

AN ANALYSIS: MIDDLESEX COUNTY COURTHOUSE

Middlesex courthouse: a not-so-comic \$55m blunder

By Richard J. Connolly
Globe Staff

Whatever time produces on the questions of liability and possible criminality, one towering conclusion is as obvious as the 21-story Middlesex County courthouse itself:

There stands no greater monument to a bungling system of county government.

Because of the ineptness of the system, the cost skyrocketed. What started as an \$18 million job is expected to cost more than \$55 million, including interest.

It was supposed to have been finished a year and a half ago. But the project needs another 14 months of work once the last phase gets underway.

To complete the job, Middlesex County, which already has burdened its taxpayers for the next 20 years, must get legislative authorization to borrow as much as \$10.5 million. This would be on top of \$27 million already borrowed.

By the time the building is completed, on the basis of the present schedule, it will be nearly three years overdue.

Why?

There are a number of factors in the answer. But the principal reason is that the county lacked the expertise to supervise a project of this size.

The county commissioners were unable to hold the contractor to schedule. There were long periods of delay at an added cost of at least \$3500 per day.

And for each day that the project lags behind completion of the current phase and the start of the next, Middlesex County taxpayers will be assessed \$3500 — the estimated increase in the cost of manpower and materials.

In the end, litigation could permit the county to recover its loss. But, on the other hand, a defeat in the courts would have to be borne by the taxpayers.

It's doubtful that any government building project in Massachusetts has been in such a morass of delay, litigation, investigation and legislative procedure.

The law suits are expected to continue long after the building has been completed.

At the present time, these are the major developments:

—A contractor hired to enclose the building and install electrical, plumbing and heating facilities — after the original contractor walked off the job in a dispute with the county commissioners — is nearing the end of his work.

—County commissioners and legislators are preparing estimates before asking the Legislature to authorize a fourth bond issue for completion of the structure. The architect's estimate of \$10.5 million is being checked by an independent firm of consulting engineers at an additional county cost of \$37,500.

—Checking records subpoenaed by a grand jury, State Police are investigating every aspect of the courthouse case under the direction of Atty. Gen. Robert H. Quinn and Middlesex Dist. Atty. John J. Droney.

—A civil action, involving the county and Gevyn Construction Corp. of Mamaroneck, N.Y., the contractor who suspended operations April 23, 1970 — accusing the county of non-payment — is before the US Circuit Court of Appeals in Boston. There the county is attempting to avoid arbitration of \$9 million in delay claims by Gevyn and subcontractors.

The county's lawyer is preparing litigation against Travelers Indemnity Co. for allegedly failing to honor its obligations under the \$21 million performance bond obtained by the contractor.

But the suit cannot be filed until the building is finished and the county determines the overall cost and the damages it will seek.

The case, which dates back to 1953, when courthouse improvements were proposed, is so complicated and involves so many documents, individuals and business firms, the State Police investigation of possible corruption is expected to continue into next year.

If there was criminal conduct, it should be uncovered in the State Police investigation and result in Grand Jury indictments next year. The legal question of liability will be settled in arbitration or court.

But on the basis of the record to date, and the observations of a number of public officials, prime respon-



CHAIRMAN DEVER

sibility for the costly snafu must rest with a political system obviously unable to cope with a project of this magnitude.

For example, the county system failed to provide its three commissioners with enough expertise to administer the \$27 million project, despite constant difficulties with the general contractor.

ANOTHER BOND ISSUE

There were instances in which some county officials entered into unusual agreements with the contractor, ignoring legal advice or failing to seek it. A number of questionable concessions were made to the contractor in the hope of keeping him on the job.

State Rep. Charles F. Flaherty Jr. of Cambridge, House chairman of the committee on counties, is heading the legislative effort to speed completion of the complex through authorization of another bond issue.

In Flaherty's opinion, the "Middlesex County Courthouse fiasco" demonstrates the need for the state to assume responsibility for the construction, maintenance and financing of courthouses. He believes the present system is "cumbersome and illogical."

Sen. John D. Barrus (R-Goshen), one of three legislative commission members who heard testimony from key figures in the case last year, was "appalled" by what he said was the apparent lack of good judgment on the part of the county commissioners.

"Basically," he said, "the hearings showed that the project was too large for the expertise available to the administration . . . The operation was so highly unusual, it was suspect."

