

Author's Commentary on "A Second Story"

Commentary On
A Second Story

Question 1

This case deals with Deborah's multiple obligations and the conflicts of interest these obligations create. To fully understand the issues of this case, it is first necessary to catalog Deborah's obligations. While this step will not automatically distinguish which obligations are most important, it will help to clarify the problem. The following is a list of parties to whom Deborah has some obligation:

Rev. Howard and the Board -- Rev. Howard and the Board are Deborah's clients. She has a responsibility to act in their best interest, to help educate and inform them in the area of her expertise, and to be sensitive to their cultural needs as expressed by the Preservation Code of Ethics. She also clearly has a responsibility to research and record her findings to the best of her ability and to recommend a preservation plan that is consistent with her unbiased professional judgment.

The Smiths and Henry -- As their interviewer, Deborah has a responsibility to accurately report the Smiths' responses to her questions. As an interviewer she must also respect their privacy, not coercing or tricking them into answering questions they do not want to answer. In addition, she must not mislead them about the use of the taped interview.

The public -- As a preservationist, Deborah has a professional responsibility to accurately portray the historical nature of the house, clearly indicating what is original, new, restored, or simply unknown.

Church members -- The resources for the acquisition of the house as well as the restoration come from the church members. Deborah has a responsibility to wisely use the money with which she has been entrusted.

A larger African-American community -- Preservationists have had a somewhat unpleasant historical relationship with many African-Americans. In many instances, preservation legislation has led to the destruction of African-American communities as historic downtowns have been gentrified. In addition, preservationists have historically focused on the more accessible histories of European-Americans, leading many people to view preservation as the documentation of white history exclusively. As a preservationist, Deborah should consider these historical issues and attempt to mitigate and/or rectify the harm that has occurred.

Other preservationists -- As a member of a profession, Deborah has an obligation to uphold the integrity of the field. Beyond performing her job honestly and following ethical guidelines, that means that she should address all of these parties tactfully. Whatever action she chooses should be carried out in a way that represents the field in a professional manner.

From this list of Deborah's obligations it appears that there is a distinct conflict of interest between her obligations to the Henry and to the Board. She must choose between including and not including Henry's comment. While her obligations to the other parties listed are very important, they will most likely inform, but not dictate, Deborah's course of action.

Questions 2 and 3 focus more specifically on Deborah's obligation to Henry and to the Board. By analyzing these obligations further using theories of moral philosophy, it is possible to decipher the relative importance of each of these obligations.

Question 2

During the interviews, Deborah asked permission to tape-record her conversations with the Smiths. When they gave permission, there was a very clear spoken contract that what they said during the interview would be recorded, transcribed and used in the final report. The spoken contract concerning the tape recorder also has an inverse implicit contract: The Smiths do not give permission to use their unrecorded comments without further consent. This agreement is made explicit when Henry refuses consent. In fact, it appears that Henry may have chosen to discuss his memory of his mother's comment after the interview, specifically because the tape recorder would no longer be on.

One could argue that there was no contract obligating Deborah to remain silent, therefore she should include Henry's comment. That would be taking a very narrow and technical view. It would probably not pass the "*New York Times*" test, which states that one should consider the reactions of a reasonable public before pursuing a questionable action. Sissela Bok, *Lying: Moral Choice in Public and Private Life* (New York: Vintage Books, 1989). In addition, it would not honor Deborah's obligations to the preservation field.

Henry has a right to have his request honored, to expect Deborah to keep their verbal contract. From the standpoint of respect for persons, therefore, it appears that Deborah has an obligation to respect Henry's request and not to include his comments about the second story in her report.

Question 3

Deborah has an obligation to the Board of Directors and their representative Rev. Howard to help them make informed choices about their property. Like Deborah's obligation to Henry, her obligations to the Board can be framed in terms of respect for persons. Respect for the moral agency of the Board members means that she must not hinder them in making free and informed choices about both their money and their property. This line of reasoning dictates that Deborah should inform the Board of Henry's off-the-record comment.

Respecting the Board's right to make their own informed choices should also lead Deborah to realize that many of her concerns about consequences are misdirected. While it is possible that the Smiths will become angry and refuse to work with the Board if Deborah discloses Henry's comment, Deborah's responsibility is to inform the Board of these perceived consequences. The right to make the decisions about the house and about a future relationship with the Smiths should be the Board's, not Deborah's.

From the preceding two questions, it becomes clear that both Henry and the Board have a valid claim. These claims must be compared to assess the importance of each. Philosopher Alan Gewirth has organized the rights of the individual (and organizations) into three tiers. The first and most fundamental tier is that necessary for survival. As quoted in *Engineering Ethics*, the first tier of rights is "life, physical integrity, and mental health." Charles E. Harris, Jr., Michael S. Pritchard and Michael J.

Rabins, Engineering Ethics. (Belmont, Calif.: Wadsworth Publishing Company, 1995).

Neither of the two parties in this case can claim that Deborah's decision will interfere with these rights. The second tier, the right to maintain meaningful fulfillment, includes the rights "not be deceived or cheated, the right to not have possessions stolen, and the right to not be defamed, and the right to not suffer broken promises."Ibid. From this tier it appears that both parties can make a claim. Henry can claim the right not to suffer from the breaking of a promise. He might also claim that he has the right to not have his words stolen, but it seems that he should have been more cautious about disclosing the information about the second story. The Board, on the other hand, has the right to not be deceived. Deception includes withholding information that they have a valid reason to be told. The last tier includes rights to self-improvement such as "the right to property, the right to self respect, and nondiscrimination."Ibid. At this level, it appears that the Board also has a claim. Henry does not want his comments revealed out of respect for his mother. Unfortunately, his mother would not have wanted her comment disclosed to Deborah because she was concerned that her family would not be seen as respectable if it was common knowledge that they lived in a house previously owned by an African-American. If Henry withholds this information, the Board will not be in a position to make an informed decision about the preservation of the house. While Henry feels the need to respect his mother's memory, he does not have the right to do so if it will violate the Board's rights.

