Professionalism Redux*

*This is the text of a Currie lecture which Mr. Sapers gave to the College in 2002.

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While my topic is the role of the architect in the twenty-first century, I intend to focus on some of the history and some of the forces that have led inevitably to the decline and degradation of all professional life in America. Many of those forces have impacted lawyers and physicians in ways similar to their effect on design professionals.

I confess to being a true believer in the professional’s role in our democratic society, and therefore devoutly wish that much of what I am about to relate had not taken place; that the golden period for the professions, the first half of the twentieth century, had persisted; and that the high fiduciary obligations that had characterized medicine, law, and architecture had not been denigrated and largely abandoned. That prejudice, now acknowledged, will explain why, at the end of this article and in the face of much adverse evidence, I fan a few embers in the hope that professional stature may be reawakened in the new twenty-first century.

To understand the basis of professional status in the golden age, I turn first to Professor Robert Gordon of Yale, an acute observer of the legal profession:

Professions are grounded on a distinctive set of relations of authority and trust between the professional and patients/clients who are relatively dependent because they are in a condition of uncertainty, and must seek the advice and treatment of others who have the skill, knowledge and experience to deal with the condition. The client’s need generates the demand for the professional’s service; this dependence and the client’s lack of the specific knowledge required, produces the need to trust in the professional’s skill, judgment and devotion to the client’s welfare. This view makes of the professional-client relationship much more than the sale of specialized technical services. The core of the professional’s work is in the cultivation of relations of trust and confidence with people in need and making complex discretionary judgments on their behalf while under fiduciary obligations to the client.

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One of America's great teachers of medicine at the Harvard Medical School, Francis Moore, began his mid-twentieth century textbook by stating: “The fundamental act of medical care is assumption of responsibility . . . complete responsibility for the welfare of the patient.” In the early 1970s, I wrote this description of the architectural profession in the golden age:

The architect, like the lawyer and the physician, is a problem solver. The client's program is the problem; designing a physical plan to meet the client's needs is the solution. The skilled architect commands a wide knowledge of the possibilities. He or she customarily narrows the choices and presents the client with realistic possibilities, taking into account the program, the budget, and the public requirements for the project. There is no correct solution, particularly because the weight given to each factor will vary with the client's needs . . . . Because the client does not command a knowledge of the possibilities, the client must rely on the architect’s exercise of discretion on the client’s behalf. The fiduciary duty arises from that relationship in the same way that it arises between the physician and the patient, the lawyer and the client.

In that golden age, professionals were satisfied to live comfortably but seldom lavishly because the scruples of higher standards of conduct—the standard of the fiduciary—limited the professional's opportunities to grow rich. The English barrister with his robe adorned with a crepe envelope hanging down the back was expected to leave the courtroom contemplating lofty notions of justice while his grateful client raced after him to stuff pound notes in the crepe envelope. This was a perfect metaphor for the professional's indifference to financial reward.

Perhaps the root cause of the professional's fall from grace has been the end of that indifference. Once we judged our success by comparing ourselves with our peers; now we judge our success by comparing ourselves with our clients. We no longer are indifferent to financial reward.

To satisfy the ambition to grow richer, architects (like lawyers) have expanded, merged, and created megafirms. A profession once characterized by small scale and an attachment to a single personality, in the last 50 years has seen firms growing to hundreds, even thousands, of employees, anonymous firm names replacing eponymous names. Thus, The Architects Collaborative, not Gropius & Partners; Rogers, Taliaferro, Kostitsky & Lamb became RTKL Associates, Inc.

The client dealt with a corporate service provider and received a corporately generated design. Within the large firm, another sea change occurred. Once the architect had focused on service to his client; now he was required to serve his partners as well, and
ultimately the obligations within the large firm to colleagues dwarfed the obligations to the client. The firm obligates itself to a large space lease and invests in expensive equipment. Substantial financial obligations are incurred, demanding that each principal assume a duty to his colleagues to work at least a minimum number of chargeable hours, to make his jobs profitable, and, with increasing frequency, to restrict his posttermination activities so as to leave his clients behind with the firm. None of these new pressures focused on obligations to the client; all embraced obligations to the firm. Except for restrictive posttermination covenants that most state bar rules prohibit, all of the same centripetal pressures developed in law firms and medical group practices over the same period.

