

## **Special Committee to Investigate Matters Regarding the Pre-Planning, Planning & Construction of the Ulster County Law Enforcement Center**

**The Special Committee to Investigate Matters Regarding the Pre-Planning, Planning and Construction of the Ulster County Law Enforcement Center was appointed pursuant to Ulster County Legislature's Resolution No. 67 dated February 22, 2007. The report is the result of the committee's investigation.**

**Legislative Committee Report and Consultant's report – available for download**

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**Special Committee to Investigate the Planning, Pre-Planning, and Construction of  
the Ulster County Law Enforcement Facility  
Committee Report and Findings Presented to the Ulster County Legislature**

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RFP-UC07-47 – Legislative Investigative Consultant/UCLEC

**FINAL REPORT**

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## PROLOGUE

Of the thousands of documents reviewed during this assignment, none is more heart-breaking than a brief professional article retrieved from among boxes of documents related to the Ulster County Law Enforcement Center (UCLEC) stored at the new offices of the County Sheriff. There is no indication of why it is there, or who obtained it. The title of this article, published in 1997, is “Avoiding the Expense of Constructing Unnecessary Jail Capacity,” authored by Allen R. Beck, Ph.D. (Appendix 1) In a passage subtitled: “Answering Four Questions About Space Requirements,” Dr. Beck writes:

The ability to reduce the projected number of beds depends on the knowledge and skills of those who determine what should be built. To establish future capacity requirements the following four questions should be addressed:

1. What is causing jail growth?
2. What are the options that can control jail growth?
3. What specific steps will be required to implement the options?
4. What are the likely outcomes, in terms of bed space savings, of applying the options?

Quite clearly, persons skilled in criminal justice system analysis are best suited to answer these four questions. Unfortunately, many jurisdictions are not aware of how they can frame the request for information. Requests for proposals, RFPs, frequently cover both structural assessment of an existing jail and a forecast of new bed space. Sometimes a requirement for a criminal justice system analysis is included. The difficulty of combining these separate informational requirements within the same RFP is that it sets up architects to take the lead. From a marketing perspective, many architects see non-architectural tasks as a “loss leader.” They bid low, winning the contract and securing an advantage for the next RFP which involves designing the jail. Typically, in low bids, there is insufficient money to perform the adequate analysis that would answer the four questions.

In the world of architecture, design fees are based on a percentage of construction cost. For this reason, some architects try to deflect attention from studies that might reduce the jail population. Characteristic of this maneuver is the ploy of currying favor of the prosecutor or sheriff, whichever is taking a stand on a specific number of jail beds. The prosecutor or sheriff is also praised on the grounds that he or she is the expert and therefore knows what is needed. The unfortunate aspect of this ploy is that such bed space estimates are usually speculative rather than the result of an unbiased examination of factors driving jail growth. Not surprisingly, prosecutors and sheriffs are sometimes part of the

problem due to inefficient practices in their offices which inflate the jail population. Thus, an unscrupulous architect may go past the ethical boundaries of good salesmanship to ensure that construction costs are not reduced.

An effective analysis of the four questions calls for neutrality. This neutrality may carry some disadvantage for the criminal justice system analyst when pursuing contracts. For this reason, decision-makers must develop an RFP which will ensure that the four questions are answered. They must either issue a separate RFP for the study of the criminal justice system or, if issuing only one RFP, must ensure that the criminal justice analyst and architect team is (1) not underbidding and (2) committed to a thorough examination of criminal justice system options that could reduce bed space requirements.

The timing of this article is significant because it represents a pool of professional knowledge available to the County in 1997, the year in which the first significant steps towards what became the UCLEC project were taken. It is also cumulative to a wealth of advice and information provided to the County during a number of “assistance visits” conducted by consultants provided at no cost by such agencies as the National Institute of Corrections (NIC), most of which was ignored.

By way of contrast, for approximately the next decade, the County stumbled through a decision-making process that was at times inexplicable, and allowed cronyism and favoritism to effectively chase away individuals, consultants and contractors that could have made a positive contribution to the structure and operation of its correctional system. The result has been the cost and schedule excesses of the UCLEC project, together with a criminal justice system that suffers from many of the same deficiencies identified nearly twenty years ago.

Over the past four years, the County has spent millions of dollars for consulting and legal assistance in negotiating claims filed by UCLEC contractors for additional compensation, and pursuing legal remedies against firms which are believed to have substantially contributed to the UCLEC cost and schedule overruns. It is not the intent of this report to re-plow that ground. Rather, and unlike any input the County has received from any of the existing and prior legal and consulting teams of which we are aware, this report will present an evaluation of how the County’s own policies and practices contributed to such problems. It is hoped that by taking such criticism to heart, the County can develop the policies and procedures that will be required to prevent the recurrence of such a troubled County project in the future.

As explained in the following section, the County has had such an opportunity for self-examination at least once before, albeit on a smaller scale. While at the time, steps were taken which were believed to be adequate to address problems on a prior construction project, the policy and procedural reforms did not “take.” Hopefully, the outcome of this exercise will lead to more comprehensive results.

## **I. Resolution No 298 (09/10/87) - “Establishing Policy For Future Capital Projects”**

On August 28, 1984, the Ulster County Legislature authorized a \$1.9 million bond for what became the Asbestos Abatement/Reconstruction Project for the County Office Building on Fair Street in the City of Kingston. However, when the project was completed in 1987, the cost had grown to nearly \$5 million. On May 14, 1987, a “Management Team” made up of then County Administrator Cal Cunningham and six other County officials released a report on the cost overruns. Among its principal findings were that the project was bonded prior to comprehensive estimates of its probable cost, and that the “ball park” figures used were not updated for scope additions, inflation and market conditions. In fact, the report cited a “perception” by key players on the project that a “cap” was set on the amount to be bonded, based on what was politically palatable, rather than a realistic projection.

The report also concluded that consultants and vendors had operated outside County procedures, that the County’s financial and oversight functions had broken down and that the minutes of the Public Works Committee were not sufficiently detailed to provide an accurate view of how decisions were made:

In the course of examining this problem, the Team discovered many flaws in the process and how it was managed. These deserve considerable attention, for they point the way to sharply improve County practice in the area of construction and renovations. In the future, there will be more building as the County grows. The building should be done in a tightly coordinated, timely and business-like way.

Specific recommendations in the Report included establishing a “Capital Program Administrator,” supported by a “Cabinet” consisting of all relevant committee chairs, that would meet monthly and be periodically “briefed on important issues relating to capital projects.” This system was intended to replace *ad hoc* committees, which the Team concluded “should not be utilized.” Also recommended was that “accurate and comprehensive minutes should be kept of all committee and Cabinet meetings.”

On September 10, 1987, the Legislature passed Resolution 298 - “Establishing Policy For Future Capital Projects.” (Appendix 2) The Resolution did not establish either a permanent “Capital Projects Administrator,” or the “Cabinet” envisioned in the Cunningham report. Rather, the Legislature decided to continue to rely on *ad hoc* committees to oversee major construction projects, although it did prescribe the specific make-up of such committees. For such projects, a “Special Legislative Committee” was to be formed, consisting of the Chairman, the Majority and Minority Leaders, the Chairman of the Public Works and Ways and Means Committees and one other member from both the majority and minority parties. Among this committee’s responsibilities would be to screen competitive proposals by architects for major projects and to negotiate their fees. The Resolution further provided that the special committee meetings would be

open to the public and that: “Minutes and a comprehensive file of documents relating to the project from its inception will be kept.”

A review of the history of the UCLEC reveals that the project proceeded well outside both the letter and intent of Resolution 298. Most significantly, various *ad hoc* committees dominated the planning and early stages of project execution, in meetings and communications which were not always public, and for which a comprehensive document trail is difficult to establish. As a result, the “business-like way” recommended in the Management Team’s 1987 Report was never achieved for the UCLEC.



## **II. 1988 - 1998 – Jail Overcrowding and Assistance Visits**

Through 1971, a County Jail was located in or adjacent to the Fair Street Courthouse in Kingston. The final iteration opened in 1902 with 42 cells, described several years later as “one of the first modern jails in the country...fitted with every modern sanitary appliance and convenience.” Between 1902 and the late 1960’s, the County’s population grew from about 90,000 to just over 140,000. In 1971, a new jail opened at the County’s Golden Hill annex on Route 32, with a design capacity of 154 inmates. Through most of the 1980’s, this increased capacity allowed the County to accommodate its own inmates and periodically earn income by boarding-in inmates from other counties. However, changes in legal and social policy resulted in increased incarceration rates for offenses such as drunk driving, drug usage and domestic violence. Together with an influx of psychiatric patients left adrift when state mental institutions were progressively closed, these new classes of inmates filled the jail.

In addition to the influx of unanticipated clientele, the Golden Hill Jail was a victim of history and bad luck. It opened as an all-electric facility about a year before the first OPEC oil embargo and subsequent events drove electric rates substantially upward. The jail was also built as a “linear” facility, in which rows of cells emanated out from hubs on each wing and floor, meaning that inmates could not be directly observed by correctional officers, other than by periodically “making the rounds.” Such linear designs fell out of favor with correctional authorities, replaced by concepts such as “remote supervision” designs, in which cells were clustered together in “pods” which could be observed at all times, directly or through video systems, and ultimately “direct supervision” designs, in which correctional officers were stationed in the pods themselves. The linear design was further inefficient in dealing with evolving requirements to segregate the increasing number of women and juveniles that were incarcerated. For example, the introduction of even one female or juvenile in one of the sixteen cell linear rows, could require the remainder of the cells to be left vacant.

By mid-1988, “variances” began to be required from the State Commission of Corrections to allow the jail to operate above its capacity. At a November 1988 meeting of the Legislature’s Judicial Committee, then-Sheriff Michael LaPaglia said he was “not in favor of expanding the jail,” and that building an entirely new jail was his preferred option. The option of replacing a jail that was less than twenty years old was not an attractive proposition to County leaders, particularly against a backdrop of difficult financial times. For example, in his January 5, 1989 State of the County Address, then-Chairman Richard Matthews said that “alternatives to incarceration” would be evaluated along with new construction scenarios, “to gain Ulster County the most cost-effective long-term solution.”

Shortly thereafter, with the support of Sheriff LaPaglia, the County Public Works Commissioner presented a “conceptual plan” to the Judicial Committee to construct a two-floor addition to the rear section of the jail, adding 40 cells, and convert the County Central Services Garage, a freestanding brick structure behind the jail, to accommodate 64 additional cells. That proposal gained no traction and instead, at its March 9, 1989

session, the Legislature voted 32-0 for a more modest plan to convert the Central Services Garage into a thirty-bed dormitory. The dormitory was completed later that year at a cost of approximately \$175,000. By the fall of 1989, the jail population had periodically spiked to 190, consuming the additional space added by the new dormitory.

Earlier in the year, the State Division of Probation and Correctional Alternatives (DPCA) agreed to conduct a study of the jail population, under a state initiative known as the Jail Management Assistance Team (JMAT), the primary goal of which was to “enable counties to better manage the use of that scarce criminal justice resource - jail space.” The JMAT “Jail Utilization Study” was released in late 1989, concluding that “the increase in the jail population was not directly related to either increases in criminal activity or increased admissions to the jail.” Rather, the growth was attributed to pre-trial detainees, two-thirds unable to make bail of less than \$2,500, and a doubling of sentences for those convicted, up to an average of 68 days that year from an average of 34 days in 1988. The report found that the majority of inmates in both categories were being held on misdemeanors or lesser charges, had no prior criminal convictions and were county residents with jobs or other ties to the community. To reverse such trends, the JMAT recommended streamlining the processing of detainees, making early decisions on risk and bail options, and assessing the potential for diverting otherwise jail bound individuals into alternative sentencing or treatment programs. The report also recommended that the County: “Establish a comprehensive community corrections facility to serve as a focal point for all alternatives to incarceration programming and to increase the variety and scope of programmatic options available to the justice system.”

While the JMAT found the County’s existing jail computer services to be “much more advanced than many jail-based systems,” they concluded that “major modifications are necessary in order to maximize the system’s usefulness.” Improvements were deemed necessary to allow the various agencies making up the law enforcement, judicial and correctional systems to share information, and to generate regular statistical reports. According to the report: “This will promote more efficient case management as well as allow for planning and policy analysis to inform decisions of agency heads and County lawmakers. While the report conceded that such efforts “will require additional investments in the criminal justice system,” it projected payoffs in the form of reducing the jail population “within the limits of the existing capacity...[T]hese new costs would be far less than the outlays required by new jail construction and operation of a larger facility.”

Making the most out of existing facilities was an attractive proposition in 1990, a year in which the County’s property tax levy increased by 41.8%. In addition, IBM’s status as the county’s largest private sector employer had begun to erode, down to 5,700 positions as compared to some 7,100 in 1985. At the March 8, 1990 session of the Legislature, the relationship between jail space, alternative programs and county finances were included in both the Majority and Minority platform statements. Citing cooperation with the state in studying alternatives to incarceration, Majority Leader Gerald Benjamin said: “We cannot afford additional facilities, and do not want to build them.” Minority Leader John Dwyer advocated for following up on the JMAT recommendation to

establish a “community corrections facility.” In September 1990, the Legislature voted 30-0 to convert the dormitory that had been carved out of the former Central Services Garage into a Community Corrections Facility, for persons serving weekend sentences and other non-violent offenders. As one of the first such facilities in the State, the DCPA put up \$662,000 for the conversion, and also contributed to its operating costs.

Implementation of some of the JMAT recommendations had an almost immediate effect on the overcrowding problem. In 1990, the average daily jail population fell to just over 150, and below 150 in 1991. When that downward trend reversed in 1992, the County again requested outside assistance. By this time, the JMAT concept had been discontinued due to State budget cuts. The County turned instead to the Community Corrections Division of the National Institute of Corrections (NIC), a branch of the federal Department of Justice. In response, the NIC funded an assistance visit by a three-person team from “The Sentencing Project” from Washington D.C. Like the JMAT, this organization supported controlling prison populations as an alternative to building costly new jail cells.

In September 1992, the Sentencing Project released: “Building Alternatives Instead of Jails: An Assessment of Community Corrections in Ulster County, New York.” Citing results from those of the JMAT recommendations the County actually implemented, the report concluded that “policy, not crime rates drives the use of the jail in Ulster County.” For example, the report noted that during 1992, the percentage of detainees held awaiting trial had decreased from 85% to approximately the national average of 55%. They attributed this decrease to an enhanced pretrial release program and better coordination with judges, with the result that more inmates were being released on their own recognizance and making bail.

The report also concluded that more could still be done to reduce the population of inmates actually serving sentences. In 1991, 90% of sentenced inmates were incarcerated for the first time, 21% were serving sentences for larceny or stolen property and 16% for DWI. Allowing that some fraction of such inmates might have been previous offenders allowed to serve only probation, the report nonetheless argued that “they are clearly not such hard-core offenders that they have cycled in and out of the jail systematically. This suggests that sentencing which imposes greater supervision and/or support than they may have previously received may provide appropriate sentencing options in many cases.”

The report also noted that the County had neither moved to develop the type of data systems recommended in the JMAT report, provided specific training on the availability of alternative programs for local magistrates, nor established the recommended Criminal Justice Coordinating Committee. It reiterated the importance of establishing such a body to centralize the evaluation of criminal justice statistics, develop responsive programs and plan for future needs.

The Sentencing Project reviewed both the costs associated with the alternatives to incarceration initiatives and the costs avoided due to a reduced jail population.

