes accompanied by the initials of the tagging crew to which the vandal

belongs. While a few taggers develop artistically, their primary motivation is fame. Status among peers comes from "getting up" in as many highly visible and, preferably, dangerous locations as possible. While tags can be highly stylized and colorful, repetition is key. Occasionally, taggers will advance to "throw-ups" the large, often balloon-like letters that take up much more space than the average tag. Throw-ups serve two purposes. They take up the space of a "piece," while requiring far less time and talent; and they cover other vandal's tags in situations where space is at a premium.[2]

Tagger graffiti is by far the greatest single property defacement problem for many cities. It represents from 65% to 75% of graffiti crime sites and attacks more varied surfaces with more varied products – paint, marker, paint stick, etching tool, adhesive sticker – than the other forms. Consequently, if a community is required to prioritize, likely the most cost-efficient order of emphasis is to focus first on tagging, second on gang graffiti and last on the producers of "masterpieces."

Recognizing the Problem

By the mid-1980's, local governments began recognizing the harm of illegal graffiti. Defacing of public and private property contributed to the perception of blight and was lowering property values. As illegal graffiti began overtaking public spaces and American streetscapes, communities sought to find ways to protect property values by advancing regulatory solutions. Much of this effort took place between the mid-1980's and early 1990's. By 1995, IMLA had developed a model anti-graffiti ordinance offering a regulatory blueprint and suggested best practices. Given lessons learned from other approaches and technological advances since 1995, a review with an eye to updating the IMLA model is probably in order and will be addressed later in this paper. However, the number of US jurisdictions adopting IMLA-type anti-graffiti ordinances since 1995, and the minimal changes made in those ordinances show the model to be both sensible and durable.

Planning for Success

Communities can effectively address illegal graffiti by adopting a comprehensive plan to deal with its causes, sources, available sites, perpetrators, and remedies. To be effective, each community should look within itself to study each of these components so that solutions are properly tailored to them in that community. For example, as noted in the section, "Motivation and Proportion," practitioners of different graffiti types have different expectations. Piecers seek artistic fulfillment. Gangs seek to inspire fear and conduct simple criminal communications. Taggers seek fame with multiple, highly visible markings. An effective effort to stop piecer graffiti is unlikely to materially affect gang graffiti or tagging. Similarly, cities mostly comprised of newer buildings provide a "canvas" different from that of cities whose buildings were built hundreds of years ago. Thus, the first step to an effective program involves study.

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[2] Gastman, Roger, and Caleb Neelon, The History of American Graffiti. New York: Harper Design, 2010, p. 105.

As noted earlier, while acknowledging the existence of an organized graffiti "art" subculture, most persons experienced in the field agree that the greatest volume of graffiti vandalism has little to do with art and stems from larger and more complex problems in the society. Among these are the breakdown or absence of family structure; the lack of values education for the very young; and the inability of the system to convey, promote and enforce such fundamentals as parental responsibility, respect for authority, respect for property and pride in community.

As a consequence, long-term success in combating graffiti requires comprehensive programming that addresses each of these components as well as remediation for the damage and problems created by the vandalism, itself. That kind of programming can only be achieved through an act of collective political will on the part of the community -- institutions and citizens working together toward a common goal.

In the following, we will explore the role legislation can play in reaching that goal, reducing graffiti vandalism and attacking the crime at its roots. Also, we will outline the basics of a comprehensive community anti-graffiti ordinance and its application.

An Orderly Approach

Comprehensive anti-graffiti planning encompass three basic categories -- education, law enforcement and abatement (clean-up).

In creating a simple and workable program design, the proper order of planning activities is essential.

One logical order is to:

- define the nature and size of the graffiti problem;
- identify, catalog and evaluate existing anti-graffiti activities;
- set realistic program goals;
- define changes required to reach those goals; and
- take the actions necessary to bring about those changes.

Creating a multi-disciplinary "task force" approach to the problem offers the best first step. Bringing together members of the business community, educators, police, juvenile justice professionals, public works officials, building maintenance officials, planning and zoning officials and representatives from parks and recreations might make a good core in forming the group. Task force organizers should also consider seeking the advice of the local arts community, volunteers in juvenile diversion programs like Youth Court or Teen Court, and youth leadership, either from such programs or others supporting positive community values.

Under this approach, municipal or county leadership — city council, mayor, county commission, county executive — brings together a multi-disciplined group of citizens,

educators and involved government agencies to assess the graffiti problem and design a comprehensive program to combat it.

The process can identify perceived gaps in existing state and local law and develop the necessary powers to implement components of the program. For example, task force research could reveal that “taggers” commit most local graffiti vandalism and that rapid clean up reduces incidents of tagger graffiti. Logically, this finding would lead to a proposal for a comprehensive "blight ordinance" to assure the prompt removal or cover-up of publicly visible graffiti on private property.

In most instances, existing statutes and ordinances dealing with crimes against property can be applied to graffiti crimes. Yet, honing existing laws and using tried and successful methods from other communities can be truly positive and productive. Recently, the areas in which we have seen the most new local laws are penalties for vandals, parental liability and victim restitution.

A Word of Caution

There are few crimes against property that generate the anger, frustration and fear triggered by graffiti vandalism. Both the victims and their neighbors are outraged at the violation of property and by the image of vandal "gangs" roaming the neighborhood. When this occurs, one of the first to hear about it will be the neighborhood's elected representative -- a city council or county commission member. With minor variations, the irate citizen's request is always, and understandably, the same. Do something! That call for action from the voters creates a special dilemma for the elected official.

With the public pressing for action, elected officials are sometimes pressured to act too quickly, attempting to solve the immediate problem without looking carefully at its cause and the unintended consequences of legislation that is either overbroad or ineffective. Consequently, in any issue area presenting widespread and heated voter sentiment, the pressure to "do something" frequently results in the introduction and passage of new law.

The process provides many opportunities for public statements, testimony and media exposure. Further, given the right level of fervor, virtually any legislation labeled "anti-graffiti" stands a good chance of passage. Unfortunately, a law produced in such an atmosphere often can have a certain "Ready! Fire! Aim!" quality to it and stands a lesser chance of being on target.

While this is not news to readers in and around local government, including elected officials, it is intended not as criticism, but as a reminder that anti-graffiti legislation is formulated in the real world of local politics. That means that the developing meaningful anti-graffiti legislation can and, often, will be affected by a number of subjective pressures quite separate from the problem and the community's long-term best interest.

Among these are:

- the pressure to do to something now rather than to do it right;
- the pressure to do what will be popular rather than what will be effective;
- the pressure for public recognition- to be seen as the anti-graffiti leader rather than as part of the team; and
- the pressure of personal gain - to use the graffiti issue to steer more authority, money or staffing to a favored person, department, agency, or contractor organization.

Whatever your role in the process, you can contribute to the quality of policymaking by being aware of these pressures, by not falling prey to them yourself, and by being supportive of local elected officials who take a reasoned approach to the issue.

The Needs Analysis

Earlier, we referred to an orderly approach to planning - designing a program path from where we are to where we want to be. An important component of that planning and program preparation includes determining what must be done to enable government to set certain standards, to take certain actions, and to require certain behaviors to reach or sustain a collective community good. The appropriate enabling vehicle, in some cases, will be legislation.

The needs analysis, audit or legislative inventory is simply the matching of existing law to the needs of the comprehensive anti-graffiti program and formulation of legislative language to fill the gaps or provide for strengthening or expanding the law to cover aspects of the programming not addressed by the existing municipal or county code. This process is not as complicated as it may sound. The following outlines basic categories and the information required in each.

The Crime - While most community ordinances define vandalism or property defacement, those definitions may fall short of describing graffiti crime. Further, the community may want to deal with graffiti vandalism differently from how it deals with a broken window.

Consequently, current law should be reviewed to assure that it contains:

- a definition of graffiti; or
- a definition of graffiti vandalism.

