The Castle of Pertinacity: A Contemporary Morality Play Set in Brooklyn

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This paper sportively adapts the genre of a morality play to present an actual case study of two building professionals who played significant roles in Brooklyn development over the last quarter century. The proceedings are set court, with the New York Department of Buildings (DOB) as Plaintiff. The defendants, Supersizer and Fixer, adamantly profess an ethical stance based upon using their expertise to assist clients in optimizing properties – namely, to build more square footage in less time. *Chutes and Ladders*, **the title of this paper session, is a fitting analogue to navigating the building permitting system in Brooklyn.**

The contribution of the paper to the discipline and practice of architecture is a discourse on ethics situated between the moral agency of a noble profession and the AIA's professional code of ethics. This case study is also pertinent to the discussion of the growing gulf between professional ethics and corresponding spheres of control. The graphic morality play format frames the situation to create a compelling portrayal of the complexity of ethical practice in the obstacle-ridden landscape of endeavoring to build in Brooklyn, New York.

LIST OF CHARACTERS

Ordinararycitizen

The Expeditors -- Supersizer and Fixer (as Good and Bad Angels)

Four Sins – Pride, Lechery, Blindambition, Greed

Four Virtues – Knowledge, Discretion, Beauty, Freewill

Plaintiff

Deceit

Loophole

Chattyrivals

Exper Testimony

Justice, Equity (the Judges)

INTRODUCTION

The discipline of architecture currently approaches ethics through two parallel, sometimes intersecting, and increasingly divergent pathways. One, is a little 'e'thical code that corresponds to practice standards; two, a big 'E'thical code that reflects the aspirations of a noble profession. The 'e' code is transactional – arising from the profession's agreement to self-regulate in exchange for a de-facto monopoly granted by the State. Self-policing occurs through various mechanisms including education, licensing, and the American Institute of Architecture (AIA) Code of Ethics and Professional Conduct. Although one might think that key role of the AIA's code is to protect the public, the most common infringements that get brought to the AIA's National Ethics Council entail the internal workings of the profession.[1]

Big 'E'thics is more like a professional moral code and embodies what motivates many individuals to become architects. As members of one of the 'noble professions, practitioners profess to be agents of the Good. The 'E'thical code addresses the realm of public advocacy (social and political influence) and cultural agency (design contributions). Zaha Hadid's 2014 comments regarding the construction worker deaths at the Al Wakrah Stadium in Qatar reignited a conversation about the widening discrepancy between the architect's perception of agency and their contractual responsibilities.

The objective of this paper is to expose an intense, gradated realm of conduct within the margins of this little 'e' verses big 'E' rubric. The paper introduces the moral, ethical and legal quagmire of building in Brooklyn through two court cases, *Dep't of Buildings v. Scarano* (filed in 2008),[2] and *Dep't of Buildings v. Schnall*[3] (filed in 2016) . "Ripped from the headlines" the identity of the two respondents has been changed. Numerous articles in the press, as well as the judges' final reports, provide the source material. The graphic morality tale will portray both cases, but the scope of this paper allots for one written example case, which will follow the background section on the workings of the DOB and an introduction to both defendants. These two cases portray a form of 'architectural activism' in which professionals 'push the envelope' in order to better serve their clients. Both defendants, Robert Scarano (the Supersizer) and Scott Schnall (the Fixer) passionately believed that not only were they innocent of wrongdoing but that they were at the top of their profession in Brooklyn.

Figure 1: The Plantiff. Brooklyn Department of Buildings, Copyright author.

Before we begin the case studies, a brief explanation of the reference to the morality play in the title of the paper and a refresher on terms might be helpful to set the stage for the reader.

The morality play is an apt analogy for telling a story on professional ethics in architecture. As in early morality plays such as Castle of Perseverance (est. 1405-25) and Everyman (1510), there is a tendency today to approach modern cannons of professional ethics as good versus evil. During the development of the genre over the two hundred years leading up to Shakespeare, characters (named after the trait they were designated to symbolize allegorically) gradually took on more nuanced portrayals of human behavior. By Macbeth (1623), evil is fragmented and hidden inside multiple characters, and Shakespeare leaves the audience to sort out for themselves which characters are evil, as well as determining the characters' objectives and motives.

In our modern Castle of Pertinacity Supersizer and Fixer, despite being accused by the Plaintiff of grievous and brazen violations of the building code and filing procedures, won the support of the New York City chapter of the AIA and many local architects. Like Shakespeare's audience and the local building community, the reader will be challenged to decide who plays Vice who plays Virtue.

Although the setting is in OATH court, the scenarios are not solely matters of law because the characters' moral and ethical behavior factors into the argument before the judges. Morality refers to intrinsic standards of human behavior differentiating right from wrong actions. These standards vary across culture and individuals, but morality is a core human characteristic --- an inner compass or "conscious." The realm of ethics connotes conduct guided by standards provided by an external source, such as professional codes of conduct or religion. The law is a systematic body of rules enforced by a controlling authority that regulates a community and the actions of its members.

SETTING

The DOB is a broken system, despite many attempts to fix it. The list of woes includes, in no particular order: inexperience of plan reviewers and inspectors, contradictions between code sections requiring interpretation[4], proliferation and lack of indexing of memos relating to current DOB interpretations, vast inconsistency between plan reviewers, and lack of enforcement.[5]

Indicative of the complexity of the DOB, the filing of building applications has become a job on its own. The people who do this are called expeditors.[6] Expeditors are to the DOB as accountants are to the IRS. In the early 1990s, expediters numbered 300 to 400; in 2014, there were more than 8,300.[7]

In the midst of New York City's financial turmoil in the '70s, the Department of Buildings introduced a procedure called Directive 14 to allow professionals to vouch for construction conformance. The aim was to address staffing issues and to streamline the construction site approval process. In 1995 options for limited review in the DOB's permitting process were introduced to allow architects and professional engineers (P.E.) to self-certify permit applications and objections. Self-certification enables an architect or P.E. of record to submit a permit application and bypass the DOB's standard plan review by signing an affidavit that the professional attests that the submitted construction documents are code compliant.

