When buildings fail: ethics for the worst-case scenario
Unabridged version

Note: Frequently manuscripts must be abriged to fit the space that is available. The article, "When buildings fail: ethics for the worst-case scenario", which ran in the October 2006 issue of Architectural Record is just such a case. This is the full version, originally titled, "To err is human . . . to respond ethically is sublime."
— The editors of *Architectural Record*.

By Eugene Kremer, FAIA

By thinking about ways design professionals should respond to catastrophic building failures, we can also gain insight about dealing ethically with less extreme construction malfunctions that architects frequently encounter.

Few architects are unaware of tragic building failures during recent decades. Perhaps best known is the July 1981 Kansas City Hyatt Regency skywalk collapse taking the lives of 114 during a Friday evening tea dance. The loss of life was limited to four in the May 2004 roof collapse at Charles de Gaulle Airport only because it occurred in early morning. It is still anguishing to contemplate the chaos, vast destruction and massive loss of life that would have resulted had the potential collapse of the 59-story Citicorp Tower in midtown Manhattan not been averted during the summer of 1978.

Understandably, these and many other building disasters were the subject of extensive attention in the public and professional media as well as painstakingly detailed investigations that sometimes led to significant advances in building codes, techniques and design practices. Beyond these rational explorations, it is clear that many architects still respond viscerally as they recall these crises because, as we all recognize despite impeccable care, the design and construction of even the simplest building unavoidably involves risk.

In the course of routine professional practice as we deal with apparently mundane problems – code interpretations, zoning variances, roof leaks, budget overruns, fees -- we recognize the necessity to serve interests that are often in competition, if not at odds, with each other. We are charged to serve clients, the public health, safety and welfare, to advance the usefulness of the profession, and, of course, there are obligations to partners, employees, consultants and creditors, as well as to our families and ourselves. Charting an ethically sound path through this thicket is often daunting,

Regrettably, there has been scant systematic study of professionals' ethical decision-making in the face of crisis. Although few of us will directly encounter such disastrous events, if we do we will be under great stress and enormous time pressure to make thorny ethical choices. Those decisions are ever more difficult and the stakes are by definition far higher for everyone involved in times of crisis when structural collapse and loss of

life are threatened, or when a disaster has occurred. There is rarely opportunity to mull what actions to take in these circumstances. Yet we can find little or nothing in the way of explicit counsel for codes of professional ethics and resources like *The Architects' Handbook of Professional Practice* characteristically focus on risk management, risk avoidance, conflict resolution and the like rather than offering advice on dealing with disaster, impending or existing.

Drawing upon the thinking of people within and beyond our profession, this article offers ideas for preparing to deal with crisis, explores alternate strategies for responding to looming disaster and to the aftermath of tragedy or its avoidance. We conclude with a general framework for professional ethics decision making in crises.

ADVICE FOR DEALING WITH DISASTER

The AIA ethical standards, largely based on the NCARB Rules of Conduct adopted by most state licensing boards, do not establish ethical norms that might serve as helpful guidelines for architects encountering building disaster.

Acknowledging the scarcity of resources available to architects faced with crisis, Victoria Beach, AIA, of the Harvard Design School, observes that the profession "seems to retroactively adjudicate rather than proactively solve ethical matters." She explains, "Architects and clients tend to come to the AIA chapter ethics committees or the AIA National Ethics Council after they perceive an ethical lapse to have occurred." She regrets that these venues are most often used for "petty turf wars rather than profound professional quandaries." To strengthen architects' ethical insight and capacity, Beach initiated the Boston Society of Architects Ethics Forum, a monthly round-table for practitioners.

The paucity of guidance available in ethical codes and practice handbooks for choosing a course of action when a crisis arises often leads architects to turn to members of their firm trusted for their wisdom and willingness to offer thoughtful counsel. But, Bob Berkebile, FAIA, a participant in the joint venture that designed the Kansas City Hyatt Hotel, recalls, "I found the most valuable [ethical] advice came from family, spiritual and mental health counselors and attorneys not involved in the failure." In his experience, counsel offered by his lawyers and insurance company, the AIA, and fellow professionals was shaped by their perceived roles or it was largely based on incomplete, often misleading media reporting.

