An Architect Looks at the Standard of Care

by James R. Franklin, FAIA*

INTRODUCTION

This is an extraordinary time to be a design professional--exciting because there is a new awakening of the public to the value of good design and an appreciation of it for its own sake. It is a time of multinational clients and global design practices. This is a time when affordable CADD systems are permitting design professionals to leverage their personal abilities and double their productivity. It is exciting because the technology of construction and the variations on delivery methodologies seem almost limitless.

But it is also an intensely challenging time because clients and the public seem to have equally limitless expectations about the results they should get from the services of the design professional. The costs and consequences of failing to meet those expectations are escalating at rapid rate

Design professionals now find themselves caught between the societal trend toward incessant litigation on the one hand, and on the other, a market trend that has made liability insurance increasingly expensive and difficult to get. Where those two national factors are in conjunction with depressed regional economies, many are asking for strategies for survival.

Until now there seem to have been two basic strategies. At one extreme is the reactionary strategy of avoiding risks through contractual limitations of liability, indemnification, and restriction of the professional services offered. The objective here has been to define the roles and responsibilities of each design discipline precisely, establish uniform rules for what each can do, and then uniformly adhere to the rules.

The problem with this defensive strategy has been that, though the scope of services (and perhaps compensation) has been decreased, claims and litigation have, nevertheless, continued to increase. Even worse, the net effect has been to move design professionals further away from meeting the owners' needs for comprehensive services, particularly in the areas affecting cost control and construction administration. Other disciplines, such as construction management, have quickly evolved to fill the gap.

At the other extreme is the radical and entrepreneurial strategy of accepting virtually any risk assigned by the owner as being somehow beyond the design professional's control and just a condition of doing business.

The practitioners who do so frequently go uninsured, practicing in what they consider to be a necessary, if not prudent manner and hoping that fate and justice will be on their side if a lawsuit comes.

They do so, however, amid an entire generation of people who have grown up thinking, if there is injury or damage, someone should pay--who seem to expect a warranty on life. In such a society, ignoring risks is like playing Russian roulette. The unfortunate side effect of this radical strategy is the temptation to see one's profession as being little more than a business, and a risky one at that.

There is much that is justifiable in both extremes. Yes, there is a need for clearly understood rules, and for better adherence to them, but the rules must guide resourceful professional conduct, not merely list proscribed actions. The law does not require the professional to do certain things; it requires one to act in a certain way. And yes, there is a need for design professionals to become more businesslike and entrepreneurial in meeting market conditions, but successful entrepreneurialism demands prudent, assertive action, rather than either overly aggressive or compliant reaction.

The problem that both extremes carry with them is a loss of control, either of the project or of professionalism. Certainly there is a feeling of loss of control over one's own destiny. There is a sense of being reduced to a mere counter in a game, the rules of which are imposed and changed capriciously by forces bigger than the practitioner and even the profession. Both extremes are essentially negative, encouraging an adversarial attitude toward clients and, worse still, an erosion of the design professional's traditional desire to serve the public interest. What is needed is a positive approach, rather than a negative response.

The purpose of this paper is to suggest that what is needed is a reassertion of control over one's own destiny, a recognition that, by acting prudently, one can be more in charge of one's fate. You have the choice of developing a more considered, responsible, and positive course of professional conduct in order to regain control. It will not be easy for you because there is no simple answer available. What is available is a modus operandi, or way of acting, to encourage professional conduct that will help you practice more prudently.

Rather than focusing on either avoiding risk or ignoring it, this positive approach calls for design professionals to accept knowingly those risks (and only those risks) for which they are competent and with which they are comfortable, and then properly manage them. Risk management requires the systematic application of knowledge and understanding, rather than the implementation of rules and rote answers.

WHAT THE LAW REQUIRES

It is important at the outset to develop a basic understanding of the law as it relates to your business and to the practice of your profession. First, there are two major categories of law, one relating to criminal actions and the other to civil actions.