Further, if graffiti crimes are going to include the possession of potential graffiti tools "with intent" to commit a crime or proscribe possession in certain circumstances, i.e., on public property or on private property without owner consent, it is essential to check the ordinance for definitions of graffiti tools. Finally, if the anti-graffiti plan restricts access to potential graffiti tools, i.e., prohibits sale of spray paint to minors, are these products currently defined by law? If the existing code falls short in any of these areas, new legislation may be required.

Penalties - While existing ordinances will specify penalties for vandalism, often they do not address the unique and repetitive nature of the majority of graffiti crimes. For example, "tagging", the most common form of graffiti, places a high premium on the number of "tags" and their public visibility. As vandals, "taggers" bear no particular animosity toward individual properties or property owners. Devoid of any respect for property rights, they select targets on the basis of location and risk. While many taggers are young adults, most start tagging or join crews in their early teens. Thus, consideration of how the juvenile justice system works in the community should be woven into any concept of “penalty.”

Because graffiti vandals begin committing these crimes early, inflict such extensive damage, and are often difficult to catch, the penalty language in the ordinance provides a rare opportunity not only to mete out punishment for the crime, but also to right other wrongs. For example, penalties can include victim restitution; provide labor (community service) for clean up; and, in the case of juveniles, force acceptance of parental responsibility. If any or all those goals are in your programming, they belong on your needs list in this category.

Abatement - While most communities have ordinances dealing with the accumulation of trash, overgrown lots and other eyesores and hazards, these laws often do not provide adequately for the clean up of graffiti defaced structures. A growing body of data indicates that rapid and efficient removal or cover-up of graffiti can substantially reduce the recurrence of graffiti crime. To assure timely and efficient clean up, the local needs analysis should review provisions for the removal of graffiti from private property and the payment for such removal.

New Requirements - If the anti-graffiti plan contains actions or restrictions in areas in which the government has not previously been involved, those areas should be reviewed in the context of existing law and authority to determine the need for new enabling legislation, if any.

Legislative drafting is not the place for micromanagement. To achieve the best results on implementation of the program, the legislative authors must be realistic and expect that the people carrying out public policy have a reasonable amount of good sense while attacking the problem comprehensively.

Comprehensive community anti-graffiti programs usually contain three elements or components - education, law enforcement and abatement. The education component deals with prevention -- teaching respect for property and pride in community -- thus directing or redirecting children and youth away from graffiti vandalism. The law enforcement component defines the actions, which are proscribed as violations of property rights and community standards, and metes out penalties for those violations. The abatement or graffiti removal component provides the rules governing removal or correction of damage inflicted by graffiti crime.

As the organization of most local governments separates funding and management of the school system from the funding and management of government, it is the latter two elements or categories on which most local legislation is focused. While there are certainly educational aspects to the law enforcement and abatement portions of anti-graffiti programming, they are almost always remedial or rehabilitative in nature and not "educational" in a preventive sense in that they do not channel behavior before it becomes anti-social. For that reason, educators should form a part of the community task force and take ownership of their responsibility to offer lessons about values, community responsibility and good citizenship.

Assuming the community understands its own problem of graffiti, a program can be put in place to regulate and remedy the problem. Using the IMLA model ordinance as a guide, the regulations can be tailored to address the problem and to conform to the city's authority to regulate. Each community will necessarily need to determine its authority to adopt the various parts of the IMLA Model. With that caveat, no graffiti law could begin without definitions. The IMLA Model provides:

> "Graffiti" means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.
>
> "Graffiti implement" means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

The law dealing with graffiti in New York City (New York City Administrative Code, Title 10, Chapter 1, Section 117) offers the following definitions, but does not define "graffiti":

> a-1. For purposes of this section, "property of another" shall mean all property, including real property, that is not owned, rented, or leased by a person; provided that such term shall not include a location that serves as such person's residence.
>
> a-2. For purposes of this section, "educational facility" shall mean any building affiliated with an institution that maintains a list of enrolled students and is used for educational purposes for more than twelve (12) hours per week for more than six (6) students.
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> e. For the purpose of this section, the term "broad tipped indelible marker" shall mean any felt tip marker or similar implement containing a fluid that is not water soluble and which has a flat or angled writing surface one-half inch or greater. For the purpose of this section, the term "etching acid" shall mean any liquid, cream, paste or similar chemical substance that can be used to etch, draw, carve, sketch, engrave, or otherwise alter, change or impair the physical integrity of glass or metal.

In Los Angeles, the municipal code §49.84.2 offers the following definitions:

> (A) "Act of graffiti" means an act which causes any form of unauthorized inscription, word, figure or design to be marked, etched, scratched, drawn, sprayed, painted or otherwise affixed on any structural component of any building, structure or other facility or upon any other property, regardless of its content or nature and regardless of the nature of the material of that structural component or property.
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> (B) "Aerosol paint container" means any aerosol container, which is adapted or made for the purpose of applying spray painting, or other substance capable of defacing property.
>
> (C) "City" means the city of Los Angeles.
>
> (D) "Etching cream" means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.
>
> (E) "Graffiti" means any form of unauthorized inscription, word, figure or design which is marked, etched, scratched, drawn, sprayed, painted or otherwise affixed to or on any surface of public or private property, including but not limited to, buildings, walls, signs, structures or places, or other surfaces, regardless of the nature of the material of that structural component.
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> (F) "Graffiti implement" means any implement capable of marking a surface to create graffiti, including but not limited to aerosol paint containers, markers, etching devices, and gum labels.
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> (G) "Gum label" means any material such as, but not limited to, decals, stickers, posters or labels which contain a substance commonly known as adhesive or glue, which cannot be removed from the surface in an intact condition and with minimal effort.
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> (H) "Marker" means any indelible or permanent marker with tips exceeding four millimeters in width or similar implement containing ink that is not water-soluble.
>
> (I) "Owner" means any person, firm, corporation, partnership or other entity, owning property either public or private, whose name or title appears on the last equalized assessment role with the Los Angeles County Recorder's Office, or the lessee, tenant or other person having control or possession of the property.

Oakland, California also defines graffiti in its municipal code, but does so much more broadly in Section 8.10.020:

> "Graffiti" means and includes, but is not limited to, the writing, defacing, marring, inscribing, scratching, painting or affixing of other markings on buildings or structures

including, but not limited to, walls, fences, signs, retaining walls, driveways, walkways, sidewalks, curbs, curbstones, street lamp posts, hydrants, trees, electric light or power or telephone or telegraph or trolly (sic) wire poles, fire alarms, drinking fountains, parking meters, or garbage receptacles.

Each set of definitions relates to how the city regulates graffiti. For most communities the IMLA Model ordinance definitions can work with some slight modifications. We suggest blending the definitions to provide sufficient description of the community's regulatory intent:

> "Graffiti" means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, engraved on or otherwise affixed to or on any surface of public or private property, natural or human-made, including but not limited to, buildings, walls, signs, structures, sidewalks, curbs, trees or places, or other surfaces, regardless of the nature of the material of that structural component by any graffiti implement or other device or, despite advance authorization, is deemed a public nuisance by the City under this ordinance.
>
> "Graffiti implement" means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment or acid, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.
>
> "Gum label" means any material such as, but not limited to, decals, stickers, posters or labels which contain a substance commonly known as adhesive or glue, which cannot be removed from the surface in an intact condition and with minimal effort.
>
> "Broad-tipped marker" means any indelible or permanent marker with tip exceeding four millimeters in width or similar implement containing ink or other fluid that is not water-soluble.

In choosing to define graffiti, the drafters must consider their local jurisprudence. While a pithy definition ought to suffice, drafters are often caught in the unenviable position of trying to guess whether a clever defense attorney will claim that a gap in the definition exists to allow a client to escape conviction. Our suggested definition could be much more terse by simply using the word "defacement" in combination with the all inclusive "all surfaces of public or private property, natural or human-made" as there should be little room for argument. Nevertheless adding the suggested language may avoid challenges based on an assumed under inclusiveness.

