

SAN JOSE HOMELESS SHELTER PROJECT

**ARCHITECT'S REPORT REGARDING  
GENERAL CONTRACTOR'S CLAIMS FOR DELAY  
TIME**

May 5, 1989

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## INTRODUCTION AND OUTLINE

Maxim Schrogin's letter of March 3, 1989, makes claims for delays which he tries to attribute to non-performance by the architect CES. The basis of these claims is twofold:

1. A series of 18 specific allegations of fact, and
2. Oliver's general attempt to discredit CES through an undercurrent of innuendo and distortion which tries to show that CES acted capriciously and unprofessionally in regards to the completion of the project.

This report analyzes the actual causes of delays on the project. It is our conclusion that it was Oliver's own actions which are directly responsible for the delays, and that these actions followed directly from Oliver's concern with hiding the control of the project budget.

The analysis to be presented has three parts.

### Part 1. The deep financial reason for Oliver's attempt to discredit CES

We shall show that contrary to Oliver's innuendoes, CES is an acknowledged world-wide leader in the field of engineering, design and construction management, but that Oliver consciously engaged in a pattern of refusing CES instructions, as soon as it became clear that the CES method of project management came too close for comfort to Oliver's control of project funds. Oliver's failure to follow CES instructions led directly to severe time problems for the project.

### Part 2. Oliver's lax attitude towards time.

As far as time is concerned, we shall show that Oliver had an extremely lax attitude to time, and that they demonstrated again and again and again, an utter disregard for scheduling problems. Only now, after they have been blamed by HIP, are they trying to pin the blame which is actually due to them, on CES.

### Part 3. Detailed analysis of Oliver's eighteen specific claims.

In the last section, we present the detailed facts surrounding each of Oliver's 18 specific claims for delay. An examination of actual dates and times shows that Oliver's 18 points lack factual merit altogether, with one tiny exception.

## PART 1

### THE DEEP FINANCIAL REASON FOR OLIVER'S ATTEMPT TO DISCREDIT CES

#### CES STANDING IN THE WORLD

By outward appearances -- the only ones Oliver seems to dwell on -- CES appears unprofessional. Example. CES professional staff rarely wear business suits -- they more often wear blue jeans and T-shirts. CES professional staff hands aren't manicured, but more often chapped with concrete.

But don't be fooled by these appearances. Make no mistake about our qualifications, expertise and unparalleled level of true professionalism. We are perfectly at home with computers, technical drawing pens, and construction equipment. Some of the most daring feats of engineering performed for buildings in this century, have been performed by CES. Some of the most written about, scrutinized, and widely studied architecture designed in this century, has been made by CES. Some of the most ingenious and technically advanced forms of construction have been pioneered and built by CES.

In addition CES is possibly the world's foremost authority on new methods of construction management in which many decisions are made at crucial junctures during the building process, rather than at the drawing stage, with no upset or loss of time in the construction schedule. (See, for instance, "Maison De Louran," in NIKKEI ARCHITECTURE, 6-13, 1988, pp. 65-69 and pp. 92-93 and pp. 232. (cover photograph). "Generative Design in Architecture Using an Expert System," by Eric Gullichsen and Ernest Chang, February 19, 1985. Paper for the Department of Computer Science of the University of Victoria, Victoria, British Columbia. NIKKEI ARCHITECTURE, May 1985, Vol. 20, No. 239, pp. 60-68 (cover photograph)).

**INITIATION OF THE HOMELESS  
SHELTER PROJECT**

From the very outset, this job was designed as a special project, which was to be built by an unusual and special process.

The city of San Jose defined the job as special, because of the project's role as a gateway to the whole redevelopment area. San Jose redevelopment gave HIP specific instructions that this was to be seen as a "gateway" project, with special finishes, beautiful brick or tile work.

In addition, the city made it clear that the budget was extremely tight, and that this very high order of quality would have to be obtained within a somewhat conventional budget.

In view of the special nature of the building, and on the recommendation of Frank Taylor (head of San Jose redevelopment), HIP hired CES to do the work, with the knowledge that this would get them a very special quality building, and that it would also require an unusual type of construction, in which design and construction were tightly intertwined, and in which a management process of an unusual kind was to be used, to get the desired effects.

Thus from the very outset, HIP acknowledged that CES work in using a new construction management method, has been well documented in the literature, and that HIP and the city wanted to use CES because of the special results which would be obtained.

In order to achieve these special results, the decision was then made, to hire Oliver and Company precisely because of Oliver's willingness to work within this method with CES.

It is of the essence of all that follows, that Oliver and Co. consciously and willingly accepted this special situation, in writings contained throughout the contract documents, in a pattern of oral agreements which accompanied the job throughout 1987, 1988 and 1989, and in a pattern of practice which existed on the job from the beginning of construction.

## PROCESS A AND PROCESS B

At the heart of the new method which CES uses to obtain this result, is a procedure in which there is less reliance on drawings, more reliance on field communication with the project superintendent, and tighter control of funds within the construction budget, so as to permit reassignment of funds, to needed items, as the building progresses. For the sake of clarity throughout this document, we shall refer to this method as "Process A."

For the sake of clarity we shall refer to the method of construction management in current use in the 1980's as "Process B." In Process B, the architect produces drawings which are to be built as drawn; the contractor tries to build from these drawings without change; and formal change orders are the only valid method of change.

It is our view that Process B is fundamentally flawed, and cannot produce results which are satisfying functionally or aesthetically, and that real "life" in a building can only be produced by some version of Process A. CES is committed to the view that Process B, which is standard throughout the industry, and which has been in use for about forty years, must be changed and replaced by some version of Process A.

As the present situation demonstrates, there is a classic confrontation between Process A, which is in principle capable of producing a good building, at a reasonable cost, and Process B which will inevitably produce an inferior building, with insufficient cost control over the general contractor. Only after this basic area of conflict is recognized can we begin to focus on the substantial issue concerning the question of whether Oliver is entitled to extra compensation for claimed time delays. We shall show that Oliver cannot be entitled to such compensation, since Oliver, itself was directly responsible for the delays which occurred.

We shall show that although Oliver entered into this project with the intent to respect the idea of Process A, the general contractor soon changed its policy and went back to its "old ways" of Process B, only paying lip service to CES' method, when they found out that process A required them to give away secrets about the money flow in the project, and that money normally not scrutinized in the course of process B, became exposed to view in process A. In order to preserve their classic method of combining time and profit,

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as all contractors do, they then began to undermine the agreement to use Process A, and began to act and interpret CES' actions within the mental framework of Process B, which they were used to. They began to express a deep seated hostility to Process A: this led to an impractical day-to-day situation where the specific actions taken by Oliver often contradicted or undermined the architect's instructions. It was this refusal by the contractor, to follow the architects instructions, which then led directly to the delays which are described in Oliver's letter of March 3rd.

### RELATIONSHIP OF PROCESS A TO FIELD COMMUNICATIONS AND TO MONEY

The essence of process A relies on two points:

1. Direct field communication between architect and contractor, with supplements to written drawings and specifications being made on a day to day basis in the field.
2. Direct control over project budget, with the possibility of making field decisions to move money from category to category within the schedule of values.

CES has pioneered the use of process A, and it has been widely discussed in the literature. For examples, see the following books and articles:

THE PRODUCTION OF HOUSES, Christopher Alexander, with Howard Davis, Julio Martinez, Don Corner, Oxford University Press, New York, 1985.

"Das Machen von Gebauden: Eishin College - Eishin High School bei Tokio," introduction by Christopher Alexander, BAUMEISTER, February 1986, p. 24 ff.

"Battle: The History of a Crucial Clash between World-System A and World-System B - Construction of the New Eishin Campus," with Hajo Neis, Gary Black and Ingrid King, THE JAPAN ARCHITECT, August 1985, Vol. 60, No. 8, pp. 15-35.

"Sketches of a New Architecture," in ARCHITECTURE IN AN AGE OF SKEPTICISM, compiled by Denys Lasdun, London 1984, pp. 8-27.

"Discord Over Harmony in Architecture: The Eisenman/Alexander Debate," (partial transcript of debate with Peter Eisenman), in HGSD NEWS, editor Yvonne V. Chabrier, May-June, 1983, Vol. 11, No. 5, pp. 12-17. Also published in 40 LOTUS INTERNATIONAL, 1983, IV, pp.

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60-68; ARCH+, March 1984, Vol. 73, pp. 70-73; Japanese translation in A+U ARCHITECTURE AND URBANISM, editor Toshio Nakamura, September 1984, No. 168, pp. 19-28.

"The Architect Builder: Toward Changing the Conception of What an Architect Is," SAN FRANCISCO BAY ARCHITECTS REVIEW, September 1977, No. 4, p. 4.

"An Attempt to Derive the Nature of a Human Building System from First Principles," in Edward Allen, SHIRT-SLEEVE SESSION ON RESPONSIVE HOUSE-BUILDING TECHNOLOGIES, MIT, 1972, pp. 22-32.

"Maison De Louran," in NIKKEI ARCHITECTURE, 6-13, 1988, pp. 65-69 and pp. 92-93 and pp. 232. Cover photograph.

Review of A NEW THEORY OF URBAN DESIGN, "Alexander's Alternative for Creating an Urban Context," by George Rand, in ARCHITECTURE, February 1988, p. 35.

"Building By the Book: Using 'A Pattern Language' to Design a House with a Heart," by Craig Canine, HARROWSMITH, July/August 1987, Vol. 2, No. 10, pp. 51-59.