Criminal actions are brought by society against the individual, and the penalties can be in the form of fines or imprisonment or both. In contrast, civil actions are brought by individuals, and the redress for wrongdoing is always in the form of money. With very few exceptions (e.g., price fixing or fraud), everything to do with professional practice is a civil matter.

Civil law can be thought of as the rules society sets up in order that we can more accurately predict the consequences of our actions. It is possible, for instance, that under extraordinary circumstances, purposely to breach a contract and incur the consequent damages would be a sound business decision. The function of the law, in this instance, is not to punish a criminal act but rather to provide a predictable system to assure equity between two parties.

Under civil law, there are basically three categories of obligations owed by design professionals to their clients and the public on every project.

- Contractual obligations are the terms and conditions you and your client agree to in the contract. If you do not provide the services or meet the schedule you have agreed to, you will have breached your part of the bargain, and the client may be due damages.
- Regulatory law embodies a second set of professional obligations. Codes, licensing laws, and zoning regulations are examples of ordinances adopted by state and local governments to protect the public. As a design professional, you are obligated to design projects that comply with these requirements, and failure to do so is negligence per se.
- The third set of obligations is less readily understood and has to do with the essence of what sets you apart as a professional. As a professional, you are obligated to practice so as to meet the standard of care, which essentially means taking those actions that another reasonable and prudent design professional would have taken, given the same circumstances. This third category of obligations--the standard of care and some ways to achieve it--is the principal subject of this paper.

THE STANDARD OF CARE--A MODEL

The standard of reasonable care can perhaps be most easily understood if visualized in terms of a solar system model. Imagine a constellation, the center of which is an unattainable and very small nucleus called, "the ideal. " Around that center is a myriad of possible actions, procedures, and decisions we call "prudent " or acceptable, none of them exactly equidistant from the nucleus but all within an acceptable range. Any actions outside this sphere of acceptability would be unreasonable, of course, or, as the law describes it when injury could result from those unreasonable actions, negligent.

Think of this model as a metaphor for our U.S. Constitution and Bill of Rights--200 years old and based in part on even older precedents in English common law--yet still working. Each year the Supreme Court generates thousands of pages of opinion about what certain concepts contained in those brief documents mean in the context of today's society.

Though the Articles of the Constitution do not change, the definition of what actions, procedures, or decisions are legal and acceptable under any given Article can change over time with new Supreme Court rulings. The rulings are the results of the Court's interpretation of what our society's beliefs, customs, and needs are at a given point in time.

If the courts had always based decisions only on the intent of the original framers of the Constitution, we can easily imagine an American experience far different from that we know. As an example, in some jurisdictions, the interpretation in 1791 of what was acceptable under the Constitution's prohibition against "cruel and inhuman punishment " might have included cropping felons' ears and burning at the stake. Both society and the courts have required that the universe of acceptable punishments change over time.

The standard of reasonable care, the legal basis for determining professional negligence, is another very old concept that comes down to us from English common law. Like such constitutional concepts as freedom of speech, the standard of care is fixed and never changes, yet the findings of what is acceptable under the law are subject to incremental changes and reinterpretations as societal conditions and technologies change. They are also subject to regional, even local, variation. Essentially, the law says only that a design professional is required to exercise a degree of care, skill, and diligence in professional

practice that is equivalent to what may be reasonably required of others in that profession, given the specific time, place, and circumstances.

In many applications of this principle, where the acceptable course of professional conduct can be readily determined in advance, that course has been codified in building codes and national standards to form regionally or nationally accepted norms for professional practice. In our metaphor, these can be thought of as the elements closest to the center, or ideal nucleus, of the constellation--those that are virtually always required in order to meet the standard of care.

Among the thousands of decisions routinely necessary for the design and construction of the typical building project, however, there are many where the optimum choice is less clear, and what is proper for one project can constitute professional negligence for another. Window selection, or the detailing of a wall system using brick veneer with a steel stud backup for a one-story building versus the same options for a 12-story building might be an example. Such factors as wind load, anticipated severity of local storms, and the system's tested resistance to internal, as well as external pressure could greatly alter the prudent selection of these building materials and the details of their installation.