The community must also describe the conduct that it wants to prohibit. In some cases it may be just the simple act arising from vandalism, in most jurisdictions it will include prohibitions involving who may possess graffiti implements and where they cannot possess them, the sale of graffiti implements and how a property owner must deal with graffiti. Again, there are several examples to draw from, including the IMLA Model and the laws in New York and Los Angeles. The IMLA Model prohibits graffiti in simple terms:

> Defacement. It shall be unlawful for any person to apply graffiti to any natural or manmade surface on any city-owned property or, without the permission of the owner or occupant, on any non-city-owned property.

The Los Angeles Municipal Code prohibits graffiti in §49.84.3, but makes clear that the violation constitutes a civil, rather than a criminal offense:

> (A) It is unlawful for any person to write, paint, spray, chalk, etch, or otherwise apply graffiti on public or privately owned buildings, signs, walls, permanent or temporary structures, places, or other surfaces located on public or privately owned property within the City.
>
> > (1) A violation of this subsection shall be subject to enforcement only through civil action, administrative fine, or nuisance abatement lien.

In New York City, the City, in the New York City Administrative Code, Section 10-117(a), prohibits graffiti in broad terms:

> No person shall write, paint or draw any inscription, figure or mark or affix, attach or place by whatever means a sticker or decal of any type on any public or private building or other structure or any other real or personal property owned, operated or maintained by a public benefit corporation, the city of New York or any agency or instrumentality thereof or by any person, firm, or corporation, or any personal property maintained on a city street or other city-owned property pursuant to a franchise, concession or revocable consent granted by the city, unless the express permission of the owner or operator of the property has been obtained.

Obviously, there are subtle differences. Both the Los Angeles and IMLA Model prohibit graffiti on any property within the jurisdiction while New York's law probably does the same but limits its applicability to properties either owned by the city and its agencies or property owned by others whose property abuts city streets or other city property.

Using the three examples, as a guide, and using plain language principles, the following prohibition should work in most communities:

> A person must not apply graffiti to any natural or human-made surface without first obtaining and maintaining the written and unrevoked permission of the owner of the property.

While the IMLA Model and the New York and Los Angeles laws all distinguish between city owned or publicly owned property and private property, theoretically, the city could grant permission to put graffiti on its property just as a private owner. We see no reason to distinguish between a private and public owner for purposes of this prohibition. Requiring written permission helps to formalize any arrangement and can protect both property owner and graffiti artist. Requiring that the graffiti artist maintain the permission can help if enforcement becomes an issue, so that the document granting

permission is available to enforcement authorities. The regulation also covers situations where the property owner decides to revoke the permission; albeit, because the owner can revoke orally, the regulation does not eliminate disputes between the property owner and the graffiti artist over the revocation.

Los Angeles and other cities also regulate property owners. These laws vary modestly. For example, Los Angeles and Oakland effectively prohibit property owners from granting permission to allow graffiti that will be visible from off the property:

Los Angeles:

> SEC. 49.84.3. GRAFFITI PROHIBITED.
>
> B. It is unlawful for any person owning or otherwise in control of any real property within the City to permit or allow any graffiti to be placed upon or remain on any walls, temporary or permanent structure, places, or other surfaces located on such property when the graffiti is visible from a public street or other public or private property.

Oakland:

> 8.10.030 - Graffiti prohibited.
>
> No person owning or otherwise in control of any real property within the city shall permit or allow any graffiti to be placed upon or remain on any permanent structure located on such property when the graffiti is visible from the street or other public or private property.

Where these laws diverge from the IMLA model and the movement that seeks to honor some graffiti as "art," derives both from each city's definition of graffiti and various issues associated with "free speech" and "property rights." As written, a property owner in either city cannot allow a person to paint a mural on a wall or building, they cannot themselves paint a political message on the wall of their home or business. As we know, governments can regulate certain forms of expression by imposing time, place and manner regulations on speech and there are regulations throughout the country that address signs, but without some form of aesthetic code requiring adherence to a scheme of visual standards, imposing prohibitions against a property owner's choice of how to display the owner's property can be problematic.

IMLA believes a better choice may be to prohibit "unauthorized graffiti;" i.e., graffiti (more loosely defined than the IMLA definition) that a property owner has not permitted or which violates a city's code where the city's code imposes aesthetic limitations on building coverings or where the graffiti constitutes a sign. In other words, the city's regulations should meld other aesthetic regulations with their graffiti program to address specific forms of expression that may find more protection in the Constitution than a vandal's expressions. Because the IMLA definition of graffiti incorporates the concept of permitted conduct, a prohibition against a property owner who allows graffiti may need to be drafted in other ways so it can require removal of the graffiti through a declaration that a property constitutes a public nuisance, but which can make allowances for graffiti as art or protected speech. For example a community's sign regulations may address some forms of graffiti and communities may want to consider adopting content

neutral regulations that address outdoor art. Nevertheless, bear in mind that determination as to what are nuisances must be content neutral.

When trying to deal with graffiti, most communities try to limit the sale of "graffiti implements" and regulate where and under what conditions people can possess graffiti implements in areas prone to graffiti. New York took an aggressive approach a few years ago to regulating the sale of graffiti implements by expanding prohibitions against sales from a prohibition against selling to minors to include sales to people between 18 and 21 and limiting where that same class of people could possess graffiti implements in public. The city had determined that while minors were a major cause of graffiti, young adults aged 18, 19 and 20 were some of the most prolific graffiti vandals. Despite a fairly strong basis for acting, a federal court struck down the city's law regulating the young adults based upon testimony from plaintiffs that they used graffiti implements for art school and for legal purposes. *Vincenty v. Bloomberg*, 476 F.3d 74 (2nd Cir. 2007). The plaintiffs claimed that they were fearful of arrest if they carried their implements between home and class while on city sidewalks or subways.

Reacting to the court's decision, in August 2007, New York passed an amended law that continues to regulate this age group, but provides some protections so that they can carry graffiti implements from home to school and back without fear of arrest. Interestingly, these regulations are not far different from regulations that allow a person to move handguns from one place to another on city streets; i.e., they require limited or no accessibility.

An interesting aspect of the *Vincenty* case and an excellent example of outside forces working to shape government graffiti policy is the fact that the plaintiffs' case was spearheaded and financed by fashion designer, video game creator and graffiti art fan, Marc Ecko.[3] Ecko had been in a running battle with Mayor Bloomberg and City Councilman Peter F.Vallone, Jr. since they had attempted to disrupt Ecko's promotion of his Atari video game: Getting Up, Contents Under Pressure. When it became known that Ecko had acquired a City permit for a public graffiti demonstration, the City withdrew the permit, forcing him to the courts for relief. Earlier, Councilman Vallone, Jr. had written to Atari's chairman, asking for a pre-release copy of the video, raising the possibility that Atari was violating the laws of the City of New York by distributing a game that encouraged graffiti vandalism. On another front, the National Council to Prevent Delinquency and Keep America Beautiful urged the Entertainment Software Rating Board (ESRB) to assign the strongest possible restricted rating to the game and distributed their arguments nationally via a joint press release.[4] While not committing to either organization, the ESRB did rate the game M, for "mature", an advisory to limit use

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[3] "BOMB THE CITY, Mayor Bloomberg Vs. NYC Graffiti Artists." *New York Press* 10 May 2006, Print. 10 May 2006 Web. < www.nypress.com/print-article-13440-print.html > Retrieved 9-8-11.