Many professionals were unwilling to assume the additional responsibilities due to the litigious climate in the construction industry.[8] As Judge Casey observed in *Dep't of Buildings v. Velasquez*, the prevalence of objections issued in the standard plan review process "confirms that zoning laws are complex, that reasonable professionals can disagree, and that the Department takes pre-screening (*plan review*) seriously."[9] (italics added by author) Self-certification of permit applications and construction site inspections opened up new income streams for those professionals willing to assume additional risk.

New York City experienced a rash of construction deaths and OSHA violations between 2002 and 2005. A majority of these safety issues happened on construction sites where inspections were occurring under Directive 14. Often these same jobs were also self-certified plan applications.[10] The DOB discovered enough professional anomalies in the process of

reviewing these jobs that it became clear that the audit rate used to monitor self-certified applications was too low to act as a check against misuse of the process. Also, the DOB's punishment options for architects and P.E.s were limited. Since the New York State Board of Education (SBE) held the power to revoke professional licenses, the DOB extended its powers by using the threat of forwarding cases to SBE to persuade architects/professional engineers (P.E.) to surrender their filing privileges voluntarily. In 2007 Assemblyman Brennen passed a reform bill. Part of the reforms allowed the DOB to fine architects and engineers.[11] The New York City Office of Administrative Trials and Hearings (OATH) was also empowered to hear cases and issue recommendations authorizing the DOB to suspend filing privileges. Professional societies (architects and engineering) were troubled about this expansion of power. Yet at least for the decade following the reform bill, the DOB showed discretion and focused enforcement on those "involving out-and-out fraud."[12] Professionals making errors in interpretation or lack of knowledge of zoning and building codes were shown some leniency.

THE BAD BOYS OF BROOKLYN

Self-certification, like expediting, became a profitable market for a small group of architects and professional engineers (P.E.) that trafficked in bulk. In this way, these firms were able to spread the cost of remedies, penalties, and litigation, and to grow business. At the height of the building boom, the Supersizer and the Fixer were each filing over three hundred (300) applications a year, many of them self-certified. With so much work in the local market, the Supersizer's office was able to claim,

> "Since its inception in 1985, our Brooklyn-based firm has developed a nucleus to provide both the public and the private sectors with a high quality of architectural services, resulting in our ability to provide a one-stop-shop for comprehensive architectural, design, expediting and consultation services at a level that eliminates any competition in these fields."[13]

At the time of the OATH court hearings, both the Supersizer and the Fixer each had over a quarter of a century of experience working in Brooklyn. Each built their reputation and grew their businesses based upon a locally renown ability to bring added value to his clients through working (within) the system.

MEET BOB "THE MAGIC"

> "That was the line: Go to Bob, he'll get you a bigger building than anyone else."[14]

> "S. & Associates is a multi-award winning team comprising more than 55 professionals and averaging approximately 200 projects per year. His (*the Supersizer's*) work has won myriad awards and, in recent years, has become synonymous with the revitalization and reclamation of many of Brooklyn's most distressed areas..."[15]

In order to understand the Supersizer's impact, in 2006 one merely needed to look across the skyline of Brooklyn identify the 'finger' buildings that stuck up above the surrounding context.[16] The New York zoning code controls floor area, and many Brooklyn neighborhoods at the time had no height limitations. The 'finger' buildings are higher than their surroundings because the Supersizer doubled the floor to floor height and inserted mezzanines in between. These mezzanines were fitted with fake floors so as not to count as habitable floor area at the time of the final inspection. At the closing, the seller's real estate agent would suggest to the new condo owners that it might be nice if they removed the fake floor to increase the floor to ceiling height from 5' to 7' and, while they were at it, that they might consider creating an opening in one of the walls. There the happy new owners would find a bathroom hidden behind the sheetrock, conveniently adjacent to their new bedroom!

At the time of the 2008 indictment, the Supersizer was not a first time offender. Two years earlier he caught the ire of then-Councilman Bill de Blasio by self-certifying an application for a building ten stories above what was eventually ruled a 6-story as-of-right height in the future mayor's neighborhood.[17] The 2006 case included other self-certified job applications as well, and hinged on the Supersizer's close-reading of the zoning code that sparked a series of creative (the Supersizer's clients' perspective) or fraudulent (judge's findings) maneuvers including provisionary floors, secret rooms, adding roof decks on other properties owned by the client into the calculations,[18] and other 'interpretations' of the zoning code. The DOB alleged that at least 17 of the Supersizer's 299 city projects were bigger than allowed by law[19] and also that he failed to guarantee safe conditions at a building site on Ocean Parkway where a worker was killed in a wall collapse.[20] The Supersizer was unrepentant, blaming his "chatty rivals" for initiating the DOB investigation "as a way of slowing him down,"[21] claiming the mezzanines a development of historical precedents, publicly stating,

> "I do not believe that the controls should be so rigid that there can't be some exceptions or exclusions. Those are the best jobs."[22]

The 2006 case was settled internally with the DOB. The Supersizer gave up his ability to self-certify in a backroom deal with the head of the DOB in exchange that the DOB neither request action from the State Board of Education nor release evidence found during the investigation that might have been relevant to a construction worker's death.[23]

Figure 2: The Fixer. Original image bby Joshua Bright for *The New York Times*, manipulation by author.