What complicates the issue of the standard of care is that each project has its own unique "ideal nucleus " at the center of its own universe of prudent or acceptable actions, procedures, and decisions. For that reason the standard of care is stated as a general principle, leaving to the courts the task of defining exactly what was required, after the fact and for each claim.

No court, professional society, university, or government agency can establish, in advance, a set of detailed rules or standards that define comprehensively what the standard of care will be for your professional services or for your projects. The very nature of your profession is to be always evolving, growing, and innovative. Practicing so as to achieve the proper standard of care as you address each client's unique needs is your own professional duty for which you have been educated and trained. You accept that role and duty when you accept professional registration.

THE IMPLIED SOCIAL CONTRACT

In a sense there is a bargain that society strikes with you as a professional. Society sees you as having unique knowledge and capabilities. It trusts that you will use your special skills to benefit society in general and your client in particular. Society recognizes that you cannot guarantee an outcome any more than a doctor can guarantee health or a lawyer can guarantee acquittal. In situations where unknown or uncontrollable factors are common and where judgment and special skills are the principal ingredient of service, infallibility is not required.

For that reason an engineer or architect is not required to produce a perfect plan, and there is no implied warranty or assurance that the drawings or specifications will be perfect and free from defects--only that they will be prepared in accordance with professional standards. There is even legal precedent stating that, unless there are special circumstances or a particular contractual undertaking, there is no implied warranty that what has been designed will even be suitable for the owner's intended purpose or use. The law will not, however, accept professional standards of practice that do not meet the reasonable needs of the general public to be assured of health, safety, and welfare; the law does require that what is designed will be reasonably safe for human use.

For your side of the bargain, by accepting a license to practice, you bind yourself to perform your professional services within a standard of reasonable care. While there can be no precise definition of the extent of a design professional's responsibilities for a project, in advance, the principle is that you agree to perform as well as other reasonable, prudent design professionals would, given the same situation, in the same location, and at the same time.

Perhaps this sounds very vague and imprecise, yet in actual operation the principle works fairly easily. Each side in a lawsuit brings other design professionals into court as expert witnesses. They review the facts at issue in the case and give opinions as to whether the design professional's actions met the standard of care, given the situation. The judge or jury is then left to decide how much credibility to give to the experts' opinions, since the experts are just other professionals, much like yourself.

And because expert witnesses are design professionals, they know that buildings are not like arithmetic problems and that there is almost never a single right answer. Part of what makes the standard of care a complex issue are the dynamics involved. Each particular building material or system must be thought of as a component of the whole, and the determination of whether the standard of care was met in its design and application will change depending on the context. Appropriate use of a material or construction detail in one part of a building can be an act of negligence if duplicated in another. If you think of there being a constellation of acceptable options concerning that material or system within your universe of professional practice, that constellation is dynamic, too, depending on experience in the industry or technological advances.

So the second condition of the bargain you as a design professional strike with society is that you agree to maintain your professional knowledge, keeping reasonably abreast of changing technologies and code demands throughout your career. In 1947, a 30-inch height was adequate for a handrail. In 1967, the use of asbestos materials did not constitute negligence. In 1977, access for the handicapped was often considered an unnecessary, even imprudent, additional expense. While we can not anticipate just which materials and areas of design will be subject next to increasingly codified requirements, indoor air quality, radon, toxic wastes, and building security are only a few of the possibilities that the AIA and NSPE routinely monitor in an effort to provide design professionals with current information.

This leads to the third basic condition of the bargain the design professional strikes with society. Because that universe of prudent options is complex and dynamic, you as a professional agree to recognize the limits of your own competency and to undertake functions and responsibilities only for those professional services for which you are properly qualified by education and experience, or for which you can assemble a qualified team of competent consultants.