Considering that a significant fraction of the cost of such programs as the Community Corrections facility were reimbursed by the State, it concluded that such initiatives were cost effective. The assistance team also reported that there appeared to be broad support in the County for continuing such initiatives:

We observed that Ulster County has developed a near-consensus about the need to limit the jail population, while assuring that the courts provide adequate sanctions for criminal acts and reasonable protection for the community... Almost without exception, the County criminal justice and political leadership has united in cautious opposition to construction of a new jail. People who identified themselves in interviews as “liberal Woodstockers” and those who are leaders of the more conservative political establishment share common ground in their opposition to building an expensive new, larger jail. The basis for this position has been a skepticism about the ability of incarceration to reduce crime, combined with concern about the serious fiscal impact which any construction would require.

This “near consensus” did not include Sheriff LaPaglia. At a January 15, 1993 Press Conference, LaPaglia credited Alternatives to Incarceration programs with helping to restrain the jail population, but added that such programs alone could not resolve jail overcrowding:

The County...opted to expand the Alternatives to Incarceration and then boasted that we would never, ever have to build jails again. Certainly this is a popular stance to take in difficult times, but in this case all it did was stall the inevitable...

We at the Ulster County Sheriff’s Department supported that program and at the same time urged the County to look at expansion or renovation of the Ulster County Jail. We did this because from a realistic point of view we knew that the jail would eventually suffer overcrowding again, and when we exceeded our design capacity this department communicated with County Legislators in efforts to address the problem. They refused to cooperate...

A few months ago we submitted a report to the County concerning a renovation of the existing jail in order to comply with Commission of Corrections directives to resolve the overcrowding problem. This too fell on deaf ears. (Appendix 3)

Several months earlier, LaPaglia had arranged for another NIC-funded assistance visit, this time from its “Jails Division.” In December 1992, consultant Stuart Readio issued a report titled: “Systematizing Information Resource Management and

Establishing a Corrections Vision in Ulster County Should Help Reduce Jail Overcrowding.” He characterized the alternative programs established to that date as “very impressive for a county of this size.” Nonetheless, the report observed that the County had yet to develop a systematic evaluation of either its programs or their likely long-term prospects. As had the earlier JMAT and Sentencing Project reports, Readio reiterated the importance of improving the statistical evaluation of the current jail population and future needs, and forming a committee of county officials and members of the public to evaluate such needs.

Absent such data, Readio speculated that short term attempts to keep the jail population below existing capacity may have actually served as a distraction. Raising the possibility that alternative programs had reached a “saturation” point, with those still in jail being unsuited or having failed to comply with them, Readio noted: “The rapid deployment of options without a careful monitoring of their impact may have had a detrimental impact on solving the long term problem. The community may have lost the focus on the deteriorating conditions in the jail,” which he summarized as follows:

The physical plant is cracking under the strain of overuse.  
It is an unwholesome work setting for a dedicated staff. It  
is an experience for offenders that does not lend itself to a  
contemplative/rehabilitative environment.

Readio was aware that the Sheriff had advanced various proposals to renovate portions of the jail to add additional cells. He characterized such plans as only a “short term solution” which would serve to “make the jail even more staff intensive.” In the alternative, he reiterated the importance of improving the statistical evaluation of its current jail population and future needs, and becoming familiar with new correction philosophies such as direct supervision jails and podular cells. He also recommended that a bi-partisan committee of county officials and members of the public be formed to both evaluate current and future needs, and be prepared to transition to the solicitation of an architect when new facilities were deemed necessary. For the fourth consecutive time in as many years, the County failed to act on such recommendations.

The impasse between the Sheriff and the Legislature was ultimately broken when plans were developed to add additional beds to the existing jail in two phases. The first phase consisted of the conversion of the unused laundry area in the rear of the jail to a 40-bed dormitory. The second phase involved moving the Sheriff’s administrative offices off Golden Hill, and using the space for a few additional beds and support facilities. In early 1993, the LaPaglia once again sought NIC assistance, specifically to review the efficacy of such plans.

In an April 1993 report, NIC consultant Rusty Dickerson concluded that the proposed renovations would increase congestion in the jail, and do nothing to address such deficiencies as the lack of medical isolation space and a visitation area that the Commission of Corrections had described in 1991 as “a threat to the safety and security of the visitors, officers, and inmates.” According to Dickerson: “Adding bed spaces

without expanding support and program spaces such as medical, visiting, and intake services will very likely create an intolerable environment for the staff.”

Rather than the options then on the table, Dickerson recommended that the County lease a modular jail unit to house up to 60 inmates, with additional space for all inmate medical and visitation services. The County was also advised to retain “an experienced criminal justice facility expert” to conduct an assessment of long-term space requirements, and comparisons of the construction and operating costs of various options, ranging from permanent expansion of the existing jail to an entirely new facility. In retrospect, Dickerson’s take on the situation was entirely accurate. Unfortunately, to the extent implementing his recommendations would require the appropriation of funds, they were dead on arrival.

1993 marked the fourth consecutive year in which the County property tax rate increased by double digits. That year, the legislature also raised the sales tax from 3.0% to 3.75% to take pressure off the property tax and a crisis over solid waste disposal loomed. Adding to tough economic times, IBM cut an additional 2,000 jobs from its Kingston facility in February 1993. In July 1994, it announced that the remaining 1,500 employees would be transferred to its plants in Poughkeepsie and Fishkill, and that the Kingston facility would close.

Against this fiscal backdrop, the County cycled through a number of short-term measures to avoid the expense of constructing a new jail, or taking the fundamental analytical steps to determine its best options. In July 1994, the Legislature voted unanimously to proceed with the conversion of the laundry area into a dormitory. Later that year, lawmakers approved spending an additional \$1,057,000 to squeeze out what proved to be the last remaining inmate space from the 1971 jail. Most dramatically, this renovation called for the Sheriff’s administrative offices to be moved out of the jail itself. The vacated space was used to add a dozen beds, a medical isolation room and new visiting and kitchen facilities, all in response to issues raised by the Commission of Corrections. The Sheriff’s administrative offices were moved to a former bank branch office on Schwenk Drive in February 1994.

This burst of activity in 1994 reduced, but did not eliminate the need to board out excess prisoners to other counties. Various legislators complained about such costs during 1995. Legislator Frank Dart began voting against resolutions supplementing the Sheriff’s budget for increasing board out costs as a protest in April 1995. At the November legislative session, he complained that board out costs were “bleeding us dry. We need a new jail.” Legislator Phil Sinagra also went on record during this time in support of a new jail.<sup>1</sup> Sinagra filled in as acting Legislative Chairman during 1996, when Chairman Dan Alfonso was sidelined for medical reasons. Nonetheless, Alfonso kept his hand on the tiller as far as the jail situation. For example, when questions arose

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<sup>1</sup> It is interesting to note that of the two Legislators willing to go on record in support of a new jail at this point, one was in the majority party and the other in the minority. For the next several years, any individual legislator’s position on a new jail appears to have been related more to their personal convictions than party affiliation.

at a January 1997 meeting of the Criminal Justice/Public Safety Committee about the prospects for forming a committee to consider a new jail, Committee Chairperson Fawn Tantillo is recorded as responding that “she asked the acting Chairman and was told that when the Chairman is ready to establish one he will.”

### **III. A Cavalcade of Committees**

By the February 13, 1997 legislative session, Chairman Alfonso was back from a prolonged absence for medical reasons and upbeat on county finances. A 1993 increase in the sales tax was producing new revenues, augmented by the growth of retail stores in the Town of Ulster. As a result, sales tax revenues in 1997 were \$50,790,821, up from \$33,681,180 in 1988, when state variances were first required to keep the jail open. In his State of the County message, Alfonso also pointed to anticipated job growth from Fleet Bank and the Head Trauma Center taking up residence at a portion of the former IBM plant. Further boosted by strong growth in new housing construction, Alfonso characterized the economic prospects for the coming year as the best in 20 years, strong enough that it was time to take a detailed look at the jail situation.

By the end of this month, I will be appointing a committee... who will study all aspects of jail expansion...I more than anyone have held up this study for the last three years, but I feel now that with existing conditions and the continuation Of the number of prisoners sent to other facilities, we must take a look to see what we should do.

In setting out to “take a look and see what we should do,” the County started out with significant advantages. It had been the beneficiary of no less than four assistance visits, and accumulated a host of recommendations that had yet to be implemented. In addition, as one of the first counties in the State to explore alternatives to incarceration programs, it had accumulated a core group of employees and other officials who were conversant with the range of issues that would need to be addressed in order to produce a comprehensive plan. Unfortunately, the evaluation and decision-making process churned through a series of *ad hoc* committees, with a chain of command that lacked basic competencies, resulting in a series of decisions that, at times, defies logic or explanation.

#### **III.A The Ulster County Jail Study Committee - April 1997 – May 1998**

The initial committee appointed by Alfonso consisted of seven legislators, five department heads and three officials from the Sheriff’s department, led by New Paltz legislator Fawn Tantillo, then the Chairperson of the standing Criminal Justice committee. At its April 3, 1997 kick-off meeting, Tantillo projected that the committee would conclude its business in “approximately six months,” during which it would “develop a plan, evaluate all alternatives, gather statistics and background material, and tour other jails.” The projected six months year turned into a year, during which the committee did visit a number of other county jails, exposing the members to such concepts as the difference between remote and direct supervision facilities and the use of pre-cast concrete cells. However, political developments resulted in the Committee’s demise before more progress could be made.

At the Legislature’s January 1998 Organizational Meeting, Tantillo was among a majority of Republican legislators who voted to have Legislator Sinagra replace Alfonso



as Chairman. Alfonso prevailed when he gained the support of the Democratic minority. In the aftermath, Tantillo, who had backed Sinagra, was both replaced as Chair of the standing Criminal Justice Committee, and directed by Alfonso to wrap up the Jail Study Committee. At the time, his stated position was that he would take whatever recommendations came out of her committee and refer them to the standing Criminal Justice Committee for action.

In the process of wrapping up her committee, Tantillo proposed that the members recommend that the County issue a Request for Proposals, seeking an engineering consultant to evaluate whether it was feasible to renovate and continue to use the existing jail for a specific subset of inmates, either high or low security risk, and build an addition, or separate facility on Golden Hill to house the other. With only ten of the fifteen members present, the vote on her motion deadlocked 5 to 5, and was thus not adopted. Legislators Dart and Provenzano then countered with a motion to recommend that “a new jail be built at an alternative site and rule out any jail construction at Golden Hill. This proposal drew the same 5 to 5 vote as on Tantillo’s previous motion.

Tantillo wrote Alfonso on March 2, 1998 to report that she would attempt to work through this impasse.

It appears to me that there was confusion about my motion to hire a consulting engineer to evaluate Golden Hill, and the existing jail. It was not limited to only evaluating the existing jail for renovations. We need to know if we can feasibly use the Golden Hill site to build additional jail space that could be used independently or in conjunction with the existing jail.

Ultimately, the Jail Study Committee broke down into two camps. One believed that the next logical step was to enlist professional assistance to determine what was feasible on Golden Hill. The other, cognizant of the existence, if not the details, of a number of reports of assistance visits by previous consultants that had produced few results, believed it was time to pull up stakes on Golden Hill and look for solutions elsewhere. Following a final meeting on March 16, 1998, the minutes of which are somewhat chaotic, Tantillo essentially eulogized the committee in a March 24, 1998 submission to Alfonso. (Appendix 4) Among the “recommendations” upon which she said the committee reached “consensus” were :

- The County should be looking at building a facility to house 400-450 inmates.
- The County should put out a Request for Proposal for project planning and a feasibility study, to include lifecycle cost, that will consider all aspects of potential jail solution for Ulster County.

It is unclear where the recommendation “to look” at a 400 – 450 inmate facility comes from, since no “needs assessment” had been performed. In fact, these “recommendations” are conflicting and actually represent the inherent split in the committee, between those that wanted an engineering study to determine the available options, and those that had already decided that a large new jail should be built, at a location other than Golden Hill. According to Tantillo, the fact that her committee made no progress towards a “needs assessment” was not for the lack of trying. In her “wrap-up” letter to Alfonso, she claimed that basic data needed to conduct such an assessment had been requested from the Sheriff’s department, with no response. She also complained that, while her committee was in progress, and without its knowledge or input, Sheriff LaPaglia had arranged for yet another assistance visit by the NIC.

In one of the many ironies that course through the entire history of the UCLEC, Tantillo also recommended that the County form a committee of law enforcement principals, essentially a version of the Criminal Justice Council that had been proposed by the JMAT team nearly ten years earlier, and reiterated in every intervening assistance visit since:

This committee should evaluate the impact and opportunities available in sentencing options, the ever-changing makeup of our criminal justice population, and monitor the effectiveness of our incarceration and non-incarceration programs... We could head off problems, have a more efficient and effective program of deterrents and punishments, and even save money...Such a committee could maintain an on going “needs assessment” and population projections. This will allow us to anticipate future growth in the jail and other programs.

In effect, the Jail Study Committee ended where it began, *i.e.* staring at recommendations that had been in play for a decade, but upon which action was never taken, even to this day. The result was the chaotic rush towards the UCLEC project.

### **III.B The Special Committee on Jail Overcrowding – April 1998 – March 1999**

Contrary to his letter instructing Tantillo to “wrap-up” the Jail Study Committee, Chairman Alfonso did not simply forward the Committee’s recommendations to the standing Criminal Justice Committee. Rather, he proceeded to establish a series of committees that incrementally managed to obtain legislative approval for individual steps and expenditures that ultimately resulted in the UCLEC. On April 3, 1998, Alfonso notified the legislature that he was establishing a new, nine-member committee, dubbed the “Special Committee on Jail Overcrowding.” He thanked Tantillo and her committee for their work and said that the information they generated “will be the basis upon which we will go into the future.” He added a PS to his memo:

My own stated position is that I have an open mind --- a new building, renovation or a combination of both. If we do recommend a new building, I have been told by several builders and developers that there is room on Golden Hill. This committee will look at every aspect.

This new committee had four holdovers from the Jail Study Committee, *viz.* Legislators Dart and Feldman, Dr. Edward Brown of the County’s Community Corrections Program and Tantillo herself. The five new members were Sheriff LaPaglia, Buildings & Grounds Commissioner Harvey Sleight, Marbletown Town Justice John Decker, Legislator John Naccarato and Majority Leader Ward Todd, who was installed as Chairman. The committee was originally given a term of only 60 days, with two specific goals, namely (1) to take into account input and recommendations from the upcoming assistance visit from the NIC arranged by Sheriff LaPaglia and (2) “Study and make recommendations then go out for requests for proposals which will include all aspects of this project.”

In fact, this committee met at least 15 times over the next eleven months. At the committee’s first meeting, on April 15, 1998, there was a review of the final report of the Jail Study Committee, followed by “a general discussion about renovating the Golden Hill site vs. a new building site.” Alfonso, who two weeks earlier said he had an open mind on the question of renovation versus a new site, changed course and claimed that there was “no further room” to expand” at Golden Hill.”

From this committee’s first meeting, members Brown and Decker, clearly possessed of educational, professional and practical experience beyond the remainder of the committee, stressed the importance of (1) conducting a detailed evaluation of the jail population and (2) specific consideration of options to deal with non-violent, minor offenders, short of constructing new jail capacity to deal with them. For a time, they had Tantillo as an ally. For example, at the committee’s April 22, 1998 meeting, Sheriff LaPaglia represented that, as part of its upcoming assistance visit, “the NIC will do an evaluation of our needs concerning future projections, crime rates, etc.” Tantillo apparently understood that such services were well beyond the type of cost-free assistance visits NIC provided to local governments. The meeting minutes show Tantillo

arguing that “We need a formal Needs Assessment “ and proposing that “we get an outside consultant to help determine how many cells to construct.”