"Putting A PATTERN LANGUAGE to Work: An inspired design approach achieves high-quality space on a tight budget," by Dale Mulfinger, FINE HOMEBUILDING, Special issue on houses, Spring 1987, No. 38, pp. 49-53.

"Harmony and Wholeness," by Pilar Viladas and Thomas Fisher, PROGRESSIVE ARCHITECTURE, June 1986, p. 92-103.

"Das Machen von Gebauden: Eishin College - Eishin High School bei Tokio," by Hansjoachim Neis, BAUMEISTER, February 1986, pp. 25-42. Introduction by Christopher Alexander, p. 24. Cover Photograph.

"A Most Excellent Architectural Master in our Time: Christopher Alexander," by Gu Meng-chao, THE CHINESE ARCHITECTURE JOURNAL, translated by Dai Zhizhong, June 18, 1986, pp. 76-77.

Reviews of THE PRODUCTION OF HOUSES, by Colin Ward, NEW SOCIETY 9, August 1985, p. 205; HOUSE AND GARDEN, London, October 1985, p. 94; OXFORD UNIVERSITY PRESS NEWS, November 21, 1985; Michael J. Crosbie, AIA JOURNAL, Vol. 74, No. 12, December 1985, pp. 88-89; Richard Dyer, BOSTON SUNDAY GLOBE, December 8, 1985, p. B15; Diane Ketcham, THE OAKLAND TRIBUNE, Sunday, January 26, 1986, p. 6; Philip Tabor, THE ARCHITECTURAL REVIEW, February 1986, Vol. CLXXIX, No. 1068, p. 86; J. Baldwin, WHOLE EARTH REVIEW, Spring 1986, p. 85; Peter Bosselmann, DESIGN BOOK REVIEW 9, Spring 1986, pp. 62-63; David Spires, FINE HOMEBUILDING, June/July, No. 33, p. 88; David Seamon, IMPRESSIONS, Fall 1986, Vol. IV, No. 3, pp. 20-23.

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At the time CES undertook the job, HIP was aware of this new method, and was aware that it would be used on the job.

### **SELECTION OF OLIVER BASED ON OLIVER'S WILLINGNESS TO USE PROCESS A**

Oliver and Co was selected as general contractor for the project, precisely because Oliver agreed to cooperate with this procedure. Steve Oliver himself said, on more than one occasion, that he "wanted to build this project with Chris Alexander." He was well aware of the nature of the project, and of the need for special project administration methods. He agreed to the use of these methods.

Even though HIP normally uses San Jose contractors, and was reluctant to use a north bay contractor for this project, Oliver was nevertheless chosen for the project precisely because of this expressed willingness to cooperate in the use of "Process A."

Throughout discussions with Oliver and Company, including discussions prior to signing of the contract, Oliver was made aware that this new method was to be part and parcel of the project.

### **ACKNOWLEDGEMENT OF PROCESS A IN CONTRACT DOCUMENTS**

The use of Process A is emphasized again and again throughout the project contract documents.

In the contract itself, the contractors cover letter makes it clear that CES will undertake specialised subcontract work of \$98,600: this required continuous direct construction involvement by CES throughout the construction work..

The use of Process A methods is also specifically called for by the following sections of the Project Specifications.

Division 1, section 1.7 clarifications and field process of CES involvement and field changes and decisions

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Division 1, section 1.15 architect's approval of construction contract

Division 1, sections 2.1-10 items supplied and installed by CES

Division 1, sections 3.1-12 items detailed by CES during construction with labor and materials supplied by contractor

Division 1, sections 4.1-3 items to be installed by CES requiring careful coordination with contractor

Division 1, sections 5.1-8 items to be detailed by CES with labor and materials supplied by owner

It was also agreed, and committed to writing, that CES would have a continuous relation to the schedule of values, and would work continuously throughout the project, to re-channel money from one category to another within the schedule of values, so as to make the most efficient use of project funds.

This agreement is specifically called for by the letter of November 19, 1987, which is part of the contract documents, where Oliver states: "Possible future savings to be implemented with in 60 days that are negotiated with subcontractors are to be applied to upgrade other building components at the discretion of the Architect and Owner".

It was also present as a pattern of practice in several months of negotiation about the schedule of values between Oliver and CES. This is more fully described below, on pages 11-12 and 17-18.

**INTENSITY OF EFFORT BY CES**

To guarantee the success of Process A, CES went to extraordinary lengths, particularly in terms of time spent on the job. The architectural contract between CES and HIP provides for project supervision, not contract administration, during the construction phase. The total amount provided for this supervision in the base fee is \$18,400. At the average daily "charge out" of \$55 for CES personnel, it is readily apparent that the project budget provides a total of 334 anticipated man-hours of supervision. The actual amount of recorded man-hours for supervision and

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architectural services provided by CES, between the start of grading in December 1987 and the present, is 1,937 man-hours, which is between five and six times what is provided for in the base fee. This represents a dollar value of approximately \$110,000.

This total does not include project management. CES was also retained by HIP to provide project management, from April 1988 to September 1988, and under this arrangement, CES provided an additional 472 man hours of services.

It is therefore a matter of fact that CES entered into this project in a far more detailed way than any architect would normally do, with the foreknowledge of both HIP and Oliver, and provided seven times the expected total number of man hours of work during the supervision period.

The extra time and services were provided by CES, with the intention to secure an outstanding and memorable project for the City of San Jose. CES interpreted its role as the task of getting the best possible building for the available money, and of making sure that every penny was spent in such a way as to give maximum benefit to the building, to the city, and to HIP.

## PUBLICLY PERCEIVED PROJECT QUALITY

The landmark status of the project, and reference to its special method of design and construction appears in several newspaper articles and stories that appeared after the contract was signed, and before close of construction.

The San Jose Mercury, in articles that have appeared in recent months, described the structure as "the best and most important piece of architecture in the entire multimillion dollar domain of the San Jose Redevelopment Agency" (San Jose Mercury, January 31, 1988, page 6P) and an "this building is designed to help residents regain the dignity they need to get back in the mainstream. This purpose is echoed again and again in sunny porches, in shaded waiting areas, in bits of color and craftsmanship throughout the design" (San Jose Mercury, February 26, 1989, page 3C). Other articles with similar content appeared on 3/8/89 p. 4B, 2/26/89 p. 1C, 3/17/89 p. 8B, 3/7/89 p. 1B, 1/15/89 p. 6C, 12/21/88 p. 1B, 12/12/88 p. 3B and p. 5B, 12/11/88 p. 1B, 12/9/88 p. 9B, 12/8/88 p. 6B. Another quote says "The Julian Street Inn honors San Jose. It

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delivers good architecture to people who really need it. It tackles a problem plaguing cities nationwide with a fresh solution.... The design is intelligently planned, creatively crafted, and above all humane. This is architecture at its very best" (San Jose Mercury, January 31, 1988, page 6P).

The importance of the project, and the specific importance of the new methods being used to do the project, and the success of these methods, as perceived by architectural critics during the course of 1988 and 1989, is therefore a matter of public record.

### PATTERN OF PRACTICE REGARDING SCHEDULE OF VALUES

As stated above, the method of process A relies on a combination of field instructions, and field decisions, together with direct access to the construction budget, and management of amounts available for different categories of work. During the months of 1988, CES staff, with the cooperation of Oliver staff, spent hundreds of man hours analyzing the project costs in different categories of the schedule of values.

This effort was directly linked to the continued pursuit of process A. It demonstrates that a pattern of practice existed in which Oliver cooperated with the attempt to save money on the building, to move money from category to category in the schedule of values, and to provide the best possible result, for the limited budget available.

During this period, CES established the idea that it was the schedule of values which would determine the budget amount for each category of construction. The principle being followed was that CES would modify the details in any given category in order to bring costs down, and with the specific goal of attaining a series of items, considered important for the building, which had not been included at the time of the initial contract. The target items included a fountain, better eave details, hardwood floors, plaster wainscot in the interior, better doors, tiles in bathrooms, bed alcoves, lighting fixtures, benches and so on.

To meet this goal, CES began a slow and patient scrutiny of the items in each budget category, supplied by Oliver, with the aim of changing them to get credit which

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could then be applied to other categories of construction. For a number of months Oliver cooperated in this effort, and made its estimates open to CES, as required by general contract.

However, there was an uneasiness visible on Oliver's part during this process. Oliver began to see that CES analysis of costs was penetrating, and went to the core of detailed item costs. The reluctance to allow CES into these numbers began to grow, as difficult questions surfaced.

For example, it turned out that Oliver was estimating the price of hanging a door at \$300 per door, for a pre-hung door, obviously far in excess of a realistic figure. Oliver claimed \$10,000 for installing 100 windows and CES argued that this was unrealistic. Oliver refused. Yet CES's view was later confirmed, when Henry Sterngold made time measurements during the actual window installation process, and found a total time vastly below that which Oliver claimed. Oliver claimed framing labor at 80 cents per board foot, far in excess of the industry norm which is about 50 cents per board foot. Disputes about major subcontracts led CES to doubt that Oliver was trying as hard as they were obliged to, to obtain the best value for the dollar.

Oliver was now faced with a choice of giving up these unrealistic estimating figures, or of allowing CES management of figures to change Oliver's entire overhead and profit picture. Startled by this "danger", and in reaction to it, Oliver now started making difficulties about the field layout process.

The essence of process A, is that changes can be made in the field, so long as they do not result in any increase of cost. When costs overruns do occur, for whatever reasons, process A also provides a method of cutting back in other areas of the job, in order to compensate for the shortage.