So that's the bargain: Society agrees not to expect perfection from you; you agree to perform reasonably and with prudence. Of course you strike another and very special bargain with your client every time you sign a contract to provide professional services.

AN INTRODUCTION TO RISK MANAGEMENT

The truly prudent professional thinks long and hard about the quid pro quo before promising to provide the individual client more than is required in the broader contract with society. For example, a client might propose the contractual requirement that you certify the project was built in accordance with the contract documents. Since an unqualified certification should be made only on the basis of firsthand, personal

knowledge, you should not agree to that requirement unless you are personally qualified for the job and unless there is adequate compensation for you to supervise the work personally and accept the additional risk.

In principle, exceptional risks should be accompanied by exceptional compensation. Unless the professional is adequately informed and qualified to prudently assume those risks, such contract terms should be avoided.

Design-build and asbestos removal are examples of services for which added compensation is available in return for additional risks. Most practitioners choose not to offer these services for a variety of reasons, a common one being to avoid risk, and, in most cases, that is prudent. But the absolute avoidance of risks is no answer at all. The only way you could achieve that would be to absolutely avoid the practice of your profession. Every professional action you undertake carries with it a risk, but that risk is what you have been trained and educated to deal with. Both insurance and AIA statistics show that you are probably very good at it.

Eighty percent of all claims against architects and engineers result in no payments to the claimants by the insurance company, and it can be arguably inferred that many of those dismissed cases were the result of failures at business, not of failures of technical or professional competency. The risks were not managed properly.

Consciously setting up a risk management program in your practice is one effective way to develop an action plan for achieving the standard of care. Before considering just how to go about doing that, however, it is useful to examine the application of law in the light of one additional metaphor--one that illustrates the standard of care at a much more down-to-earth level than does the celestial metaphor we used to analyze the principle involved.

THE PRUDENT DRIVER MODEL

Driving an automobile involves risk management and a certain standard of care. For the public health, safety, and welfare, society has established laws governing the use of automobiles and, in a sense, strikes a bargain with each of us as licensed drivers. We do not have to be perfect, but, to maintain the privilege and right to drive, we agree to be reasonable and prudent drivers.

Every time you drive you assume certain risks. Some risks, such as ice on the roads, may persuade you not to make the drive and thereby reject the risks altogether. Under normal conditions, however, many of the prudent actions we take as drivers are almost instinctive; stopping at intersections and driving more slowly in rainy conditions are examples. Some risks require conscious decisions, such as whether to take the beltway to avoid the risk of being made late by downtown "gridlock " at rush hour.

Some of the rules for prudent driving are uniformly and consistently applied. If you "rear-end " another car, you are automatically presumed negligent unless you can prove otherwise. You may claim there were mitigating circumstances, but, absent a very exceptional situation, you will virtually always be held liable for any damages.

Other rules require good judgment on your part given the circumstances. If you run a stop sign, even at 3 a.m. on a deserted street, you have been negligent. If no one sees you and you cause no damage, however, you are not liable. If you ran the stop sign at 3 a.m. to avoid an accident with a runaway bus bearing down on you, that probably was prudent.

The point is that there can be no definitive list of actions comprehensive enough always to govern your driving. Instead, society relies on you to exercise prudence--to act with a minimum level of judgment and skill.

It is not enough always to obey the traffic signs. Experts at least tacitly agree it is not prudent to obey the 55 m.p.h. speed limit on a crowded interstate full of traffic moving at 70 m.p.h. Most jurisdictions have a prohibition against driving at a speed unreasonable for the conditions existing at the time, regardless of posted signs. Going 55 m.p.h. in dense fog on that same interstate might be an example of imprudent, even unlawful driving. The central fact about the standard of care is that you have to apply it en route.

The practice of your profession is like that. You are always in the driver's seat and must vary your route, speed, and attentiveness according to the conditions that unfold around you as you progress toward your destination. Mid-course corrections are not the exception; they are the rule. Arriving safely and without harming others is the driver's task (and the passengers' expectation), and most of us do it routinely and well.