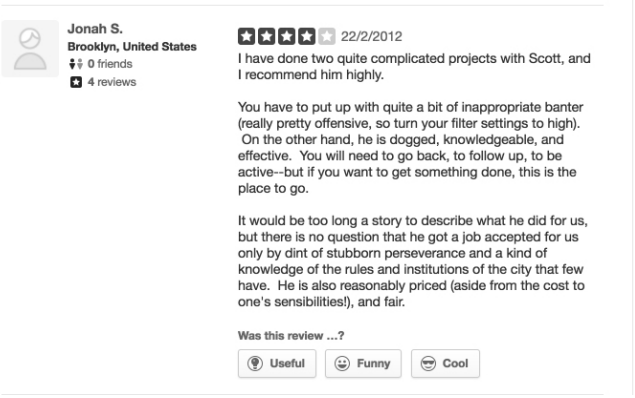

Figure 3: Brownstoner forum entry, February 2, 2012.

MEET "BETTER CALL SCHNALL"

> "One expeditor told me that the good ones are like procedural gurus. The bad ones are more like rats running through a maze."[24]

The Fixer was considered the guru in Brooklyn. Upon graduating from engineering school in 1990, The Fixer joined his father, Judson (an architect) in the family business founded by his grandfather in 1936.[25] As the Fixer states in his go-fund-me page,

> "…(we) have always worked through the ever changing (sic) and often archaic Building Department procedures to obtain legal and lawful approvals to allow people to renovate or sell their buildings or open their businesses. Sometimes this would require a professional decision to navigate the archaic system to get the necessary approvals."[26]

As a Professional Engineer (P.E.), the Fixer was eligible to stamp and file drawings. In testimony before the OATH court, he claimed that since taking the business over from his father in 1999 he filed between 10,000 and 20,000 plans with the DOB.[27]

That he could seemingly fix a myriad of situations for his clients, including avoiding triggering a change of occupancy in multi-family house conversions, allowed many doing business with him to overlook his character. Jonah S. (figure 3) on the Brownstoner forum indicates politely what a visit to his place of business might entail.

The 2014 New York Times article "Renovating? Don't Forget the Expediter," quoted the Fixer complaining about the process at the DOB,

> "You go back and forth and back and forth. That could take one day or one million days. It's true. The whole system is much more screwed up than you could ever imagine…. My expediters can get to the D.O.B. at 5:30 a.m. and leave at 2 p.m. with nothing done. In the real world when you have 20 things to do and you get them done, that's success. In this world, when you get two things done you get excited."[28]

He cleaned up his act quite a bit for the public record.

THE CASES

In June 2008, administrative charges were filed again against the Supersizer following a special investigation. The DOB filed against the Fixer in July of 2016 as the result of audits of eleven alteration applications filed between 2010 and 2014.[29]

Each case had multiple charges regarding multiple filing applications. The 'smoking gun' in the Supersizer's case was a seemingly innocuous city light post, discovered when an audit revealed the Supersizer submitted allegedly fraudulent surveys and misleading photos regarding the location of the post. What follows is a synopsis of this case as presented to the OATH court by the DOB.

"IT IS A SMOKING PEASHOOTER"[30]

Per New York City Department of Transportation (DOT) Guidelines a lamppost must be at least seven feet away from the edge of the curb cut of a driveway. The post shown below was originally 4' inside the curb cut of the driveway occupied by the white van.

In order to move a street light, a request must be made to DOT. DOT received and approved a request from the Supersizer in December 2006. They required that the pole be moved 21' feet. Not only did the relocation require considerable