Former Legislative Chairman Matthews spoke at the committee’s April 30, 1998 meeting and claimed that alternative programs had saved some \$5 – 6 million the previous year. According to the minutes of this meeting:

It was agreed that we need a systematic review of all Individuals jailed. We must determine if they can be served elsewhere.

Ward Todd said we need an oversight panel similar to the one set up...in Monroe County. It consists of Legislative Chairman, County Judge, Public Defender, Sheriff and Representative of the Magistrates, and they meet every two to four weeks year-round to monitor the number and types of jailed inmates.

It was decided that Ulster County Sheriff’s Department needs To update its data system. The Committee will meet with Joseph Lemme concerning the computers and software which is needed.

During an informal interview on July 21, 2007, Mr. Todd said that none of the above objectives were accomplished prior to his resignation from the Legislature in June of 2003. He said that to achieve such goals would have required “one guy” to be in charge of the alternatives to incarceration initiatives and, since establishing such a position would have required other departmental officials to “give up some of their authority,” such a position was never established.<sup>2</sup>

For the remainder of its tenure, efforts by individual members of the Special Committee on Jail Overcrowding to raise issues related to alternatives to incarceration or comprehensive long-term criminal justice planning were consistently subordinated in deference to a series of incremental steps that led to the UCLEC. A particular turning point was the assistance visit arranged by Sheriff LaPaglia by NIC consultant Alvin Cohn. Between May 5-7, 1998, Cohn met with County officials and toured the Golden Hill Jail. He also reviewed the reports issued as a result of the prior NIC assistance visits over the years. As had all previous NIC consultants, Cohn took a programmatic approach to jail overcrowding. He presented his conclusions at a May 7, 1998 meeting of the Special Committee. (Appendix 5)<sup>3</sup>

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<sup>2</sup> Mr. Todd’s recollection in this regard was independently confirmed in informal interviews with Robert Sudlow, Director of the County’s Probation Department, and Dr. Edward Brown, who headed the County’s Community Corrections Program in the pertinent time frame.

<sup>3</sup> The “transcript” of Dr. Cohn’s remarks was made from a tape made at the May 7, 1998 meeting of the Special Committee. It is not known whether the “transcript” captures his entire presentation or whether the tape began at some point after Dr. Cohn began his remarks. (Hearing Transcript at 372-3; 380)

Select excerpts from Cohn’s remarks have been used to support the notion that the County required a new jail with a capacity to hold at least 400 inmates. For example, the transcript opens with Cohn stating: “The answer is yes. Unquestionably you need to do a facility. It is highly unlikely that you could renovate that facility to accommodate unexpected and anticipated needs.” As to the prospective size of such a new facility, he said only: “That’s all hypothesis and I cannot anticipate that the new facility would be less than 400 beds. I can’t anticipate it would be less...”

However, the bulk of Cohn’s comments went to more practical and programmatic issues than simply building a new jail. For example, his most immediate recommendation was that a civil engineer be retained to conduct an analysis of the “infrastructure and restraints” on the Golden Hill property, stating:

I recommend strongly Golden Hill because you already  
Have facilities up there, and there is no point in trying to  
go into my backyard...

I hope that the Civil Engineer will be able to approve the  
site and even specify the area because there are enough  
problems, and if you have to now go looking for a site  
somewhere, you have serious problems that would  
probably set you back at least a year.

Cohn said that making this initial analysis of Golden Hill was more important than trying to project what the total capacity of a new jail would be, saying he had no such projection and “that is a somewhat irrelevant question initially.” As for his “hypothesis” that the capacity of a new jail would be at least 400 beds, he noted:

...how much more is dependent on the crunching of a  
lot of numbers that will be able to tell you the various  
categories of offenders and such things as average  
length of stay for pre-trial detainees, for post-sentence  
offenders, and you have to take another hard look at all  
the alternatives available to you, what can be enhanced,  
and on the assumption that additional offenders could be  
placed in various alternatives or diversions has to be  
determined.

In “crunching” numbers, Cohn warned against simplistic extrapolations:

One of the difficulties in projecting the number of beds  
you will need is that it is going to be very easy, in fact  
done too frequently, to develop what is called the linear  
projection – you look at the crime rate, you look at the  
arrest rate, you look at the booking rate, and you continue  
to draw that line in any given year you want – 25, 20,10.

That really becomes an artificial figure.

Ironically, Cohn's specific concern was that simple, linear projections could understate the need for jail beds. Pointing to the dramatic increase in DWI legislation and mandatory sentences in the previous ten years, he postulated that a similar wave of new inmates could arise:

...there is something that you will have to anticipate and that is the significant increase in the at-risk juvenile population that will confront the total country. Crimes rates are down and violent crime is down, but the numbers of at-risk kids being incarcerated is increasing because of the violent nature of their behavior and for other political reasons.

So I could say based upon the actual analysis of the at-risk population, all of whom have been born so we really can count, you will have to look at the census data here and see what the 16-19 year old range will...be and that is going to tell you, as an example, as we project that figure for the next 15 years how many minors you are going to likely have. By doing a complete needs assessment you begin to smell certain kinds of things that are going to happen.

In retrospect, Cohn's concern over a future Ulster County jail bulging with dangerous teenagers appears to have been somewhat overwrought. In 1998, the year of Cohn's assistance visit, the peak jail population was 232 inmates. It increased to 246 in 1999 and 256 in 2000. By way of contrast, on September 13, 2007, the population in the UCLEC stood at 249. Reportedly, a 48-cell pod set aside for juveniles had only six such inmates. Recall, however, that Cohn never characterized his thoughts on the likely capacity needs for a future Ulster County jail as more than a "hypothesis" and that he cautioned that speculating on numbers was "irrelevant" at the time. Rather, the bulk of the transcript of his comments at the May 7, 1998 meeting of the Special Committee, and his subsequent full report, provided a roadmap of how the County could intelligently address the question.

For example, in addition to his "strong recommendation...that Golden Hill becomes the Criminal Justice Complex," he also pointed out that the "Complex" did not necessarily need to reside in one integrated structure:

The only other recommendation for today is that at Some point, and it may be at the site of the current jail, but a civil engineer should look at it, you need to triple or quadruple the number of beds you have for minimum security. Some for treatment, some for diagnostic workups, some for probation violators...But I could

easily see a 50 bed facility, privatized or not, but it is an essentially diagnostic treatment facility. You could headquarter your work release there, community corrections service programs. All of them would be up there.

Cohn also reviewed the reports of the previous JMAT and NIC assistance visits and recognized that some of their more significant recommendations had never been implemented. In response, he recommended that “all existing committees...be abolished.” He proposed two new bodies, one a “Citizen Advisory Board of prominent citizens” to meet regularly to review overall policy and direction. He also reiterated the need for a Criminal Justice Coordinating Council, made up of law enforcement and departmental officials, to achieve a more comprehensive understanding of who exactly was in the jail. He also reprised earlier recommendations that: “...the jail must be computerized immediately. An internal program where you can track and routinely analyze data to provide...categories of offenders, track every length of stay, track parole violators and probation violators.” Input from this data and the Citizen Advisory Board and Criminal Justice Coordinating Council would then be referred to a “Transition Team,” consisting of a “vertical slice” of the criminal justice system “from command down to line staff...to begin to give you a gross approach to how many square feet you need for offices and for certain kinds of services.”

The bulk of Cohn’s recommendations were never acted upon. Rather, only two components of his multi-phase recommendations were injected into the narrative that ultimately led to the UCLEC, *viz.* the need for a new jail and a “hypothesis” that 400 beds might be a reasonable capacity for such a facility. Dr. Cohn’s presentation at the May 7, 1998 meeting of the Special Committee figured prominently in a May 14, 1998 Resolution adopted by the Legislature in support of building a new County jail. It remains unclear whether the representation of the events at the May 7, 1998 Special Committee were appropriately used as a basis for the May 14, 1998 Resolution. It appears that the transcript of Cohn’s remarks at the May 7, 1998 meeting of the Special Committee were at least provided to the committee members, of which five were legislators, the following day. (Appendix 5) The only other record of this meeting are the minutes composed by Mr. Todd, which progressed through at least three iterations. (Appendix 6)

The first was Mr. Todd’s handwritten notes of the meeting, which appear to capture the highlights of Cohn’s presentation, as recounted in the transcript. These notes also contain the rhetorical question: “Is this committee prepared to vote on the question,” presumably that a new jail should be built. Mr. Todd’s notes suggest an affirmative response by the committee (“Yes-Unanimous”), but are unclear as to whether the committee intended to “authorize” a specific action, or merely “agree” to a general concept. At hearing, Mr. Todd was unable to shed any light on his choice of words in his notes.<sup>4</sup>

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<sup>4</sup> Hearing Transcript at 373-74. Unless indicated otherwise, all such citations refer to the consecutively numbered four-volume document covering the hearings held on August 27 and September 6, 2007.

The second iteration is a draft of minutes apparently produced from Mr. Todd's notes. According to Mr. Todd, he was solely responsible for keeping the minutes of the Special Committee, with an initial draft prepared by his secretary, and based upon his notes and some dictation.<sup>5</sup> The draft minutes of the May 7, 1998 meeting of the Special Committee are quite terse, but include a number of comments by Cohn emphasizing that expensive jail space should not be built for misdemeanor and non-violent offenders. Mr. Todd struck such passages from the draft.

In what appear to be the final minutes of the May 7, 1998 meeting of the Special Committee, Mr. Todd inserted a number of passages from the transcript of Dr. Cohn's remarks. However, consistent with the draft, no trace of his comments emphasizing the importance, and fiscal advantages of identifying alternative measures for non-violent offenders are to be found. There is no indication in the minutes of the meetings of the Special Committee that the minutes were reviewed, amended or approved by the members.<sup>6</sup> Nonetheless, the minutes of the May 7, 1998 meeting of the Special Committee featured prominently in the passage of Resolution No. 170 at the Legislature's May 14, 1998 session. This resolution, titled "Approving the Building of a New Jail," reads in its entirety:

WHEREAS, Consultant Alvin Cohn of the National Institute of Corrections (NIC), after touring the present jail, recommended that a new jail be built, and

WHEREAS, the Special Committee on Jail Overcrowding, comprised of the above-named legislators, as well as Sheriff Michael LaPaglia, John Decker, Harvey Sleight and Edward Brown voted on May 7, 1998 that Ulster County should proceed toward building a new jail,

RESOLVED, that the Ulster County Legislature go on record that it intends to build a new Ulster County Jail, and asks for further assistance from the NIC in planning such.

While, as noted above, members of the Special Committee had apparently received at least the transcript of Cohn's May 7, 1998 presentation, the balance of the Legislature apparently had not, a point raised by Legislator Sinagra:

It may be a fact we have to build a new jail. However, it is wrong to vote the way this resolution is written. Most of us tonight were told that an interim report was available. This Resolution does not say anything about building a new facility next to the one we have and combining them.

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<sup>5</sup> Hearing Transcript at 376-77.

<sup>6</sup> At interview, committee member former Town of Marbletown Justice John Decker stated affirmatively that he had never received minutes of the committee's sessions.



Sinagra was among ten Republican Legislators that moved to amend the Resolution to add "Or Major Expansion" to the title. When that amendment failed, the Resolution was passed by a vote of 21-9, again with all those voting in opposition in the majority party. (Appendix 7) Thus, the first concrete legislative step towards what became the UCLEC was taken with bi-partisan approval.<sup>7</sup>

Passage of Resolution No. 170 carried no immediate fiscal consequences. It was presented merely as a show of intent, designed to qualify the County for further assistance from the NIC. A second Resolution at the May 14, 1998 session contained the first actual appropriation towards what became the UCLEC, authorizing up to \$20,000 for an engineering study "to determine the feasibility of building a new jail on Golden Hill." In fact, the text of the Resolution appeared to be broader than suggested in the title, and is arguably consistent with the type of analysis for which Dr. Cohn, and Legislator Tantillo before him, had advocated:

WHEREAS, Ulster County desires to maximize the utilization of properties is currently owns, and

WHEREAS, an engineering review of infrastructure capabilities and identification of building sites on Golden Hill would be beneficial for making decisions regarding jail facilities, siting other future County facilities, expanding existing buildings, and ensure that existing infrastructure can meet the critical public safety needs of buildings currently on site...

RESOLVED, that the Chairman of the Ulster County Legislature is hereby authorized to enter into an agreement with Brinnier & Larios to conduct a study of that site, including surrounding and adjoining property to determine if it is feasible to build a new jail on Golden Hill...

To address the apparent discrepancy between the title and the text of the Resolution, fourteen Republican Legislators moved to amend the title to delete the words "a new jail." The amendment was defeated by the remaining sixteen legislators in attendance, again with a bi-partisan core of support. The original Resolution was ultimately passed by a vote of 27-3.

In fact, the specific scope of the Brinnier & Larios engineering study had been set out the day before the May 14, 1998 session, at a meeting of the Special Committee.

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<sup>7</sup> Dr. Cohn submitted the final report of his assistance visit to Sheriff LaPaglia on May 17, 1998. Consistent with his remarks before the Special Committee, the report essentially reprises the prior NIC reports and recommends an interim modular jail, hiring a consultant to do a needs assessment and evaluating whether Golden Hill had the capacity for either expansion, a new jail and/or some satellite facilities. Chairman Alfonso provided copies of the report to the members of the Legislature on May 21, 1998, a week after the passage of Resolution No 170. It is therefore apparent that legislators were not aware of the content and context of Cohn's findings and recommendations when they voted.

(Appendix 8) According to the minutes, Brinnier & Larios presented a “Draft Scope of the Work Required for Jail Site Feasibility at Golden Hill.” Rather than the type of broad analysis recommended by Dr. Cohn, the “Draft Scope” was designed solely to determine the suitability of Golden Hill for the construction of a new jail, the “footprint, capacity and dimensions” of which were to be supplied “by others.” At interview, Mr. Larios said that his best recollection was that he had provided the “Draft Scope” earlier in the day, in response to a phone call from Mr. Todd. He also said that he was not familiar with any of the reports resulting from NIC assistance visits for the County, nor any recommendations made therein regarding the evaluation of the Golden Hill site.

Brinnier & Larios issued its “Preliminary Site Feasibility Study of the Correction Facility, Ulster County Golden Hill Complex” on June 29, 1998. The report evaluated the potential for building a new jail on Golden Hill. The dimensions and a 400-bed capacity were provided “in consultation with architect.” At interview, Mr. Larios said that the architect in question was Joseph Roblee or the firm of McNeice, Hatch and Roblee. At hearing, neither Mr. Todd nor Mr. Sleight could provide a clear explanation of how Roblee became involved in the Brinnier & Larios analysis, not whether he was compensated for his efforts.<sup>8</sup> As opposed to the recommendations of Dr. Cohn, and the expectations of some legislators, the potential for continuing to use the existing jail, or other detached facilities on Golden Hill for some portion of the inmate population or administrative offices was not considered.

Since it was presumed that the existing jail would remain in service until replaced, Brinnier & Larios concluded that the only Golden Hill option for an entirely new jail was a site to the southeast, which featured as much as a 135 foot drop-off on the side facing Route 32. Constructing a jail on the site would require that the structures be terraced down the slope, an inefficient design for a jail, or “massive amounts of fill.” It was also determined that significant new construction on Golden Hill would exacerbate a chronic drainage problem, requiring the construction of storm water control facilities.