From this analysis, it appears that the Board has stronger claims than Henry, and it appears that Deborah should tell the Board about Henry's comment. This disclosure will violate Henry's rights, and everything should be done to lessen the impact.

Question 4

While the preceding two questions were based on respect for persons, we should also look at a utilitarian view. Using a utilitarian argument, we need to look at the consequences of Deborah's actions and pick the solution that creates the greatest good. If Deborah keeps Henry's comment to herself, Henry and the Smiths will not have to witness the partial demolition of their childhood home. Henry will also feel that he is respecting his mother. Unfortunately, this action will mean that the church members spend money restoring and maintaining the second story. This money will not be available to be used for other benefits to the local community and the public

at large. Additionally, the public will not see the most accurate representation that Deborah can give of Stewart's history.

If Deborah chooses to inform the Board of Henry's comments, Henry will feel betrayed. He may not trust Deborah or preservationists in general. However, in light of the negative impacts if Deborah does not inform the Board, Henry's mistrust seems less important. From the utilitarian approach, it appears that the greater good will be served if Deborah does inform the Church. J. Rachels, *The Elements of Moral Philosophy* (New York: McGraw-Hill, 1999).

Question 5

Using both the utilitarian and respect for person approaches, it appears that Deborah should choose to tell the Board of Henry's comments. This argument is based on Deborah's view that there are only two alternatives. In fact, this view limits many other alternatives that Deborah should consider before resorting to telling the Board. A better approach would be to follow a contingency plan like the one outlined below.

First, Deborah should privately explain to Henry the consequences of keeping his comments a secret. She could discuss the fact that the church will spend money on an unnecessary part of the restoration and the church's right to make decisions about the property. If he is receptive, she could also discuss how his mother's actions and attitude have resulted in a loss of history for many people and ask him to help rectify this wrong. If she can convince Henry to come forward, she can honor all her obligations. This would be the best solution.

If it is not possible to convince Henry to come forward, Deborah should attempt to expand her search. She should attempt to find historic pictures of the house or other residents of the town who might have a recollection of the original house, research biographical accounts, and look for an increase in the house's recorded worth in deeds, censuses, and other historic records during the first year that the Smiths owned the house. If surviving relatives of Jesse Stewart are still living, they should also be interviewed. Finally, Deborah should do a further detailed inventory of the materials that make up the second story. It may be possible to find some physical evidence that confirms a later construction date.

This additional research will be costly. Deborah should first explain that she believes that the second story was not original and discuss the extent of her further research with the Board. As discussed in Question 3, the Board should be allowed to make informed decisions about the use of their money.

If further research does not bring new evidence to light, Deborah must decide whether to tell the Board of Henry's comment. However, this action should be approached cautiously. Simply including Henry's comment in a report that she hands to the Board and the Smiths seems to be a fairly tactless approach. It does not seem to respect the fact that her actions violate Henry's rights. Nor does it seem to hold up her professional obligations. Most importantly, this course of action would damage relations between the Board and the Smiths. It would not be in the best interest of the Board, nor allow them to be in control.

A better approach would be to relate Henry's comment to the Board privately before the report is written. The Board could then decide whether they want to keep this information confidential (possibly to be used after Henry's death) and/or whether to go ahead and demolish the second story. The Board may suggest that Deborah leave out the comment but still recommend demolition. If this happens, Deborah should inform the Board of the preservationist guidelines and of her responsibilities to uphold the integrity of her profession. As a preservationist, she cannot recommend demolition without thoroughly documenting that historic fabric is not being destroyed. Finally, if the Board decides that she should include the comment, Deborah should discuss the decision with Henry. She should show her concern for his rights and make him aware that she did not make the decision lightly. In every way possible, she should attempt to retain the good will of the Smiths.

Question 6

Deborah's situation is a result of her inability to foresee the possibility of conflicts of interests. In hindsight, Deborah should have been more careful about promising a copy of the report to the Smiths. While it may have seemed like a friendly gesture at the time, it clearly led to a difficult situation. She should have discussed with the Board and the Smiths other alternatives such as giving the Smiths a copy of the interviews or having a plaque hung in the museum to honor the Smiths' contributions. Additionally, Deborah should have made it very clear to the Smiths

and especially to Henry that her obligations rested with the church. She could have let the Smiths know that what they said during the interview, whether on the record or off, was "fair game." Taft Broome, Jr., personal communication, July 24, 1999. This might seem fairly heavy-handed, but it is more appropriate than allowing conflicts of interest to arise.

Finally, the preservation community may be able to take actions to alleviate these types of situations. The preservation code of ethics, while addressing the responsibility to one's employer, does not discuss responsibility to the public or to others involved in the documentation process. The profession should probably discuss these obligations and formulate policies to use when conflicts of interest arise. The profession also might formalize the interview process. They could look to other professions such as psychology and anthropology for insight into dealing ethically with research participants. This research may lead to formalized consent forms and prescribed procedures or it may lead to profession guidelines. In either case, the result would help preservationists avoid situations such as this case discusses.

References

- The preservation code clearly indicates that unalterable changes should not be recommended unless there is clear evidence showing that possible historic fabric is not being unnecessarily destroyed. Using this guideline, Deborah does not have enough evidence to recommend demolition.