All this requires an absolutely open scrutiny, of real costs, as they actually are. This scrutiny led to a change of attitude on Oliver's part, and a general refusal to cooperate in the field operations, coupled with a beginning attempt to paint a fictional picture of the nature of these field operations as somehow inadequate.

But the refusal to work with CES's process, began to create delays whenever Oliver acted as if process B were in place, and causing delays because they chose to maintain this fiction.

**DIFFICULTY OF FIELD COMMUNICATION**  
**THE LAYOUT OF THE BUILDING**

Mr. Schrogin mentions the layout of the building as somehow setting the tone for subsequent events. This is true. The actual facts, however, are entirely different from the ones he has described, and clearly indicate the pattern of actions which Oliver began to follow in the project.

First, during the month of February 1988, CES repeatedly asked Oliver to find monuments and set property boundary lines according to the survey drawings which the owner had provided them.

Second, on February 26, 1988, (a Friday) we received a phone call stating that Paul Ruedi, Oliver's superintendent, needed our help in laying out the building. We were pleased to get this call, since it told us that Oliver's work was now finally beginning in earnest, and we agreed to go to the site on the next working day (Monday, February 29, 1988). We did so.

In anticipating this visit, we fully expected that the building layout would depart somewhat from the drawings, and that the actual layout would have to be done through the exercise of professional judgment on the project site. In our experience, real sites are almost invariably different from drawings. In addition, the careful laying out of a building with respect to site conditions, as opposed to ink lines on a drawing, is one of the hallmarks of CES work. In this building, with its extremely tight connection and point of contact with various boundaries, the surveying problem is entirely different from a project where a square building is set somewhere in the middle of an empty lot. It is impossible to get it right at the drawing stage, and both common sense and good judgement require that it be done in person, on the site itself.

We advised Paul Ruedi that we would come to San Jose on Monday, February 29, 1988, and we also asked him to keep his men away, so as not to waste unnecessary labor. He expressed appreciation for our solicitude.

On Monday, we went to the site with two people experienced in layout (Chris Alexander and Gary Black), and we helped Paul Ruedi establish the crucial lines on the site. In the course of this process, it became necessary to

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modify the relationship of the building to the street sidewalk, the existing building, and the southern lot line. We promised to issue a revised drawing to explain the changes. The new drawing was made, and it was given to Oliver on the next working day (March 1, 1988).

During the work on February 29th, we found out, to our utter astonishment, that Oliver had never located the full set of lot boundary monuments, in spite of our repeated instructions to do so. Mr. Ruedi was thus attempting an impossible task, since without locating the crucial monument on the southern boundary, his layout task was impossible in principle. This occurred because Maxim Schrogin had ignored our repeated requests to establish the property boundaries before the layout procedure started.

At this stage in the process, no time at all had been lost because of CES' actions, and CES had provided two professionals for three quarters of a day, without benefit of payment, to make Oliver's task easier, and to make the process work. All necessary drawings had been issued in a timely fashion, and the problem of Oliver's "lost monument" had been solved, for Oliver, by CES personnel.

In spite of this generally positive scenario, however, Oliver immediately tried to take advantage of the situation by requesting a change order in the amount of \$677.70. (See letter from Oliver dated March 31, 1988). Yet in point of fact, Oliver had lost no time, and CES had done half the work for them.

The change order request was denied by HIP, and rightfully so.

It is interesting that in the letter of March 3, 1989, Oliver discusses the layout problem as if it is something which should be solved "on paper," without recognizing the salient fact, well known to almost all contractors, that building layout is a field operation which always, without exception, requires small adjustments to be made in the field. This is the first example of a process where, to make their legal case, Oliver is trying to maintain the fiction of Process B, while denying the reality of Process A.<sup>1</sup> Process

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<sup>1</sup> The difference here between Process A and Process B is crystal clear. Under Process A, the staff works through the layout process at no additional cost. Under Process B, however, the contractor immediately has a claim that the project is not proceeding exactly as drawn, thus giving rise to an inevitable -- and wrongful -- change order.

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A is more realistic, and in fact did not cost any extra time or effort. Yet, within Oliver's fictional account, the contractor tries to claim extra payment for it.

In reality, the actual process which we followed was cooperative, extremely prompt, and cost CES money, which we spent in an effort to get a better building. Oliver, because of a mental condition in which Process A looks different from Process B, immediately tried to take advantage of it, and characterize it in a way which makes it seem as if CES somehow failed in providing normal architectural services.

This pattern was later repeated again and again. Oliver was relaxed about some matter, because of Maxim Schrogin's lack of contact with day-to-day realities of construction, and especially those concerning the owner's money, or the sensible use of money for the building. CES then came into the picture, to undertake work not being performed by Oliver, in order to make good tasks which Oliver properly should have been performing. CES then became involved in a drawn-out struggle with Oliver, to make Oliver perform correctly, and in the process solved whatever problem was currently at hand. Finally, Oliver then blames CES for the "time delay," and wants to be compensated for it.

### OLIVER'S FAILURE TO ACT CORRECTLY WITHIN THE GUIDELINES AND INTENT OF PROCESS A THE DINING HALL WINDOWS

Oliver's general failure to grasp the method of Process A, or to act correctly within the framework of Process A, is exemplified by the events surrounding the ordering of Dining Hall windows.

During the early part of 1988, careful mockups were made by Mr Alexander and Mr Black, in CES offices in Martinez, in CES offices in Berkeley, and on site in San Jose, to determine the best shape for the dining hall windows. These mockups included full size, half size, and two scale models. We undertook this work, because of our awareness of the special importance of the dining hall, and because of a growing conviction that the shape and size of the windows would play a crucial role in the beauty and satisfying quality of the room, and its value to the Homeless people who would use it.

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After more than 30 man-hours of experiments, we concluded that it would be necessary for the six windows to be of unusually large dimension, and that they would need a special curve in the top piece in the sash.

We now undertook preliminary cost investigations, to find a suitable supplier, who could produce these windows within the budget.

Mr Schrogin rejected our work on the supplier, and insisted on using his own. We accepted. Then, on August 19, 1988, Mr Schrogin informed James Maguire that the dining hall windows as shown in the window schedule would be far over budget. Specifically, he obtained a quote of about \$3,000 per window, making a total of \$18,000 for the job, when we knew that the correct price was \$1,200 per window or \$7,200 for the job -- A DIFFERENCE OF \$10,800. CES immediately approached a local supplier and obtained a preliminary bid of \$1,200 per unit for the six dining hall windows, \$7,200 in all, \$1,800 below the budgeted figure of \$9,000.

This information was delivered to Mr Schrogin on August 22, 1988, and he reluctantly agreed to abandon his supplier, and to retract his statement that "it could not be done".

CES staff worked with the local supplier and developed complete details for these windows in order to maintain the budget.

Completed details, including hardware schedules, were delivered to Mr Schrogin on October 23, 1988. Approximately 15 hours of design time and 25 man-hours of bid research were done by CES staff in order to insure the quality of this important component of the building within the budget.

The dining hall windows were ordered on December 20, 1988. James Maguire met with Mr Schrogin and supplier to review details.

It is instructive to note that Mr Schrogin was made aware of the importance of these windows, on or about August 10, 1988. However, during the subsequent 5 months of work, which continued until the windows were ordered in December, Mr Schrogin did not lift a finger to solve the budget problem, and merely told CES "You won't be able to do it". This lack of concern, and disregard for the budget, or for the clients needs, aptly describes Oliver's attitude throughout much of the process of 1988-9.

It is also significant to note that CES succeeded. As in so many other cases which are documented below, CES had a more realistic view of costs than Oliver -- unless we assume that Oliver had the knowledge, but for some reason does not like working with low-priced subcontractors.

### BREAKDOWN OF DISCUSSION ABOUT MONEY

The mismatch between Oliver's conception of money and CES's conception of money, and the discrepancy between CES's and Oliver's conception of its responsibility towards the client's money, which is evident in the analysis of the dining hall windows, had come to a head long before this incident.

During July 1988, Christopher Alexander and Gary Black had a series of sessions with Steve Oliver and Mr Schrogin, in which CES evaluated Oliver's own labor and material on the job (not just the subcontractors).<sup>2</sup> We analyzed Oliver's costs for framing of the kitchen building, change from 4x6 to 2x6 in the residential building, change from 2x6 to 2x4 in the kitchen building, amounts of concrete, lack of finish carpentry, siding on kitchen building, removal of courtyard paving, hanging of doors, size reduction of building, reduction of window prices, reduction of doors, reduction of masonry, reduction of steel, etc. In these discussions Oliver and Co would agree to CES's analysis verbally, but was then completely unwilling to redistribute money on the basis of the analysis.

Steve Oliver took the position that "any profits from the project could be given back to the client at the end of construction". This has two problems.

1. To make process A work, the money must be released as the items of construction are being performed so changes can be made elsewhere in the schedule of values and
2. If the profits are not tied to an independent analysis but to Oliver and Co own say-so, it is fraught with potential abuse by the contractor who has the owner over a barrel, so-to-speak.

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<sup>2</sup>Up until this time CES had been evaluating Oliver's subcontractors to verify their costs. At this point the analysis went further and CES began to analyze Oliver's labor and materials as well.

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Even after we had removed tens of thousands of dollars of structure in order to move the released funds into other categories, Oliver accepted the changes thus reducing his costs, and then turned around and said that they would not give us back the credit for the cuts.

It was at this point, when the CES analysis no longer only focussed only on subcontractors, but started to make inroads into Oliver's own labor and materials, that the real breakdown in money management took place.

Significantly, at about the same time, Oliver also began manipulating \$98,600 of CES subcontracts, and left CES in the position of doing the work without signed subcontracts, and Oliver refusing to pay for the work.