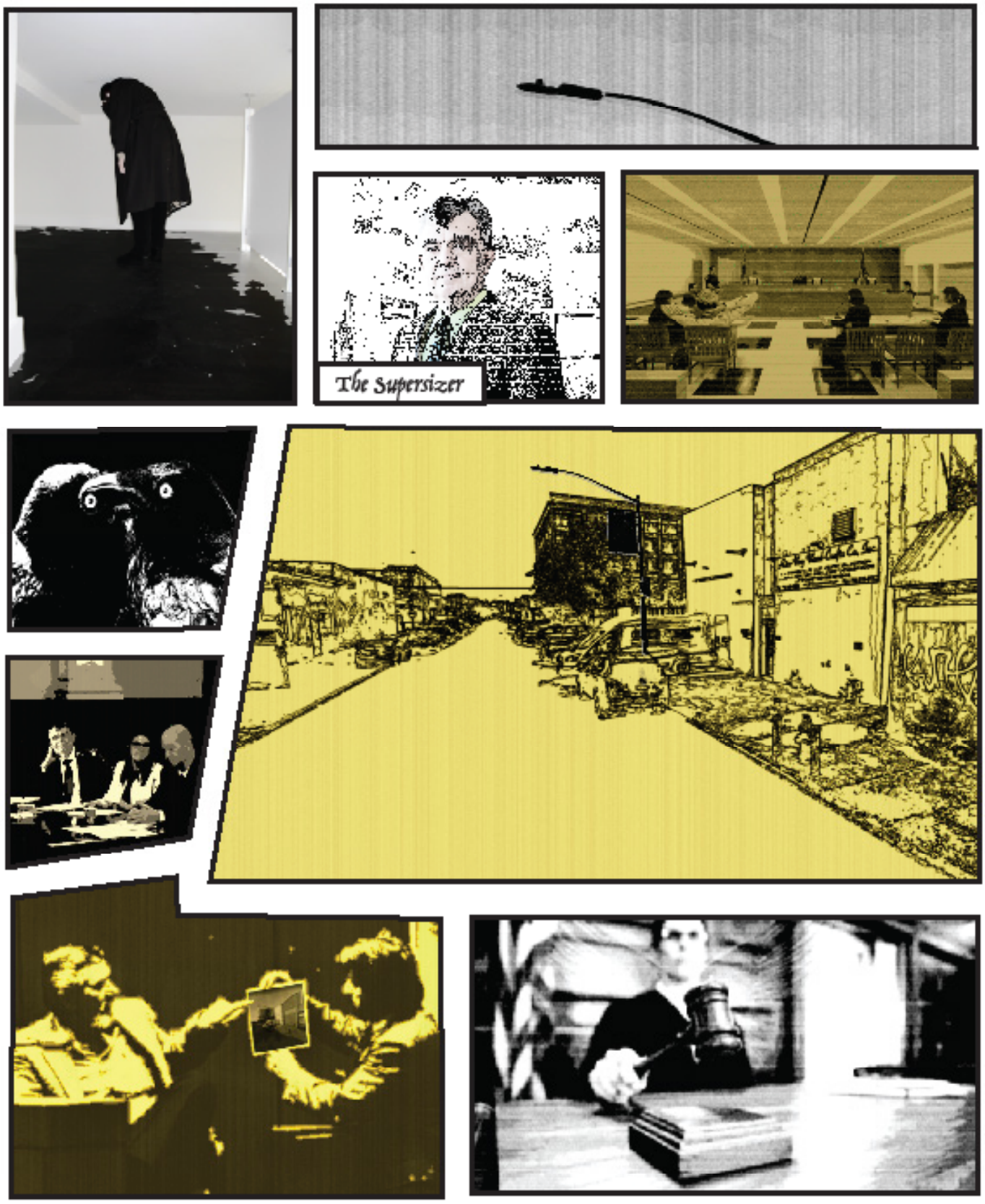

Figure 4: Morality Tale Panel 1. (clockwise) 5' Tall mezzanine with fake floor; The Shifty Lampost ("smoking peashooter"; The Supersizer; 2006 Hearing; Chatty Rivals; The Site of the Alleged Duplicious Action; OATH Court; Testimony; Judgement. Copyright the author.

expense to be paid by the property owner, but it also placed the post in a location which impeded the owner's (a contractor) planned use of the public sidewalk.

In 2008 the Supersizer began procedures to close the permit, including the submission of a series of site surveys and photographs allegedly intended to show that the lamppost had been moved. In October 2008 he submitted an affidavit to the DOB certifying the final construction sign-off could be issued.[31]

The post had not been moved. The DOB charge was that the Supersizer schemed to move the sign-off forward despite the lack of compliance.

The Supersizer raised a number of defenses including that he felt an "ethical obligation" to his client not to let the DOB know that the pole was four feet into the driveway. Respondent also testified that his client was complaining about the cost of the job, lacked funds, and was reluctant to move the pole. The Supersizer claimed he was trying to elicit a "stronger objection" that he could show to his client, and say to him, "here, knucklehead. Fix this already, please."[32]

Judge Salzman's report captures the tone of the eight days of proceedings, "I find the defenses to these charges to be without merit, and, in part, disingenuous and incredible." She went on to write:

> "His testimony confirmed that he believed he could be less than forthright with the Department. But filing documents with the Department by a professional is not a cat-and-mouse game, with the filer hoping the Department will not catch a violation of the law. Rather, the architect has a solemn obligation to be truthful and forthright in his dealings with the Department of Buildings, so that the public servants charged with scrutinizing the professional paperwork filed for construction work in New York City can properly discharge their duties to protect the public safety. This is particularly so when the professional affixes his or her seal and swears or certifies the truth of the written statements being submitted to DOB."[33]

Other charges made by the DOB against the two Respondents (the Supersizer and the Fixer) included nomadic community rooms,[34] existing egress stairs changing locations on plans submitted in incremental filings, and a zoning 'double jeopardy' filing. The trial log discernably heats up in and out of the courtroom with Respondents calling clients "knuckleheads and babies," taking pride in "pushing the envelope," claiming their own professional experience and expertise trump that of the DOB's plan reviewers, disputing scope of work and professional responsibility, and alleging persecution by competitors and DOB vendettas.

'BROOKLYN' STANDARD OF CARE

lthough the OATH court cases are legal proceedings, both moral and ethical considerations apply due to the complexity of the building and zoning codes as well as internal and external contradictions between codes. A pivotal aspect for both judges was the proof of intent to deceive the DOB. The Respondents based their defenses on their expertise, testifying that their representations were neither false nor negligent, but were 'interpretations' of law that differed from the Department's interpretations. Here the reader is invited to decide for themselves what is ethical (and legal) behavior, and what the Respondents (defendants) objectives and motives were.

Tort law defines negligence as a professional's failure to exercise the proper *standard of care*.[35] The standard of care is defined by the AIA Standard contract as follows:

> The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. (AIA B 101 – 2007 Section 2.2)

Elliot Vilkas testified as an expert witness in the Supersizer's defense regarding the 'Brooklyn' standard of care, namely that professional experience is required to interpret the zoning and building codes in order to file a job with the DOB, and that this includes an expert understanding of such codes as well as previous approvals ('interpretations') by the DOB for other filings. When an applicant (architect or P.E.) receives the plan reviewer's list of objections, the response process begins with sorting out the non-applicable concerns, addressing drafting errors and omissions, and then responding to relevant code and zoning issues. In code issues requiring interpretation, experience and expert knowledge are on the side of most practitioners. The Supersizer's defense cited *Police Department v. Miller*, "Statements which are legitimately open to differing interpretations are neither false nor evasive."[36] The Supersizer's case included testimony that DOB architects Rahimi and Ribners approved plans that did not conform to code, and that an architect/PE cannot always rely upon the interpretation of the DOB. As a point of information for the reader, an approved drawing set does not entitle conditions that do not conform to code to be built. Judge Salzman's 'cat and mouse' game reference is not a poor characterization of what it can take to get a project approved at the DOB. In fact, one of the original intents of allowing self-certification was to remove some of the internal static in the DOB from the process by increasing reliance on a professional's knowledge and experience.