No history of the professions’ fall from grace can omit the critical role played by the antitrust division of the Justice Department. Until the 1970s, professionals flourished under the protection of anticompetitive rules imbedded in their Codes of Conduct, including prohibitions against advertising, prohibitions against bidding for work, rules requiring adherence to fee schedules, and rules forbidding supplanting of one professional by another unless the first had been “properly terminated.”

How was all of this anticompetitive behavior justified? The Sherman Act forbids unreasonable restraints of trade or commerce. Surely, argued the professions, none of us is engaged in “trade or commerce.” Until the National Society of Professional Engineers challenged the Justice Department on this issue and lost in the United State Supreme Court in 1978, some respectable observers thought the professions had a legitimate argument. However, the NSPE case settled the question and exposed the professions to the harassment of anti-trust claims. The American Institute of Architects, in particular, suffered a heavy financial loss in Mardirosian v. American Institute of Architects, which successfully challenged its rule against supplanting. The AIA reacted to Mardirosian by abrogating its Code of Ethics and abandoning the professional conduct field to the state registration boards for nearly a decade.

Formerly, professionals disdained marketplace competition; now, pressed by the Justice Department, they embraced it. Professionals began to advertise, engage PR firms, and cut their fees to win commissions.

The demise of the professional architect was accelerated by

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harassing professional malpractice claims. Since 1960, exposure for professional negligence has grown exponentially. In Southern California, where the onslaught has been the fiercest, many architects have chosen to avoid liability exposure by abandoning full-service practice and by offering only preliminary design services. Thus, gifted designers, like Pelli and Gehry, both products of Southern California, developed practices largely limited to preliminary design. Generating construction documents and serving as the architect of record has become a technical service of production houses which appropriately budget for insurance to cover their exposure.

The liability crisis in turn impacted how architects practiced in another way. When a case in court was lost or even when a case seemed to have a large loss potential, the professional liability insurers put pressure on the AIA to modify the architect’s role set out in the standard documents. In response to a Louisiana boiler explosion lawsuit, the description of the architect’s construction phase duty was changed from “supervision” to “administration of the construction contract.” In response to the failure of a bracing wall in Arkansas, the architect’s right to stop the work was deleted from the standard forms. More recently, insurers have responded to a leaky curtain wall case in Oakland by urging their insured architects explicitly to negate any implication that they are fiduciaries. In each example, the insurers’ pressure to reduce exposure at the same time reduced the architect’s authority.

As important as the reduction in authority has been in shaping the architect’s diminished role, I want to focus on the other branch of the tree: the abandonment of full service architecture. Even as Gehry, Pelli, and others were limiting their service to conceiving a design and leaving to different firms the responsibility for implementation, another force pushed in the same direction—a new enthusiasm across America for engaging non-US architects to design major and conspicuous works: architects from Spain, Holland, Switzerland, Japan, and England won commissions that two decades ago would have been awarded to local designers. None of these foreign architects holds US registration and all of them skirt our licensing laws. In nearly every case, they followed the path pioneered by Pelli and Gehry—a local production house would produce construction documents and act as the architect of record, while the foreign architect acted as a “design consultant.” Whether lawful or not, most of our state licensing boards have accepted this practice and no action has been brought to impede it.

These foreign architects have confirmed that two quite differ-
ent forms of practice can co-exist. A small group of gifted designers creates and a much larger group produces technical work. This split in roles has encouraged new notions of project delivery and new relationships between the architect and the rest of the construction community. This evolving relationship has most effectively undermined the architect’s professional status. It is useful, therefore, to explore the history of that relationship.

In 1860, Richard Morris Hunt went to court to recover the fee promised to him by one Parmly, a wealthy dentist and real estate developer, for the design of a townhouse in New York City. The contractor testified on Parmly’s behalf that Hunt’s plans were unnecessary and he, the contractor, could have built the house without them. Then, a professional architect as the essential creator of the design was a notion not generally accepted in America.