To address the drainage problem, the report identified a property across Route 32, immediately south of the Kingston Recycling Center, as suitable for a detention pond. Beyond its potential for storm-water management, the property was characterized as “a potentially attractive site” for the entire jail complex. Brinnier & Larios concluded that building an entirely new jail on Golden Hill would be feasible but difficult, and cost some \$3.5 million to prepare the site for construction, including the purchase of the Albert Street property for drainage. Given that the land was a candidate for purchase for storm-water control, the report recommended that “this parcel, tentatively called ‘Golden Hill Annex’ be evaluated in detail and the site development costs and issues on this parcel be quantitatively compared to the Golden Hill parcel.”<sup>9</sup>

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<sup>8</sup> Hearing Transcript at 58-59.

<sup>9</sup> At interview, Mr. Larios said that he was familiar with the Albert Street site since his firm performed the survey for what became the Kingston Transfer Station when the City purchased the property from the Starpoli family. He added that he also included the property in an inventory of potential sites for a warehouse park he prepared in the 1980’s for Economic Development officials. He said that his conclusion that the Starpoli property was suitable for off-site storm-water control facilities if a jail was built on Golden

At its August 13, 1998 session, based on the Brinnier & Larios preliminary report, but without the type of detailed comparative analysis it recommended, the Legislature voted to pay \$15,000 for a six month option on the Albert Street property, to be applied against a purchase price of \$350,000 when and if the deal was closed. The two dissenters were Legislators Tantillo and Kevin Hunt, the staunchest opponents of constructing a new jail. The option on the Albert Street property was executed on November 11, 1998, setting off a six-month dash to conduct the environmental studies necessary to purchase the site.

From its inception in April of 1998, various members of the Special Committee on Jail Overcrowding stressed the importance of gaining a better understanding of the make-up of the jail population, computerizing correctional records to analyze trends and develop strategies, conducting a comprehensive “needs assessment” and further developing the County’s alternatives to incarceration programs. (Appendix 9) During 1998, such efforts generally took a back seat to activities such as passing the Resolutions adopted at the May 14, 1998 Legislative session and arranging for the option on the Albert Street property.

With the execution of the option on the Albert Street site, the conduct of a comprehensive needs assessment could no longer be deferred. Pursuant to the New York State Environmental Quality Review Act (SEQRA), in order to purchase the site, the County would have to not only address the potential environmental impacts of developing the property, but also demonstrate the need for the facility proposed to be constructed thereon. To fulfill that requirement, it was recognized that the County require outside professional assistance.

County policy implementing Section 104-b of the New York State General Municipal Law requires that contracts for certain types of professional services, above a certain dollar amount, be awarded pursuant to the issuance of a Request for Proposals (RFP) to candidate firms. Between 1992 and 1999, the threshold was \$20,000, increased to \$40,000 in 2000. (Appendix 10) The fact that an RFP would be required to engage a consultant to conduct a “needs assessment” was understood by members of the Special Committee on Jail Overcrowding, including its Chairman, Mr. Todd and Buildings & Grounds Commissioner Sleight.<sup>10</sup> Nonetheless, the contract for the needs assessment was awarded through a process that was inconsistent with both County policy and New York State law.

Rather than widely disseminate an RFP for the needs assessment, only one consultant was initially asked to submit a proposal. Upon review by Mr. Sleight, he deemed the proposed fee of \$197,100 to be “too much” and informed Mr. Todd that “I know another firm that could give us the same services for what I’m sure would be considerably less money.” (Appendix 11) That firm turned out to be McNeice, Hatch & Roblee and, several days later, Mr. Roblee sent Sleight a proposal with a new verbatim

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Hill, or for evaluation as a site for the jail itself, was based on his own professional judgement, independent of any outside input or pressure related to his identification of the site.

<sup>10</sup> Hearing Transcript at 77-80.

scope of work as the original proposer, but since the hours associated with certain tasks had been reduced, Roblee's proposal featured a significantly lower cost, *viz.* \$124,360. At some point, Mr. Todd reviewed the modified proposal and determined that eliminating certain of the proposed tasks "for now" could further reduce the cost. He calculated that the deletions would further reduce the cost of the Roblee proposal to \$98,840. (Appendix 12)<sup>11</sup> Roblee responded the following day with a "revised proposal," deleting the tasks indicated by Todd, and confirming a proposed fee of \$98,840. (Appendix 13)

Roblee noted that the scope the County plucked from the original Ricci proposal represented "a large amount of work to be done in a short time." He added that his firm would "be using Rosser International, a known and respected Correctional Design firm to do the bulk of the work associated with this project." While there is no indication that any person or committee took part in or was aware of these negotiations aside from Mr. Todd and personnel from the Buildings and Grounds Department, Roblee proceeded as if it was understood that his firm had been retained. For example, on February 10, 1999, he faxed B&G's Senior Projects Manager, informing him that travel plans had already been made to bring Rosser personnel to Kingston for meetings on February 23-24, 1999 to get the assignment underway (Appendix 14).

While decisions had apparently already been made, Roblee's proposal was brought before the Special Committee on Jail Overcrowding at its February 16, 1999, as if the matter was still in question. (Appendix 15) At the time, Roblee's firm had already been retained for the architectural services associated with the installation of a 60-bed modular jail, adjacent to the existing Golden Hill jail.<sup>12</sup> While the contracts required for site preparation and the lease and installation of the modular units were competitively bid, Mr. Roblee's firm appears to have been retained without the issuance of an RFP.

While Roblee's firm had been working on the modular jail project for several months, Mr. Todd "introduced" him at the February 16, 1999 meeting of the Special Committee in a different capacity. Whereas, in the proposals reviewed by Messrs. Todd and Sleight a week earlier, Roblee had said that Rosser International would be participating in the needs assessment under the auspices of his firm, at this meeting, he was "introduced" as "presenting his report on behalf of Rosser International, a firm from Atlanta, Georgia."

The minutes of this meeting indicate only that Mr. Sleight characterized what was now a Rosser International proposal as substantially less expensive than one other proposal, from a firm he did not apparently identify. There was no evident explanation of how the original proposal solicited from Ricci Associates had morphed into first a Roblee

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<sup>11</sup> Hearing Transcript at 426-27.

<sup>12</sup> The installation of a modular jail unit, which had been an NIC recommendation since 1993, was endorsed by the Special Committee at its January 28, 1999 meeting. At a Special Session convened on January 28, 1999, the Legislature passed Resolution no. 40, amending the 1999 Operating Budget to incorporate the costs of preparing a site adjacent to the existing jail for the installation of leased modular jail units. When some legislators argued that it might be more cost effective to purchase rather than lease the units, Mr. Todd replied that leasing was the preferred option since it was projected that a new jail would be constructed at the Albert Street site within the proposed four-year term of the lease for the modular unit.

proposal, and finally a Rosser proposal. There was apparently no discussion of the fact that the original Ricci proposal and the ultimate Rosser proposal were not directly comparable.<sup>13</sup> As noted above, at the direction of Mr. Todd, certain of the tasks included in Ricci's proposed scope were stripped out of the Roblee/Rosser proposals.<sup>14</sup> In addition, of the tasks that remained common between the Ricci and Roblee/Rosser proposals, the latter significantly reduced the hours proposed to be dedicated to certain critical activities.

For example, the Roblee/Rosser proposals reduced the hours to be spent on "Existing Facility Re-Use Options" from 80 to 16. Similarly, the hours proposed to conduct a "Classification Analysis" of the existing jail population was cut in half, falling from 120 to 60. Even larger cuts were made to Ricci's proposal to spend 120 hours on an "Alternatives Analysis," to determine the extent to which additions to the current roster of Alternatives to Incarceration programs in the County could reduce the bedspace needs in a theoretical new jail. By way of contrast, Roblee/Rosser proposed to devote only 32 hours to such an analysis.<sup>15</sup>

Without the benefit of any of the above-noted information: "The jail study committee unanimously agreed to proceed as soon as possible with Rosser. The work could begin as soon as next week." Mr. Todd sent a copy of the minutes of this meeting to the entire Legislature: "In order to insure that all legislators have as much information as possible regarding the jail over-crowding situation."

The day following the February 16, 1999 meeting of the Special Committee, Rosser faxed a copy of the exact same scope of work as had been submitted by Roblee, with the exception that their corporate logo was substituted for that of McNeice, Hatch & Roblee. On February 25, 1999, Rosser submitted the same document to the County Purchasing Department, purportedly "in response to RFP #99-27."<sup>16</sup> The entire file residing at County Purchasing, including this document, is attached to this report as Appendix 16. On the "Contract Approval Routing Slip," and on other documents in the file, reference is also made to "RFP-27."

These multiple references to "RFP-27" is curious since, at hearing, both Mr. Todd and Mr. Sleight testified that the Rosser contract was awarded without an RFP being issued.<sup>17</sup> In fact, based on discussions with past and current officials from the Purchasing Department, which was apparently left out of the loop during the contact between Roblee/Rosser and Messrs. Todd and Sleight, the paperwork associated with the selection of Rosser arrived at their office as a *fait accompli*, with instructions to assign it an RFP designation after the fact. The only other reference to an "RFP 99-27" in the file at Purchasing is in connection with another consultant that performed some of the

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<sup>13</sup> Hearing Transcript at 94.

<sup>14</sup> These included a "Detailed Site Plan" (60 hours), a "Floorplan" (100 hours), an "Outline Specification" (32 hours) and a "Budget Cost Estimate" (40 hours).

<sup>15</sup> As noted in the following section, it does not appear that Roblee/Rosser accomplished even this diminished scope.

<sup>16</sup> Pursuant to County policy, that filing also included an executed "non-collusion bidding certification."

<sup>17</sup> Hearing Transcript at 94-5.

environmental studies required for the SEQRA evaluation of the Albert Street property. However, since that contract was originally valued at less than \$20,000, no RFP for that assignment was apparently issued.

The confluence of facts noted above raises a number of troubling issues. At hearing, former County Attorney Murray testified that, given the value of the Rosser contract, “policy would obviously have required that there be RFP’s.”<sup>18</sup> Further, it appears clear that members of the Special Committee, some of whom were vigorous advocates of exploring a detailed analysis of the existing jail population and a rigorous examination of the potential for augmented alternatives to incarceration programs to constrain the size of a new jail, did not realize that such tasks have been substantially diminished in the Roblee/Rosser proposal they were asked to approve.

In addition, as acknowledged by Mr. Todd at hearing, there was agreement among the members of the Special Committee that whatever firm was selected to conduct the needs assessment would not be eligible to serve as the architect for the UCLEC project.<sup>19</sup> Clearly, the eventual actions which had Rosser as the lead firm for the needs assessment, with Roblee playing a supporting role, and the hiring of Roblee to serve as the lead architect on the UCLEC project, with Rosser in a supporting role, constituted a manipulative and transparent effort to defeat that agreement.

Most fundamentally, the defective process whereby Rosser International, with Mr. Roblee in tow, was commissioned to conduct the so-called Track 1 and Track 2 studies, deprived the County of the talents and insights of any number of other firms that might have approached the UCLEC project in a more effective manner. Although Mr. Todd did not recall the fact, the NIC provided the County with a list of fifteen firms it believed were qualified to perform a competent needs assessment.<sup>20</sup> Based on our own research, it has been established that, as early as Legislator Tantillo’s original Jail Study Committee, other firms notified the County that they would be interested in submitting proposals for such an assignment. Nonetheless, all such options were foreclosed by the ill-advised and improper process by which the needs assessment in support of the purchase of the Albert Street site was commissioned. The inability of cognizant County officials to explain how this unfortunate situation came to pass merely compounds the problem.<sup>21</sup>

Once the Rosser/Roblee team was on board, the Special Committee on Jail Overcrowding became largely irrelevant. While the committee remained in existence for some time, the balance of power shifted to yet another committee, which would set the agenda for the remainder of 1999.

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<sup>18</sup> Hearing Transcript at 95.

<sup>19</sup> Hearing Transcript at 63. This understanding was confirmed during interviews with a number of the individuals involved in the SEQRA studies and the selection process.

<sup>20</sup> Hearing transcript at 399-400.

<sup>21</sup> Hearing Transcript at 77-104; 399-436.

### **III.C The Jail Project Steering Committee – February – June 1999**

On February 18, 1999, Chairman Alfonso announced the formation of the “Jail Project Steering Committee,” again chaired by Majority Leader Todd. The members were Sheriff Bockelman, Dr. Brown, Commissioner Sleight, County Administrator William Darwak, Legislator Frank Dart and Joy Matthews, of Rosser International. They were directed to meet twice a month, but according to available County records, only meetings on 3/23/99, 4/6/99, 4/20/99, 5/18/99 and 6/1/99 can be confirmed.

Consistent with Mr. Roblee’s February 10, 1999 advisory, Rosser’s first working sessions in the County were on February 23-24, 1999, shortly after the Steering Committee was formed, but before it ever met. During these session, Dr. Brown explained that projecting future bedspace needs from existing County data could be problematic since “the classification status of the data is questionable...there is no historical tracking of inmates...” Mr. Roblee was undeterred by this input, saying that for the Track 1 analysis, “we would use the straight line projections...and use the worst case scenario to generate the preliminary Bed estimate figure.” He justified the use of such a “very conservative number,” on the grounds that the purpose of the Track 1 study was to test the ability of the Albert Street site to support a large facility, with the option for future expansion. He assured the Committee that in the Track 2 analysis, a more sophisticated projection of future needs would be developed, including an estimate of how augmented alternatives to incarceration programs could influence the ultimate outcome.

From the outset, the Steering Committee suffered from a split personality. Chairman Todd, supported by Roblee, Rosser personnel and Commissioner Sleight, operated under the assumption that their primary mission was to oversee the gathering of the data to justify the purchase of the Albert Street site, and the construction of a new jail thereon. Other members, believed there should continue to pursue engineering and programmatic studies to determine whether Golden Hill could still serve as the main jail complex. This diversity of opinion led to some lively discussions.

For example, Buddy Golson of Rosser was the featured speaker at the first committee meeting on March 23, 1999, focussing on the narrow objective of justifying the purchase of the Albert Street site. By way of contrast, Marbletown Town Justice John Decker complained that the committee hadn’t “done one thing” to determine whether DWI’s or domestic abusers could be diverted to programs other than simply sent to jail. In response to Decker’s comments, Todd said the committee would eventually address those issues, leading Decker to respond: “Yes, when, when?”

Todd: Just a second John, let me finish what I’m saying.  
We’re up against a deadline with the SEQRA process.  
We have an option on this piece of property...and it expires in May and we're on a fast track to get all the work that got to be done for the Environmental Quality Review Act...We may not build a jail as big as 400.

We may never expand to 600. That's down the road as is the specific design of the jail. We've got to get going on all of the process that's required by law before we can buy this property. If we don't act by the May 11<sup>th</sup> of the Legislature (sic) then we could lose the property.<sup>22</sup>

Justice Decker responded by noting that by chronically failing to conduct a comprehensive needs assessment, and fully developing alternatives programs, and now pushing through an expedited effort to purchase the Albert Street property, the County was putting the proverbial cart ahead of the horse:

All I'm saying is, we could have, with a very small effort in finding this out, maybe have done something to alleviate the problems that we have in the jail today and also in the future...That's all I'm saying.

The Rosser Track 1 report was issued in May of 1999. Consistent with Roblee's earlier commitment "to ensure that the EAF doesn't understate the project size," the jail population was projected by simple extrapolations of historic inmate counts, using the base years of 1985, 1988 and 1991. The choice of the base year is critical since it determines the rate of growth for the projection. For example, starting in 1985 or 1988 would include years in which the jail population had been constrained by the alternatives to incarceration programs beginning to take hold. Beginning in 1991 would only include years in which the jail population consistently increased. The differences are significant:

<b>Base Year</b>	<b>2010 Projection</b>	<b>2020 Projection</b>
1985	314	389
1988	327	410
1991	400	534

Without any explanation other than a desire to be "conservative," Rosser chose 1991 as the base year. All three extrapolations presumed that (1) "Crime trends will follow the general pattern of the last decade" and (2) "There will be no significant change in judicial sentencing practices in Ulster County." The end result was a projected need for 460 beds in 2010, 615 in 2020, based on a 1.15% multiplier for classification and peaking issues, and a 189,475 square foot facility to accommodate the 2010 projection.