[4] Feldman, Curt, "Getting Up gets put down by anti-graffiti lobby" *Gamespot.* 16 August 2005 Web. www.gamespot.com/news/6131203/getting-up-gets-put-down-by-anti-graffiti-lobby Retrieved 9-8-11.

to persons 17 years and older. Ecko's clothing market is heavily pre and early teens. The video was promoted as a "how to" for tagging and appeared to be directed at a younger market. The plaintiffs' lawyer in *Vincenty* was Daniel Perez. Mr. Perez is also legal counsel for Marc Ecko. The case named both Mayor Bloomberg and Councilman Peter F. Vallone, Jr. as defendants, along with the City of New York.[5]

The current New York law provides in Section 10-117 of the New York City Administrative Code:

> c. No person shall sell or offer to sell an aerosol spray paint can, broad tipped indelible marker or etching acid to any person under twenty-one years of age.
>
> c-1. No person under twenty-one years of age shall possess an aerosol spray paint can, broad tipped indelible marker or etching acid in or on the property of another. This subdivision shall not be deemed to prohibit the possession of an aerosol spray paint can, broad tipped indelible marker or etching acid where such item is contained in a manufacturer-sealed package or completely enclosed in a locked container, which shall include bags, backpacks, briefcases and other containers that can be closed and secured with a key or combination lock.
>
> c-2. This section shall not apply to any person possessing an aerosol spray paint can, broad tipped indelible marker or etching acid while in or on the property of another in violation of subdivision c-1 of this section, where:
>
> (1) the owner, operator or other person having control of the property, building or facility consented in writing to the use or possession of the aerosol spray paint can, broad tipped indelible marker or etching acid; or
>
> (2) such person uses or possesses the aerosol spray paint can, broad tipped indelible marker or etching acid under the supervision of the owner or person in control of such property; or
>
> (3) such person is at his or her place of employment and the aerosol spray paint can, broad tipped indelible marker or etching acid was, will be or is being used during the course of such employment and used only with written permission from, or under the supervision of his or her employer or such employer's agent; or
>
> (4) such person is at an educational facility and uses or will use the aerosol spray paint can, broad tipped indelible marker or etching acid at the educational facility, where he or she is enrolled, and is participating in a class at the educational facility that requires the use or possession of such items; or
>
> (5) such person is on the property of another and uses or will use the aerosol spray paint can, broad tipped indelible marker or etching acid in or on the property of another if such use or possession is necessary to participate in a government-sponsored function or in other circumstances where a government agency gives its consent to such use or possession.

Los Angeles tries a more limited approach limiting the reach of its prohibitions to city property that is posted as required in its law:

> SEC. 49.84.5. POSSESSION OF SPECIFIED GRAFFITI IMPLEMENTS PROHIBITED IN DESIGNATED AREAS.
>
> (A) It is unlawful for any person to have in his or her possession any aerosol paint container or etching cream while in or upon any public facility, park, playground, swimming pool, recreational facility, or other public building owned

[5] See footnote #3

> or operated by the City unless otherwise authorized by the City, where signs forbidding such possession are displayed as provided in Subsection (B).
>
> (B) Posting of No Possession of Graffiti Implements Signs. At least two signs shall be conspicuously painted or posted on the outside of every public facility, park, playground, swimming pool, recreational facility, or other public building owned or operated by the City that is subject to this regulation. The letters and numbers on said signs shall be in black lettering at least six inches high on a white background stating:
>
> NO POSSESSION OF AEROSAL SPRAY PAINT OR ETCHING CREAM L.A.M.C. SEC. 49.84.5

In one of the more recent efforts to address graffiti vandalism, Carpentersville, Illinois adopted restrictions in its code, § 9.16.020 against minors possessing graffiti implements and incorporated prohibitions regulating adults who have charge over minors in circumstances where a minor's possession of graffiti implements would be lawful:

> D. Possession of Graffiti Materials by Minors. Possession of graffiti materials by a person under the age of eighteen (18) (a minor) is declared a nuisance. No person under the age of eighteen (18) shall possess within the village any graffiti materials. This prohibition shall not apply to:
>
> 1. A minor using what is otherwise defined as graffiti materials while under the immediate supervision of his or her parent, legal guardian or other responsible companion at least twenty-one (21) years of age approved by his or her parent or legal guardian;
> 2. A minor using what is otherwise described as graffiti materials while engaged in a supervised activity sponsored by a school, church, or not-for-profit community organization;
> 3. A minor using what is otherwise described as graffiti materials at the direction and under the supervision of his or her employer.
>
> E. Aiding or Abetting Possession of Spray Paint by a Minor. No person shall aid, assist or abet a person under the age of eighteen (18) in obtaining possession of graffiti materials. This prohibition shall not apply to:
>
> 1. A parent, legal guardian or other responsible companion at least twenty-one (21) years of age approved by the minor's parent or legal guardian who is assisting and supervising his or her child or ward in the use of what is defined as graffiti materials;
> 2. An employee of a school, church, or not-for-profit community organization assisting and supervising a minor in his or her charge in the use of what is otherwise defined as graffiti materials;
> 3. An employer assisting and supervising his or her employee in the use of what is otherwise defined as graffiti materials.

Both Carpentersville and New York try to address what they perceive to be the cohort that most likely causes graffiti vandalism. New York expanded the cohort from that in Carpentersville as it includes people 18 to 21. Because New York was faced with overcoming a decision enjoining its law, it also took measures to carve out an exception that Carpentersville does not have – an exception for possessing graffiti implements while traveling between authorized activities where their possession does not violate the

law. Taking both as examples, using the IMLA suggested definitions and assuming the decision in *Vincenty v. Bloomberg* to be good law, a suggested approach using a plain language model might look like this:

- A person must not sell or offer to sell a graffiti implement to a person less than 18 years of age.
- Possession of graffiti implements by a person under the age of eighteen (18) (a minor) is declared a nuisance. A person under the age of eighteen (18) must not possess any graffiti implements. This prohibition does not apply to:
  a. A minor using graffiti implements while under the immediate supervision of his or her parent, legal guardian or other responsible companion who is at least twenty-one (21) years of age and approved by the minor's parent or legal guardian to supervise the minor;
  b. A minor who is using graffiti implements while participating in a supervised activity sponsored by a school, church, or not-for-profit community organization;
  c. A minor who is using graffiti implements while at work as directed by and under the supervision of the minor's employer.

An alternative, as in New York City, if the community has ample evidence that young adults create most illegal graffiti would be to change the age stated in the proposed law to an age between 18 and 21 inclusive based on the age group that is causing the problem. In addition, the Los Angeles approach wisely addresses the authority of the community to regulate its own property. In doing so, communities should bear in mind that courts are likely to look at the community's regulation of the use of its own property less severely than how it will look at the community's use of its sovereign power to regulate offenses occurring on someone else's property. Thus, we suggest adding the following provision:

- A person who does not have the written approval of the City, must not possess a graffiti implement on City owned or managed property; including, but not limited to, any public facility, park, playground, swimming pool, recreational facility, or public building.

Using the Carpentersville, ordinance as a guide, a community should also regulate the conduct of adults who assist minors obtain graffiti implements. As with liquor and cigarette sales to minors, enforcement may be difficult but adding this tool can help enforce its total anti-graffiti program and may aid in developing enforceable injunctions against repeat offender conduct. Our suggested approach to handling a regulation like this might look like:

- A person must not assist a person under the age of eighteen (18) obtain possession or hide possession of graffiti implements. This prohibition does not apply to:

  1. A parent, legal guardian or other responsible companion at least twenty-one (21) years of age who the minor's parent or legal guardian has approved to assist and supervise the minor while the minor is lawfully using graffiti implements;

2. An employee of a school, church, or not-for-profit community organization who is assisting and supervising a minor while the minor is lawfully using graffiti implements;
3. An employer assisting and supervising his or her employee while using graffiti implements.

Most communities that successfully address the graffiti problem incorporate in their laws requirements that mandate that a property owner remove graffiti, but also create a community resource to remove graffiti, either funded through taxes, donations, assessments, or a combination of funding devices. The communities that have the most effective programs remove graffiti quickly. To do so, they need resources and they need effective laws in place. Where a community has the authority to create a downtown improvement district or other district with a dedicated funding source, one of the goals for that district should include the elimination of nuisances, including graffiti. Thus, in those areas, graffiti removal can be an authorized expenditure for the district. For downtowns or blight prone areas where laws that allow downtown improvement districts or urban renewal areas, the government may have more authority both to raise money and to act preemptively to improve or protect property values from vandalism like graffiti. Where those laws do not exist, a community can still find ways to deal with graffiti and similar problems. The IMLA Model ordinance provides an example of requirements that may be used to enforce a law that prohibits graffiti. Using that as a guide, a community could choose to require property owners who do not allow the government to cover over the graffiti or remove it, to do so themselves or bear the cost of having the government do it. Here is an example of language that could be used to implement this approach:

- A property owner must remove graffiti when and as directed to do so by the City under this ordinance.
- Notice to remove graffiti.