### OLIVER'S CONSCIOUS ATTEMPT TO MAKE A FICTIONAL PORTRAYAL OF CES

The increasing discomfort experienced by Oliver, in the light of CES's investigation into Oliver's job finances led Oliver to begin a conscious smear campaign to discredit CES. Maxim Schrogin's continuous statements along the line: "why don't you behave like an architect should" was increasingly used as a smoke-screen intended to deflect attention away from the uncomfortable area of project finances, by making CES appear incompetent.

There are a few items in Mr. Schrogin's letter which are best dealt with under the heading of "general attitude." These items would appear to indicate a pattern of conscious effort, by Oliver, to create a fictional scenario, intended ultimately to mislead an arbitrator or a court. One example is Mr. Schrogin's assertion about phone calls. Early on in the project, he began an abusive stream of comments on the subject of CES's office procedure. Christopher Alexander told Mr. Schrogin that, as contractors, CES personnel were very often in the field, and that he could leave messages for them at our main office any time between 11:00 a.m. and 7:00 p.m. Mr. Alexander often sat with Mr. Schrogin and watched him leaving messages with other subcontractors, who were routinely on the job during the day and could only be reached by leaving a message; direct contact was possible only very early in the morning or very late at night. Mr. Alexander explained

#### THE DEEP FINANCIAL REASON FOR OLIVER'S ATTEMPT TO DISCREDIT CES

that CES's situation was similar, and asked Mr. Schrogin to communicate with CES accordingly. Mr. Schrogin, however, insisted that CES should "behave like architects" -- and that is his phrase. This attitude showed a conscious unwillingness to see the reality of CES's operation, and a determination to abuse and insult our operations, in order to establish some kind of paper trail of incompetence. It was, however, entirely fictional from the first. The actual facts about CES's quantity of work have already been recorded earlier in this document, and are discussed even more thoroughly below.

Another instance of this kind of behavior occurred on April 6, 1988. At 11:00 a.m. on that day, Mr. Schrogin literally used physical force to throw Mr. Black, vice president of CES, out of Oliver's office. This occurred shortly after Oliver received letters expressing CES's intent to make Oliver hold to the contract and to the agreed schedule of work, and to the schedule of values. What is significant about the incident is not the confrontation itself, but the fact, demonstrated by this incident, that Oliver could not and would not face straightforward discussion of the real issues, but resorted to almost any smoke-screen or behavior which would divert attention away from the real financial issues.

In another example, Mr. Schrogin claims in his letter of March 3rd, and has claimed in repeated discussions with the owner, that CES spent too little time on the project. Given the actual number of man-hours already described in this Report (see pages 9-10 above), and the fact that CES spent six to seven times the number of hours paid for by contract on purely architectural services, this claim is absurd. But it comes, once again, from Oliver's refusal to recognize the legitimate nature of the building process being followed by CES. CES spent an altogether extraordinary number of man-hours on a wide variety of building problems, at a level of intensity and expertise which is probably without precedent in professional public construction projects done in the last thirty years. But because the form and character of this work did not fit into Mr. Schrogin's narrow understanding of legitimate architect's work, he chose to make the libellous claim that CES spent too little time on the project.

The same thing happens again, in Oliver's loose and general claim that the drawings were vague and inconsistent. It sounds good when it is said. But the fact is that Oliver and Company bid these drawings. Obviously, an experienced general contractor would not bid a set of drawings that are vague and inconsistent. The fact that

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Oliver bid the drawings, in itself describes the real truth. The other is only a smoke-screen, said now, in an attempt to lead the eye away from the real problem of this project: Oliver's manipulations of the budget.

In his letter of March 3rd, Mr. Schrogin attempts to build up the elaborate fiction that CES does not provide architectural services of a high professional level. What is true, and what is demonstrated herein, is that CES provides an extremely detailed and very high level of service. In this case, the level of service simply was different -- more intense, more realistic, and more to the advantage of the owner -- compared with that which Oliver expected.

## CESSATION OF FIELD COMMUNICATION

### OLIVER'S INTENTIONAL REFUSAL TO COMPLY WITH THE ARCHITECT'S INSTRUCTIONS

As a result of Oliver's increasing difficulty with the visibility of money, and with their increasing frustration with the fact that CES financial analysis had gotten under their skin, Oliver now began a conscious and deliberate withdrawal from the Process A, not only in regard to money management, but also in regard to field communication.

Before the start of work, it was agreed that CES would communicate directly with Paul Ruedi, the Project Superintendent. During the brief period that Oliver allowed this process to occur, the project worked very well and proceeded on schedule. Later, when Oliver began trying to protect their financial interest by various forms of concealment and mis-communication, the project began to fall apart, and substantial delays resulted from Oliver's actions.

In the early stages of the project, Paul Ruedi was performing extremely well; communication between him and CES was excellent; and, as far as we know, there was no loss of time in the field.

During this period, CES received feedback from Mr. Ruedi, who stated that he enjoyed the work; that the people at CES knew something about construction unlike other architects; that this was the only way to build a good

THE DEEP FINANCIAL REASON FOR OLIVER'S ATTEMPT TO DISCREDIT CES

building; and so forth.

However, in a letter dated April 12, 1988, Steve Oliver abruptly ordered CES to discontinue direct field communication with Mr. Ruedi. This was a direct violation of the understanding about Process A, and as such CES had to reject it. From that time on, CES made various efforts to communicate with Mr. Ruedi, and gave a variety of instructions through Clarifications and other Field Orders, only to find that these instructions were unceremoniously disregarded.

In some cases, this appeared to be due to Maxim Schrogin's unfamiliarity with the building. Sometimes it appeared to be malicious, and in many cases later in the project, it came about as a result of Henry Sterngold's and Al DiLudovico's direct instructions to the contractor. The practice, mandated by Al DiLudovico and Henry Sterngold, of the owner communicating with the contractor, thereby destroying the chain of command between the architect and contractor, further confused a difficult situation, and led to many instances of frustration and further delay.

For example, shortly before plastering, James Maguire and Christopher Alexander each had separate discussions with Paul Ruedi asking him not to place stucco on the low balustrade height wall separating the Day Room from the Dining Room, or on the baluster of the eastern stair. The fact that these walls needed to be made with a wood surface had been explained to Mr. Ruedi several times. He followed a pattern of agreeing to these oral requests, but then continued to place stucco mesh on this area of construction, thus making it obvious that he would have them finished in stucco. After one such conversation, he told Mr. Alexander that he needed final authorization from Al DiLudovico, if he was to do what CES had requested. CES spent two hours tracking down Mr. DiLudovico to make sure he would communicate the agreement to Mr. Ruedi, before any actual stucco was shot. Even so, Mr. Ruedi went ahead and had the area shot in stucco, only to offer the "excuse" that he would tear it out later, and replace it with wood. At this date, six months later, he has not done so.

In the context of this flagrant disregard of architectural instructions, CES did, on one occasion, actually remove stucco netting from a place where it had been installed contrary to instructions.

The contractor's flagrant disregard of the architects instructions, even in a case where neither money nor time

## OLIVER'S LAX ATTITUDE TOWARDS TIME

were at stake, must be viewed in the most serious light. Even in a normal construction project this kind of disregard would be a violation of contract, as it is in this case. In the context of this project, with its emphasis on field communication, it must be regarded as the final breakdown of the contractor's adherence to his obligations.

### **SUMMARY**

The claimed delays occurred within the context of a situation where CES was performing vastly more work than an architect normally performs, and vastly more than was called for by the architectural contract. Throughout the job, and in order to improve the quality of the project, CES used its special knowledge of contracting, and the extra time which CES personnel brought to job, to make inroads into areas of technique, management, budget and procedure which Oliver normally reserves for itself. Oliver reacted to these inroads with a continuous pattern of various time-consuming objections and refusals which ultimately caused immense delays, thus hampering the proper execution of the work. It was attitude and posturing by Oliver, rather than any failure by CES to be timely, which caused the delays that Oliver now claims.

Even more important, the general attempt which Oliver has made, in the letter of March 3, to discredit CES, is a smoke-screen which is intended to divert attention away from manipulations of a financial nature, which originally caused the difficulties Oliver is complaining about.

## **PART 2**

### **OLIVER'S LAX ATTITUDE TO TIME**

The fictional nature of Oliver's letter of March 3rd, is most clear in the discrepancy between Oliver's recently written attitude to time, as expressed in the March 3rd

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

letter, and Oliver's real attitude as to time, as expressed in actions and statements throughout the early stages of the project.

During the first few months of the project, Oliver was extremely lax about time. For example, the "62 days of delay" that Mr. Schrogin mentions in his letter, and which occurred at the beginning were not caused by inclement weather, but by the fact that Oliver just did not feel it was essential to move the project very fast. To our recollection Maxim Schrogin himself, visited the site only once in the first four months of 1988.

The start of the project also describes Oliver's attitude expressively. The contract was signed on November 19, 1987. In order to speed up construction, CES had already obtained a grading permit on May 6, 1987, had obtained a special foundation permit on October 20, 1987. The building permit itself was ready on December 20, 1987. Oliver did not pick up the building permit until March 21, 1989. It is quite remarkable that with all these permits in place on these dates, Oliver did not begin layout of the building until the end of February 1988. Foundation trenching was begun in March 1988, five months after issuance of the foundation permit. Oliver claims that he never had the information from CES when he needed it. In this case, he had the information five months before he saw fit to use it.