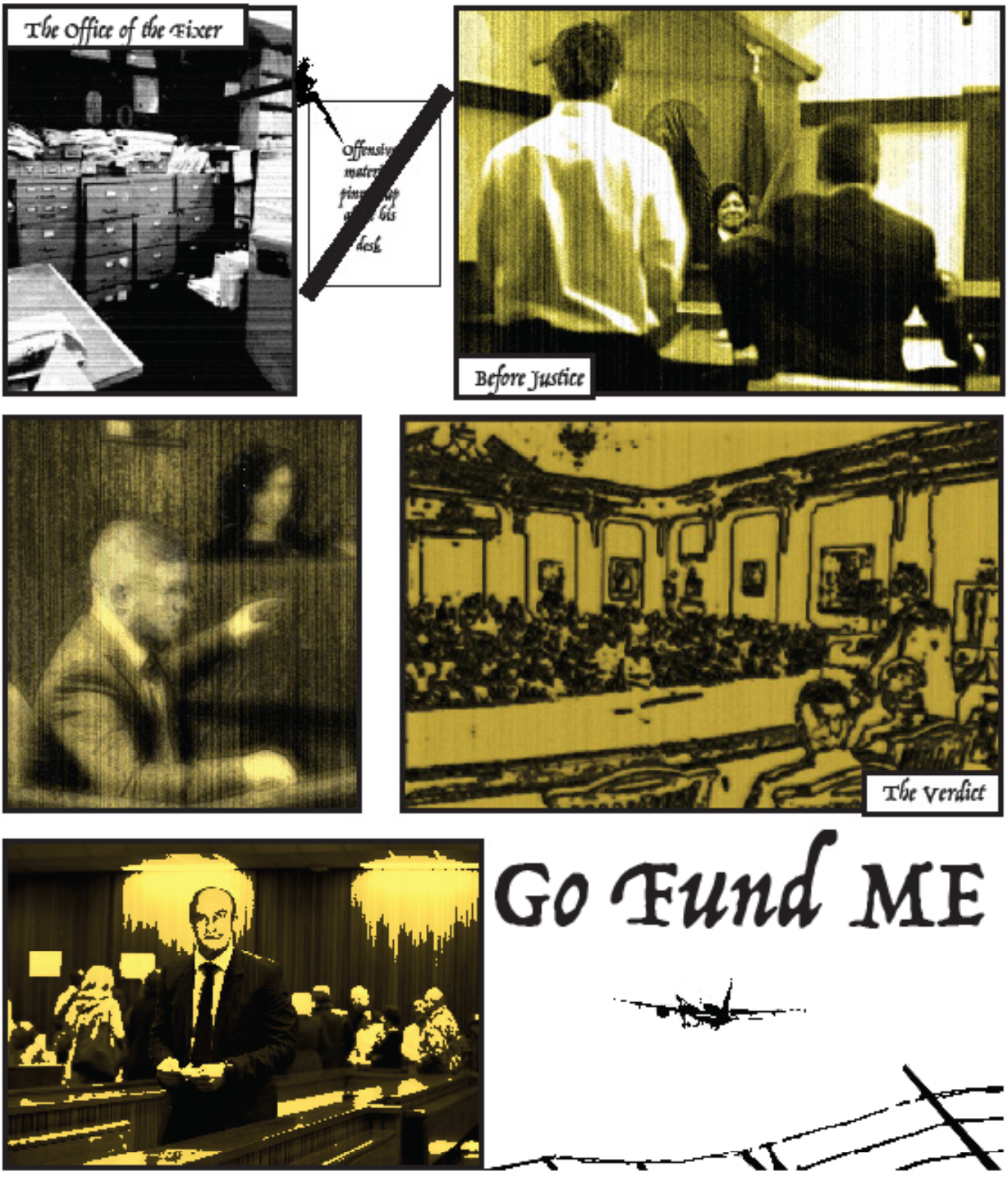

Figure 5: Morality Tale Panel 2. (clockwise) Files from Hell (the office of the Fixer); ~~lechery~~; OATH Court; Exper Testimony; The Verdict; Denial; Fleeing the country. Copyright the author.

In the case of Respondent Supersizer, Judge Salzman ruling included the following finding,

> "Vilkas's testimony of his opinion of the meaning and applicability of the zoning provisions at issue and of its purported acceptance in the filing community is no more than an account of what practitioners may have been able to file, whether in professionally certified or reviewed jobs. It cannot displace the actual terms of the governing law or the Court's interpretation of those terms."[37]

She found "deliberate subterfuge" noting, "I find that he (the Supersizer) knew the rules very well, but deliberately flouted them" and "Respondent took full advantage of the probability that professionally certified jobs would escape review or audit by the DOB."[38]

Both defendants were found guilty and received a lifetime ban on filing with the New York Department of Buildings. The Supersizer became a developer[39]; and it was rumored that the Fixer fled the country while waiting his federal court case filed in US District Court Eastern District of New York to clear. *Scott Schnall P.E. against the City of New York Department of Buildings* was settled November 7, 2018. The City of New York agreed to pay $125,000; Schnall agreed to his lifetime ban.[40]

CONCLUSION

At the 2015 Royal Academy debate on architectural ethics, Jonathan Meades stated: "architecture and ethics should not be in the same sentence."[41] Meades argued that an architectural code of ethics is presumptuous, given the architects' contemporary role in the construction process. This call for the 'de-ethicing' of the profession is to, as Owen Hopkins of Architecture Review summarizes,

> "question why architecture is different from other professions or creative pursuits that are apparently unconcerned with questions of ethics? Having ethics implies architects have a power that extends well beyond the confines of their brief. What, Meades' argument goes, gives architects the right to say that their concern or influence should extend beyond that which they are contracted to do?"[42]

Many architects In the US building environment perceive they have little control over the 'noble' outcomes that many joined the profession to try to influence. In the words of an ex-architect, "…it is the clients, not the architects, who have the ability to change communities and improve people's lives. "[43] Over what 'higher good' then to architects retain agency? Is viewing architecture as a 'noble profession' an anachronism?