1. Notice. The City, upon observing graffiti, must issue a notice to the owner of record of the property where the graffiti was observed. The notice must include the following information:
    a. A description of the graffiti;
    b. The address of the property,
    c. Specify that if the graffiti is on a painted surface, it must be painted over with a color consistent with the predominant tone of the building or structure, and that if the graffiti is on an unpainted masonry or wood surface, it must be removed by cleaning so that the unpainted surface is returned to its condition prior to the application of the graffiti and if the graffiti is on a natural surface the method by which the graffiti must be removed;
    d. Describe the consequences for failing to remove the graffiti including any penalties or costs;
    e. Direction to remove the graffiti, allow the City to remove the graffiti or file an appeal all within two days after service of the notice; and
    f. A description of how to contact the City to allow it to remove the graffiti at no cost to the property owner.

2. Service—Return of Notice.
    a. The city may personally serve the notice upon the owner of the property where the graffiti exists, and if served personally must return a copy of the notice showing the date of service and the person upon whom it was served; or
    b. The city may mail a copy of the notice to the property owner at the address to which the government mails property tax bills. If mailed and not returned because of a defective address, notice is presumed to have been received three business days after deposit in the United States mail; or
    c. If the city is unable to effect service on the property owner because the owner is avoiding service or because the city has inadequate information as to the owner's mailing address, the city may post the notice on the property and insert the notice in a newspaper of general circulation within the city where other legal notices are placed, or follow the procedures under the rules of court for serving a person who is avoiding service. If the notice is posted on the property and advertised in the newspaper, the notice is presumed to have been received five days after the last to occur of posting the property or advertising and if the city follows the rules of court, notice is presumed to have been delivered as described in the rules.

3. Compliance.
    a. If the property owner did not authorize the City to remove the graffiti, the City must investigate to determine whether the graffiti has been removed.
    b. If the City determines that the owner did not remove the graffiti within the time set in the notice or did not authorize the City to remove the graffiti, then the City must make arrangements to remove the graffiti through any available public agency or by contract with any applicable private entity and the cost of removal becomes the responsibility of the owner.

The IMLA Model ordinance provides additional sections that address due process consideration for both the determination of whether the graffiti must be removed and to assess the cost of removal against the owner. These are important provisions, but are not repeated here.

Often communities seek to regulate sales of graffiti implements, not only by prohibiting sales to minors or other age cohorts, but also by limiting the manner in which these products can be displayed. While these regulations are effective in limiting illegal retail sales and theft, with the advance of Internet shopping, they are less effective as a supply-side control restricting the flow of graffiti implements in commerce to vandals. As with government's effort to limit alcohol sales to minors, the Internet limits the government's ability to act and it offers a brand new way for children to obtain prohibited goods. Nevertheless, communities interested in dealing with graffiti vandalism can and should impose reasonable point-of-sale restrictions on graffiti implements. Shelby County, TN

recently enacted an anti-graffiti ordinance, which follows along the lines of the IMLA model stating:

> (a) Every person who operates a retail commercial establishment selling aerosol paint shall store or display such paint either (1) in line of sight of a workstation normally, continuously occupied during business hours, (2) under electronic or other surveillance, or (3) in such a manner so as to require employee assistance for customer access.

A point-of-sale restriction limits the immediate availability of the regulated product, even if it does not eliminate a vandal's access to graffiti implements from other sources. The point-of-sale restriction also reinforces in the public mind the community's goal of reducing the graffiti problem.

Creating and applying penalties for graffiti crimes can be the most complex and frustrating aspect of anti-graffiti program development and application. And, while challenging, can be the most rewarding.

Because juveniles form the largest number of graffiti vandals, deterrents that can be applied through the juvenile justice system must be developed. A juvenile justice system generally promotes rehabilitation over punishment, so penalties, unless they offer rehabilitation, generally do not apply. Fines and jail time that apply to adult offenders, generally do not apply to juveniles. Other approaches must be considered and juvenile justice professionals included in the task force.

While using social policies to reform young offenders adopts the view that children can still be molded into good, responsible adults, these policies do not adapt well to the young graffiti vandal, particularly the "tagger." No doubt, these young people can benefit from intervention and juvenile services; yet, a mild response to their "first offense" is not necessarily in their best interest or in the best interest of the community, for two reasons:

- graffiti vandals generally commit many acts of vandalism before being apprehended the first time; and
- most graffiti vandals subscribe to a value system so divergent from that of the society in general that they require substantial reorientation and redirection to avoid recidivism.

Consequently, for the juvenile vandal who the court finds delinquent of a first graffiti offense, the court should include as part of the disposition a standard minimum combination of approaches that includes most or all of the following:

- probation or other structured professional evaluation and counseling;
- community service;
- victim restitution;
- parental liability; and
- when allowed, a fine.

Further, the task force must insure that all law enforcement or juvenile justice agencies involved in intervention or diversion programs which, in effect, adjudicate juvenile

crimes prior to or in place of formal proceedings should, as a matter of public policy, be educated to the serious and unique nature of graffiti crimes. Where possible, these agencies should be part of the task force and take ownership of their responsibility to include the above disposition components as part of any disposition made when dealing with a juvenile vandal and the child's parents or guardians.

If the vandal is an adult, the same cautions should be raised with respect to a "first offense." While tradition and trust in the wisdom of the courts dictate that the law be flexible with regard to fines and jail time, victim restitution should be an integral part of sentencing, either through cash or clean-up, as should be community service.
The rapid, thorough and efficient removal of graffiti and repair of graffiti damage is the single most visible component in a community anti-graffiti program. It is also a component that usually requires a great deal of community coordination and, frequently, changes in or the establishment of a nuisance or "blight" ordinance.

To get an idea of the potential complexity of an abatement plan, picture for a moment a single intersection in your neighborhood. Then picture a tagger moving quickly around the four corners of that intersection leaving his mark on every surface. In a few minutes, that vandal can tag light poles, stop signs, telephone poles, a mailbox, a few small businesses and maybe one or two private homes.

The property owners then responsible for removing that graffiti or providing permission for its removal could include a public utility or public works department, the streets or highway department, the phone company, the U.S. Postal Service, one or two businesses and a few homeowners -- about eight separate and diverse persons, organizations and companies. The abatement portion of the anti-graffiti plan must include the methodology by which graffiti removal sites are determined and approached while preserving the rights of property owners.

Further, the plan needs to be reasonable and supportive of property owners or they will perceive themselves as twice victimized -- once by the vandal and again by the city or county. Local abatement legislation can help dispel that victim image by providing an even-handed approach to enforcement, a reasonable hearing and appeal procedure, and assistance to property owners who are repeat targets of vandals or in other unusual or difficult circumstances. Indeed, the best approach and one responsive to property owner concerns, one that helps assure rapid uniform clean-up, authorizes the government to include, with the owner's permission, private property as well as public property in its systematic removal plan and takes the responsibility for abatement off the owners who authorize the government to remove the graffiti on their properties.

However the actual graffiti removal is organized and implemented, a legal framework is required to enable the community to affect the cleaning or repair of vandal damage. To that end, the basic abatement law, often referred to as a "nuisance" or "blight" ordinance, should include the following:

- declaration of nuisance or blight - stating that the existence of graffiti is a public nuisance and a violation of the law;

- statement of responsibility - setting forth the responsibility for graffiti removal; (perpetrator, property owner, manager, etc.) and exceptions;
- rights/obligations of the government to:
  - determine violations
  - enter private property
  - eradicate graffiti
  - collect eradication costs; and
- assure due process.