Mr diLudovico repeatedly asked us during this period, why Oliver had not started and why they were not on the job. Mr diLudovico also suggested that from his experience of contractors "something funny must be going on" (Mr diLudovico's actual words). We tried to reassure him, and told him that Oliver repeatedly assured us that they would be starting any day. Nevertheless, we were pressing Oliver, without results, throughout this period.

In essence, the lax attitude as to time was comfortable for Oliver because they had a contract without a penalty clause for delay. In addition, under the conditions of fewer men on the job, it was easier for Oliver to respect CES's wishes, and to try to operate within Process A.

Oliver repeatedly told CES that they were comfortable with the slower time scale, and that it would produce a better building. They repeatedly told CES that time was comfortable, and they made no special effort to "hurry up" the project. CES supported Oliver in this attitude, since we had also advised Al DiLudovico that the building would be better built, and sounder, if it were built

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

on a slower pace, with fewer men on the site.

In August or September 1988 Al DiLudovico hired Henry Sterngold, as the owner's representative. Mr. Sterngold unfortunately failed to grasp CES's efforts in Process A, and the subtle balance between time and money dictated by process A. As a result he began to apply an extremely burdensome and unrealistic time pressure on the job. When CES understood Mr. Sterngold's intentions and method of project management we strongly advised Mr. diLudovico to exercise more care with respect to project management, and told him repeatedly that Mr Sterngold's approach was causing real problems for the job.

The concern we had was that Mr Sterngold came into the job halfway through performance of the contract, and suddenly began insisting on full completion of the building within 300 days of contract-signing, not start-of-construction. That is not the way the parties, in practice, had been interpreting the contract. There had been a pattern of practice set up, which was quite different. CES and Oliver had been working on the basic assumption that the sleeping quarters of the building would be occupied within 300 days from start of construction, or earlier if possible. Al diLudovico, with CES and Oliver, was in agreement with this principle. All parties also understood that there were certain aspects of the construction process that would take slightly longer than normal to complete.

Nevertheless, and despite repeated warnings from CES to both HIP and Mr. Sterngold, Mr. Sterngold began to threaten legal action in case of delay; set up an arbitrary and unrealistic completion date in November 1988, and frightened Oliver into changing his allocation of men and time. The effect of this action was that Oliver then began to recognize a time problem which had not existed earlier. To protect itself, Oliver then immediately began to make claims which attributed this time problem to the CES, in order to absolve itself of responsibility. (i.e. letter of October 13 1988).

Oddly enough, HIP's actions in trying to advance the pace on the project did not speed it up. This happened because the step-wise methodical rhythm of work that CES and Oliver had established in the previous months, was replaced with an almost chaotic "do-everything-tomorrow". The confusion caused by this effect actually slowed things down. But it also created an atmosphere in which Oliver suddenly felt obliged to try and demonstrate an apparent concern for time and time delays.

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

Finally, we should draw attention to the fact that Oliver evidently supported the idea of Process A, and used a relatively relaxed attitude to time as part of their understanding of process A, until threatened by Mr. Sterngold in October 1988. However, from that date forward, starting with Mr. Schrogin's letter of October 13th, Oliver began back-peddalling furiously, and began creating a fictional picture as if Oliver had been planning to meet an earlier deadline all along.

Earlier in 1988, Oliver did not even provide the construction schedules requested by CES and by Henry Sterngold. In spite of repeated requests for time schedule and for construction schedule, Mr Schrogin did not even meet his elementary obligation, under contract, to provide an accurate and up-to-date schedule for the project when required to do so.

All in all, the main point is this: Until October 1988, Oliver just was extremely relaxed about time, and was not especially concerned with meeting deadlines. The claim that CES was responsible for Oliver's delays, and the implication that Oliver was trying to move fast but was being prevented by CES, is simply fictitious. All along, Oliver and Company was moving at the pace that suited them.

As we shall see below, there are also substantial grounds for blaming Oliver and Company for the delay in the project, and for concluding that Oliver and Company caused this delay by their own negligence.

#### THE HUBBARD INCIDENT

Oliver claims a delay caused by CES in connection with the Hubbard framing contract. The actual circumstances of this delay are quite different from those stated in Oliver's March 3rd letter. Again, the real facts are instructive, and give insight into the pattern of motives and excuses being given by Oliver.

In the original schedule of values, CES estimated the probable cost of floor and roof framing as approximately \$84,000. Oliver approached Hubbard to do this work. Significantly, Oliver did not obtain written bids from a second subcontractor.

After several months of delays and changes, Hubbard

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

came forward with a proposal of about \$120,000, far in excess of a reasonable price. CES participated in several discussions to get the price down, but Hubbard maintained a high figure. Oliver was negligent in not obtaining a second or a third bid, and Mr. Schrogin told us at some point, that it was too late to get another contractor.

CES therefore took on the role of trying to force the price down to a figure consistent with the building and the budget. After several discussions, the price came down to \$95,000. CES was convinced that this figure was still too high, and undertook efforts to reduce it further, so as to benefit the building with the extra funds. This procedure was explicitly outlined in the letter of agreement that accompanied the general contract. In the course of this discussion, CES discovered that Hubbard had included a figure of \$33,000 in the bid to cover the arcades. This figure was absurdly high. In addition, further discussion with Hubbard had convinced us that their level of craftsmanship was not good enough for the highly visible arcades. We let Oliver know that we (CES) could complete the work at an adequate level of skill and finish, for \$21,000. Since our efforts to reduce Hubbard's figure further failed, we now requested that Hubbard strike the arcade from its contract, and that we use \$21,000 of the released \$33,000 for the arcade, and use the balance (\$12,000) for other much needed items in the building.

At this stage, Hubbard suddenly claimed that its arcade price was not \$33,000 but \$17,000, and redistributed the extra \$16,000 in various other categories. This was a transparent ruse, evidently intended to retain as much of the budgeted funds as possible.

Oliver refused to support CES' efforts on behalf of the owner. CES made exhaustive studies of Hubbard's in-house costs, and discovered the "missing" \$16,000 in a variety of categories, which had been patently over-estimated. The written evidence is in our files, in the form of computer estimates. The money had been skillfully hidden, but CES work discovered it.

We showed these results to Steve Oliver, who appeared to be highly amused by the situation. However, he still refused to press Hubbard, on the ground that he had to maintain his subcontractor relationship.

The discussion continued, and CES finally arranged for the arcades to be built by one of our subcontractors, at a price of \$17,000, below even CES's bid. We did this, in order to keep the money in the project. However, in spite

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

of this effort made by CES to maintain a high quality in the crucial woodwork of the arcades, the money was now "lost" to the project, since it was no longer available for other uses.

What we had here was an apparent agreement between Oliver and Hubbard, to overcharge the project at least \$10,000, and possibly \$16,000. Without CES' intervention, the arcades would have been built at the same sloppy standard used for the Day Room ceiling beams. And, if we had succeeded in our attempt, the project would have saved \$10,000 to \$16,000 in the amount now given, unreasonably, to Hubbard and Oliver. This money which could have been diverted to much needed items in the building, has disappeared.

The so-called "delay" which Oliver now wants to be paid for, happened because Oliver neglected to get more than one written final bid for a \$100,000 subcontract, and then protected his subcontractor even though that subcontractor was evidently trying to gouge the project.

It is true that CES did indeed take the steps which directly led to some loss of time. But is it reasonable that Oliver should be paid for this time? The proposal is outrageous.

Once again, CES went more deeply into Oliver's operations than architects normally do. We questioned the Hubbard subcontract, and somehow irritated Oliver's relation to a single sub to whom he had promised the contract.

Because of CES' special expertise, and because of CES' enormous time spent, we were able to penetrate more deeply into the real nature of Hubbard's operation. The obviously unsuitable nature of Hubbard as a subcontractor became more and more clear, but Oliver dug in his heels, because he had neglected to protect himself or HIP with other bids. Oliver's insistence on using Hubbard, in spite of all reasonable conclusions to the contrary created by CES' investigation, then led to a loss of time. CES set out to improve the quality of the building and to save HIP \$10,000 to \$17,000. Oliver has retaliated by claiming that CES has caused it a time delay, and Oliver wants to be paid for it.

#### **PLASTERING, ELECTRICAL AND ROOF-TILE CONTRACTS**

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

Mr. Schrogin mentions some delays in other subcontracts. Yet, during the period of obtaining subcontracts, Oliver made almost no effort to get good-priced subcontractors. In many categories, Oliver obtained but a single bid, and then sat on their hands, claiming that they couldn't meet the price CES had outlined.

The failure of Maxim Schrogin to obtain good, competitive subcontract bids reached such a level that CES was obliged to do a great deal of Oliver's subcontract bidding work. We spent months searching for subcontractors who would meet the necessary conditions, and who would meet the prices which were reasonable for the work at hand.

Gary Black personally found the roofing contractor, personally found the masonry contractors, personally found the electrical contractor, and after months of search found a plastering contractor who would not gouge the project.

Starting in September 1987, Gary Black began to search for a roofing contractor who could supply the roof at the budgeted price. In October 1987 he located Parker roofing, and obtained a final bid proposal in November 1987.

Starting in January 1988, Gary Black began a search for plastering contractors. On December 2, 1988 he received a final bid proposal from Nicchelini plastering which was too high for the budget. In the period March 1988 through May 1988 he negotiated with two other plastering subcontractors, H & H plastering and Jones & Bridges plastering. He received a verbal bid from H&H in April, which was lower than Nicchelini's and lower than Oliver's bid from Nava plastering. but was still too high for the budgeted amount. The written bid from Jones & Bridges, received on May 17, 1988, was high but promising. Gary Black negotiated with Al Jones at Jones & Bridges and received an acceptably low bid sometime later. As a part of their effort to find a low plastering bid for Oliver, CES paid Carl Lindberg \$500 fee for time spent in locating plasterers. Through Lindberg, CES located Jones and Bridges.