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In searching for the right course of ethical conduct, architect and practicing attorney Bill Quatman, FAIA, reports that he sometimes says to his clients, "OK. It is two years from now. You are in a deposition or in court and are asked how you handled this situation. What do you want your answer to be?"

A proactive strategy is advocated by Professor Michael Davis, of The Center for the Study of Ethics in the Professions at the Illinois Institute of Technology. He recommends that offices designate a little time monthly to discuss ethical responses to crises -- as well as more routine situations -- "while there is leisure to think them through … and weigh up alternatives. Firms may even want to designate an ethics officer to provide advice, write opinions in response to queries," and otherwise counsel colleagues.

"Lack of preparation is what is unethical," says public relations professional, Joan Capelin, Hon. AIA, who calls for "vigilant scrutiny of work and work relationships at the partner level that bespeaks quality procedures and mature acceptance of responsibility." She insists that every office ought to develop and maintain an up to date crisis plan incorporating 24/7 contact information, a prepared first responder and staff designated to ensure effective communications internally and externally.

IN THE FACE OF LOOMING DISASTER

Avoid Public Panic

One of the most difficult decisions for an architect when there is evidence that a design or construction fault could cause a building collapse, is how much to tell the users and the public and when to tell it. The implications can be serious. Do you avoid creating panic by remaining silent, or by making ambiguous or false statements while focusing on mitigating or resolving the problem? Should you remain silent when others – owners, professionals, public officials – make misleading or untrue public statements?

"No matter what, tell the truth in real time," argues writer, educator Andrew Pressman, FAIA, observing that the era in which paternalism by professionals was normative has passed. If the professional's role is that of honest collaborator, he believes remaining silent when others mislead the public "is simply not an option."

Others embrace less forthright approaches. In an effort to reduce the likelihood of false public statements and avoid panicking the public, Bob Berkebile advocates opening dialog about the danger with a limited group of stakeholders, progressively widening that circle as the situation is clarified and as a collaborative approach to its solution is developed. Only then would the larger public be informed. Observing that crises "can make reasonable people unreasonable and logical people illogical," Berkebile might forego public challenge to a misleading statement if he saw opportunity to engage the speaker and redirect his strategy.

"In government we don't have 'secret' as an option," says New York City Buildings Commissioner, Patricia Lancaster, FAIA, Yet, she acknowledges, "We think very carefully about who is told, what they are told and when they are told." To avoid making actively misleading comments, she advocates responding with "no comment." Rather than directly challenging false assertions by others, she counsels "we question the validity of the statement," followed by "no further comment," thereby encouraging public scrutiny.

Joe Demkin, AIA, long-time executive editor at the Institute, identifies avoiding panic as "an ethical obligation since panic itself could compromise safety and produce harm." He then reminds us of the AIA Code of Ethics' unequivocal demand: "Members speaking in their professional capacity shall not knowingly make false statements of material fact." Conceding that ambiguous or false statements made to avert panic may not violate the law, he cautions that countenancing them heightens the risk of harm to people and property if a failure occurs.

Focusing on architects' relationship with clients in the event of crisis, Joan Capelin urges openly acknowledging the problem and cautions against defensiveness. She encourages architects to make clear that the priority is actively rectifying the fault wherever responsibility for the crisis may lie.

Differentiating between personal and professional morality, Michael Davis explains that if a profession mandates candor in its members' communication, anything short of that has "the same moral standing as outright lying for the rest of us." Professional status brings with it added moral obligation and Davis cautions, "Instinct is a poor guide in a new environment," He points out that, as with the rest of architecture, architectural ethics must be learned.

