“Am I under arrest?”

It was not a question that a middle-aged lawyer with no criminal history, but who moonlights as an architecture critic, was accustomed to asking a police officer. But this was a new place — the only major city in New England that this potential troublemaker had previously never visited — and the cop had certainly made clear that the tourist he was addressing, on a downtown street corner within sight of a big, gleaming McKim, Mead & White building, was not free to go.

“Don’t make me embarrass you,” said the gendarme, apparently having decided that his mark was the sort of fellow inclined to avoid a public scene. Actually, with no one around but strangers, the traveler was almost curious enough to call his bluff. Ultimately it was not fear of embarrassment but fear of wasting an otherwise pleasant Saturday afternoon that led the miscreant to acquiesce and follow the cop into the nearby shopping mall where two stern-faced security guards joined them.

Call this brush with the law a case of attempted architectural photography.

Charles Follen McKim, whose building looked down on the crime scene, might have appreciated the caper, though his work was not directly implicated. Rather, the architecture in question came from Arrowstreet, the Cambridge-based designers whose retail accomplishments include everything from the imposing CambridgeSide Galleria to the folksy false forest of the Centerra Marketplace owned by Dartmouth College. Just as McKim had once re-created the Baths of Caracalla over the tracks of the Pennsylvania and Long Island railroads in Manhattan, here in a major southern New England city, Arrowstreet had cantilevered a cathedral of commerce (complete with Gothic arches) over a...
set of busy railroad tracks — at the very spot where the tracks themselves cross a river.

The building is designed so that one cannot be distracted from the important act of shopping by these intriguing structural facts. Rather, it is only from the sidewalk along busy Francis Street that what appears at a distance to be a courtyard proves to be a space open to the river and the railroad below. An otherwise undistinguished commercial building is suddenly a bridge, and there is the faintest hint of the pleasure one gets out of the Ponte Rialto in Venice or the Ponte Vecchio in Florence.

The pleasure was short-lived in this instance, however, because the visitor had dared to pull out his camera as he strolled down Francis Street and to aim it at the river and railroad tracks below. A mall security guard indignantly marched up to the tourist and instructed him that photography was prohibited. Outraged, the travelling critic snapped — his shutter, that is. The guard began chattering urgently into his two-way radio, summoning the aforementioned official representative of the city’s constabulary.

A word here about Francis Street, cameras, and architecture. As best a visiting attorney is able to ascertain without conducting a title search, Francis Street is a public thoroughfare, in a city with a visitors’ bureau that is actively promoting the kind of tourism that should reasonably be assumed to include photography. An attorney who is also an architecture writer quickly grows accustomed to being hassled by security guards when wandering into privately owned but publicly open buildings and taking pictures of the architectural features in plain view. Indeed, the lawyer/critic in question was once thrown out of a different Arrowstreet project — a Hannaford Brothers supermarket in another great New England city — for precisely this transgression. On that occasion, the visitor was openly accused of industrial espionage, presumably on behalf of a competing supermarket chain.

Ultimately, no spy ring was busted in the Case of the Francis Street Caper. No threat to the republic or to public order came to light by detaining a shutterbug who didn’t fit even the most imaginative terrorist profile. Once inside, the security guards suggested that their suspect could resolve the situation by identifying himself and explaining his purposes. Our hero gave the guards his business card and explained that he was a tourist in their fine city, not wanting to complicate things by admitting so shady an avocation as architecture criticism. After successfully demanding the opportunity to inspect the driver’s license of the perpetrator, they set him free, kept the card, and warned him that he could soon be hearing from the mall’s lawyers about “trademark” violations.

**But Was It Legal?**

Exactly how risky is photographing a building from a public sidewalk without permission? Not very, according to Peter J. Gardner, an attorney at Stebbins Bradley Harvey & Miller in Hanover, New Hampshire, and chair of the New Hampshire Bar Association’s Intellectual Property Law section. He starts by noting that it’s a question of copyright rather than trademark law — and that both are federal statutes applicable throughout the country.

Architectural designs do enjoy protection under the federal Copyright Act, according to Gardner. But, he adds, the law specifically allows the taking of photographs as long as the building is “ordinarily visible from a public place.”

“That said, it may be prudent for those who wish to photograph buildings to note that while they may indeed have certain rights under copyright law, they may be prevented from availing themselves of those rights if, as a practical matter, they must trespass to do so,” said the intellectual property expert. In other words, stay on that sidewalk!

The lesson of the parable is not that shopping malls need to do a better job of briefing their security personnel about intellectual property law (since they ought to know the difference between a trademark and a copyright, the former being obviously irrelevant to this situation). Nor is the lesson that something is profoundly rotten in our culture when the supposedly public architectural realm has been so thoroughly privatized that it is no longer possible for a person who loves buildings to take pictures of design features that seem interesting. That struggle was lost long ago, as part of a greater losing battle for excellent public-spirited architecture.

Rather, the lesson is that things have gone too far when private security forces are in league with the police in an effort to deter the architecturally curious. That is why our suspect snapped (photographically speaking) when first confronted, and why every architect and every American who cares about architecture should start packing a concealed weapon in the form of a camera.

Whatever these building owners have to hide is something that urgently needs to be exposed. 

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