Since Oliver claimed to have been unable to find an electrical sub who could meet the budget allocated for electrical, in September-October 1987, CES found Allied Electric, the electrical subcontractor who later did the job. It must be emphasized that the electrical subcontractor originally found by Oliver completely failed to meet the budget necessities of the job.

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

It is highly significant that CES had to go out and find the major subcontractors for the job.

The most fundamental obligation of a contractor -- the obligation to get the subcontracts at the best possible prices for the owner -- was casually sloughed off by Oliver and Company. In many cases, we felt we had to drag Mr. Schrogin by the scruff of the neck, to even telephone the subcontractors, once we found them for him. For whatever motive, Oliver was not helping HIP to obtain the best value for its money.

CES, with an extremely conscious effort to try and save every penny -- so the money could be spent on other needed aspects of the building -- did Oliver's work. In many cases this led to resistance. The discussion about plastering contracts, which Oliver could have solved, but did not solve, may have slowed the work down by a few days. The same might be said about the roofing contract or the electrical contract.

But why did these delays, small as they were, occur. Because Oliver refused, again and again, to cooperate with the fundamental task of finding the best and cheapest subcontractors for each given task.

In good conscience, CES could not accept the high-priced subcontracts which Oliver proposed, not only because CES had an obligation to save our owner money, but also because CES had, as an article of faith, undertaken a determined effort to garner every possible penny so that it could be spent to better the building.

Once again CES, because of contracting experience unknown to the majority of architects, obtained these subcontractors for Oliver, and struggled day after day after day, insist that these better-priced subcontractors be used by Oliver.

The time and delay was directly caused by Oliver's original negligence in failing to obtain the best subcontracts in the first place, and by Oliver's recalcitrant attitude in making contractual arrangements, once these contractors had been found.

#### **THE HUGE DELAY CAUSED BY OLIVER'S FAILURE TO ISSUE CES SUBCONTRACTS**

## OLIVER'S LAX ATTITUDE TOWARDS TIME

The real lack of concern which Oliver had over matters of schedule is nowhere more visible than in their attitude towards the CES subcontracts.

The general contract and the specifications state that CES is to perform \$98,600 of specialty-work subcontracts for Oliver. Oliver asked CES to provide a bond for this amount, and agreed that general liability insurance would not be needed.

CES met these conditions, and has had a bond ready for almost a year, but Oliver has never issued a single subcontract. We at CES were aware that Oliver's failure to perform on these items would cause serious scheduling problems for the building, and we therefore began to perform on six of these contracts, without benefit of contract. Oliver has never yet paid for the work done by CES, even though it is completed and standing in the building.

It was only because of CES's dedication and professionalism that the building could be built at all. Without CES cooperation, the main structural columns of the building could not have been completed, the lobby ceiling could not have been completed, the first story arcades requiring specialty columns could not have been completed, the building's exterior tile-work could not have been ready for completion, the wall of the front courtyard could not have been completed, and the slabs of the building themselves could not have been completed for want of the chases for terra cotta inserts. CES provided all of this construction work, on the basis of oral agreements, covered the costs of this construction out of our own pockets, all without signed contracts. As a result of this action, CES has incurred approximately \$50,000 of debts in construction work alone. Oliver, who should have been concerned about construction delay, did not lift a finger to help in all this construction. Oliver also refused to issue subcontracts.

These facts paint a profound and accurate picture of the relative attitude of the two companies. On the one hand, Oliver, who was obliged to issue these subcontracts in order to get the building built, was totally unconcerned about the effect of its own neglect on the building. Oliver did not issue the necessary subcontracts, and to date, has not even paid for the work after it was done, even though it has been formally approved for payment by the owner,

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

has been paid for by the owner, and even though the owner has repeatedly instructed Oliver to pay their bills to CES.

On the other hand, CES, at enormous expense, and without hesitation, performed some \$50,000 of work, merely to keep the building on schedule.

This comparison tells the real story of this project in a nutshell: CES spent time, and effort, without concern for its own well being, only in order to make sure the building quality could be secured, and to get the project done one time. Oliver stood by and watched it, in utter disregard.

#### THE DINING HALL TRUSS AND EXTERIOR TILE-WORK

The same careless attitude to time, and utter disregard for possible delay, is evidenced in Oliver's attitude on the awarding of Dining Hall Truss contracts and Exterior Tile-work contracts.

As the project approached mid-road, and CES still had not received written subcontracts for the lesser work already in progress, we repeatedly explained to Mr. Schrogin that the lack of written contracts for the truss and tile-hanging work would inevitably delay the project.

The reason was that many engineering and design questions on these items depended on the exact and specific nature of the construction procedure which would be used. For example, the truss had at least three possible forms of realization: (1) Gunitite shot from platforms in the air; (2) prefabrication of the ground and lifting; and (3) prefabrication of steel work with subsequent plaster cover.

As soon as CES was awarded the subcontract, it would immediately determine the best method of construction based on CES capabilities. For another subcontractor, it would be necessary to make other engineering decisions, based on their capabilities. This conclusion was based on CES's extensive field experiments which were undertaken during preparatory work on the truss. Under circumstances where the contract was not awarded, and where Oliver continued to create doubt about

#### OLIVER'S LAX ATTITUDE TOWARDS TIME

the CES role as contractor for the truss, it became essentially impossible to complete the fine tuning of the minor engineering on the truss. The major engineering was of course completed many months earlier. However, essential questions of vibration, attachment, horizontal force, special loading under major horizontal out-of-plane movement, could not be studied without knowing the specific techniques that would be used for construction.

Further, it was of course impossible to start the actual work on the truss, without benefit of a written contract. Nevertheless, CES repeatedly told Mr. Schrogin that the truss needed to be started immediately after completion of the dining hall walls, in order to keep the project on schedule. To do this would have required a contract, and a start of work, some time in September of 1988. Instead of taking this problem seriously, Oliver kept on with a highly ambiguous attitude towards the issuance of written subcontracts, to such an extent that our bonding salesman (Gordon Richards) finally told us that he would tear up the papers which had lain on his desk for a year, if we did not respond immediately to his request to complete the bond. Yet Oliver, who originally had expressed itself satisfied with a bond, now hesitated and vacillated endlessly about the question of whether they should, or should not, compel liability insurance from the subcontractor chosen for this work. It should be noted that Steve Oliver permitted other structural work of CES to go ahead unimpeded, without asking us to stop work, when he knew perfectly well that there was no general liability insurance behind that work. (Such work may well have been covered by Oliver's own insurance policy, and for this reason Oliver allowed it to go ahead without asking CES to stop work.)

Nevertheless for reasons of his own, Oliver failed to issue the necessary contracts for truss or tile-hanging, month after month after month. Oliver finally issued a contract to one of CES's own subcontractors, for a larger amount, and approximately seven months late.

The same thing happened with the exterior tile work. Even as of April 30, 1989 that contract has not been issued. Yet CES gave Oliver a firm bid for the work six months earlier. Our bid was never accepted. Whatever Oliver's motives may be in all this manoeuvring, one thing is clear: For months on end, right up until the present, Oliver has flagrantly disregarded the need of the project to be moved forward in an expeditious manner.

**OLIVER'S FAILURE TO ACT PROMPTLY ON  
CES CLARIFICATIONS**

Oliver's disregard for time, and their effort to create a fiction regarding CES delinquency on time issues, becomes especially clear when we examine the relationship between clarifications requested by Oliver as being urgent, and the time delay which typically occurred before Oliver then acted on these clarifications. In the letter of March 3, Mr Schrogin makes the assertion about the fact that clarifications were not issued on time, and caused delays for Oliver. In fact, as the following examples clearly show, Oliver sometimes waited for periods varying between six weeks and eight months, after "urgently needed" clarifications were issued, before they began the construction work specified by the clarification.

A number of examples are given below.

#21 Kitchen curb.

Clarification issued 8-15-88. Five sheets issued after lengthy discussion, with field supervisor, and several days of work. After all work done by CES Oliver made a field decision to proceed according to original plans. In this case work could evidently have proceeded several weeks earlier on the basis of these original CES drawings, with no difference in result.

#23 terrace step details

Clarification issued 8-15-88 after a number of requests from Oliver. Reissued as #36 on 10-11-88 with simpler foundation details to meet budget. Steps were actually constructed late December, four months after issue of clarification.

#28 doors and windows at dining entrance

Clarification issued 8-24-88 specifies steel sash windows, and fire rated doors. Windows were ordered late in january, five months after issue of clarification. Doors have not yet been ordered, eight months after issue of clarification.

#34 attic venting at kitchen building

Clarification issued 9-30-88. Repeated requests, we must have, we must have. Roof vents as specified have still not been installed, seven months after issue of clarification.

#44 day-room ceiling remedy

Clarification issued 11-18-88 for cleaning, chamfer and trim

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work. Five months later work has still not been started.

#45 window modifications to allow emergency egress  
Clarification issued 12-5-88. Work not started until two months later, in early February.

#46 dining hall gable at second floor arcade  
Clarification issued 12.22.88. Repeated pressure and requests from Oliver. "When are you going to get this to us". Work on details called for in this clarification was not started until last week (April 18), four months after the clarification was issued.

#48 kitchen pass-through  
Clarification issued 2-3-89 for modifications to kitchen pass-through. Work still not started, two and a half months after continuing pressure from Oliver and HIP.