In fact, for the preceding 30 years, Jacksonian democracy disdained the idea of a professional elite in America. The prevailing view was that any citizen could cure illness, argue his case in court, or design buildings. Surely, it was argued, the craftsman who built the building understood its intricate parts better than these fancy young gentlemen, often educated in Europe, calling themselves “architects.”

This was the argument made by Parmly’s contractor when he took the stand against Hunt: a “professional architect” was of no use at all and any good artisan (like himself) could do the architect’s job just as well. He even testified that he had rejected much of Hunt’s work as useless. However, Parmly and his contractor lost the argument; Hunt, supported by testimony from most of New York’s architectural glitterati, prevailed, won his fee, and scored an historic victory for the future course of architectural practice in America. For the next 40 years, American courts, with increasing consistency, recognized that the architect, like the physician and the lawyer, was a professional and should be judged by the special standard applicable to professionals: they need not be right; they need only exercise reasonable care.

In the late 1850s, the same glitterati who testified on Hunt’s behalf joined with him to explore the formation of a professional organization for architects and gave birth to the American Institute of Architects. From the AIA’s beginning, its meetings involved passionate debate over the question of who would be eligible for membership. In 1864, Calvert Vaux proposed that membership should be opened to include carpenters, masons, and others connected with construction. However, another member
promptly moved to adjourn the meeting and successfully squelched Vaux’s proposal. Undaunted, Vaux raised the issue some months later and was told by another member that his proposal amounted to a confession that architects needed information to be imparted by technicians and craftsmen to discharge their responsibilities. Such an admission was unacceptable then and for most of the ensuing hundred years.

The inclusive idea raised its head from time to time over the life of the AIA, but it never succeeded. The prevailing view was that a professional architect did not need the association of technicians, craftsmen, contractors, and subcontractors in the chambers of his professional organization. The forces prevailing on exclusion also proscribed, in the first published ethical canons, participation by architects in the building trades. The 1923 version of the AIA Canons prohibited:

[Engaging] directly or indirectly in any of the building or decorative trades; and [accepting] any commission or substantial service from a contractor or from any interested party other than the owner.

During the Great Depression, the AIA stopped publishing ethical canons—perhaps viewed as a luxury that could no longer be afforded—but a set of Mandatory Rules finally was published in 1949. In somewhat different language, the 1949 rules repeated the earlier prohibition:

An Architect is remunerated for his services solely by his professional compensation, salary or fee and is debarred from any other source of compensation in connection with the work and duties which are entrusted to him; and

An Architect may not engage in building contracting [nor . . .] guarantee any estimate of construction cost.

The 1964 version continued the same prohibitions and added a comment that an architect who engages in building contracting would “have a conflict of interest which would be untenable . . . .” In 1970, however, in recognition “of new forms of practice,” an ethics study task force recommended, and the AIA adopted, a substitute rule prohibiting an architect only from having a financial interest “that would compromise his professional judgment and prevent him from serving the best interest of his client or employer,” unless the architect first obtained his client’s consent.

Currently, the AIA publishes Rule 3.201, which has abandoned altogether the principle that the client or employer is owed a special duty of loyalty. The current language forbids a Member from rendering:

. . . professional services if the Member’s professional judgment
Professionalism Redux

could be affected by responsibilities to another project or person, or by the Member’s own interests, unless all those who rely on the Member’s judgment consent after full disclosure.

In the commentary that follows, we are told that “those who rely” include a client, owner, employer contractor, or others who “rely on or are affected by the Member’s professional decisions.”

When the 1970 ethical change took place, it allowed the client’s consent to cure a conflict. The AIA had recognized that architects no longer would limit themselves to serving ONLY the traditional client; architects now wanted design-build arrangements and partnerships with members of the building trades and expanded opportunities to prosper. The AIA obliged. For instance, the current version of the conflict rule does not even recognize the special obligation to the client; now, all those who rely on the architect’s judgment are the beneficiaries of the rule. A fair reading of the current rule has the architect equally obliged to the bricklayer, the plumber, the general contractor, and the owner.