The final reports from the two OATH judges span the spectrum of thoughtful discussions defending zoning as a public good to procedural tutorials on how the building permit approval process works in the five boroughs. Through compelling explanations of the 'spirit of the law' – the judges outlined the overarching public aims of regulations. They found that in exercising what the defendants both argued as their obligation 'to push the envelope for their clients,' the defendants were perpetrating theft of the public good.

Between the little 'e' and big 'E' ethical poles is the place to explore the tension between the ethics of protecting the community interest versus the ethics of protecting the clients' interest. This case study asks the reader to navigate between the limited scope of the AIA Canons and the possible out-of-reach of noble agency, opening up a clear route of exploration for students and practitioners of architecture.

It should be the role of the academy to spearhead a national conversation on an ethics rooted in the communities we impact and the objects we create, an ethics that focuses upon the consequences of our work rather than on the internal regulation of our profession.

ENDNOTES

The defendants' identity remains in the endnotes. Much of this story was told in the local press and neighborhood blogs, and the endnotes are extensive as a resource for the teaching case study as not all sources are easily accessible.

1. American Institute of Architects, *The Architecture Student's Handbook of Professional Practice* (NJ: Wiley, Hoboken, 2017), 25.

2. *Dep't of Buildings v. Scarano,* 257108 (NYC OATH 2010). http://archive.citylaw.org/oath/08_Cases/08-2571.pdf

3. *Dep't of Buildings v. Schnall*, 275015 (NYC OATH 2017). http://archive.citylaw.org/wp-content/uploads/sites/17/oath/15_cases/15-2750.pdf

4. Attorney Sheldon Lobel, Head of the Zoning Advisory Council, explains: "Zoning is far from being black and white. We deal with zoning resolutions that have a lot of inconsistencies. You can interpret a zoning regulation, but when it's more closely re-examined, the regulators say the architect didn't make the right interpretation. Most architects and engineers aren't trying to get something that's clearly wrong approved." Luby, Abby. "The Finger Building is a tragedy." *The Real Deal New York.* October 23, 2011. https://therealdeal.com/2007/11/07/scarano-the-finger-building-is-a-tragedy/

5. New York State Organized Crime Task Force, and Ronald Goldstock. *Corruption and Racketeering in the New York City Construction Industry: Final Report to Governor Mario M. Cuomo* (New York: New York University Press, 1990).

6. Bartlett, Sarah. "A New York Trade Thrives on Red Tape." *The New York Times*. September 12, 1991. http://www.nytimes.com/1991/09/13/nyregion/a-new-york-trade-thrives-on-red-tape.html. In an effort to determine how long expeditors had been part of the system in NYC, *The Real Deal (TRD)* found the following quote in New York Times article from 1931, "A self-described 'expediter' testified at a corruption hearing that his occupation was "entirely legitimate" and that he never bribed anyone in the buildings department. Brenzel, Kathryn. "Is time up for NYC's construction expeditors?" *The Real Deal New York*. September 19, 2017. https://therealdeal.com/issues_articles/2379456/.

7. Kaufman, Joanne. "Renovating? Don't Forget the Expediter." *The New York Times*. December 12, 2014. https://www.nytimes.com/2014/12/14/realestate/renovating-dont-forget-the-expediter.html#.

8. For an architect's perspective on self certication see the following forum thread: "So far, I have never self-certified - convincing clients instead that it's in their interest to have DOB sign off on things beforehand. If I ever do a self-cert, I plan to have my client sign a letter acknowledging that the code is subject to interpretation, and the while I'll self-certify for their convenience, I assume no liability if there's an audit that that has 'interpretation' issues…but I'd still be liable if

I just out and out get something wrong." "Anyone Self Certify a DOB Filing in NYC?" *Architect*. May 19, 2010. https://archinect.com/forum/thread/98688/anyone-self-certify-a-dob-filing-in-nyc.

9. Kevin F. Casey, Administrative Law Judge, *Dep't of Buildings v. Velasquez*, 155710 (NYC OATH 2010) cited by John B. Spooner, Administrative Law Judge *Dep't of Buildings v. Ali* 275115 (NYC OATH 2016), p. 13. http://archive.citylaw.org/wp-content/uploads/sites/17/oath/15_cases/15-2751.pdf.

10. "Brennan Writes 'Laundry List' of Building Legislation." Brownstoner. May 2, 2007. http://www.brownstoner.com/interiors-renovation/brennan-writes/ : "During the pre-recession building boom, construction safety became a public concern. Between 2002 and 2005 the Occupational Safety and Health Administration (OSHA) reported 80 deaths from New York City construction accidents. A 2002 review by the NY Trial Lawyers Institute of 2,500 OSHA construction-site inspections found one or more serious safety violations at two-thirds of the sites. A 2003 NYC Comptroller's audit found errors in 67% of sampled self-certified construction plans. In 2005, the DOB conducted internal audits of a fifth of all self-certified plans. Sixteen percent (16%) of the applications reviewed contained such grave errors that the DOB decided to revoke the building permits. Moreover, in 2007 the Buildings Commissioner Patricia Lancaster told the Daily News that she crosses the street to avoid walking under scaffolding. " and "Welcome to the Wild, Wild West." Brownstoner. April 18, 2008. https://www.brownstoner.com/development/welcome-to-the/. This forum reported that "in the previous month the DOB inspected conditions at 305 construction sites in Brooklyn, finding violations at 87 of them and putting stop work orders on 43 of them."