Actively Inform Owners and Users

Deciding to inform building users and the public of a looming disaster so they may act in what they perceive to be their self-interest engenders another set of issues. What if this strategy risks what proves to be unnecessary disruption of personal, civic and business activity as well as additional public safety agency expenditures? Might the strategy increase the likelihood of damage claims and public relations debacles for owners, design professionals, localities and others that would have been avoided if the danger had not been disclosed and the problem were safely resolved?

Citing architects' overriding obligation to protect public health, safety and welfare, management consultant Peter Piven, FAIA, warns that concerns about potential business disruption, additional government expenses, and damage suits are unavoidably secondary to that responsibility.

When an architect is convinced that there is a threat of calamity Joseph Demkin argues risking disruption should not trump revealing that conclusion. Substantial amounts of time and sums of money are expended annually because of all sorts of threatened disasters that never occur, and Demkin reminds us that although "hoaxes are prosecutable under law, legitimate warnings are generally tolerated even when they cause unnecessary disruptions."

Cautioning against acting precipitously without sufficient information to substantiate a safety risk, Bill Quatman, too, affirms the ethical duty to inform. He recalls a court case involving the failure of an engineer to report an un-shored trench that collapsed killing a worker. His defenses – that construction site safety was not in his contract and that the worker's supervisor saw the trench – were rejected by the court. As a professional, the engineer was obliged to act when he recognized the safety risk. Faced with a known risk to safety Quatman counsels that the professional should inform the client that the danger will be made public and invite the client to issue a joint disclosure or otherwise collaborate in revealing the problem. Ultimately, a client's desire for secrecy cannot override the obligation to disclose.

Concurring that professionals must inform stakeholders of looming disaster, Bob Berkebile is concerned nonetheless that once the danger is revealed to the public, media speculation, law suits and the actions of other interest groups can undermine efforts to study the situation and effectively resolve the crisis.

Michael Davis declares, "Candor is not cost free. If it were, our moral life would be much easier." He warns of the consequence of maintaining a secret for a time only to have it revealed and to be accused of a cover up which, when combined with the initial problem, transforms a public relations problem into a debacle, stimulates a suit, or sullies reputations. Even when a secret is maintained, "Success does not make a moral wrong any more right -- even as it makes it seem more attractive," says Davis.

ONCE DISASTER HAS BEEN AVERTED OR HAS STRUCK

Avoid Public Comment

After resolution of a crisis or in the aftermath of a disaster, design professionals must again weigh the potential consequences of ethical choices they confront. Is it best to evade, avoid or refuse public comment or to share the available information? What if knowledge and understanding are still incomplete? Even if that is not the case, what consideration is merited by the possibility of legal action arising from the crisis or the

disaster? What if silence heightens the likelihood of denying the lay public access to information of value in protecting itself from risk? Or, denies design professionals of insight that might advance their knowledge and skill? Or, denies regulatory agencies of understanding that might lead to useful reform?

Observing that demand for information varies directly with the significance of the threatened calamity or the disaster, Joseph Demkin acknowledges the risks of sharing information before all the information is at hand. But, he also points to the likely risks of withholding information: suspicion and diminished confidence, loss of future commissions and even legal challenge. Demkin sees it as "unethical for the design professional to deny peers, the public and regulatory bodies information that could reduce future risk in buildings."

Cautioning against withholding valuable information Andrew Pressman advises care to avoid making assumptions about what is not yet known. If the professional is not centrally involved, Pressman favors "guarded, qualified public comments based on what is known … or [on] very general principles."

Complete silence is likely to worsen the situation says technology journalist Kenneth Jacobson. When information is fragmentary, he advocates forthrightly acknowledging that and counsels that although "legal constraints can weigh against disclosure … maintaining silence would be equivalent to placing personal or legal concerns before the public interest."