If you think of it that way, for some design professionals the rest of this paper is about defensive driving. Depending on how experienced a practitioner you happen to be, you may decide that prudent driving is a better analogy. Many of us probably would say we drive prudently rather than by the strict rules of what is defined as defensive driving. We know the rules, but through many miles of experience have learned it is both effective and reasonably safe to apply them only when conditions warrant.

In dense fog we slow our speed and add car lengths between us and other vehicles. Through experience we've learned, in normal conditions, to trust the capabilities of both our cars and ourselves, so we drive for a balance between maximum effectiveness and utmost safety. There is a continuum from defensive through prudent to reckless. The prudent driver tries always to avoid being reckless, but is not so defensive as to routinely avoid making the trip.

MANAGING THE RISKS

With this metaphor in mind, consider three important aspects of proper risk management for the design professional:

- Risk assessment
- Equitable allocation of risks
- Documentation

As with defensive driving, the most difficult part of risk management is making the commitment and sticking to it, since you probably already have all the knowledge and skills required to perform the processes involved. From the standpoint of legal liability, the decision to be prudent is easy--of course you should opt for prudence. From the standpoint of business, the difficult evaluation to make is just how

much time and resources you are willing to afford--and to negotiate into your contracts--in order to make it work. It is like the distinction between defensive and prudent driving.

Claims data strongly suggests you consider at least the three elements listed above and the cost implications of a risk management program versus the cost implications of what recent claims history implies. It is anticipated that there will be 44 claims made this year for every 100 insured firms. The cost will be enormous, but cost aside, design professionals and, for that matter, society can ill afford the terrible drain of productive time and psychic energy spent in defense. Here are some of the considerations involved in risk management.

1. Risk Assessment

Conscientious and consistent risk assessment includes the following:

- Recognition of what risks are involved;
- Quantification of what is at stake and determination of the value of the risk;
- Identification of who has the power to control the outcome;
- Determination of who should assume the risk.

Making an assessment of the risks involved in a project is a natural activity at the beginning as you prepare yourself to negotiate or develop a work plan. Perhaps the hardest part at that stage is to give appropriate credibility to the risks that can be anticipated at a time when your enthusiasm and hopes for the project run high.

Once the project is under way, however, the difficult part of risk assessment will often be just remembering to do it, so a good idea at the beginning is to make some specific assignments within the firm, designating members to track certain areas of risk. Those who will be responsible for different activities on the project should spend some time in a conscious effort to identify the worst that could happen, what it would cost, and who would be in the best position to fix it.

It is useful to develop the results of the preliminary staff critique into a checklist to be used periodically throughout the project and, certainly, whenever circumstances change in a significant way. Figures 5 and 6 offer the idea of thinking of the parameters that affect the standard of care for the project as "modifiers " and suggest two very general ways you can begin to categorize modifiers to help make sure that for a specific job the checklist is reasonably comprehensive. Checklist forms are available in various publications, including, for example, the B141 Commentary from the AIA's Architect's Handbook of Professional Practice.

One way to help you learn and teach the younger members of the firm to make a habit out of this "down-side " or critical thinking is to systematize the process and assign one firm member to be the devil's advocate or critic on each project. It works best if this person is outside the project team and is assigned the routine task of attending team meetings equipped with the checklist developed by the team for the project. As the design is developed, so is the checklist of modifiers. Remember from our automobile

metaphor that assessing the risks before you start the drive is helpful but insufficient. It has to be done en route.

Though the primary role of the critic is to trigger the risk management process when needed, you will quickly realize an important side benefit if you've kept in mind that modifiers can be either positive or negative and that a good critic can help the team recognize and enhance the positive opportunities.

There is also a positive side effect of the second step: quantification of the risks. It encourages you to think of risks in terms of the same currency that the rest of the world tends to think of them: money. Because of the ideals that lead most engineers and architects to take up their professions, design professionals like to consider the consequences of professional actions in terms of function or esthetics or the quality of life. Without minimizing in any way the importance of that idealism, it is also essential to translate the options into the monetary language that most clients and all courts use. "Award " has a totally different meaning to a lawyer as compared with a designer.