The Report described the existing jail, with all its inadequacies, to be structurally sound, and "a good candidate for adaptive re-use," such as an adult or juvenile minimum-security detention facility, or expansion space for the Community Corrections Program, a portion of which it stated would be "ideal for this function." However, because of the structure of the Rosser analysis, such possibilities were not taken into account in

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<sup>22</sup> During the course of this investigation, no documentation that any other party other than the County had an active interest in the Albert Street site was encountered.



projecting the future need for cell space. Rather, the new jail would be sized to presume no such adaptive re-uses were undertaken.

The Track 1 report was not completed in time to allow the completion of the SEQRA process within the six-month option on the Albert Street property. As a result, at the May 13, 1999 Legislative session, a resolution to extend the option for an additional six months, at a cost of \$35,000 was passed by a vote of 21-11.<sup>23</sup> The Track 1 report was submitted later that month. The additional time provided by the option extension should have been sufficient for Rosser to produce both a more sophisticated population projection and a detailed assessment of the potential for additional alternatives to incarceration programs to reduce required bedspace. At the May 18, 1999 meeting of the Steering Committee, both Mr. Todd and Commissioner Sleight stressed the importance of the alternatives analysis in particular in the anticipated Track 2 report.

Nonetheless, at the Committee's June 1, 1999 meeting, Roblee acknowledged that neither Rosser nor his own firm were possessed of either the resources or qualifications to conduct the alternatives analysis included in their scope of work. Roblee attempted to soften the impact of this admission by claiming that existing County alternatives to incarceration program were so well developed, additional programs were not likely to have a major effect. Surprisingly, the County accepted this excuse, essentially without complaint. While Roblee offered at this meeting to rebate the funds that had been allocated for the alternatives analysis, no indication that such a refund was made. Rather, it appears that the funds were simply applied to other activities within Rosser's scope on which they had gone over budget.

The fact that Rosser essentially walked away from its commitment to conduct an evaluation of the potential for enhanced alternatives to incarceration programs to reduce future bedspace needs was not widely known. In fact, at a Public Information Hearing on the UCLEC project held in the Legislative Chambers on July 21, 1999, Rosser's Buddy Golson claimed:

Part of our charge in track two will be to work with Ed [Brown] and to look at those alternatives to incarceration. We have a good bit of experience throughout the country in looking at, with local folks, that type of thing. And we've seen that it does indeed lower the inmate count by and large across the board. But we intend to do that here. That's part of our charge in the second track.

What I hope I conveyed in my presentation was that our first track was simply a worst case swag (sic) at this thing to see what fit on a piece of property. We're going to take into consideration a number of issues, and this will be one of them, to fine tune the number of inmates and the type of

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<sup>23</sup> As they had for the original option vote the previous August, Republican Legislators Tantillo and Hunt were in opposition. Unlike the vote on the original option, they were joined by all nine Democrats.

inmates to determine what this facility needs to be and how big it needs to be.<sup>24</sup>

Given Mr. Roblee's remarks on behalf of Rosser nearly two months earlier, at the June 1, 1999 meeting of the Steering Committee, to the effect that Rosser had neither the ability nor the inclination to conduct this type of analysis, Mr. Golson's remarks at this Public Hearing are somewhat startling.

Rosser's Track 2 Report was filed with the County on November 4, 1999. Rather than the more sophisticated population projections to which it had committed, the Track 2 projections were developed by simple adjustments to the same basic extrapolations used in Track 1, *e.g.* giving more weight to the more recent data points between 1991 and 1998, and smoothing out peaks and valleys in the data. As the methodology hadn't changed much, neither did the results. The Track 2 report projected an inmate population of 457 in 2010 and 617 by 2020. These projections were three higher for 2010 and two lower for 2020 than in the Track 1 report, which was intended to be a conservative "worst case." According to the Track 2 projection, the jail population should have grown to approximately 350 by this year. As noted above, as this report goes to press, the population is approximately 250.

The Track 2 data did improve in one respect over the Track 1 filing. Based on four months of the most recent classification data, Rosser was able to break down its projections by age, gender and security classification. For example, Rosser established that 53.1% of the jail population in mid-1999 was classified as "minimum security." According to its projections, the percentage of inmates classified as minimum security would remain close to 50% for both 2010 and 2020. It is from this large fraction of minimum security prisoners that one would expect to find candidates for treatment or sentencing options other than incarceration. But since the County had not upgraded the computerization of its criminal justice records, there was no way to further break this subgroup down by the types of infractions committed, or to design alternative programs to deal with them short of going to jail. Since they couldn't be identified, they couldn't be planned for, other than to assume they would wind up in jail. As noted above, Rosser abandoned its commitment to conduct an analysis of how enhanced alternatives to incarceration programs could affect the future jail population. Rather it's projections presumed that "current conditions remain the same."

The Track 2 report, in a brief discussion of existing alternatives to incarceration programs in the County, makes reference to the 1989 JMAT study, cites a handful of its recommendations and says: "Ulster County has been extremely successful in accomplishing the development of each of these options." It fails to discuss the significant number of the JMAT recommendations that had yet to be adopted after ten years.

As was the case with the Track 1 Report, the bulk of the Track 2 report is taken up by a "Space Program," *i.e.* calculations and schematics laying out a general vision of

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<sup>24</sup> Transcript of July 21, 1999 Public Information Hearing, Re: Ulster County Jail at 69.

what the square footage of the various sections of the jail they presumed will be built at the Albert Street site would be. Between the Track 1 and Track 2 reports, the projected size of the UCLEC increased to 226,514 square feet.

On November 8, 1999, the standing Committee of Criminal Justice/Public Safety voted unanimously to accept the Track 2 Report. At the November 10, 1999 session of the Legislature, Resolution 338 authorized the County to exercise its option to purchase the Albert Street property and, in its role as Lead Agency for the SEQRA process, adopted its own Negative Declaration, finding that the construction of a new jail thereon would have no significant environmental impact. It passed by a margin of 24-8. The “nays” were evenly divided between members of the majority and minority parties.

The County took title to the Albert Street property on February 3, 2000. In presenting the Republican platform at the legislature’s March 9, 2000 session, Majority Leader Todd stated: “The next steps include hiring an architect and a construction manager with a goal of breaking ground in 2001.”

### III.D The Original RFP Committee

With the possible exception of the Jail Project Steering Committee, the *ad hoc* committees noted above did not necessarily trigger the establishment of the type of Special Committee called for in Resolution No. 298 (1987). Ostensibly, they were formed to evaluate options rather than to commit to a specific capital project. But with a site purchased and “a goal of breaking ground in 2001,” the prerequisites for a Resolution No. 298 Special Committee were clearly met, particularly since the immediate task was to retain an architect for the project. Nonetheless, rather than the bi-partisan committee of legislators called for in the Resolution, a seven-member committee was assembled that included but a single legislator, *viz.* Todd, who was designated Chairman of the committee. Alfonso dubbed it the “Jail Project Architect RFP Committee” but, as discussed below, whether it’s original scope was that limited remains unclear. Joining Todd on the committee were Commissioner Sleight and Senior Projects Manager Marc Phelan from the Department of Buildings & Grounds, Sheriff Richard Bockelman and Purchasing Agent Arlene Kerans. Two local businessmen were also named to the committee: Robert Carey of Carey Construction and John Morrow of Safeco Alarms.

As a result of notices published in trade journals and direct solicitations from lists of architects gathered from a number of sources, fourteen firms expressed interest, and provided their credentials. Based on a spreadsheet developed by Phelan, the committee rated the responses, and decided that six of the firms should be “shorted listed,” and sent detailed RFPs. Of those six, four actually submitted proposals. Of these four, McNeice, Hatch & Roblee (MHR) had the least experience in jail construction.<sup>25</sup> Prior to its UCLEC proposal, MHR’s primary correctional experience was various expansions at the Albany County Jail. The largest of these projects was a 300 cell addition to an existing 520 cell facility (\$30 million). They were, however, known to the County by virtue of their earlier work on the renovations at the Golden Hill jail and the installation of the modular unit, although such projects were hardly comparable to the construction of an entirely new facility. In addition, the MHR proposal made direct reference to the Rosser Track 1 and 2 reports, in which Mr. Roblee had participated, essentially portraying the design of the UCLEC as an extension of that work.

Based on another scoring sheet developed by Phelan, three firms were selected for interviews. Following the interviews, the field was narrowed down to MHR and the New York City-based Grosfeld Partnership. While Grosfeld had no prior experience in Ulster County, it was a substantially larger firm than MHR, with significantly more correctional experience, claiming to have designed over 500 major justice projects in 28 states. They had performed or contracted out planning and conceptual studies similar to Rosser Tracks 1 and 2 for Westchester, Nassau, and Rockland counties. They had designed expansions to correctional facilities in Westchester, Rockland, Putnam and Nassau counties. The Rockland and Putnam expansions featured Direct Supervision facilities. Grosfeld had also designed multiple projects at Riker’s Island and designed the multi-story Manhattan

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<sup>25</sup> The MHR proposal featured four other subcontractors, *viz.* Clough Harbour, Rosser International, Brinnier & Larios and Robert Millikin. Rosser had substantial correctional experience, but was not to be the lead firm.

Detention Center, winning awards from both the American Correctional Association and the American Institute of Architects for the latter project. For the UCLEC proposal, Grosfeld partnered with STV:

The firm of STV, Inc. has a full range of comprehensive capabilities including full in-house multi-disciplinary engineering – including civil, structural, geotechnical, electrical mechanical and plumbing, as well as full-service estimating and construction management. The New York City office numbers over 330 professionals.

The professional relationship between TGP and STV dates back to 1970, and we have completed numerous successful justice projects together since then. In their own right, STV has been the leader in the last 3 decades in introducing highly successful new design concepts in justice design – including direct supervision... They have a solid background of justice facility design in more than 150 judicial and criminal justice projects in 20 states and abroad. Their experience in justice design includes Jail projects in Westchester and Onondaga Counties, N.Y., and in New York City, as well as prisons in New York State, Pennsylvania, Missouri and Puerto Rico.

In addition to an impressive *resume*, the Grosfeld/STV team apparently proposed a significantly lower fee than MHR, which initially proposed a fee of 6.9% of direct construction costs. Neither the complete Grosfeld/STV proposal, nor its separate fee proposal could be located in the files at the County Purchasing Department. Nonetheless, at interview, those members of the selection committee that had a recollection of the fees proposed by the two finalists, agreed that the Grosfeld/STV proposal was lower than that of MHR, perhaps by as much as a full percentage point or more.

In an April 28, 2000 “Memo to File,” Mrs. Kerans recounted the meeting held the previous day make to chose the architect. Unfortunately, the memo does not list those in attendance. Nonetheless, the memo states that “all agreed” to offer the assignment to MHR, contingent upon their lowering their fee.<sup>26</sup> MHR ultimately reduced its fee to 6.4% and was awarded the contract. It remains possible that even this reduced fee was above that offered by the Grosfeld/STV team.

In addition to allowing MHR to revise its fee proposal, the committee also acceded to a concern expressed by Mr. Roblee that the level of professional liability

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<sup>26</sup> The memo also notes that the committee’s recommendation would be forwarded to Chairman Alfonso since “it is understood that he intends to put the award as a Legislative Resolution at the May meeting.” In fact, the Legislature was never asked to approve the MHR contract award, and the task was delegated to the Purchasing Department, subject to the recommendation of the selection committee.

insurance called for in the RFP was excessive. In a February 1, 2000 e-mail to Mrs. Kerans, Roblee said:

The County is requesting professional insurance of 5 million dollars for the Jail Project. This is unusual as industry standard for a project this size is 2 million dollars.

We have investigated the cost of this insurance and wanted to make you aware that this coverage will result in an additional cost of \$125,000 that will be passed directly to the County. This is for the lead consultant only there will be additional costs in the subconsultant's fees also.

Please let me know if there is any change to the insurance requirements or if we should provide the \$5 million dollars requested.

At the time, County policy was to require at least \$1 million in professional liability insurance for contractors on construction projects, with the understanding that greater coverage could be required on an *ad hoc* basis for particularly large projects. Following consultation with the County's Insurance Officer, the committee agreed to reduce the coverage required for the UCLEC architect to the \$2 million levels suggested by Mr. Roblee.<sup>27</sup> While this reduction applied equally to all the candidates, it likely was of greater benefit to the smaller firms, such as MHR.

At interview and at hearing, Mr. Todd recalled that the April 27, 2000 meeting to select the architect was a lengthy one, during which Mrs. Kerans raised concerns over whether MHR had benefited during the selection process by virtue of its prior engagements with the County.<sup>28</sup> At interview, Mr. Todd recalled that then County Attorney Murray advised him that MHR could not be disqualified on such grounds. At hearing, Mr. Murray did not recall either attending the April 27, 2000 meeting, or providing such guidance to Mr. Todd.<sup>29</sup> In a post hearing communication, Mr. Todd offered the following clarification to his recollections:

My understanding was that Rosser Justice Systems, if chosen to conduct Track 1 and Track 2 was not going to bid on the architectural services for the new jail. I believe that opinion was shared by other members of the jail committee. However, the Purchasing Department advised us that it would have been a violation of county policy if Rosser or MHR was disqualified from bidding on work on the jail...

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<sup>27</sup> In retrospect, given MHR's performance on the UCLEC Project, and the County's pending litigation against the firm, that decision was unfortunate.

<sup>28</sup> Hearing Transcript at 121-26.

<sup>29</sup> Hearing Transcript at 124-25.

While Mrs. Kerans did express reservations about McNeice, Hatch and Roblee, she also informed the committee that MHR could not be disqualified from responding to the RFP, nor could they be disqualified from possible selection as the architectural firm hired to design the new jail.

In fact, Mrs. Kerans prepared a memo expressing her thoughts on the architect selection, which we retrieved from the files at the Purchasing Department. (Appendix 17) On the relationship between MHR and Rosser, she wrote:

I was told that HMR (sic) did not take the contract for the Phase I and Phase II due to the fact that they wanted to “bid” on the architect project. HMR (sic) did respond to the RFP, however, Rosser is in fact the lead on the Architect project. It should have been Rosser/MHR. (sic)

At interview, Mrs. Kerans confirmed that she had raised the concern that “Rosser had an unfair advantage by its inside information concerning the present UC jail, its employees, the Sheriff and information from the Buildings & Grounds Department” at the April 27, 2000 meeting of the selection committee. Consistent with Mr. Todd’s original recollection at interview, and contrary to his later modification, Mrs. Kerans said that it was County Attorney Murray who opined that these prior activities were not sufficient to disqualify MHR/Rosser from being selected as the UCLEC architects.

At interview, committee members Morrow, Carey and Phelan said they also believed that Rosser would be the *de facto* lead architect, with MHR playing the role of local representative. According to Mr. Morrow: “The committee would never have hired Roblee (MHR) as the lead architect.” By way of contrast, both Mr. Todd and Mr. Sleight stated at interview that they believed MHR would serve as lead architect.