One of the generals leading the change in construction relationships is Charles Thomsen of Texas, who recently retired as CEO of the Houston firm 3DI. At various points in his remarkable career, he coined the phrase “fast track,” pioneered construction management, invented with George Heery the notion of “bridging,” ran CRS during its heyday, and successfully managed projects throughout the world. With becoming modesty, Thomsen, a trained architect, acknowledged that architects could not know everything. In an increasingly complex construction process, the architect needed the information and experience of the installer and the manufacturer. “Today,” he has written, “most of a building is built from an industrialized product. For those products, the detailed knowledge of construction technology lies with specialty subcontractors and manufacturers.”

Central to his vision is the failure of architects to stay abreast of the information flow necessary to build complex projects. The design, then bid, then build process that had dominated American construction for more than a century needed to be replaced with a method that facilitated this information flow. “Bridging” begins with an architect who designs the aesthetic features of a project and ensures the functional features and the durability of the project by carefully crafted performance specs. A design/build team then takes over, first producing construction documents that meet the performance specs and incorporate the aesthetic choices of the original architect, and then building the project. As a result, the subcontractors and manufacturers work with the design/build team to create a technologically informed and cost-
effective project. If the owner wants pink walls, that first architect requires pink walls as part of the aesthetic specification. Except for the performance characteristics, the owner does not care about what is behind the wall or above the ceiling; those decisions are made by the design/build team.

Thomsen's argument that these new forms of project delivery are necessary because the architect does not know enough to lead the process on the owner's behalf echoes the contractor's testimony against Hunt 150 ago. However, project delivery in the twenty-first century involves new players as well. In particular, there is a hunger for management. The introduction of the project manager and construction manager to act as the owner's chief advisers in the construction process has subordinated further the architect's professional role.

The Judicial Office Building next to Union Station in Washington, D.C. exemplifies the new ways of delivering projects. The building was programmed and schematically designed by a project manager and a government bureaucrat. It then was put out to bid to developer/financiers under a build-own-transfer arrangement. Each developer/financier had a contractor and architect as part of its team. The winning team had Edward Barnes, the distinguished American designer, as its architect. Barnes never talked with the building users! He designed within the narrow boundaries of the program and conceptual design already fixed by others. The interiors were done by another architect, who exchanged little information with Barnes. My architectural students, green behind the ears, have no trouble pointing out the multiple design opportunities lost in this process. For a distinguished architect like Barnes to have accepted this commission in 1988 may mark a low point in the fortunes of the architect as a professional. Edward Larabee Barnes was not a fiduciary on the Judicial Office Building; he was a technician, selling construction documents.

Another milestone came when a powerful architectural firm, HOK, insisted that it was not a fiduciary at all in its design and construction administration of an office building in Oakland, California. It argued that the conventional wisdom as to the architect's role was simply beside the point; one should look only to the explicit language of the architect's contract to comprehend its duties to the owner; no implied duty of loyalty and fidelity should be inferred. Turning much of history on its head, HOK pointed out that Turner Construction Company (under A-111, which describes the contractor in language descriptive of a fiduciary) had assumed the role of the owner's fiduciary while the
Professionalism Redux

architect (under B-141), which has no such language, had not. HOK lost the argument and the lawsuit in which the argument was raised. I cite the case as another step in the apparent descent of the architect from high professional status to a more modest technical role.

With this rather grim picture of architectural practice I have been painting, it seems unlikely that the golden age of professional life in America will be restored in the twenty-first century. The exception that I am about to describe either proves the rule or undermines it. Time will tell. Also, one may accurately point out that the extraordinary journey of Frank Gehry may tell us only about him and not reveal a trend for the new century. With some confidence, however, I can say that my students at Harvard at least see Gehry’s firm as an important model for their careers, rather than Thomsen’s 3D1, RTKL, HOK, Gensler, and the other corporate architecture firms. If Gehry is shaping the aspirations of young architects, Gehry’s journey cannot be set aside as irrelevant to future practice.

When I last mentioned Gehry, it was as an example of a firm that had largely limited itself to front-end design. The journey we now examine began in 1988. That year, the architectural selection committee of the proposed Disney Music Hall, to be built on Bunker Hill in Los Angeles with $50 million donated by Lillian Disney, selected the Gehry firm over three eminent foreign architects. Gehry was expected only to do a preliminary design and then transfer the production and implementation to Dworsky & Associates, another Southern California firm. Gehry received a construction budget of between $85 and $95 million to serve as a guideline. Also, Gehry was told that he should do his best design work, without compromise.