In the view of structural engineer Matthys Levy, "Disclosure to the professional audience should be as complete as possible as a guide to avoiding similar future situations." On the other hand, Levy, co-author with Mario Salvadori of *Why Buildings Fall Down* lucidly explaining to lay readers the causes of many major building collapses, reveals a change in his outlook. "If a problem has been resolved, even after a disaster, there is no reason for public disclosure in more detail than to indicate that the problem has been resolved." In discussing his present position, Levy cites contemporary insurance and litigation concerns as well as the risk of "confusing" nonprofessionals with more technical information than can be absorbed.

Going further than Levy, Peter Piven urges cognizance "of the importance of timing," in speaking about a crisis. He argues that the needs of professionals and the public for information "are not paramount" and can be deal with "when the architect's risks are minimized."

Bob Berkebile conjectures that, "Delaying the release of information to the public might in fact improve the quality of information which in turn would improve professional insight and reduce risk." He points out that early public disclosure can elicit insurance claims and lawsuits resulting in delays in the dissemination of information needed for reform of professional practice and regulation.

Share Available Information

The architect who decides that quickly and forthrightly sharing available information with affected parties, regulatory agencies, fellow professionals, and the public is the sound ethical choice may encounter additional challenges. What if disclosure is contrary to the wishes of the client? Might the client insist that the design professionals sign a confidentiality agreement? Could sharing such information increase the likelihood of damage claims, and public relations debacles for the client, the design professionals, the locality and others?

Sharing information "should be the basic goal, keeping in mind that speed can be the enemy of accuracy and that forthrightness, when offered up thoughtlessly, can lend itself to being sensationalized," observes Kenneth Jacobson. While acknowledging the concerns of clients, risks of lawsuits and public relations calamities, he believes that those concerns must be secondary to safeguarding public safety.

Although cautioning against speculation, Andrew Pressman believes that if accurate, specific information is at hand, to should be divulged for "There is no better public relations than telling the truth." He says it is essential for the design professional to forthrightly share information "as soon as it is known," thereby enabling clients and the public to exercise their right to autonomy in decision making.

If a disaster results from a known design flaw, Joseph Demkin asserts that a client's desire for secrecy cannot prevail. He points out that our legal system does not incorporate architect-client privilege and Rule 3.401 of the AIA Code of Ethics permits the professional to "reveal a confidence that is contrary to other ethical duties … or to applicable law,"

Affirming that "the architect must disclose," if the public is at risk of injury, attorney Carl Sapers argues for sharing information about a problem with those able to effect remedies. He reports that at the time the danger of collapse in the John Hancock building was recognized the repairs were made amid public secrecy but the new knowledge was immediately given to the appropriate professional committee and incorporated in the structural steel code. In considering a client's demand for a confidentiality agreement, Sapers believes the architect must consider whether disclosure would advance the profession's knowledge base "and is therefore worth fighting for."

William Quatman states emphatically "The client does not dictate ethics to an architect." Viewing damage claims in such cases as unavoidable, he advocates early public disclosure since delay is likely to engender charges of a cover up, thereby compounding the public relations damage for all involved. His view is consistent with Joan Capelin's observation, "The court of public opinion will get you, long before the court of law is ready to try the case."

A CONCEPTUAL FRAMEWORK

Victoria Beach offers a conceptual framework for engaging professional problems that should provide a useful starting point as we grapple with vexing ethical choices in crises. Employing the rubric *Others First*, Beach proffers a hierarchy of professionals' responsibilities: "always serve the public first, then client, then craft and colleagues (the latter two perpetuate the professional's capacity to serve the former two)." By definition, professional careers are focused on service to others rather than on self-interest which is therefore assigned the last position in the hierarchy. It follows then that "if keeping a professional secret serves only yourself and harms others you should tell." Pursuing that logic further, "you should tell if your client's interest endangers the public interest."

It may be inevitable that even among experienced thoughtful professionals and academics there will be disagreement on the ethical appropriateness – and potential consequences – of alternate courses of action when architects are confronted by crises. Or, perhaps the diversity of views we encountered affirms not only the difficulty of the issues but the need for continued dialogue that might help move our community toward shared ethical understandings.