More recent abatement ordinances also include provisions developed from practical experience in graffiti removal. For example, some might require above ground fixtures for utilities (phone, TV cable, electric) to use common colors; or developers to keep building sites graffiti free and/or provide for government access as a part of the building permit requirements; or graffiti prevention specifications in the requirements for new construction or building renovation. Including building code officials and planning and zoning department officials on the task force enables the task force to consider changes in other codes to help reduce graffiti. For example, graffiti resistant or sacrificial surfaces can be incorporated in a building and zoning code. Planning officials can require landscape plans to create vegetative and other barriers to graffiti on new or redeveloped buildings.

While the above are the principal components of a community anti-graffiti law, some cities and counties choose to include other aspects of their anti-graffiti programming in local ordinances. Examples include rewards for citizen informants and retail spray paint display standards.

In the past couple of years, Los Angeles has tried an even more aggressive approach by using the concept of gang injunctions to seek injunctions against graffiti vandals, both individuals and gangs. While the cases continue to proceed through the courts, so far, the courts have denied defense objections recognizing that the First Amendment does not protect vandalism. A case against a gang, considered the first of its kind, involves a complaint, filed by the City Attorney's Office in June 2010, modeled after civil gang injunctions and seeks to enjoin members of the MTA (aka Metro Transit Assassins) tagging crew from engaging in public nuisance and unlawful business practices.

Unlike previous civil gang injunctions, this lawsuit seeks to enjoin the tagging crew and its members throughout the state. The injunction seeks to prohibit MTA members from associating with each other, possessing graffiti tools, and imposes a mandatory curfew on its members. The civil suit also seeks penalties and damages for the tagging crew's 500 documented incidents of graffiti vandalism, including the vandalizing of a quarter mile long wall in the Los Angeles riverbed.

Christian Gheorghiu is named as one of the MTA "crew" and specifically named in the request for injunction against him and nine others to prevent them from profiting off their "unlawful marketing." If granted, the injunction would prevent those ten from selling photographs of their illegal graffiti and from carrying "graffiti tools"—paint, markers,

pens and pencils—in public between 10 pm and 5 am. Christian Gheorghiu is a sensation in the Los Angeles art world. He gained brand recognition for his nickname "Smear," by tagging it thousands of times across the walls, lampposts and riverbed of Los Angeles. The City has had success with similar injunctions in the case of gangs, but Gheorghiu has no past gang convictions. On June 21, 2012, the *Los Angeles Times* reported that the city settle the suit with the Defendants and that cases against Gheorghiu were dismissed under terms of the settlement. According to the *Times*, the settlement provided "the city and defendants agreed to an injunction that prohibits crew members from associating with each other in public, possessing graffiti tools, and staying out past 10 p.m." "However, the city agreed not to enforce the injunction against eight of the defendants as long as they refrain from any "graffiti vandalism" and complete certain requirements . . ." Because the gang did not answer the suit, an injunction was issued against the gang and can be enforced against its members.

Phoenix, Arizona adopted another innovative approach. It created a sting operation called Street Art Productions (SAP). The sting involved undercover police officers from Phoenix and surrounding communities posing as a California production company. Purportedly, SAP was making a documentary film about graffiti. Fliers were placed on poles near schools, in convenience stores, in hip hop shops, and anywhere that vandals might see them, asking "street artists" to call the SAP studio to schedule a screen test. When "street artists" called the undercover police interviewed them and asked them to come in for follow-up on-camera interviews. SAP interviewed several on camera about their graffiti and asked them to demonstrate their talents on large pieces of butcher paper taped to the studio wall. During the course of the interview, when a "street artist" bragged about previous works of graffiti that had not been removed, the "director" asked to film it. Some of the vandals eventually led the undercover officer movie crew to sites showing off their "art" while discussing their creations. The interviews helped Phoenix refine its anti-graffiti program as it helped the city better understand motivations and deterrents to graffiti. This greater understanding enabled the city to strengthen its program.

Updating the Model

Earlier in this paper, we suggested a fresh look at the 1995 IMLA Model Ordinance on the basis of new experience and technological change. The areas we believe could stand modernizing are few and speak well of the reasoned judgment that went into the first IMLA work product. Taking them in the order first presented, education merits review on the following grounds:

Graffiti vandalism is a crime of values. Taggers, for example, have no respect for the property of others. And with the current strain on juvenile justice resources, it is unlikely that fear of punishment will serve as a deterrent in the foreseeable future. Consequently, it would be prudent to look at the education component of new anti-graffiti law or programming as an opportunity for creative diversion and alternative sentencing programs. The standard community service/graffiti cleanup can actually be counter-productive in that it slows down the rapid abatement response that is important to

deterring repeat vandalism, and it frequently puts vandals together with other vandals on work crews for long periods of time.

An alternative being explored is the diversion of juvenile graffiti vandals to youth court or teen court programs. Usually limited to misdemeanor cases not involving drugs or violence, youth courts are staffed with adult volunteers and are a voluntary choice of the offender and the offender's parents or guardians. They involve few paid professionals and bring youthful offenders into the program structure, first as defendants and, eventually, as part of the adjudication team. Community service sentences are not limited to graffiti cleanup, but can involve a range of community volunteer programs. Teen vandals can be assigned tasks in food banks, Habitat for Humanity projects and other programs. They work with other young people, many true volunteers, not court ordered workers. Adapting pre-sentence diversion in this fashion can place graffiti vandals in a setting supportive of change and among young people with the values we hope they will embrace.

As to law enforcement, one area that looks to need the review, due to technology changes, is that of supply-side controls.

In-store signs, required to announce the ban on sale of various graffiti implements to minors, need to be reviewed. Since 1995, there has been a massive reduction in the number of hardware and similar small stores. "Big box" stores have proliferated in the US. In these stores there are few interior walls at checkout stations upon which to post signs. However, there are checkout computers that can be programmed to stop each time the bar code of a regulated item passes over, triggering a prompt to check for proof of age. The Model could be improved by adding an exception to the sign requirement for anyone using such a computer prompt.

Earlier, this paper acknowledged the expanding Internet offerings of potential graffiti instruments. Experts consulted during the *Vincenty vs. Bloomberg* case estimated that there are 1,000 Internet sources for aerosol paints, markers and other products used for graffiti.

In Europe, spray paint brands such as Belton and Montana, with production capacity in the millions, cater specifically to the graffiti market.[6] The Internet is an electronic bridge between those companies and producers of legal and illegal graffiti in America.

The message here is not that supply-side controls are futile. Prudent sales and display standards are important to maintaining responsible retailing practices, and to limiting illegal purchases and theft. The message is that we should be looking for new ways to have Internet businesses comply with the laws of the jurisdictions into which they sell, including the tax laws.

[6] Official Montana web site <wwwMTNcolors.com> Retrieved 9/8/11.

Finally, we have learned a great deal about abatement. Municipal abatement professionals now know that rapid, efficient cleanup and orderly due process to get property owners to abate graffiti can take very different amounts of time. "Zero tolerance"-- wiping out new graffiti within 24 to 48 hours -- requires fast access to vandalized properties. (Remember the example of the tagger circling the four corners.) In that case, permission to clean up the property becomes more valuable than having the owner abate the graffiti after notice, hearing, appeal, etc.

Consequently, some jurisdictions will often abate graffiti on private property free of charge, if the property owner or manager has signed a permission-to-access. This does not require major ordinance changes. Language that gives the jurisdiction the option to perform the service free of charge can be enough.

The City of Philadelphia was among the first to set up "zero tolerance zones" where graffiti abatement was conducted uniformly on all permitted property. The methodology was to clean a portion of a neighborhood one day, and, the next day, go over that same area, cleaning up any new graffiti, before moving on. The following day, the process was repeated. If the jurisdiction has the option of cleaning non-government property and the signed permission for access, such an approach is possible.

There are other ways to promote graffiti abatement without undue cost to property owners. The District of Columbia, in cooperation with local paint retailers, provides graffiti clean-up kits to residents and local businesses. The New York City Mayor's Office, with donations from a major US paint manufacturer, has provided a similar service to neighborhoods for several years.

In most instances, assisting the victims of graffiti crime with abatement will be better community relations and a far more cost-effective course than proceeding against them legally.