Gehry began to design a concert hall with acoustical properties comparable to the Berlin Philharmonic Hall and an exuberant exterior design with arcs and warps in multiple directions. At about the same time, Gehry was commissioned by Barcelona to design a pavilion for the 1992 Olympics, and he chose to design the sinuous fish, which became the Olympics’ symbol. The fish posed unique skin and structural design problems.

During this period, roughly 1990, Gehry made two strategic alliances. The Italian contractor Permasteelisa was engaged to construct the Barcelona fish. A Seattle architect, Jim Glymph, joined Gehry’s firm. Glymph introduced Gehry to the Catia software system made for aerospace design. Catia creates virtual models by precisely locating every point mathematically. By trial and error, Gehry used the Catia system to refine a 3D model of
the fish for Barcelona. The structure was developed and construction instructions were transmitted digitally to Permasteelisa's computer in Italy, where the fish's complicated curving skin and structure were fabricated.

While this experimental work with Catia was going forward, the Disney Hall working drawings were being prepared by Dworsky. Dworsky produced a thick set of hundreds of conventional, orthogonal plans, sections, and elevations. When those conventional construction documents were submitted to contractors, the lowest bid came in at nearly double the budget guideline. The contractors were protecting themselves against embarking on a complexly designed project they only partially understood and layered their bids with protective fat. When the bids were received, the Committee shut down the project, and Gehry was blamed for the catastrophic miscarriage of Mrs. Disney's generosity. He was regularly attacked in the press, and for a while, he contemplated moving his office so he would not constantly need to defend his Music Hall design.

In 1991, Gehry was awarded the Guggenheim museum in Bilbao, Spain. Here was a project in scale and exuberant design comparable to the Disney Music Hall. For Bilbao, Gehry took the lessons learned on the Barcelona fish and applied them from the beginning. Gehry would not pass this project off to a production house; rather, his firm would do it all. After many years, he was a full service architect again. Permasteelisa, by now entirely comfortable with Catia, cut stone and metal in accordance with Gehry's master digital instructions. The only use of paper on Bilbao was to serve as an index to the virtual information communicated via Catia software. Bilbao came in on budget.

In 1997, with the success of Bilbao assured, Gehry was again approached by the Disney Hall Committee and asked to resurrect the project. Using his Bilbao experience, Gehry began again. This time, with the innovations he had pioneered, the Music Hall proceeded successfully and opened to great acclaim in the fall of 2003.

To imagine how Catia works, you must remember its previous application was to airplane design; plane bodies were designed and refined on computer. Gehry always had begun his designs with three-dimensional models. Now he could refine and perfect the model on computer. Catia dealt with the precise curves and bends in the refined details. The money was in the most complex details and the Catia system would alert the architect to the most costly aspects of his design by quantifying them. The architect could test the acoustical design, wind loading, and...
shadow movement on the 3D digital model. Moreover, Catia could ensure the coordination of the mechanical, electrical, and structural elements of the design. Finally, and most significantly, it became a communication tool for forwarding instructions to the manufacturers and the subcontractors.

When Gehry found Permasteelisa in Northern Italy, he found a contractor of great skill, dedication to quality, and capacity for experimentation. Like Disney Hall, Bilbao was nearly impossible to describe in conventional documentation. In Gehry’s new paperless world, his computer communicated directly to a sister computer at Permasteelisa’s headquarters in Italy; after decades of retreat, Gehry was directing the cutting of the building’s skin and structure.

Additionally, Permasteelisa was saving time and money. When a contractor has to think, the price goes up. In Gehry’s new world, the architect has assumed the thinking responsibility. Gehry puts the proposition more civilly: “Contractors,” he observes, “want the architect to be the daddy.”

Gehry’s triumph is not limited, however, to use of Catia and the power it confers on the architect. He has attracted such bright colleagues that his firm has the capacity not only to understand materials but to explore new fabrication and construction possibilities, when what is available is patently inadequate. You recall Thomsen’s insight that project delivery should be reorganized so that fabricators and installers who deal daily with the materials of their trade should be encouraged to select the materials and systems rather than entrusting the choice to architects.