2. Allocation of Risks

Judicious and equitable assignment of risk is at the heart of truly successful contractual relationships for a design project. You can think of it in terms of the "win-win " agreements we all try to negotiate. In this case, risks, responsibilities, authority, and compensation are the elements to be combined and distributed with basic fairness. Both the AIA and NSPE state the intent of their standard contract forms as follows: that each risk should be allocated to the member of the design and construction team who has the best capability to provide the solution to the problem and both the authority and compensation for doing so.

For portions of the work where neither the design professionals involved in the design, nor the contractors engaged in the construction are empowered to control the outcome, the risk is appropriately carried by the owner. This is so because the person who initiates and buys the project has the final authority over it and stands to derive the ultimate benefits from it. Any variation of this general scheme of allocation, in effect, transfers risks and responsibilities and, therefore, should carry with it a commensurate transfer of authority and compensation.

As with risk assessment, too many design professionals think of risk allocation, with its sharing, rejection, transfer, and renegotiation of risks as activities that end at the signing of the contract. The skilled design professional should be alert to the need for, and adept at the renegotiation of such matters at any point in the project, if need be.

In many cases, of course, that will not be necessary if your firm's staff understands and is trained to follow simple routine processes. Two examples: (1) If there are risks inherent in a decision that place it beyond the scope of your responsibility, it's usually possible to advise the client of the parameters involved so the client can make an informed decision and you can transfer the risk appropriately back where it belongs; (2) By remembering to restrict your job-site directives to only those things having to do with construction results, not methods, and by then issuing your directives only to the superintendent, you can avoid having your actions construed as having modified the contract and your having assumed the risk for construction supervision and safety.

These examples illustrate how to avoid one of the two most common ways design professionals unilaterally raise their own standard of care and cause themselves liability: Avoid exceeding your authority. The other common mistake happens most often in negotiation and during redesign after the price has come in, when the design professional hopes for the best and, by words or actions, assures the owner it will happen. Don't promise more than you can deliver.

These rules apply to the actions of everyone in the firm, and proper attention to risk allocation must be a shared responsibility at every staff level. One highly successful, mid-size architecture firm reports that immediately upon signing the contract a meeting is called of the entire staff assigned to the project, including the consultants. The agenda is simple: They read the contract together, stressing that every member of every design firm involved on the project assumes an ongoing responsibility for seeing that the contract is either adhered to or else changed so that it can be.

At a major meeting in 1985, when asked publicly for the single most important piece of advice they could give the design professions regarding professional liability, the top executives and lawyers for Victor O. Schinnerer & Co. were quick and unanimous in their response: "Know your own contract. " Their response to the follow-up question of how they themselves avoided liability was just as emphatic and prompt: "We hire the best people we can afford and train and supervise them well. "

3. Documentation

Careful documentation and record keeping are obviously an important part of good risk management. For many, proper documentation is also a major frustration since there is no clear definition of how much is enough. When there is a claim, there never seems to be enough. When managing a project, it feels as though you are in danger of spending the entire fee on documenting the services instead of providing them.

There are numerous sets of project management record forms and checklists available commercially to make such documentation systematic and less onerous. Some firms furnish each staff member a diary or time management system in which to record decisions, actions, and communications. Others require project managers to assemble and maintain project record books in a standard loose-leaf notebook format containing standard forms and checklists. Some firms report their personal computers are invaluable for project documentation. Many have developed their own routing stamps, memo pads, and transmittal forms.

The mechanics of your documentation system are far less important than the fact that you have one and that the entire firm works consistently with it. Novices are held to the same standards of professional conduct as experienced practitioners, and any member of the firm may, in fact, be deemed a legal agent of the firm whose actions can create legal duties. The ability to leave a proper paper trail is, therefore, a skill to be highly prized at every staff level.