#54 walls railings and planter at entry  
Clarification issued 3.2.89 after repeated requests for these details. No work has been started, one and half months later.

Once again, the actual facts are different from Oliver's claims. Because of process A we had warned Oliver and Co that scheduling of clarifications would be critical, and asked them to make their requests as late as possible, so as to give CES enough time to do a good job of making the decisions. In this context it must be remarked that some of the decisions involved are extremely time consuming and difficult, and that part of the work of doing a good job, requires that the decision be made when enough context exists, to make it wisely (i.e. as much finished construction is in place, to form a realistic context for the final decision), and that secondly, the actual decision itself sometimes takes several visits, to get it right. CES was therefore extremely frustrated that in the majority of cases Oliver exaggerated the need for a decision, requesting it as urgent ("has to be tomorrow" etc), and then, after receiving the clarification waited for weeks, and often months, before undertaking the actual construction work to implement it.

## PART 3

## **DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS**

Maxim Schrogin's letter of March 3, 1989, makes claims about eighteen specific ways in which the architect caused delays for the contractor.

The following analysis presents the actual facts in each of these cases. Within the context of the previous analysis, it will come as no surprise that these eighteen claims are almost entirely fictitious. Even when they are tinged with truth, they always represent substantial distortions of fact and substance.

### **RESPONSE TO THE EIGHTEEN CLAIMS**

For clarity, we quote each one of Oliver's claims exactly as written in his letter of March 3, 1989, and follow it with our analysis of the facts.

(1) "The plans were unclear and/or contradictory with regards to column and footing dimensions and layout, both for the Residential Building and for the Dining Hall. We ran into many situations which required specific attention and clarification, and lost time awaiting responses."

Column dimensions were not changed at any time. Minor modifications were made in column positions only to conform to the layout process described above, and were recorded precisely and communicated to Oliver. Other than that no column position was changed at any time as far as we know. Clarification 2, issued March 29, 1988, confirms a telephone conversation in which Gary Black helped Paul Ruedi read one of the drawings. Clarification 5, issued April 9, 1988, describes a slight and minor adjustment in the location of a single foundation, to compensate for the layout adjustment already described.

A few key changes in the foundation were made at the request of the contractor's field superintendent to facilitate construction. As an example, the south end of dining hall footing was modified solely at the request of Paul Ruedi to ease trenching adjacent to the property line. In all cases in which a problem arose, the architect moved

#### DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

quickly to resolve the problem. Note that the specific points mentioned in this item --column location, footing dimensions and others -- are addressed in Clarification No. 2, 4 and 5, which were issued between March 29, 1988, and April 9, 1988 -- a total span, including weekends, of only 11 days.

Over one month later, on June 13, 1988, Oliver concluded a letter with the following sentence: "Please help us continue the smooth progress of the job by providing these (other drawings) as soon as possible." (Emphasis added.) This letter demonstrates that at this point in time -- only a little bit over a month after the Clarifications had been issued -- Oliver perceived the work as proceeding smoothly.

(2) "Extent of masonry work (heights of walls; extent of masonry) was unclear. Opening dimensions and heights were changed minutes before, and sometimes hours AFTER, openings had already been verified with the architect and framed."

Masonry shown in drawings is completely clear, and formed the basis for masonry subcontractor bids. However, as a result of discussions between CES and Oliver, some masonry walls were later removed, to reduce cost, in order to help Oliver.

The main problem with the masonry work had to do with budget, and not with the clarity of drawings. Between the time that Oliver signed the contract with HIP and the time for initiation of masonry work, Oliver's subcontractor was no longer in business. Oliver, however, was still obliged to make good at the price Oliver had quoted. Oliver's "replacement" subcontractor was \$15,000 higher than the budget amount. To help solve this problem, CES redesigned much of the masonry work on the building. All of the re-design work, such as reducing the height of the wall between the arcade and the main court, removing masonry walls in the women's bathroom; and pouring a monolithic slab foundation for the dining hall, substantially reduced the volume of masonry work. Final masonry bids reflect the reduced amount of work. All of the design changes were done solely to reduce cost to Oliver, and were performed at Oliver's request. The redesigns required approximately 60 man-hours of CES's work. All of the redesign work was performed by CES without charge to either Oliver or HIP.

## DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

In one instance, the openings in the front porch masonry wall were changed after field observation of the first course above sill height. We asked the sub to remove eight blocks to improve the appearance of the openings. This change was made while the subcontractor was on the job. It cost him perhaps one hour of his time, and had absolutely no effect on the overall schedule of his subcontract work.

In one other case, ten blocks had to be removed in order to make room for a fountain, which was to be installed by CES at the owner's request. Since the necessary blocks were removed by CES, this also caused no time delay for subcontractor work or for general contracting work.

(3) "The details of the interface between the existing shed and the new building was unclear; we requested a drawing on June 30, 1988 and we were still awaiting clarifications on September 7, 1988."

The information was given piecemeal so that parts of the work could be completed as needed.

The drawing was initially requested on June 13, 1988. Revised drawings indicating the reorganization of framing in the interface between existing shed and the new building were issued by CES on June 30, 1988.

Additional information was provided in model form on August 4, 1988. A completely detailed design concerning the stair roof structure and the building interface was presented in model form at a site meeting on August 25, 1988.

After new requests for clarification, and to help the contractor understand the very complex situation, CES provided full scale layout on the site, on September 8, 1988 and September 9, 1988. Construction did not commence until September 23, 1988, fourteen days after CES work was complete.

(4) "Shop drawings were not approved in a timely manner."

The main shop drawings were for the sprinkler system, heating and ventilating (HVAC), and roof framing.

#### DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

Fire Sprinkler System: Shop drawings concerning sprinkler heads required discussion with Oliver's sprinkler subcontractor, Lescure Plumbing, to determine a method for either concealing the sprinkler pipes or relocating them in the dining hall, at zero cost to the owner. After several telephone discussions with Lescure Plumbing, it turned out not to be feasible to conceal the pipe, but it was possible to relocate it. During the next several weeks, Jerry Thorpe checked the San Jose Fire Department requirements concerning attic sprinklers and prepared cost estimates for concealing the sprinkler pipe in the dining hall. The drawings received CES' approval by April 22, 1988, which was the deadline set by the subcontractor. The architects action did not impede progress nor delay the job in any way whatsoever.

HVAC: HVAC shop drawings required discussion with the HVAC subcontractor to design the "design-built" HVAC system. We spoke with a person named Connie. CES requested shop drawings from Oliver on April 15 1988, and received them on or about May 1. Shortly after receipt Gary Black called the HVAC subcontractor to discuss the shop drawings, and discovered that Connie had left the company, thus requiring a new line of communication. New shop drawings were resubmitted and approved on May 28, 1988. The HVAC system was not installed until three months later.

Roof framing: On June 20, 1988 CES requested in a letter to Oliver, to have Hubbard submit shop drawings of roof trusses, so that the engineer, Avery Miller, could review them. Six weeks later, on August 3rd, Oliver and Co submitted these drawings to CES and requested CES approval of roof structure shop drawings. On August 5, 1988, CES formally approved the shop drawings in writing to Oliver and Co. Roof structure work began on August 25th.

Shop drawings for kitchen roof framing were approved on September 26, the same day they were received by CES. Trusses for kitchen building were also reviewed and approved with in 2 days.

Other miscellaneous shop drawings: James Maguire repeatedly had to request shop drawings for approval in a number of cases. Steel windows, plumbing and electrical cuts are all examples, and Mr Maguire had to wait weeks for them, in each of these cases. When finally provided by Oliver, the shop drawings were reviewed and approved within five days on each occasion.

DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

(5) "Finishes for floors and walls were not clear, making it difficult to pour slabs. Likewise, shower drainage as shown was not in compliance with code; the week it took to resolve that issue also delayed slab pouring."

Wall finishes: To our knowledge, unknown finishes for walls were causing no time delay problems with respect to slab pouring.

Floor finishes: On or about March 29, 1988, verbal instruction to Paul Ruedi was to pour all slabs at the same height. If money for tile or oak flooring ever became available, we would lay those finishes directly on the slab, and threshold the level changes with a 12" wide wooden threshold containing a 1/2 inch jog at the leading edge. This detail would allow for a maximum elevation change of 1.5 inches, and was approved for handicapped access. A 1.5 inch level change can accommodate any type of flooring the owner might choose.

Floor finishes were undecided by the owner at the beginning of construction. Oliver agreed to postponement of these decisions in their letter of agreement, dated November 19, 1987. The specifications explicitly call for a later decision about floor finishes.

Shower drain detail: Requests for shower drain modification was made by Oliver on April 8, 1988. CES received this request on April 11, 1988, and issued Clarification No. 7A on April 15, 1988. In addition, on March 30, 1988, Gary Black had a discussion with Paul Ruedi in which it was determined that for Oliver it would be beneficial to block out the shower area and pour it at a later time, because it would make the form work easier. This would be done to improve construction convenience and quality. That area which required complex forming with sloping floors, etc., would be poured at the time of the dining hall slab or the kitchen slab. CES provided this alternate approach precisely to avoid any time delay.

(6) "We requested adequate sections of first floor framing details, of relationship between concrete columns and exterior walls of arcade beams and connections which were omitted from contract drawings; awaiting response cost time."

DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

There is no first floor framing in the building. If this item is supposed to refer to second floor framing, the facts are as follows:

Items mentioned in this heading were provided in several clarifications. Clarification Nos. 7B, 8, 9, issued on April 28, 1988, and Clarification No. 11 issued on May 6, 1988. All Clarifications were provided between April 28, 1988 and May 6, 1988. The concrete pour took place on or about May 20, 1988. First floor framing did not occur until August 8, 1988, approximately three months after the necessary clarifications were issued.