Thomsen’s observation doubtlessly is correct if you go to a subcontractor to ask him to deliver what he has always delivered in the past; it is probably in error if you seek innovation.

When the Gehry firm won the commission to design the Condé Nast cafeteria in Times Square, Gehry promised to drape the hall with multi-curved glass resembling the glass on Gehry’s office building in Prague, which the client admired. The Prague building was of such a scale that the illusion of multi-curved glass could be achieved by assembling small, flat, glass panels. In contrast, Condé Nast was a small space, and Gehry was compelled to find a way to curve 12-foot sheets of glass in several directions at once. The glazing subcontractor said it could not be done. So, a Gehry partner imagined where he might find someone who could produce the needed glass and succeeded in locating a California shop that made automotive glass for concept cars. Using a digital master model controlled by Catia software, the partner and the concept car shop together figured how to make
molds and slump the glass to meet the design requirements for the Condé Nast project.

If architects seize a position of leadership after so many years on the margins, it will work a remarkable transformation of the construction industry. No doubt, design/build and its progeny will continue to flourish for cookie-cutter buildings. Indeed, such unchallenging projects may well be designed by computers—if our licensing laws can be thrust aside—without much, if any, human intervention. However, whenever commodity or aesthetics are of consequence, the architect as skilled problem-solver is essential. That architect will once again wear proudly the robe of a fiduciary.

As a postscript to my examination of the status of the design professional, it is fair to ask, “Why all this fuss about professions; are they after all necessary?”

We often hear the claim that professional work is so complex and requires the application of training, experience, and skill to particular problems. However, critics of the professions would contend that any service can be standardized and mechanized. One historian of the professions suggests that shoemakers a hundred years ago would have similarly claimed that every foot is different and that every shoe must be custom-made by a shoemaker, exercising judgment and discretion to adapt the last to each individual foot. Now we manufacture shoes to fit standardized sizes and force the consumer to accept the preset dimensions. The CIFE (Center for Integrated Facility Engineering) at Stanford has made a similar claim with respect to architecture. We can produce designs faster and more efficiently by entrusting the process to computers and the only price of doing so is like fitting feet to standard sized shoes: modest discomfort and lack of variety. Perhaps the answer is in our experience of the last few years; in the same state as CIFE, high design has flourished and eminent architects from around the world have been engaged to create that design.

The second criticism of professionalism arises from the resentment engendered by the client’s dependence on the professional’s superior knowledge and skill. The professional’s elite status has not set well in an egalitarian society. In 1993, the British parliament received the fruits of a study by one John Warne, which concluded with the recommendation that registration of architects in the United Kingdom be abolished. In his report, Warne emphasized the change in professional status since World War II. At the beginning of the period, professionals, including architects, were held in high esteem and treated deferentially by the public.
However, by the end of the era, the public had become better educated about the matters referred to professionals and had mastered more and more of their arcane knowledge. At the same time, the public began to appreciate its enhanced market power in dealing with professionals, and this deference toward professionals has all but disappeared. Chiefly on account of that change, Warne recommended that the privileged status conferred by registration on architects should disappear as well. Whatever the merits of Warne’s analysis, I would point out that we, in America, expect our professional architects to protect the interests of the public who use buildings and not just those of the client who commissions them; the UK is focused entirely on protecting the client’s interest.

In conclusion, and to address both arguments against professional status, I would submit the basic justification for professionalism advanced by Professor Gordon of Yale:

[P]rofessionalism solves problems that markets not only cannot solve but often exacerbate, the problems of supplying . . . disinterested judgment that is not for sale to the highest bidder, for a primary ethical orientation towards service [to] people in . . . need (a need that could easily be exploited by the unscrupulous). . . . Market forces cannot reliably produce these [services] and regulation cannot compel or guarantee their production. We still need people with the appropriate internal orientation to an ethic of service, care and quality; and we are not going to attract or produce them through profit incentives or micro-management. So the professional ideal is starting to look very appealing again just as the conditions for its effective institutionalization are eroding. The agenda should not be to scrap [professionalism], but to search for ways to nurture it.