Appendix 18 consists of excerpts from a February 29, 2000 filing by MHR in response to the RFP for UCLEC architect. On the first page, Roblee describes MHR as the “lead firm” in the proposal. On the third page of the Appendix, he then characterizes Buddy Golson of Rosser as “our proposed lead architect.” On the fourth page, it is stated that Golson “will manage the design effort” and that Rosser would “provide the interior architecture” during the development of Working Drawings, while “Staff at MHR will provide architecture for the building shell.” Finally, in the “Methodology” section of the proposal, it is stated:

For this project, we have assigned each firm specific roles that will best meet the goals of the county. Rosser will be responsible for program verification and architectural design, through design development...Buddy Golson of Rosser...will

be the lead architect...Joe Roblee and staff from MHR will be involved in the design development, so they will be familiar with every aspect of the facility as they take the lead to produce working drawings. Mr. Roblee understands the County's goals and processes. As Project Manager, he will be the glue holding all the elements together.

Given the diversity of opinion among the members of the selection committee, the extent to which the committee as a whole understood the relationships among the players on the MHR team is somewhat unclear. However, at least one member of the committee believed that relationships of a different kind played a role in the architect selection. As Kerans wrote in her memo regarding MHR:

I have a problem with their flaunting the fact they know "Ulster County," they know the Sheriff's problems, that they have a head start on the project due to their history on this project. If this is to be taken into consideration, then the whole system of responding the (sic) RFP's is a farce and should not be continued where one contractor/architect/professional has an inside track. They did advise me that when it came down to winning a contract, having the credentials was not always the best way, it was who you talked to and what door you came in.

At interview, one other member of the selection committee expressed similar concerns. On the other hand, four other committee members reviewed Mrs. Kerans memo and said that they had no such concerns.

We are left with no clear understanding of why a highly qualified and experienced architect team, offering a lower cost than MHR, albeit without Mr. Roblee's local contacts, failed to garner a single vote from the selection committee. To the extent that Rosser's experience and reputation tended to burnish the overall credentials of the team assembled by MHR, the fact that its main offices were located in Georgia would seem to dampen that advantage.

As a point of information, following their failure to win the UCLEC assignment, Grosfeld and STV partnered to design a 280 bed correctional facility for Westchester County. That facility was recognized as "Project of the Year, 2005" by the Westchester/Putnam Chapter of the New York State Society of Professional Engineers.



### **III.E Construction Manager Selection Committee**

It is clear that the Architect Selection Committee originally operated under the assumption it would also choose the Construction Manager. (Appendix 19) For example, at the Committee's December 6, 1999 meeting, Kerans said she would "gather sample specs and contracts for Construction Management Companies and also obtain names of Construction companies." Similarly, at the Committee's February 2, 2000 meeting: "Tentative Specifications for Construction Manager were reviewed and approved by the committee." Kerans was to then forward the CM specifications to the County Attorney "for his input prior to finalizing the document." On February 11, 2000, Kerans sent a memo to the committee, updating them on her efforts to notify and contact prospective CM firms, and asked the members: "If there are any other firms you wish me to contact, please call me immediately and I will forward info to them." In the heading of this memo, she refers to the committee as the "Jail RFP Architect/CM Committee."

On February 17, 2000, Kerans sent out a "Notice" to 28 prospective CM firms, with an eleven item Pre-Qualification "Questionnaire." In addition, notices were published in three construction newsletters, with responses due March 7, 2000. Nonetheless, on April 7, 2000, Chairman Alfonso wrote Kerans stating:

...please send me all the information about the construction management firms that you have received. Within a week or so, I will name a Construction Manager RFP Committee to review this material and begin scheduling interviews.

Kerans responded on April 10, 2000, notifying Alfonso that eight CM candidates of the 28 contacted had responded to the Questionnaire. She added:

We have a meeting scheduled for 1:00 pm at the County Office Building to reduce the list of eight to a short list...

The fee charged, their answer to a Request For Proposal and the input from the Architect will be the determining factors... We do have time during the design process to let an RFP for the CM and make an award...

Our committee is prepared to continue on with the RFP and selection if you so wish.

If the original selection committee met on April 10, 2000, no record of it has been located. There was another committee meeting scheduled for April 19, 2000 "to discuss the CM responses," but Kerans was informed by Mr. Todd that the meeting should be cancelled. In a memo to the committee on April 17, 2000, Kerans notified the members that at their next meeting, at which only architect proposals would be discussed, the members should turn in the materials they had received regarding potential CM firms.

Three days earlier, Alfonso had followed through on his stated intention to form a separate committee to select a CM. He would chair the committee, with the other members designated being Ward Todd, Legislators John Naccarato and Joan Feldman, County Administrator William Darwak, Sheriff Richard Bockelman, Commissioner Harvey Sleight and Arlene Kerans. On April 17, 2000, Kerans sent Alfonso a memo she proposed to send to the new CM committee members, describing their “mission” along the same lines as followed by the architect selection committee. It involved grading responses with an “evaluation sheet,” short-listing no less than three candidates, submitting an RFP to those candidates, rating the proposals with an additional evaluation sheet, checking their references on other projects, and conducting interviews.

The minutes of the CM Committee’s first meeting on May 4, 2000 establish that Alfonso chose a different course than proposed by Kerans. He informed the members that at their next meeting, scheduled for May 15, 2000, they would be expected to “evaluate the eight proposals and pick the final four,” and then, without the benefit of an RFP, proceed immediately to interviews. At the May 15th meeting, the committee voted to interview five candidates. Also on May 15, 2000, Kerans issues a “Notice of Pre-Qualification” to the five CM firms, *in lieu* of an RFP. It directed that candidates submit a flat fee for the project and asked that in describing their experience, applicants should cite to jobs on which they had served as construction manager “with only law enforcement projects of similar size and complexity, particularly with other Counties in New York State.”

The committee interviewed the five finalists on May 30-31, 2000. While minutes were apparently kept of the interviews, they have not been located. Nonetheless, from various other committee documents, and what records remain at County Purchasing regarding various promotional materials submitted by the finalists, the particulars of three of the candidates are most noteworthy.

- Barry, Bette & Led Duke (BBL) – Headquartered in Albany, New York, with offices in Florida, Pennsylvania and Texas. As far as correctional experience, BBL cited work on five state prisons, all from the 1980’s. They had worked with MHR as architect on one of these projects, the Oneida Correctional facility. The only county jail project they cited was two phases of renovation work at the Albany County Jail, projects that were apparently successful as far as schedule and budget.<sup>30</sup>

BBL had other Hudson Valley credentials, ranging from a “complete renovation” of the historic Ulster County Courthouse, to projects at Kingston and Benedictine Hospitals, Bard College, the Culinary Institute in Hyde Park, Vassar College, and six ShopRite supermarkets.

In its proposal, BBL attached a table from the June 16, 1997 issue of Engineering News-Record, listing the Top 100 “At Risk” CM Firms in

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<sup>30</sup> In some general promotional material BBL sent Kerans a year earlier, it cited to work on the \$60 million Mount Olive Correctional Facility in West Virginia, as well as the Albany projects.

the U.S. The table had BBL ranked #46, with U.S. revenues of \$140.7 million. The same table showed that three other of the firms that responded to the Questionnaire were ranked much higher, specifically:

Bovis	#9	\$ 735.2 million
Morrison/Knudsen	#6	\$ 849.0 million
Turner Construction	#1	\$2,606.5 million

- Bovis Lend Lease – A multi-national project management and construction company, headquartered in Australia and doing business in 40 countries. Bovis cited to seven previous county jail projects in New York, all of which it claimed achieved budget and schedule goals, as well as only minimal costs associated with Change Orders. In addition to the county jails, Bovis had also worked on some ten other state correctional projects. Bovis did not cite to other correctional projects outside of New York, but presumably could have.
- Turner Construction – A U.S. firm with 41 national offices and six overseas. Turner characterized itself as “the State’s most experienced and successful construction management firm, providing building services to local hospital/healthcare facilities, educational and cultural buildings, government and correction facilities, industrial buildings, airline terminals and parking areas.” Turner cited a 1999 ranking by “Engineering News Record” placing them as “the leading correctional facilities builder in the United States,” having completed over 3 million square feet of correctional facility projects valued at over \$273 million in the previous year. Over the previous 25 years, Turner had participated in the construction of some 39 correctional facilities, 27 of which were “direct supervision” designs, and 19 of which won various types of industry award. In New York, Turner had worked on eight state correctional facilities, and was then working on the 1,500 bed Seneca Falls Correctional Facility. However, they had not to that point been directly involved in a county-level jail.

Mrs. Kerans wrote to Mr. Todd on May 31, 2000, informing him that she would not attend the June 5<sup>th</sup> meeting, with her Senior Buyer attending in her place “so minutes can be kept.” She added:

I would suggest that you ask for a “secret ballot” when voting. I have enclosed forms for this purpose. This eliminates any pressure people might have in their voting.

She attached a sheet summarizing the bids and trying to put them on equal footing, using a estimated construction cost of \$53 million. LiRo Group was the high bidder by a significant margin (\$4,050,000). Morrison Knudsen was next highest (\$2,654,000). BBL was in a range between \$2,385,000 - \$2,650,000, plus Field Office

costs, as much as and additional \$60,000 per year. The two lowest proposed fees were submitted by Bovis (\$2,252,500) and Turner (\$1,555,150).

The CM committee made its selection on June 5, 2000. The minutes of the meeting say only that:

The committee voted by ballot – resulting in a 6-2 vote for the firm of BBL. It was decided to contact BBL and ask them to meet with Mark Phelan, Harvey Sleight, Ward Todd, Arlene Kerans to negotiate further. No announcements will be made as yet.

The two votes again BBL were cast by Commissioner Sleight and Legislator Feldman.

On August 24, 2000, the Middletown Times Herald Record reported that BBL had been involved in a corruption scandal in Dutchess County, in which the firm was shaken down for a thinly disguised \$10,000 bribe by officials who were later prosecuted by federal authorities. Based on their eventual cooperation with the prosecuting authorities, BBL was not charged in the matter. In an August 25, 2000 article in the Record, BBL President Donald Led Duke, said the bribe was paid by employees, without his knowledge, and characterized his firm as having been “victims” of corrupt politicians.

On September 1, 2001, the Record reported that BBL had met behind closed doors” with the selection committee. Alfonso issued a statement characterizing BBL as the victim of a shakedown, saying that the County “reviewed all the data” and “agree with the decision reached by the U.S. Attorney’s Office that BBL was not guilty of any crime.” His conclusion was that: “The county cannot disqualify BBL from the job.” Legislator Feldman is quoted in the article as saying: “They cannot manage their own company and oversee their own employees.”

On September 14, 2000, the Record published another article with the headline of: “BBL Not Among Top Jail Firms, Source Says.” In pertinent part:

A large political contributor from Albany appeared out of the running for a \$2.5 million Ulster County job until Legislature Chairman Danny Alfonso stepped in...

Three of the firms stood “head and shoulders” above the rest, according to one source, and the Albany company of Barry, Bette & Led Duke, was not among them...

The article noted that, when Alfonso named the committee to select the Construction Manager, he, Naccarato, Darwak and Feldman “replaced three people with extensive construction backgrounds: County Senior Projects Manager Mark (sic) Phelan, Safeco President John Morrow and Carey Construction President Bob Carey.” Alfonso said that “he intended all along to have a separate committee select the construction

manager, although he may not have told the first committee that.” Kerans was quoted in the article as saying that she was not aware that a new committee would be named.<sup>31</sup>

At a September 21, 2000 meeting of the CM Committee, Todd moved and Feldman seconded “not to sign the contract” with BBL. A September 24, 2000 County Press Release stated that Alfonso directed Harvey Sleight to report back to the Committee with a recommendation for a replacement at their next meeting on September 25, 2000. The remaining CM candidates were re-interviewed on September 26, 2000, with Sleight, Kerans, Phelan, Cunningham and Roblee present. Of the three, Morrison Knudsen had the highest proposed fee, “however they were willing to negotiate.” They were credited with “extensive prison experience” but “they did not have an exceptional amount of jail experience in NYS.”

Turner was also credited with “extensive” prison experience, but not a “great amount” in New York.<sup>32</sup> It was also noted: “They appeared to be very regimented in their procedures, so much so that it was felt that they might not be flexible enough to work with Ulster County’s changing needs.” The minutes of the meeting make no mention of the fact that Turner’s fee proposal was the lowest by some \$800,000.

For these interviews, Bovis’ prior experience on county jails appears to have received more attention than in the original round. The ultimate decision is recounted as follows:

All three had major assets that would be good for Ulster County, but when we came back to the main categories, Jail experience, realistic costing for pre-construction phase, experience of team who would be assigned to Ulster County, it was determined that BOVIS would be the best choice.

The minutes also indicate that Harvey Sleight was to present the recommendation to retain Bovis to a meeting of the full committee on October 4, 2000. That meeting was apparently postponed until October 11, 2000. On that date, Sleight wrote:

As directed, a select group met and re-interviewed three firms from the original short list. It was a unanimous decision that the Bovis Lend Lease would best serve our County as the construction manager of our Jail project. I have attached the minutes of the interviews for your review. I will report more on them at this afternoon’s meeting.

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<sup>31</sup> At interview, two members of the original RFP committee agreed with this account, saying that the committee was on the verge of deciding on a short list that did not include BBL, when the CM selection process was transferred to the new committee. Three other member of the committee did not have that recollection.

<sup>32</sup> It is presumed that this reference was to county jails. In their promotional materials, Turner cited significant experience with state prisons in New York.

On October 18, 2000, Sleight wrote the Committee saying that, “as directed by Chairman Alfonso,” he had contacted officials in Cayuga, Delaware, Oneida, Otsego and Schoharie counties, where Bovis had performed as Construction Manager on their respective jails.

Without exception, all rated Bovis as excellent and said that they performed beyond their most optimistic expectations. They all knew Richard Scaife and proclaimed him as highly qualified, efficient and possessing management skills that they have rarely seen. Reports and documentation were always provided in a timely manner with the results being change orders less than 1.5%, all under budget, and all completed early or on time of the planned construction schedule. Their skills in doing plan review, value engineering and monitoring contractor progress, including quality control are exceptional. Based on this information and the review processes conducted by the Buildings & Grounds Department, I can find no reason not to enter into contract with Bovis Lend Lease as expeditiously as possible.

As discussed below, the County’s experience with Mr. Scaife and the Bovis team in general did not track the experience of the various counties that vouched for them.

#### **IV. The Bovis Contract**

On October 20, 2000, the County sent Bovis a copy of the contract it had negotiated, but never executed, with BBL, offering the same terms. Bovis countered with numerous proposed changes. Over the next several months, there was considerable back and forth regarding the contract terms. In particular, the County was adamant that Bovis make specific commitments in the contract consistent with its written and oral presentations prior to being retained. Senior Projects Manager Phelan was quite adamant over including these commitments in the contract, advising County Attorney Murray in a letter: "I believe this attachment of the documents is imperative." Phelan attached a list with two sections. The first is captioned: "Responsibilities Not Specifically Mentioned Under Contract" (16 items); the second is "Items Promised Under Bovis' May 30, 2000 Presentation (12 items). (Appendix 20)

Phelan and Murray ultimately prevailed and, in late April 2001, Bovis conceded to including its prior proposals and submissions in Section 14 of the contract. The final contract was sent by Purchasing Agent Kerans to Bovis on June 15, 2001. The contract includes a 24 page section titled "General Provisions" before the AIA boilerplate, as modified, as well as the early Bovis proposals in Section 14. Among the "General Provisions":

- Bovis shall provide recommendations on constructibility, availability of materials and labor, time requirements of installation and construction, and identify factors impacting project costs including, costs of alternative designs or materials. "Consultation During Project Development" (VII.B.1)
- Bovis shall conduct a constructibility review of the 95% level. "Additional Services" (#2)

As a result of these extended negotiations, Bovis' contract for the UCLEC appears to have been somewhat more restrictive than at least one of the contracts they had on another county jail project. The specific contract used for comparison was for the Delaware County Jail, a 100 bed facility constructed between 2002 and 2004 for approximately \$23.5 million. The Bovis UCLEC contract is more comprehensive in that it includes the 24 page "General Conditions" preamble, and the various Bovis proposals. Both contracts feature comparable additions to, and deletions from, the base AIA boilerplate. The UCLEC contract has Bovis playing more of a role in identifying and evaluating bidders for the prime contracts, assigns Bovis greater responsibility for maintaining updated project documents, and greater responsibilities in preparing punch lists and inspecting the subsequent work. While both contracts call for Bovis to prepare progress reports and ongoing reports "monitoring the approved construction cost," the UCLEC contract requires such reports to be submitted monthly, while the Delaware contract have no such specific requirements. It is notable that, in the County's pending litigation against Bovis, a primary complaint is that it failed to conduct a "constructibility

review” of the Crandell design documents.<sup>33</sup> The County’s position in this regard is strengthened due to the extensive negotiations over the contract terms.