Risk assessment, allocation of risks, documentation--three ongoing activities that prudent architects and engineers do routinely in the conduct of the business of the practice. Note that they really are no different from the prudent conduct required in the areas of your technical knowledge and professional skills used to keep your bargain with society. Regardless of whether the question arises in the area of practice or of business, decisions most often hinge on the determination of what is prudent under the circumstances.

"Prudent, " the word so often used in legal references to the standard of care, is defined merely as exercising sound judgment in practical matters. Problems arise not in the difficulty of the judgments required but, rather, in the sheer number of practical matters associated with any design and construction project. The tough judgment call is to decide what really warrants a consciously documented process instead of the quick, almost instinctive, snap decisions so typical of the design and production of a project.

In fact, the seasoned practitioner will find there is nothing difficult (and perhaps nothing new) in any of the separate pieces of information presented in this report. Yet combining them into a consistent and effective risk management program will, for many, involve basic behavior modification and changes in attitude. As anyone who's ever tried to make defensive driving a new habit can tell you, that is never easy.

For the great majority of design professionals, there are several statements that can apply equally well to defensive driving and to an effective risk management program:

- You already have virtually all the skill and knowledge required to do it.
- Taken a step at a time, there is nothing hard about doing it except taking the time.
- It is feasible, starting now, if you decide to do it.
- The key to it is consistent application of the principles until it gets to be habit.
- Only you can do it. No one can do it for you.

A much more positive way to think about this last statement is to realize you do not need anyone else to make risk management (or defensive driving) work. You remain in the driver's seat and are not dependent on someone else. Winning the battles for tort reform or low interest rates or affordable insurance is not a prerequisite to your taking positive action to avoid liability. After all, tort and insurance reform are global and societal issues. The practitioner who waits for society to provide remedies may be in for a long and expensive wait.

But this you can begin to do today:

- Understand the standard of care (constellation model).
- Learn how it is applied (prudent driver model).
- Assess project risks (identify and evaluate responsibilities).
- Equitably allocate risks/dollars (win-win contracts and processes).
- Document your projects (not only be accountable--keep accounts).

It should be obvious by now that the best defense is a good practice--that the most appropriate steps for you to take to limit your liability are the very ones that improve the quality of your professional services and the caliber of the people who work with you.

This paper was prompted by many discussions with people from the AIA, NSPE, and the Victor O. Schinnerer & Co. Commended Insurance Program. I appreciate very much the tremendous help those discussions were to me in formulating the message it contains. From my own experience, I realize that this is not an easy message for engineers and architects to receive and act upon, nor is it sent without an appreciation of the commitment and effort it asks.

What it does offer, however, is an alternative to the "iron-maiden " aspects of those concepts which would restrict the limits of professional practice by imposing rules from outside the professions. It suggests that through confronting risks and controlling them you can appropriately increase your power, image, and compensation. It proposes a positive approach with every confidence that the abilities of the design professions to continue to work so as to meet the standard of care should guide the incremental improvement of performance judged as meeting that standard. It acknowledges we are in the driver's seat.

---

* James R. Franklin is a Group Vice President of The American Institute of Architects, Washington, D.C., where he is responsible for all practice, design, and education programs. Prior to joining the AIA in 1985, Mr. Franklin practiced architecture for more than 35 years, most recently as Managing Principal of The Franklin Design Group, Inc., Chattanooga, Tennessee.

** This issue of Practice Notes was originally published as a monograph by James R. Franklin, FAIA. A shortened version appeared in the November, 1987, issue of Architecture. a/e ProNet, convinced that it stands among the very best works on the subject and that it can serve as a professional liability loss prevention resource of great value to architects and engineers throughout the nation, requested permission from the copyright holder to reprint it here. a/e ProNet thanks Mr. Franklin for granting that permission. The views expressed are those of Mr. Franklin and do not necessarily represent the views or the position of The American Institute of Architects.