Sen. George V. Kenneally (D-Boston) found that mistakes were made by the commissioners, the contractor and the architect. It was, according to Sen. Joseph J. C. DiCarlo (D-Revere), former Senate chairman on counties, "a comedy of errors."

But the "real culprit" in the opinion of Frank J. Zeo, executive vice president of the Massachusetts Taxpayers' Foundation, was the "county system that spawned it."

Atty. John P. Donnelly of Malden, chairman of the courthouse committee of the Middlesex Bar Assn., and formerly its president, believes that the commissioners "had no business in building a complex of this magnitude."

The commissioners, Chairman John F. Dever Jr., Frederick J. Connors and John L. Danehy, contend that they had sufficient expertise in the service of the architect, Edward J. Tedesco Associates of Winchester, and Francis Q. Concannon, the clerk of the works who has 40 years in the construction business.

They blame Gevyn Construction Corp. for "persistently and repeatedly" failing to supply enough men and materials. They say the firm "improperly interfered" with subcontractors and suspended work without justification or excuse.

Gevyn Construction Corp., through its president, George Ungar, has blamed the county and its architect, claiming there were nearly 4000 dimensional mistakes in drawings, "broken promises," a "lack of understanding" on the part of the commissioners, "harassment" by the architect and "inept people."

At one point during the controversy, the commissioners hired a construction and engineering firm to determine who was at fault and it concluded that relations between the architect and the contractor were "distrustful" and "abrasive."

The engineers found "confusion and discrepancies in contract documents and project management procedures."

Tedesco, whose fee is 5.5 percent

of the project cost, was hired in November 1962 and prepared plans for an 18-story courthouse. The old East Cambridge jail was demolished under a contract for excavation and foundation work held by Donoghue Construction Co., of Arlington.

\$165,000 SUIT

The excavation work began in January 1966 but specifications and design were revised after the county commission decided to add three more floors for inclusion of the Third District Court facilities. Some of the delay and subsequent construction problems have been attributed to this decision.

With 21 stories included in the revised plans, Architect Tedesco determined that 90 additional piles were necessary. The piles were driven by Donoghue and he sued the county for an additional \$280,000. Tedesco said the extra cost was \$48,000 and the dispute was settled for \$165,000.

In the meantime, water flooded the foundation and the county decided it would be cheaper to let the water accumulate than to pump it out repeatedly before work began on the superstructure.

When the commission invited bids for the superstructure an estimated 1.5 million gallons of water—16 feet in the center and four feet deep on the perimeter — covered the top of the piles.

On Sept. 14, 1967, the commissioners received only two bids for the major part of the project. Gevyn Construction, reducing its figure by \$2 million 10 minutes before the opening, bid \$21,783,000. The figure was only \$12,000 under that of the other bidder, Aberthaw Construction of Boston.

There was another significant development that day.

Commission records show receipt of a letter from Gevyn Construction noting that most of the site was under water when it was inspected by the contractor. Gevyn said that it assumed that all previous work done under the contract with Donoghue was satisfactory and the foundation would hold the superstructure.

There was to be some question as



TREASURER BRENNAN

to whether Gevyn's letter was a "qualification" which would nullify his bid under Massachusetts law. A bidder can attach no conditions to his bid.

Strangely, the special delivery letter, noted in the minutes, apparently disappeared. Its existence was not noted again until the legislative commission hearing last year. Then, each commissioner denied knowledge of the letter. There was no public explanation of its whereabouts during the three-year period.

After the bids were opened, the county began to check Gevyn's qualifications. Tedesco wrote to 10 agencies for whom the New York firm had done work. Shortly before the contract was awarded on Oct. 27, 1967, Tedesco notified the commission he had adverse information about Gevyn.

There had been criticism of a hospital project he handled for the state of Pennsylvania. But it was noted that his financial rating was tops and that Travelers Indemnity Co. was prepared to furnish a 100 percent bond, although the state requires only half that amount.

Comr. Danehy was to explain later that he and his two colleagues consulted with two lawyers, but there was no way to show that Gevyn was irresponsible and should not have been given the contract.

In the contract was a provision for arbitration of claims and disputes.

Within a month after the contract was signed, Tedesco presented Gevyn with new drawings indicating to Gevyn, according to the firm's president, Ungar, that "there were conditions under the water quite different from those indicated on the contract drawings."