Various parties, including the Office of the New York State Comptroller, have criticized the County’s contract with Bovis for the lack of specific penalty clauses. On May 19, 2006, the County responded to the Comptroller’s concern. (Appendix 21) As noted in subsequent sections, the extent of the problems on the UCLEC problem were so pervasive, and the eventual relationship between the County and Bovis so strained, it is doubtful that even a proportionate incentive/penalty clause would have changed the ultimate outcome. In fact, disputes over whether one side owed some additional compensation to the other pursuant to such clauses would probably now be included among the roster of charges and counter-charges in the pending litigation.

This is not to say that the County should not consider such provisions in future construction contracts, on a case-by-case basis, and endeavor to utilize them where appropriate and cost-effective.

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<sup>33</sup> By the time construction began on the UCLEC project, the firm of McNeice, Hatch & Roblee had reverted to its former corporate name of “Crandell Associates.” At that point, neither Messrs. Hatch or Roblee continued as partners in the firm. All subsequent references in this report to the firm will be as “Crandell.”



## V. The Railroad Right-of-Way

As early as the June 29, 1998 Brinnier & Larios (B&L) report, it was recognized that the use of the Albert Street site would require the relocation of a Central Hudson power line that cut across the property. On March 30, 1999, County Planner Dennis Doyle sent a hand-drawn March 25, 1999 Rosser site plan to Central Hudson, requesting input on options to relocate the power line. He specifically asked if under-grounding the line was a viable option. As it stood, the Rosser sketch had the power line re-routed behind the jail, on the far-east portion of the site, still above ground. It also depicted a "Public Entry" that cut across an abandoned railroad ROW, to which the County did not then have access. It is not clear whether Rosser understood that such an access point would require negotiations with the owner of the ROW.

On March 11, 1999, Buddy Golson of Rosser mailed Marc Phelan a number of preliminary sketches for a jail layout on the Albert Street site.

It should be noted that we are currently working from aerial topographical information provided by Dennis Larios and a tax map provided by Ulster County. At present, we do not have the final survey indicating the precise amount of property available for development. We need that information to complete our work with the degree of accuracy you will need. Please advise when we might expect to receive this information. Based on this, it is not likely we will be able to complete our work by...March 15, 1999.<sup>34</sup>

The Rosser Track 1 Report was issued in May of 1999. Chapter 5 consisted of a "Massing and Footprint Study," intended to provide a general understanding of potential jail layouts. Therein, it is noted:

In order to utilize the site efficiently, the utility line must be relocated. One possibility is to relocate the line along the north property boundary. This would require removal of most of the trees on the elevated portion of the site in the zone exposing the development to view from northern adjacent properties. The second possibility is to relocate the line along the south property boundary at the lower portion of the steep slope. This is preferable because the retention of vegetation is more likely in this situation and the natural slope of the land will tend to shield the view of the lines from the adjacent properties.

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<sup>34</sup> Golson also mentions in this memo that it was going to difficult to fit a 600 bed facility on the site without utilizing "a high-rise solution."

There is no mention in the Track 1 Report of under-grounding the power line. The “Site Plan” shown in Chapter 6 continued to show the “Public Access” across the railroad ROW.

In June 1999, B&L issued an “Engineering Report on Water Supply and Sewage Disposal” on the Albert Street site. It is included with the materials supporting the Environmental Assessment Form for the SEQRA process. Exhibit 1 to the report is a Conceptual Site Plan. It appears to be based on the March 29<sup>th</sup> Rosser site plan, except that it shows the power line under-grounded through the parking area and does not show any road access over the ROW. This same site layout is repeated in another B&L document issued in June 1999, the “Preliminary Storm Water Management Report.”

Versions of the Expanded Assessment Form required for the SEQRA process were issued in June, July, September and October 1999. Each has a site plan attributed to Shuster Associates, but it is sourced to a May 1999 Rosser sketch. The site plans show the power line under-grounded under the parking lot. However, like the earlier B&L sketch, and unlike the Rosser site plan, these versions show no road crossing over the ROW for public access. A conceptual site plan included with the County’s Negative Declaration under SEQRA in November 1999 continued to show no road access over the railroad ROW.

The earliest reference we have found regarding the use of the railroad ROW to relocate the power line is in the minutes of a March 21, 2000 “Design Coordinating Meeting.” Phelan reported that he was “hopeful of having utility construction underway by late summer of this year,” with the power line under-grounded on the railroad ROW. According to the meeting minutes: “County officials are meeting today on pursuing acquisition of the adjacent railroad ROW as the property is reportedly involved in receivership/bankruptcy proceedings.”

The next design coordination meeting was on June 14, 2000. According to the minutes, the importance of acquiring the railroad ROW for both public and utility access “was becoming more evident as these site design decisions would need to be made very soon...Relocating the overhead lines is also important in staging of the work site, as cut and fill operations could not start until the poles and transmission lines were removed.” Contacted by phone from this meeting, Murray reported that no work on the ROW acquisition has been done, and he estimated that acquisition of the property could take as long as a month due to the bankruptcy of the owner.

At a July 5, 2000 Design Coordination Meeting, Tony Zell of B&L reported that he had met with Murray and that “negotiations were actively underway” for acquisition of the railroad ROW. However, on July 25, 2000, Murray wrote Zell requesting supporting information for the condemnation of the railroad ROW, since negotiations had proven unsuccessful. He and bankruptcy counsel requested that Zell provide a description of where the county was in the planning and scheduling process, the reasons the ROW was needed and: “How this need was identified since it was originally felt that this property would not be necessary.”

At a Design Coordination Meeting on July 26, 2000, Murray reiterated that a negotiated settlement over the railroad ROW was “unlikely” and that condemnation might be the only recourse, taking between five months to a year. Also on July 26, 2000, Phelan wrote to Alfonso *et al*, at the request of Commissioner Sleight.

As most of you know during the early stages of the land acquisition it was determined that access to the site from the Northwest side would be advantageous. Even the conceptual site plan in the Phase I Report, dated March 29, 1999, clearly shows access to the site across the adjacent railroad bed...

The reason for writing this memo, at this time, is the fact that the conceptual site development and planning process has reached a point where the conceptual work such as the site entrance can no longer proceed. We cannot meet with Central Hudson again until this issue is resolved. As you probably know the first constructive work at the site will be the relocation of the electric lines. Without this decision we cannot proceed with this item...

Phelan estimated that under-grounding the power lines on the railroad ROW could save “many weeks of construction time and as much as \$200,000 in construction costs, as well as add to the visual buffer.

Murray responded to Phelan the next day (July 27, 2000), reiterating that the owner of the ROW was in bankruptcy and that “condemnation may be the only recourse.” He estimated that as a “best case,” the County could take title to the property within four to five months after initiating an action, “if there are no appeals.” The “worst case” was that the process could take “well over a year.” At an August 23, 2000 Design Coordinating Meeting, Phelan stated that the ROW issue “was creating a critical holdup in design and would create future construction delays for the project.”

Tony Zell provided the information requested by Murray on September 6, 2000. He explained that the inability to acquire the ROW would delay the current timetable, which called for the completion of the engineering design of the site utilities by early 2001, and building construction beginning between late 2000 and early 2002. He further explained:

During the preliminary planning for the utility lines it became apparent that the most economical route to the site would require access across the former railroad bed. Also, once the project architect was chosen and the design team assembled it became clear that it would be beneficial to have a separate entrance for the public and a separate location for the inmate transfers and other related prison uses...

We estimate that indecision on acquisition of this property will likely delay the project for at least one year. We base this decision on the construction staging issue discussed earlier in this letter and the delays in

design of access roadways, parking areas, storm drainage and off-site facilities...

A Public Hearing on the ROW Condemnation was held on February 28, 2001. The Legislature approved the condemnation of the railroad ROW on May 10, 2001 by a vote of 17-14.<sup>35</sup> As with many votes over the years related to the UCLEC, the make up of both sides was decidedly bi-partisan.

As noted in Section III.B of this report, among the activities deleted from the Ricci Associates scope of work in support of the SEQRA filing for Albert Street, as it passed through the hands of MHR and then Rosser, was 60 hours for a "Detailed Site Plan" during Track 2. This would have been incremental to the 80 hours allocated in Track 1 for "Site Plans." (Appendix 12) While there is no way to know precisely how these additional hours would have been utilized, it seems reasonable to believe that this additional effort might have precluded a situation where different consultants proceeded for most of 1999, working on the same project, but with differing assumptions concerning the relocation of the power line and the public access point to the UCLEC.

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<sup>35</sup> Resolution 52.

## VI. The Status of the UCLEC Project During 2003

At the UCLEC groundbreaking on September 30, 2002, it was announced that the construction duration of the project had been reduced from 24 months to 18 months. The following day in the Kingston Freeman, Richard Scaife of Bovis said the reduction was due to a decision to use pre-cast cells and beginning construction on all parts of the jail at the same time, instead of “starting from one corner and going all the way around.” At interview, Project Coordinator Brian Cunningham said that he was “surprised” at this schedule compression, and did not have “even a theory” as to why it was done. He added that while he was skeptical that the 18 month schedule could be accomplished, he was “willing to accept the possibility.” Commissioner Sleight recalled that Bovis’ initial position was that the project would take two and a half years to construct, an estimate he said that “looked right on the money.” He added that Mr. Scaife was the prime mover behind the 18 month schedule, that he did not know why the schedule was compressed and that it appeared to him at the time to be “pie in the sky.” He repeated that skepticism at hearing.<sup>36</sup>

Whatever optimism may have been built into the 18 month schedule, events began to erode that goal from the outset of construction. The scope and significance of such problems began to emerge in the earliest monthly Bovis reports, albeit in a somewhat muted tone. For example, in its January 14, 2003 report, Bovis acknowledged that “ledge rock” had been encountered in the foundation area. This report also has the first indication that there is a problem with the steel: “Structural steel and foundations revisions – Continue as a result of RFI processing.”

The February 11, 2003 Bovis report noted that the “ledge rock” had thusfar delayed the project by about three weeks and that “The site subcontractor continues to encounter ledge rock in the overblast area. This rock is being removed by using a hoe-ram.” In addition, Bovis reported that “Structural steel and foundations changes” were continuing not just due to RFI processing, but also “design revisions.” By no later than the April 8, 2003 Monthly Bovis Report, it is clear that the project faced significant challenges. Therein, it is noted in a section titled “Engineering Design Change,” that “Significant structural steel and foundation changes continue as a result of RFI processing and design revisions and potential significant added costs.”

On April 20, 2003, the Kingston Freeman published an article with the headline of “A Jail Grows in Kingston.” County officials quoted in the article painted a generally positive picture of the progress of construction. A photograph accompanying the article shows the first floor structural steel taking shape, but only scant progress above that level. By way of contrast, the “Preliminary” schedule issued by Bovis in its January 14, 2003

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<sup>36</sup> Hearing Transcript at 242.

monthly report, required that most of the structural steel for the entire building should have been erected by this time to achieve the 18 month schedule. (Appendix )<sup>37</sup>

Compared to the Bovis “Preliminary” schedule, the installation of foundation walls was ultimately delayed by more than two months in areas E, F, and C, more than three months in area D and G-2 and over a year in area G-1. The excavation/foundation delays clearly rippled through the installation of the structural steel. This problem was then compounded by the fact that numerous changes had to be made to the steel, including adding steel where the design provided inadequate support to various parts of the buildings. Again, based on Bovis’ January 2003 schedule, delay in erecting structural steel ranged from a month in areas E and F, the first part of the building to go up, to over six months in area G, to over a year in area H.

During 2003, the Public Works Committee was the primary legislative overseer of the UCLEC, with Buildings & Grounds personnel providing the input. That input, as reflected in the minutes of the committee’s sessions, was skeletal. For example, at the January 21, 2003 session, under “Capital Project Reports,” there is only: “UCLEC – Every Phase in the 12 contracts is moving.” The minutes of the February 25, 2003 meeting say only: “U.C.L.E.C. – Footings poured, sections of wall poured. Concrete tested. Steel has been fabricated.” At this session, Legislator Richard Parete “requested a review of change orders being done out of contingency.” However, there is no record in the minutes of subsequent sessions that such information was provided. Indeed, the committee minutes became even more terse. The minutes of the March 25, 2003 session say only: “UCLEC – Update.” Although a memo by Harvey Sleight indicated he would provide an “UCLEC update” at the committee’s April 23, 2003 meeting, the minutes of the meeting have no detail on any such “update.” Similarly, the agenda for the committee’s May 20, 2003 meeting again indicates that there will be an “UCLEC update.” However, the minutes say only: “U.C.L.E.C. (New Jail) – Pictures passed around.” It does not appear that the Bovis monthly reports were being provided to legislators nor, if so, that the serious issues they raised were being discussed.

The first indication the Public Works committee was getting any bad news came at the June 24, 2003 session, when the minutes record: “UCLEC: 300 people working. 5-6 weeks behind schedule due to weather, etc. Slowly getting back on schedule.” The agenda for the August 27, 2003 committee meeting has Sleight indicating: “Project Updates: Due to a shortage of time, I will forward to each Legislator’s box a written update of all active projects and will include any additional information I feel will be of interest to the Committee members.” The minutes have no other detail.

At the September 15, 2003 meeting, which featured a one-hour tour of the jail site, the committee agreed to invite a representative of Crandell to their next meeting “to discuss progress.” Nonetheless, there is no record of Crandell appearing before the committee at any time for the remainder of the year. At the September 23, 2003 committee meeting, the project report says only: “UCLEC – Bldgs A-E out of ground;

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<sup>37</sup> Hearing Transcript at 168-171.

some under roofs – Committee may want to consider having next month’s meeting on site.” At the October 21, 2003 committee meeting: “As requested at last month’s meeting, Commissioner Sleight handed out pre-typed project updates for his Department to committee members.” The last meeting of the PW committee in 2003 was on November 11<sup>th</sup>. The agenda says that there will be “Handouts to Committee Members” for “Project Updates.” The minutes indicate that Sleight handed out the updates, but there is no other comment.

At interview and hearing, former Chairman Todd recalled that when he left office in June 2003, the UCLEC project was between two and four weeks behind schedule, but still on budget. At interview, Project Coordinator Cunningham said that as early as the first quarter of 2003 and no later than the middle of that year, he knew that the project would be subject to significant cost and schedule overruns. Commissioner Sleight had similar concerns by mid-2003, both because of the time that had been lost to the preceding harsh winter, and issues that were emerging related to the precast concrete cells.<sup>38</sup> Those issues included questions related to the strength of the concrete, deficiencies in their installed insulation and whether it would be possible to complete the erection of the cells by the end of 2003, as called for to meet the 18 month schedule.