Foundations, Federal Grants and Funding Ideas

At the beginning of this paper, the authors noted the widespread financial constraints being experienced by many local governments. Acknowledging the fact that many of the program components set forth in this paper involve costs, we approached an expert in the juvenile justice field and an experienced grant manager, Scott Peterson, the founder and CEO of Global Youth Justice, LLC (www.globalyouthjustice.org). In response, he shared with us an extensive compilation of resources covering a wide range of potential program components. We share that compilation with you here as an Appendix. Global Youth Justice is an excellent information and educational resource on a large range of topics, among which are funding sources, grant application, alternative sentencing for juveniles, and youth court/teen court organization and training.

In looking for program funding from outside the community it might help to remember that, while grant money might not be available for the specific program you wish to fund, it might be there for another of your program areas, thus freeing up local funds, or it

might be available to fund an approach that will deliver the same or similar results as that program for which funding is needed.

Additional Information Resources

As more local governments establish web sites, information gathering and direct access to knowledgeable individuals should become easier and more cost effective. However, in the development of local ordinances and their integration into comprehensive anti-graffiti programming, the following are recommended as sources for information on the topic.

- International Municipal Lawyers Association (IMLA), formerly the National Institute of Municipal Law Officers (NIMLO).

Based outside Washington, D.C., in Bethesda, Maryland, IMLA is a non-profit professional organization that has been an advocate and valuable legal resource for government attorneys since 1935. IMLA provides its more than 2,500 U.S. and Canadian members continuing legal education courses; research services; litigation assistance; webinars/teleconferences; the bi-monthly publication, The Municipal Lawyer; and bi-weekly e-newsletters and frequent alerts on emerging issues.

Of particular value to local governments or attorneys drafting new laws or amendments will be the IMLA Model Ordinance Service. Combining the organization's extensive research and legal drafting capabilities, the Service can provide assistance and direction in shaping ordinance language on virtually any subject addressed by local governments. IMLA can be reached by phone: (202) 466-5424; by fax; (202) 785-0152; or by E-Mail: info@imla.org. This e-mail address is being protected from spambots. You need JavaScript enabled to view it.

- The National Council to Prevent Delinquency (NCPD).

The NCPD is a nonprofit corporation, funded by the paint and related industries, to combat the illegal or dangerous misuse of consumer products, particularly by young people.

The Council's Anti-Graffiti Project maintains extensive municipal program and ordinance information, and provides assistance in community programming and implementation. NCPD also serves as a networking resource, collecting actual ordinances and program language and helping governments and community groups access that information, and appropriate resource personnel. In addition, the organization maintains a members' regulatory information service, which provides retailers with local jurisdiction compliance information on sales and display restrictions for potential graffiti implements. The NCPD can be reached by phone: (410) 897-9209; by fax: (410) 897-9205; or by E-Mail: info@anti-graffiti.org. The NCPD web site is www.antigraffiti.org.

Appendix

FOUNDATIONS, FEDERAL GRANTS and FUNDING IDEAS

(Criminal & Juvenile Justice, Foster Care, Youth Development and More)

Register with Grants.Gov
http://www.grants.gov/

Find Grant Opportunities on Grants.Gov
http://www.grants.gov/applicants/find_grant_opportunities.jsp

Developing Quality Grant Proposals
http://georgewbush-whitehouse.archives.gov/government/fbci/grant-proposals.html

Federal Grants Catalog at the Office of Faith and Community-Based Initiatives
http://www.whitehouse.gov/government/fbci/grants-catalog-05-2006.pdf

Federal Financial Grants Management Training – Calendar w/Locations.
http://www.esi-bethesda.com/OJPtraining/locations.html

The Foundations Center – Listing of the top 100 Foundations with Links.
http://foundationcenter.org/findfunders/topfunders/top100assets.html

The Foundation Directory On-Line – need to be subscribed.
http://fconline.fdncenter.org/

State and Local Foundation Directories
http://foundationcenter.org/getstarted/topical/sl_dir.html

Grant makers for Education Lists – About 150 Foundation Links!
http://www.edfunders.org/about/members.asp

The Grantsmanship Center
http://www.tgci.com/funding.shtml

The Chronicle of Philanthropy
http://philanthropy.com/

American Honda Foundation
http://corporate.honda.com/america/philanthropy.aspx?id=ahf

American Legion Child Welfare Foundation
http://www.legion.org/cwf/grantseekers/overview

The Andrus Family Fund
http://www.affund.org/Contact_Us.html

Annenberg Foundation
http://www.annenbergfoundation.org/

Annie E. Casey Foundation
www.aecf.org

Atlantic Philanthropies
http://atlanticphilanthropies.org/

Bank of America Foundation
http://www.bankofamerica.com/foundation/

Ben & Jerry's Foundation
http://www.benjerry.com/company/foundation/

Bill and Melinda Gates Foundation
http://www.gatesfoundation.org/Pages/home.aspx

CarEth Foundation
http://www.proteusfund.org/programs/careth-foundation/about

Catholic Charities USA
http://www.catholiccharitiesusa.org/NetCommunity/Page.aspx?pid=1707

Charles Lafitte Foundation
http://www.charleslafitte.org/thefoundation.html

Charles Stewart Mott Foundation
http://www.mott.org/

Citi Foundation
http://www.citigroup.com/citi/foundation/

Daniel and Florence Guggenheim Foundation
http://www.dfguggenheimfoundation.org/

Eckerd Family Foundation
http://www.eckerdfamilyfoundation.org/

Edna McConnell Clark Foundation

http://www.emcf.org

Education Foundation of America
http://www.efaw.org/

Evelyn and Walter Haas Jr. Fund
http://www.haasjr.org/

Ewing Marion Kauffman
http://www.kauffman.org/grants.cfm?topic=fundingguidelines

Ford Foundation
http://www.fordfound.org/

George Gund Foundation
http://www.gundfdn.org

Goldman Sacs Foundation
http://www2.goldmansachs.com/foundation/

Harry and Jeanette Weinberg Foundation
http://www.hjweinbergfoundation.org/index.htm

Hearst Foundations
http://www.hearstfdn.org/

Heinz Family Philanthropies
http://www.heinzfamily.org/aboutus/philanthropies_02.html

Hitachi Foundation
http://www.hitachifoundation.org

Home Depot Foundation
http://www.homedepotfoundation.org/

International Youth Foundation
http://www.iyfnet.org/section.cfm/32

Jack Kent Cooke Foundation
http://www.jkcf.org/

James Irvine Foundation
http://www.irvine.org/

Kauffman Foundation
http://www.kauffman.org/

Kellogg Foundation
http://www.wkkf.org/default.aspx?LanguageID=0

Key Bank Foundation
https://www.key.com/html/key-foundation-philanthropy-banking.html

Knight Foundation
http://www.knightfoundation.org

Kresge Foundation
http://www.kresge.org/index.php

Lily Foundation
http://www.lillyendowment.org/theendowment.html

Lumina Foundation
http://www.luminafoundation.org

Lynde and Harry Bradley Foundation
http://www.bradleyfdn.org/

MacArthur Foundation
http://www.macfound.org

Mazda Foundation
www.mazdafoundation.org/grantguidelines.html

McCormick Foundation
http://www.mccormickfoundation.org/

Merck Family Fund
http://www.merckff.org/programs.html

Mertz Gilmore Foundation
http://www.mertzgilmore.org/

MetLife Foundation
http://www.metlife.com/about/corporate-profile/citizenship/metlife-foundation

Morgan Family Foundation
http://www.morganfamilyfoundation.org/

Morris Stulsaft Foundation
http://www.pfs-llc.net/stulsaft/index.html

Nellie Mae Education Foundation
http://www.nmefdn.org/

Norman Foundation
http://www.normanfdn.org/

Omidyar Network
http://www.omidyar.net/index.php

Open Society Institute - US Programs
http://www.soros.org/initiatives/usprograms/focus

Open Society – Youth Action Fund
http://www.soros.org/initiatives/youth/focus_areas/action