11. For more on fines being to low to incentivize compliance, see Elizabeth Hays"Embattled Architect Fined for Failing to Inspect Sites," *New York Daily News*, February 19, 2009. http://www.nydailynews.com/new-york/brooklyn/embattled-architect-fined-failing-inspect-sites-article-1.390349

12. *Dep't of Buildings v. Ali*, p.23.

13. "Scarano Architect PLLC." Scarano Architect PLLC:: Home. Accessed September 24, 2017. http://scaranoarchitect.com/. The site now claims "dozens of projects a year" rather than the plus 300 in the boom pre-2008.

14. Quote by Brooklyn architect John Hatheway. Rice, Andrew. "The Supersizer of B rooklyn." *The New York Times*. March 19, 2011. http://www.nytimes.com/2011/03/20/magazine/mag-20KeyScofflaw-t.html.

15. Award-winning Architect Looks Back on 25 Years." *The Free Library.* https://www.thefreelibrary.com/Award-winning architect looks back on 25 years.-a0121417939.

16. "Dubbed the "the Supersizer of Brooklyn" by *The New York Times,* his namesake firm was once one of the most prolific in the city, working on hundreds of mostly small-scale projects in the last decade. Critics alleged that he put the needs of his clients—developers who wanted to maximize profit by maximizing sellable space—above good taste or any regard for building codes." Brite, Jennifer. "Blacklisted from the NYC Department of Buildings, a Former Architect Tries His Hand at Green Development." *Architectmagazine*. com. December 17, 2013.. http://www.architectmagazine.com/technology/blacklisted-from-the-nyc-department-of-buildings-a-former-architect-tries-his-hand-at-green-development_o.

17. Councilman Bill De Blasio called the Supersizer "the worst example of an architect who continues to build in this city despite his long history of violating zoning and building codes and practicing unsafe construction" Judson Davidson, "Judson Davidson on the Defeat of Architect Robert Scarano Jr." http://nymag.com/daily/intelligencer/2010/03/justin_davidson_on_the_defeat.html

18. The lawyer in this case, Ray Hannigan at Herrick, Feinstein, said his client never understood how the Supersizer was building 16 stories. "We discovered Scarano's [air-rights] calculations included roof decks on top of all of our buildings. In my view, he probably expected to get away with it." Luby, Abby. "The Finger Building is a Tragedy." *The Real Deal New York.* October 23, 2011. https://therealdeal.com/2007/11/07/scarano-the-finger-building-is-a-tragedy/.

19 Cohen, Ariella. "City Charges Architect with Super-sizing his Designs." *The Brooklyn Paper.* April 22, 2006. https://www.brooklynpaper.com/stories/29/16/29_16nets6.html.

20. Fahim, Kareem. "Controversial Architect Is Barred by City." *The New York Times*. March 03, 2010. http://www.nytimes.com/2010/03/04/nyregion/04scarano.html?mcubz=0 and Robledo, S. Jhoanna "He Built This Borough (Badly)." *NYMag.com*. October 7, 2007. http://nymag.com/news/intelligencer/39000/.

21. "Not to sound egotistical, but it's jealousy," he said. "We put a lot into our jobs. We've changed the face of what Brooklyn buildings look like. With change comes resistance." The Supersizer, quoted in Cohen, "City Charges Architect."

22. Luby, "Tragedy."

23. Kates, Brian. "Building on Death and Secrets." *NY Daily News*. December 09, 2007. http://www.nydailynews.com/news/buildings-chief-hid-architect-mistakes-article-1.273763.

24. Robert Jacobs, a land use attorney with Belkin Burden Wenig & Goldman quoted in Brenzel, Kathryn. "Is Time up for NYC's Construction Expeditors?" The Real Deal New York. September 19, 2017. https://therealdeal.com/issues_articles/2379456/.

25. " Brownstowner. "Looking for a Structural Engineer," carriagehouse994 January 4, 2016. Little public information exists on Schnall's credentials. Schnall testified that he graduated in 1990 from engineering school and took over the business from his father in 1999. *Dep't of Buildings v. Schnall,* p.8.

26. Requesting funding for his Federal case, Scott Schnall, *P.E. v. The City of New York Dep't of Buildings.*

27. *Dep't of Buildings v. Scarano*, p.8.

28. Kaufman, "Don't Forget."

29."The Building Department took the comments (*to the NYT in 2014*)personally and have been on a long, drawn out crusade to put my 81-year business, " out of business." Schall in *Schnall P.E. v. The City of New York, Department of Buildings, et al.* (1:17-cv-02412), New York Eastern District Court. https://www.pacermonitor.com/public/case/21218722/SCHNALL,_PE,_v_THE_CITY_OF_NEW_YORK,_DEPARTMENT_OF_BUILDINGS_et_al.

30. Rice, "Supersizer"

31. Two years later, in response to a DOB inspector's objection to the condition of the sidewalk in August of 2008, Scarano submitted the following affidavit in October as part the final sign-off on the project:

I, Robert M. Scarano Jr., the Architect of record for [145 Snediker Avenue], have attached final survey for objection #1, #2, & #3, and photographs showing the installed sidewalks, curbs & roadway. As per my inspection dated 10/6/08, these items have been noted. Therefore, I certify that a final construction signoff can now be issued. (Pet. Ex. 46).