Concerns over precast cell issues were sufficient for the County to request that Hill International, whose role to that point had been to administer the Project Labor Agreement (PLA), assist in evaluating claims for change order and delay compensation by the precast cell contractor. Surprisingly, none of the County officials testifying at hearing could explain the circumstances surrounding this expansion of Hill’s scope. It would not be until June of 2004 until the need for the type of assistance Hill began providing in the summer of 2003 became a mater of record.

The County’s ability to present a unified front against the problems that were emerging on the UCLEC in 2003 was complicated by the transition between Mr. Todd and Mr. Gerentine as Chairman of the Legislature in mid-year. Mr. Gerentine testified, and project documentation confirms, that he had not been among the legislators who had been extensively involved in the early stages of the project planning and construction.<sup>39</sup> Nonetheless, beginning on December 16, 2003, in what became known as the “Chairman’s Meeting,” Mr. Gerentine endeavored to move to the forefront in addressing the problems that were disrupting the project. In particular, he realized that a fundamental issue was the lack of an integrated project schedule, one that was agreed upon by the contractors and which could be competently monitored and enforced by Bovis. As the record established at hearing makes clear, that objective was never accomplished.

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<sup>38</sup> Hearing Transcript at 243-44.

<sup>39</sup> Hearing Transcript at 265-67.

## VII. The Law Enforcement Project Oversight Committee

On May 20, 2004, Bovis announced projected cost overruns of some \$21 million, attributable to change orders and pending claims. As the problems on the project became more pronounced and visible, the requirements of the 1987 Resolution that a Special Committee be formed to oversee the project was unearthed. After a number of false starts, at its June 10, 2004 session, the Legislature adopted Resolution No. 197 which, among other things, created an Oversight Committee consisting of the Chairman of the Legislature, and six other members, split evenly among the parties. The Resolution called for this committee to “replace any previously formed committees and supercede the activities of any standing committee relative to the issues concerning the Law Enforcement Center Project.” The Resolution also called for the appropriation of \$150,000, admittedly a down payment, for the cost of engaging consulting and legal assistance in evaluating the performance of UCLEC contractors and defending against claims.<sup>40</sup>

While the Oversight Committee remained in place through the completion of the UCLEC, it went through what can be characterized as three distinct phases:

**Phase 1** – As noted at hearing, following the December 16, 2003 “Chairman’s Meeting,” there was a lively exchange of correspondence among the County, Bovis and project contractors. The dispute between the County and Bovis by 2004 revolved around the County’s insistence that Bovis produce an integrated schedule and, in its capacity as Construction Manager, devote sufficient personnel and resources to “take charge” of the project. Bovis would typically counter that design issues were at the heart of the project’s problem and beyond their direct control. (Appendix 23) A May 4, 2004 memo from Project Coordinator Brian Cunningham to Bovis characterized its most recent schedule as unattainable. He stated:

Ulster County requests that Bovis address these comments and provide a realistic schedule, which will accurately forecast a completion date...Additionally, the Project Team will not be able to develop a realistic recovery plan since the forecasted completion date appears unattainable. The County is particularly concerned that the forecasted dates are misleading to the Project Team members, contractors and elected officials.

The finger pointing between the County and Bovis notwithstanding, both continued to deny their respective shortcomings in their dealings with project contractors,

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<sup>40</sup> Resolution No. 197 brought the County into approximate compliance with one longstanding policy, *i.e.* the need for an oversight committee for major capital projects, as originally set out in the 1987 Resolution, however it violated another policy. Notwithstanding the experience Hill International had compiled under its properly awarded contract to administer the PLA, and whatever additional wisdom they had obtained since the summer of 2003 under an apparently liberal application of that contract, the contract for consulting assistance should have been awarded pursuant to an RFP process.



in an attempt to squeeze what performance they could from them under chaotic circumstances. For example, in an April 26, 2004 letter to the precast cell contractor, Bovis asserted: “Neither Bovis Lend Lease nor Ulster County has done anything to hold up the project schedule...” In an August 5, 2004 letter to County Attorney Murray, Bovis Vice President Mark Balling complained:

...I spoke with Harvey Sleight this past Tuesday regarding correspondence between Richard Scaife and Christa Construction that occurred in June. From what I understand, this correspondence was provided to Hill International with a memo that expressed frustration that Bovis would place pressure on Christa to increase manpower when we should have known that structural steel changes were holding up portions of the work as indicated by Christa’s response...

While we all know structural steel changes in particular have caused us to lose much needed leverage to push the schedule, this doesn’t mean we should not continue to try and pressure the root cause of multiple delays that have no basis in design changes. (Appendix 24)

Unfortunately, disputes over where to draw the line between required contract work and change order work due to design deficiencies and changes came to dominate the project, to the detriment of advancing the schedule. The result was that the County’s efforts to press Bovis for a realistic schedule throughout 2004 were fruitless.

It appears that communications related to these types of fundamental disputes among the County, Bovis and the project contractors circulated primarily within a relatively narrow circle of County leaders and officials, and the legal and consulting team that had been assembled. As the Oversight Committee attempted to orient itself to the facts of the project during the second half of 2004, it appears that much of this “inside” information was not known to it. As progress stalled on the project, the Committee would become more aggressive in seeking such information out.

**Phase 2** – With little progress to show for its efforts to achieve a realistic schedule in 2004, the County’s strategy shifted somewhat in 2005. At the beginning of the year, Bovis asserted that the UCLEC could be completed by August. In an attempt to enforce that schedule, Bovis issued Construction Change Directives to each of the prime contractors in February. In the minutes of the February 17, 2005 meeting of the Oversight Committee, the following comments are attributed to Richard White of Bovis:

There have (sic) not been any substantial push backs from contractors at this point. He received a letter from Christa...stating that that they can easily meet the schedule.

Despite such optimism, the schedule continued to slip. (Appendix 26) As the failure of the Construction Change Directive to progress the project became apparent, the Oversight Committee became openly frustrated with Bovis. In addition, friction developed between members of the Committee and the legal and consulting team. Throughout 2005, attempts to gain access to information that was being developed to establish the root causes of project delays, and to inform a prospective litigation strategy, were consistently of little avail. Typically, such work appeared to be continually “in progress,” or deemed too sensitive to be shared. Discontent with this overall state of affairs sowed the seeds for significant changes in the County’s overall strategy the following year.

**Phase 3** – The year 2006 opened with a change in control of the County Legislature. For a time, the new leadership continued to pursue the project completion and litigation strategies developed by its predecessors. Generally speaking, those strategies placed primary importance on preserving the County’s litigation position, even at the expense of completing the project as expeditiously as possible. More specifically, it called for the County to pursue legal action against certain contractors, most notably the Building Contractor, as well as the project architect. It was believed that Bovis would be helpful in this effort, and apparently it was thought that, in exchange for some type of informal cash settlement that could be used to defray litigation costs, there would be no need to take legal action against Bovis.

Based largely on efforts by the Oversight Committee, that strategy was discarded in early 2006. Bovis was terminated, new special counsel was retained and a construction expert was retained to begin to explore ways to re-establish at least workable relations with contractors having outstanding claims, particularly the Building Contractor, Christa Construction, Inc. This shift in strategy did not come without controversy. Some County officials and legislators still maintained that the previous litigation strategy would ultimately prove successful, allowing the County to recover significant portions of the cost overruns. To the extent progressing the project meant settling claims with contractors whose overall performance was deemed questionable, such cash payments were deemed distasteful to some. Nonetheless, this revised strategy certainly contributed to the fact that the UCLEC was commissioned in January of this year. It appears to be a functional, if not perfect facility and there is hope that in the near future, the County may begin to derive some much needed revenue by boarding-in inmates from other counties.

On February 27, 2007, the Legislature passed Resolution No. 77, effectively settling all outstanding major claims by prime contractors on the project at a cost of \$7,950,000. The Resolution was passed by a vote of 27-3. Litigation continues against the project architect and construction manager. There remain individuals who believe that either the settlement amount was too generous, or that litigation should have been pursued against some or all of these contractors. Given the wealth of project documentation that establishes there were significant deficiencies in the project design, and the somewhat caustic relationship that developed between the County and Bovis, we

believe that the outcome of lengthy litigation against the contractors would have been, at best, expensive and uncertain. This conclusion should in no way be taken to suggest that all contractors performed admirably. Some clearly did not.

In reviewing the records and minutes associated with the meetings of the Oversight Committee, it is interesting to note how the members grew into their task over time. As the Committee progressed, the members' ability to deal with complex issues increased, as did their ability to flush out information presented to them that was questionable or simply incorrect. It is reasonable to assume that if such a Committee had been in place from the outset of the project, as called for in the 1987 Resolution, some of the early problems that went on to cause substantial cost and schedule impacts could have been identified much earlier, and mitigated.

## VIII. The New York State Comptroller's Report

At the Legislature's June 10, 2004 session, Resolution No. 219 – "Request Comptroller to Perform a 'Complete Audit' of UCLEC," was adopted by a vote of 33-0. Chairman Gerentine subsequently wrote the Comptroller, asking:

I would appreciate it if you could advise me as to exactly what services your department can provide, particularly in assisting the County in prosecution and defense of the claims which may be made...

Perhaps due to the construction of the request, the Comptroller's office declined to provide assistance on the grounds that:

...the courts will be the final arbiter of these issues. Therefore, we do not believe an audit is appropriate at this time. However, we will continue to review the situation as it evolves and will conduct an audit in the future if we determine it would be beneficial for Ulster County officials and taxpayers."<sup>41</sup>

On June 22, 2005, Christopher J. Ellis, Chief Examiner of Municipal Affairs at the Comptroller's office notified the County that they would be conducting an "on-site assessment...to determine which, if any, of the various services that we provide is warranted." Shortly thereafter, the Comptroller decided to perform an audit of the cost and schedules overruns on the UCLEC. As explained by an agency spokesman:

We've been monitoring the situation for the last year or so, and we've determined that it is appropriate to do an audit at this time...There was a determination made by our professional staff that it was appropriate to proceed with an audit at this time.<sup>42</sup>

The Comptroller's audit report was issued on June 28, 2006, covering the period July 1, 2000 through June 23, 2005. As noted in previous sections, there are a number of factors that pre-date this period which influenced the course of the UCLEC project, e.g. the County's failure to address multiple recommendations by the NIC and the selection process and conduct of the studies conducted by Rosser International in 1999. In addition, at the County's request, the audit team did not confer with the consultant's developing its claims and litigation strategy. "because we did not feel it would be useful or beneficial to duplicate the consultant's efforts."<sup>43</sup>

Notwithstanding such constraints, the Comptroller's report contained pertinent insights. To the extent the report raised questions concerning the performance of the

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<sup>41</sup> Assistant Comptroller Steven Hancox to Chairman Gerentine, August 19, 2004.

<sup>42</sup> Christopher Ellis to Ulster County Administrator and Legislators, June 29, 2005,

<sup>43</sup> Comptroller's Audit Report at 41.

UCLEC architect and construction manager, such issues are available to be incorporated into the County's pending litigation against those parties. To the extent the report raised issues related to various prime contractors, while all outstanding claims related to them have been settled, they were consistently settled at amounts less than the original claims. It is reasonable to assume that the types of issues raised by the Comptroller's staff were among the factors contributing to that outcome.

Perhaps inevitably in such a complex undertaking, the audit report contains a number of factual and computational errors, and assertions that are not fully documented. To itemize such instances at this point would amount to quibbling. Suffice it to say that the audit report represents a significant investment of time and effort by the Comptroller's Office, at a time that the County was clearly struggling to regain control over the UCLEC project. On balance, it appears that the audit report was a useful contribution to that effort.

Early in the audit process, controversy attached to the fact that members of the audit team met with members of the Law Enforcement Center Oversight Committee, *viz.* Tracey Bartels, Richard Parete and Peter Kraft, at Democratic Party Headquarters in Kingston. Among the purposes of the meeting was to provide an opportunity for a former County employee to meet with the audit team in a location other than the County Office Building.<sup>44</sup> The three legislators also served on the Special Committee overseeing this report, and the matter was discussed with them informally. There appears to be a consensus that, while their attempt to accommodate the former employee were appropriate, a better choice of could have been made for an alternative location. More importantly, while this incident led to the replacement of members of the audit team, there is no indication that this had any significant effect on the thoroughness or content of the audit report itself.

This incident joins several others during the UCLEC project in which the motives behind seemingly minor events have been questioned. At hearing, Legislator Parete was questioned by a colleague on the circumstances of his sharing a fishing hole and lunch with a project contractor that had claims pending before the County.<sup>45</sup> Similarly, on the final page of Comptroller's report, it was noted that a project contractor had been reimbursed for \$39.59 worth of cigars it provided to a County legislator. Subsequent news articles established that former Chairman Todd had received the cigars from Rosser International.<sup>46</sup>

It is hoped that a reader of this report will understand at this point that the root causes of the cost and schedule overruns on the UCLEC project are far more substantive than cigars, fishing holes and hamburgers. Nonetheless, if these incidents serve as cautionary tales for past present and future County officials that stepping into public service means that appearances matter, some small purpose may be served.

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<sup>44</sup> August 29, 2007 Hearing Transcript at 14-16.

<sup>45</sup> August 29, 2007 Hearing Transcript at 12-14.

<sup>46</sup> Kingston Freeman, April 21, 2006; June 29, 2006.

## IX. CONCLUSIONS AND RECOMMENDATIONS

The controversy over the construction of the UCLEC has clearly been a traumatic event for the County, not to mention a significant financial burden. While many actors played a role in the project's difficulties, it is left to the County to examine its own policies and procedures to ensure that there is no recurrence. As noted above the County has had this opportunity at least once before, in the aftermath of the renovation of the County Office Building. Hopefully, the remedies it sets out to establish in this instance will be more enduring. Specifically:

- The County should review, and modify as necessary, Resolution No. 298 (1987) to provide adequate oversight of future capital projects. Such provisions should be formally enacted into a Local Law.
- The County should review its policies associated with the awarding of professional services contracts. N.Y.S. General Municipal Law Section 104-b requires that the policy be reviewed on an annual basis. The County has been negligent in this regard over the years.
- The County should establish a procedure whereby it can be assured that contracts for professional services have been properly awarded. It is understood that the County has established the position of Contract Manager. Through this, or another office, provisions should be made to audit on a random basis, if not more frequently, the entire process of soliciting and awarding specific contracts, from the preparation of the RFP, the submissions thereto and the process by which a decision is made to choose among the candidates.
- The County should review its policies regarding the level of professional liability insurance required in professional services contracts.
- The County should review its policies regarding the manner in which minutes are kept by the standing committees of the Legislature, and the disposition of the documents relied upon by the committees. To the extent special or *ad hoc* committees are formed, the same requirements should apply.
- The County should establish a threshold above which contracts for major construction projects are approved by the Legislature.
- The County should establish a process whereby due diligence evaluations are routinely conducted for low bidders on a major construction contract.

- The County should establish a threshold above which Change Orders on major construction projects are reviewed by at least an appropriate standing committee of the Legislature. Over a threshold value, approval by the Legislature itself should be required.
- The County should review the extent to which penalty/incentive clauses could be effectively utilized in major construction contracts.
- The County should conduct an evaluation of the effectiveness of its various Alternatives to Incarceration programs. As noted in this report, a number of longstanding recommendations concerning such programs have never been implemented. Whereas such programs have been relied upon in the past to avoid or reduce jail overcrowding, such efforts could still be cost-effective in that they would maximize the space available for board-ins from other counties or jurisdictions. Such financial benefits would be incremental to the basic social wisdom of such programs.