Open Society – Criminal Justice
http://www.soros.org/initiatives/special/focus/criminal

Open Society – Transparency and Integrity
http://www.soros.org/initiatives/usprograms/focus/transparency

Pew Charitable Trusts
http://www.pewtrusts.org/our_work_category.aspx?id=72

Proteus Fund
http://www.proteusfund.org/about

Public Welfare Foundation
http://www.publicwelfare.org/

Rockefeller Brothers Foundation
http://www.rbf.org/programs/programs_show.htm?doc_id=472520

Sierra Club Foundation
http://www.tscf.org/

Smith Richardson Foundation
http://www.srf.org/

Solidago Foundation
http://www.solidago.org/funding-strategy

Sparkplug Foundation
http://www.sparkplugfoundation.org/

Staples Foundation
http://www.staplesfoundation.org/

Starr Foundation
http://www.starrfoundation.org/whoweare.html

State Farm Foundation
http://www.statefarm.com/about/part_spos/grants/foundati.asp

State Street Foundation
http://www.statestreet.com/company/community_affairs/global_philanthropy/overview.html

Stuart Foundation
http://www.stuartfoundation.org/

Surdna Foundation
http://www.surdna.org/

Tides Foundation
http://www.tides.org/

The Tow Foundation
http://www.towfoundation.org/about_mission.htm

Verizon Foundation
http://foundation.verizon.com/

Wallace Global Fund
http://www.wgf.org/

Wallace Foundation
http://www.wallacefoundation.org/Pages/default.aspx

Wal-Mart Foundation
http://walmartstores.com/CommunityGiving/203.aspx

Walter S. Johnson Foundation
http://www.wsjf.org/

William and Flora Hewlett Foundation
http://www.hewlett.org/

William T. Grant Foundation
http://www.wtgrantfoundation.org/index.htm

W.K. Kellogg
www.wkkf.org/

State Level Grant Contact Links and Resources

The Find Funder's Foundation Finder – Search by State
Select your state for a free listing of foundations in your state with links to most. http://foundationcenter.org/

Philanthropy News Digest Listing of Employment Opportunities by State.
http://foundationcenter.org/pnd/jobs/

The Grantsmanship Center's Map of Local Funding Listed by State Top Grant Making Agencies by State, Top Community Foundations, Corporate Giving Listed by State, and State Government Homepages.
http://www.tgci.com/funding.shtml

State and Local Foundation Directories: A Bibliography
http://foundationcenter.org/getstarted/topical/sl_dir.html

GRANTS 101 - Learn a little about grants before getting started!
http://www.ojp.usdoj.gov/grants101/typesoffunding.htm

Office of Justice Programs (OJP) State Administering Agencies Federal Funding from the Office of Justice Programs (OJP), United States Department of Justice to include BJA, NIJ, OVC and OJJDP.
http://www.ojp.usdoj.gov/saa/index.htm

Office of Juvenile Justice and Delinquency Prevention (OJJDP) State Contacts Includes State Representative, Juvenile Justice Specialist, EUDL Coordinator, DMC Contact, JABG, State Community Prevention, State Planning Agency, and SAG Contacts.
http://www.ojjdp.gov/statecontacts/resourcelist.asp

Coalition of Juvenile Justice Listing of State Contacts
http://www.juvjustice.org/states.html

OJJDP's State Advisory Group Training Grant/DSG.
http://www2.dsgonline.com/sag/ConstituentRosters.aspx

State and Local Listing of Youth Justice/Juvenile Justice programs called Youth Court, Teen Court, Peer Court, Student Court, Youth Peer Panels.
http://www.globalyouthjustice.org/Youth_Websites.html

State Listing of Reentry Activities and Resources at the Office of Justice Programs (OJP)
http://www.reentry.gov/sar/welcome.html

Office of National Drug Control Policy's State and Local Resources
http://www.whitehousedrugpolicy.gov/statelocal/index.html

State Listing of Local Police Athletic Leagues (PAL) Programs
http://www.nationalpal.org/index.php?option=com_mtree&Itemid=24

State Listing of National Council of Juvenile and Family Court Judges
http://www.ncjfcj.org/content/view/942/526/

National Juvenile Justice Network Members Listed by State
http://www.njjn.org/members_public.html

State Offices for the Relay for Life @ The American Cancer Society
http://www.relayforlife.org/relay/relaymap

State Profiles of Underage Drinking Laws
http://alcoholpolicy.niaaa.nih.gov/state_profiles_of_underage_drinking_laws.html

State Listing of Organizations Working to Stop Youth being Prosecuted as Adults
http://www.campaignforyouthjustice.org/parents-resource-center/find-your-state-contacts.html

State Contact Information for Communities in Schools (CIS)
http://www.communitiesinschools.org/about/where/

Listing of Juvenile Detention Alternative Initiative (JDAI) Sites by State
Annie E. Casey Foundation's Juvenile Detention Alternative Initiative.
http://www.jdaihelpdesk.org/Pages/ReplicationSiteDocuments.aspx

State and Regional Offices for the Substance Abuse and Mental Health Services Administration (SAMHSA) within the U.S. Department of Health and Human Services.
http://www.samhsa.gov/about/regions/index.aspx?from=carousel&position=2&date=12292010

Service in Your State: Corporation for National and Community Service
Senior Corps, Americorps, Learn and Service, VISTA, MLK Day, State Service Contacts.

http://www.nationalservice.gov/about/role_impact/state_profiles.asp

State Listings for the Education Department to include Contact Information, Resources, Data, Dropout Statistics and more.
http://wdcrobcolp01.ed.gov/Programs/EROD/org_list_by_territory.cfm

State Offices for the Children's Defense Fund
http://www.childrensdefense.org/state-offices/

United States Child Data
http://www.childrensdefense.org/child-research-data-publications/us-state-child-data.html

State Fact Sheets at the Act 4 Juvenile Justice
http://www.act4jj.org/factsheets_state.html

Association for Conflict Resolution State and Regional Contacts
http://www.acrnet.org/Sections.aspx?id=145

National Bar Association (NBA) State Contacts
(Oldest and Largest National Association of African American Lawyers and Judges)
http://www.nationalbar.org/nba/affiliates.shtml

Search for Upcoming Justice Related Trainings by State at NCJRS
http://www.ncjrs.gov/App/eventscalendar/CalendarMainPage.aspx

Federal Per Diem Rates Listed by State and Locality
http://www.gsa.gov/portal/category/21287

Contact Your State Governor and Legislature
http://www.usa.gov/Contact/Elected.shtml

Contact your State's Two (2) United States Senators
http://www.senate.gov/general/contact_information/senators_cfm.cfm

Contact Your State Representative in the United States Congress
https://writerep.house.gov/writerep/welcome.shtml

State Contacts for Students Against Drunk Drivers
http://www.sadd.org/scoordinators.htm

Listings for Parent Teacher Association (PTA)

http://pta.org/jp_find_your_pta.html

The Sentencing Project State Map
State Data to Include Juveniles in Custody, State Corrections Populations, etc.
http://www.sentencingproject.org/map/map.cfm

State Contact Information for Volunteering for Special Olympics
http://www.specialolympics.org/program_locator.aspx

State Listing of OJJDP Funded Local Tribal Youth Programs
View more than one hundred (100) OJJDP funded local Tribal Youth Programs
http://www.tribalyouthprogram.org/map

State Law-Related Education Offices and Websites
(Civics, Law-Related Education (LRE), Service and More)
http://www.youthforjustice.org/state.html

State Map for links to State and Local Level Bar Associations
http://www.americanbar.org/groups/bar_services/resources/state_local_bar_associations.html

United Way - State Contacts
http://apps.liveunited.org/myuw/

National Center for Justice Planning
http://www.ncjp.org/state-agencies

Interstate Compact on Juvenile Justice
http://www.juvenilecompact.org/Directory.aspx

Kids Count Data Listed by State, Territory, and DC
http://datacenter.kidscount.org/data/bystate/Default.aspx