ALLEGATIONS

Ungar was to tell the legislative commission probing reasons for de-

lays in construction. . . . I think now in retrospect . . . they (the commissioners) induced me and sucked me into a position where I signed the contract and put up a \$21 million bond and I could not proceed with the work because the site was not as represented . . ."

"My hands were tied," he said. "I couldn't bid another job. I couldn't go anywhere else . . . I would say they knew very well what was wrong with the foundation and they knew I had to remedy the situation . . . I am quite sure Mr. Tedesco knew about it."



ARCHITECT TEDESCO

With new drawings and Gevyn's claim that the foundation work was not satisfactory — a claim later disputed by a number of persons involved in the project — there followed a long series of change orders.

The orders are authorizations by the architect and the commissioners for the contractor to make revisions in work for additional compensation. Two months after Gevyn was given the contract, the commissioners authorized a foundation change order "for all work required to correct the deficiencies."

This change order was later cited by the Gevyn firm as indicative of the commission's agreement with his claim that foundation work was not satisfactory.

The change orders — there were a total of about 169 — are expected to be studied by State Police Lt. William C. Lally and Troopers Malcolm Kadra and Robert Sayers who are conducting the investigation out of a special office set up in the old East Cambridge courthouse.

Wording of a number of the work orders was changed by the construction firm after they were signed by the architect and the commissioners.

The joint investigation has been welcomed by Chairman Dever.

"The public can be satisfied that a grand jury and the district attorney and the attorney general are working together and looking into everything concerned with the job," Dever said.

Dever said specifications for the final phase of the building have been completed and the independent study of the architect's additional cost figures is expected to be completed in about two weeks.

Because of the complexity of the case, it is likely that State Police and Asst. Atty. Gen. John J. Irwin Jr., who is directing the investigation within the Criminal Division, will need the services of an accountant and a consulting engineer.

The investigators must study 30,000 pieces of correspondence and interview more than 100 individuals, including subcontractors who worked under Gevyn and 50 or so suppliers from across the country. Through the grand jury, the probes have obtained records from Tedesco, the commissioners and County Treasurer Thomas B. Brennan.

A large amount of work will be devoted to a study of insurance documents. Until July 14, the county had paid a total of \$176,587 in insurance premiums on the building, which it officially does not own until it accepts it upon completion of the contract.

Some principals in the case — County Treasurer Brennan among them — have questioned the decision of the commissioners to provide risk insurance on the structure. Brennan has said that Gevyn should have carried the insurance.

But Comr. Danehy claims that the county pays for it whether Gevyn places it or not, that it is included in the price of the contract and the commission should place it with local firms.

State police have custody of most of the insurance records under the Grand Jury subpoena and the County Commission has refused to disclose a complete list of insurance brokers they have selected for county business.

One aspect of the state police in-

vestigation involves the role of Peter J. Cloherty of Brighton, former state representative and Democratic state committee member who was employed as a "public relations man" by Gevyn Construction Corp.

Ungar has explained that since his firm operated out of New York and was unfamiliar with Massachusetts regulations he hired Cloherty as a local representative.

Cloherty, whom Ungar says was recommended by a sub contractor in New York, was hired after the contract was signed and before the Legislature authorized a bond issue to pay for the Gevyn contract.

The contractor said Cloherty, a familiar figure on Beacon Hill and at City Hall, kept him informed of legislative developments prior to authorization of the bond issue and helped him overcome "communication difficulties" with the commissioners. Both Ungar and Cloherty have explained that Cloherty's role was not that of a lobbyist in the year and one-half he was on Gevyn's payroll.

HARMLESS AGREEMENT

One of the concessions which critics of county officials have claimed that were made to Gevyn Construction was a so-called "hold harmless agreement" dated Jan. 18, 1968. It held the firm "harmless from the substantive effects of proceeding" with work authorized by the commission.

However, Comr. Danehy refused to sign the document because he felt it placed the county in a dangerous position and held the county responsible for remedial work done by Gevyn.

Subsequent developments showed that the county paid Gevyn \$1.5 million for remedial work on the foundation which had cost only \$444,168 to begin with.

This prompted Atty. R. Robert Popeo, who represents the county in the Federal court case, and who testified at last year's State House hearings, to remark:

"Now, there is no way, of course, on a \$455,000 contract, which was the total contract to Donoghue for the excavation and pile driving . . . that \$1,500,000 of remedial work is necessary."