Attached to the affidavit, which was signed over his seal, and sworn before a notary public, were three photographs of the lamppost taken by respondent himself (Tr. 1136), from extreme side angles, with a van parked in the driveway at an angle, which gave the viewer the misimpression that there was more clearance between the post and the end of the driveway than in fact there was. *Dep't of Buildings v. Scarano*, p.66.

32. "Scarano testified that he knew about the "discrepancy between the photographs and the survey and that I wanted something that I could bring back to my client to show him that hey, look, you've got to really move this pole because it's -- now it's getting to the point where we cannot finish for you this job until this work gets finished . . . . Well, the previous objection was not really clear enough I guess to my mind in terms of, you know, alerting the owner that the pole had to be moved. So, I was hoping that we were going to get a stronger objection that basically said hey, look, you know, move the pole or you're not going to get the sign-off" (Tr. 1031). D*ep't of Buildings v. Scarano*, p. 25.

33. D*ep't of Buildings v. Scarano*, p. 18.

34. The second case Charges 1 and 2, Specifications 1-8; Charge 3, Specifications 5-8: 158 Freeman Street/1037 Manhattan Avenue, Brooklyn: The Zoning Violations, was for a zoning lot combining two tax lots, which Judge Salzman termed a "duplicitous" "scheme to flout the zoning regulations." This included an interpretation of the property as a corner lot, filing the first permit using the area of the entire zoning lot and the second one as an individual tax lot, as well as shifting a community space (which provides an FAR credit) between the properties which the client testified that he had never planned to build. The DOB alleged that through the deliberate staging of the development of the two properties, the Supersizer conspired to increase the total amount of floor area and avoid any requirement to provide parking. The staggered filing allegedly aimed at increasing the floor area allowed and, at the same time, avoiding the parking requirement.

35. "As a general rule, [a]n architect's efficiency in preparing plans and specifications is tested by the rule of ordinary and reasonable skill usually exercised by one of that profession… [I]n the absence of a special agreement he does not imply or guarantee a perfect plan or satisfactory result. Architects, doctors, engineers, attorneys, and others deal in somewhat inexact sciences and are continually called upon to exercise their skilled judgment in order to anticipate and provide for random factors which are incapable of precise measurement. The indeterminate nature of these factors makes it impossible for professional service people to gauge them with complete accuracy in every instance." Holland, J. Kent, J.D. "Standard of Care for Design Professionals." *Construction Risk*. 2011. https://www.constructionrisk.com/2015/09/standard-of-care-for-design-professionals/.

36. Brief at 96, OATH Index No. 513/92 at 7 (Mar. 2, 1992) Judge Salzman.

37. The Department correctly argues in its Closing Memorandum at 38 that there was no "clash of interpretations." *Dep't of Buildings v. Scarano*, p.57.

38. "This case is not about honest or harmless error…Respondent emphasized in closing briefing Manhattan Borough Commissioner Magdi Mossad's testimony on cross-examination that respondent was knowledgeable about

the Building Code and the Zoning Resolution (Tr. 65). Respondent's Brief at 21 ("throughout his testimony, Mr. Scarano confirmed Commissioner Mossad's opinion by evincing an incredible knowledge of both the Zoning Resolution and the Building Code"). It is the respondent's undisputed knowledge of these regulations that tends to exonerate him on the incompetence charges, but to inculpate him on the false statement charges in the case. Respondent did not claim he had overlooked anything. Rather, he disagreed with the Department's application of the pertinent regulations to architectural plans during the ordinary course of building projects. Part I of this ruling involves written representations of an architect concerning a Brooklyn property that were so deceptive that they call to mind out-and-out fraud. Part II involves a subtler form of deception over 8 years that required a review of multiple sets of plans and amendments respondent filed with DOB between 2000 and 2008. This scheme concerns false, written representations about another property in Brooklyn that go to the very heart and purpose of the zoning regulations in this City. Respondent is accused of deliberately overbuilding in violation of the zoning law." *Dep't of Buildings v. Scarano,* p.59.

39. Brite, "Blacklisted."

40. *Schnall PE v. Dep't of Buildings*. Case 1:17-cv-02412-LDH-LB Document 31 Filed 11/07/18. New charges were filled by Brooklyn District Attorney Eric Gonzalez in early October 2018 indicting the Fixer in an "asbestos and false permit scheme" with four others. Parker, Will. "Brooklyn DA Indicts 5 in Asbestos and False Permits Scheme" *The Real Deal New York*. October 4, 2018. https://therealdeal.com/2018/10/04/brooklyn-da-indicts-5-in-asbestos-and-false-permits-scheme/

41. Hopkins, "Why Is Ethics Such an Important Issue for Architects?" *Architectural Review.* November 26, 2016. https://www.architectural-review.com/essays/why-is-ethics-such-an-important-issue-for-architects/8692460.article.

42. Hopkins, "Why is Ethics."

43. Reactions to Hadid's contention that construction issues were out of her control, include calls on the profession to "disabuse ourselves of that powerlessness." For more on this see Dickinson, Elizabeth Evitts "Architecture: Big-A and Little-a" Architect. March 9, 2015. http://www.architectmagazine.com/aia-architect/aiafeature/aia-feature-architecture-big-a-and-little-a_o Scarano downplays the role of the profession, "The architectural profession is seen as some sort of prophet to the building industry. They think we should monitor and coddle jobs. The reality is, architects are hired to produce a set of plans for construction entities to build." Quoted in Luby, Abby. "Scarano pointing the finger back." The *Real Deal New York*, November 4, 2007. https://therealdeal.com/issues_articles/scarano-pointing-the-finger-back/