The Donoghue firm's position was that it had done its job properly. But the commission, facing Gevyn's allegations that the work was defective and wouldn't support a 21-story building, didn't dare risk it. Change orders for remedial work by the Gevyn firm were authorized.

Actually, the county did not have a contract with Gevyn for this phase of the work. It was accomplished by change order and, as Tedesco observed at the time, the county was "at the mercy of the contractor."



COUNTY ATTY. POPEO

Another unusual development occurred in July 1968, after some of the subcontractors threatened to leave the job in a pay dispute.

Gevyn Construction prepared a letter which was to give the subcontractors assurance. It was signed by the commissioners without the knowledge of their legal counsel.

It read in part: "We recognize the project was substantially delayed without any fault on your part or your subcontractors' and we are prepared to pay proper compensation for damages which have occurred and which will obviously continue."

By August of that year, Gevyn started installing structural steel. The firm was six months behind schedule and asked that the deadline be extended a year until Jan. 1, 1971.

Later, Gevyn, claiming financial troubles and delays not of its own fault, asked the county to release so-called retainage funds. A portion of payment on such jobs is retained by the owner (the county in this case) to insure completion of work. The commission's lawyer, Atty. John F. Rear-

don, opposed payment but \$300,000 was authorized in February 1970.

Treasurer Brennan refused to pay the \$300,000 but was ordered to do so by a Superior Court judge.

In the meantime, the construction firm filed a \$5.4 million claim against the county, maintaining that the remedial work it had done on the foundation had delayed its work on the superstructure for a year and it had financial problems as a result.

Relations between the commission and the contractor worsened. Gevyn owed \$215,000 to five subcontractors and suppliers and the firm threatened to suspend operations because of the county's refusal to pay the delay claim.

Amid layoffs, work was curtailed, negotiations broke down and by mid-May 1970 the commission claimed that Gevyn had breached its contract. On May 27, Gevyn was notified that the contract had been terminated and work was halted until last November, when Franchi Construction Co. of Newton was hired to enclose the building at a cost of \$4.3 million.

The Massachusetts Supreme Judicial Court ordered an investigation of the courthouse situation by its executive secretary, Richard D. Gerould. After eight months, he reported insufficient resources to complete his probe and said that it was not appropriate for the court to pursue the matter in view of litigation.

The Senate authorized creation of a three-man commission which was ordered to determine reasons for the delay in construction and make recommendations to the Legislature. Its chairman, Beryl W. Cohen of Brookline, lost his bid for re-election and no report was issued.

Five volumes of transcript show the contractor blamed the county commissioners and the architect and they, in turn, blamed the contractor.

So, too, did Atty. Popeo, who observed of Gevyn Construction: "I came to the opinion that not only were they not a good prime contractor, but they had no intention of finishing this job."

He said his opinion was confirmed after Gevyn collected its \$300,000 in retainage and then walked off the job. While Gevyn's work was marked by a large number of change orders, Popeo said, the county was not involved in one dispute with Franchi in eight months.

LACK OF UNDERSTANDING

As many as 35 letters a day were sent by Gevyn to the county concerning various aspects of the work. Some 5000 were exchanged by Tedesco and Gevyn Construction.

According to the Gevyn firm, 911 letters from Tedesco confirmed a total of nearly 4000 dimensional mistakes.

Gevyn's lawyer, Leslie A. Hynes of New York City, noted a lack of understanding on engineering problems on the part of county officials. On technical matters, he said, "responsibility was a blank."

Tedesco's reply was that the contractor caused delays and then used such delays as the basis for claims, that the "element of good faith" was lacking and that the contractor "certainly had things much his way."

Clerk-of-the-works Concannon, who was coaxed out of retirement to represent the county on the project, blames the contractor for all the trouble.

"They wouldn't listen to anyone," he said. "They didn't carry out the specification requirements and they lacked, primarily, the proper supervision on the job site."

At 72, the clerk-of-the-works has plenty of work ahead of him.

"This job was supposed to last six years," he noted. "Here I am in my sixth year and I've got two more to go."

That is, if Mr. Concannon and the taxpayers of Middlesex County are lucky.



P.R. MAN CLOHERTY