(7) "The plastic storm drain we installed per plans and specifications was rejected by the City inspector -- we had to substitute cast iron."

As architect, CES is not qualified to prepare storm drain drawings. At Oliver's recommendation, the storm drain drawings were prepared by Moran Engineering, a civil engineering firm in Berkeley, California, in December 1987, and approved by the San Jose Public Works Department on April 7, 1988. If there was any doubt about PVC pipe, it would have been the storm drain subcontractor's duty to double-check with the City before laying it.

When Oliver, City officials and Moran decided to replace the drain with cast iron, CES approved the change orally on the very same day we received it.

Another point of construction procedure is also relevant. At the time that the storm drain was changed, gravel and forms had not yet been placed. There were weeks of work left to do, prior to slab pouring, which were not contingent on the storm drain. At such an early date, it should have been easy to substitute cast-iron for PVC in the zone under the walkways, without affecting the schedule.

(8) "Waterproofing details, originally requested on December 28, 1987, were not given to us until April 25, 1988."

Both CES and Oliver expressed concern about waterproofing details. These concerns are elaborated in several letters dating from December 28, 1987 to April 25, 1988. The final resolution was to determine the waterproofing details on a point by point basis in the field,

#### DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

when a complete understanding of each problem was arrived at. In all cases CES provided the necessary discussion and resolution of details in a timely manner. Since the solutions never required the use of fancy complex pre-manufactured items, lack of long lead time on details did not cause a delay in the project.

(9) "Various connection details, between masonry walls and concrete columns and between wood beams and concrete columns, were nonexistent or incorrect."

If this rather broad statement refers to the two items discussed below, it is completely incorrect.

Minor modifications in both the masonry wall-to-concrete column connection, and in the wood beam-to-concrete column connection, changes were made to the original drawings solely to help the contractor.

The masonry wall at the entrance to the project was originally designed as a freestanding cantilever wall which springs from a 6" slab at the entrance court. The original drawings indicate special steel reinforcing to provide a moment connection at the base of the wall. When the slab and footing supporting the masonry wall were poured, the contractor forgot to install the special moment bars as per the original drawing. They were installed later, by drilling and epoxying the bars in place. However, at an earlier stage Ruedi had made a request to place additional steel between the wall and the residential building column. His desire for these bars was based on his own misunderstanding of the cantilevered base: but we permitted him to install the bars he asked for, and these are detailed on Clarification # 13.

As for the connections between wood beams and concrete columns, the contractor's field superintendent requested a change from the original drawings which had shown the beams supported on pack-outs in concrete columns. The superintendent's proposal was to support the beams on steel straps, as this would make his job easier, and if detailed correctly could be covered with a wood corbel at some later date. CES agreed with this request, and provided the new details in Clarification No. 30.

(10) "We were not given information for rough openings for wood windows and doors on time. Once rough openings were given, some information was incorrect and windows

DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

had to be moved. Door rough opening information did not follow window information as required. After windows were installed per the final schedule, they were not in compliance with code, requiring post-installation correction. Information was first requested around June 30, 1988 and was not finalized until October 19, 1988."

Rough window openings were given to Oliver on July 8 1988, only five working days after first request. Several of these openings were then framed incorrectly by Oliver's carpenters, not according to CES' schedule, and had to be redone by the contractor.

The window schedule was given to Oliver on August 11, 1988. Minor revisions were made on August 21, 1988, and CES provided bids from suppliers at suitable prices at the same time.

Oliver did not order windows until three weeks later, September 7, 1988 to September 15, 1988. Whatever reason Oliver had for this delay was not due to CES since CES' specs could have been ordered from suppliers proposed by CES, three weeks earlier for better prices. We believe that Oliver may have delayed the order because of a previous commitment to a higher bidding window supplier.

It is true that because of an oversight by CES staff, bedroom windows as ordered and installed did not meet UBC requirements for emergency egress. CES immediately provided direction and details to make necessary modifications in clarification #45. Two windows had center mullions removed. Four other windows had new hinges installed.

So far as we can determine this one item in the last paragraph is the only legitimate part of Oliver's claim. It amounts to about three man-days of extra work by Oliver.

(11) "We were delayed pending resolution of gas and electric service locations. Once information was given, it was inadequate to construct housings. We requested information on June 13 and were not given a drawing until August 23."

The requested information was provided on July 1, 1988, and revised on August 16, 1988, and again on August 23, 1988, as per PG&E requirements. By August 16, 1988, the masonry work had not yet begun, and was not started

#### DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

until August 25, 1988. Insofar as the gas and electric housing bear on the masonry work, however, that work could have begun on July 1, 1988. Later revisions to the housing affected only the height, which is framed in wood, not masonry. Whatever reasons the contractor had for not proceeding with the kitchen building, they were not dependent on the gas and electric housing.

Housing was not built until mid- October. Oliver's claim of delay is entirely spurious.

(12) "Stairways shown were not to code, not detailed or dimensioned, and would not have resisted inclement weather."

All stair details and dimensions in the Contract Documents (and Clarifications) are consistent with requirements of UBC. All critical dimensions are clearly shown on sheets R2 and R16, and all additional details regarding materials and installation are covered in Specifications Sections 6.1.2(a), 6.2.1 and 9.5.3.

The exterior stairway was laid out on site, on September 8, 1988 and September 9, 1988 by CES' staff with Paul Ruedi. All additional details for exterior stair handrails were provided in accordance with Specification Section 1.3.12. A revised drawing showing all details of these stairs was issued on October 16, 1988. Construction of handrails according to these details were not completed until early December, approximately two months after material supplied by CES.

The interior stairway shown on drawing R2 is drawn to code, with a width of 3'8". However, Oliver placed the bathroom wall incorrectly, not according to the stair dimensions shown on drawing R2, and then built the stair width at less than the 3'8" required. Thus, as built by Oliver the stair was not constructed according to contract documents, which were to code. Oliver built the stair too narrow and so violated the code. To solve Oliver's problem, CES then provided alternate handrail details, provided extensive on-site field work by CES' staff, and negotiated with building officials to solve the stair width problem caused by Oliver's mistake. CES's alternate handrail details were able to meet the code even within the incorrect stair width built by Oliver.

The exterior concrete stairs, which are shown in the contract drawings on sheet D2, are detailed in Clarification No. 25, dated August 15, 1988. In order to help reduce

DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

cost, this Clarification was revised and re-issued as Clarification No. 36 on October 11, 1988. Construction of these stairs did not take place until late December, two and a half months later.

The stairs were intentionally shown at a preliminary level in the original working drawings, since the three dimensional configuration was extremely complex. In a situation like this, CES never tries to work these details out on paper in advance, and prefers to make the judgement in situ, where decisions are more reliable. The stair, as designed by the Clarifications, did solve the problems, and did not delay the project. The junction between an old rough existing building which can only be crudely surveyed at 1" to 20 feet, and a complex three dimensional structure cannot be properly understood or specified by drawings alone. In order to do work of this kind at an excellent level of quality, the work and decisions must be made in the field. This is what CES did.

(13) "We lost time due to deviation from the plans of the entry arches."

On September 26, 1988, Oliver proceeded to complete the framing of the arches as per the original drawings. They proceeded in this fashion, on their own schedule, and over the objections of CES, so as to *avoid* delaying the project. On October 12, 1988, CES issued a Clarification #35 which required changing the shape of the arches. Oliver agreed to modify the arches if the architect would pay for the change. No mention of any time delay caused by this change was made at that time. CES agreed to pay for the change on the time and material basis, which ultimately cost \$600.00. Since lathing was only 65% complete as of November 3, 1988, the modifications to the arches could not have resulted in any overall time delay to the project.

(14) "Ventilation, required by code, was not shown for the building attics."

With regard to the Residential Building, CES provided attic venting details in Clarification No. 31, issued on September 6, 1988. These details were specifically designed not to not disrupt the framing of the building in any way. Framing of the venting was not completed until late November, two and a half months later.

#### DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

In the Kitchen building, CES provided attic ventilating details in Clarification No. 34, issued on September 30, 1988, three weeks before roof framing began. Even as of the date of this report, specified roof vents have not been installed. Over seven months have passed.

(15) "Storm drainage as shown was not to code -- we were delayed with sidewalk work pending its resolution."

Storm drainage with respect to sidewalk was shown to code on drawing 3-6940. This drawing was prepared by Moran engineers and approved by Public Works department in December 1987, two months prior to commencement of construction. Oliver pulled this permit on April 7, 1988, after payment of fees by HIP.

The charge that sidewalk work was delayed by CES's handling of this problem is entirely fictitious. After about six months of delay caused by the owner, who hoped to avoid the cost of going into Julian, the work was finally performed in October 1988, according to the drawings submitted by CES in 1987. No sidewalk work has been delayed in any fashion by the CES drawings.

(16) "Eave details, listed in the contract as an allowance to be negotiated between our office and the Architect, became an item of delay because the Architect never produced a detail which was buildable for the agreed budget."

Proper resolution of this item hinged on acceptance by Oliver of the revised schedule of values. The continuing dispute about the schedule of values had resolution of this issue as one of its major targets. Oliver derailed this discussion, and made it impossible to resolve the financial aspect of the issue. In late September 1988, when it became apparent that Oliver would not accept the revised schedule of values, CES moved quickly to provide the necessary details.

Wood fascia details with stucco alternates were agreed to by Maxim Schrogin and Gary Black on September 26, 1988, and design drawings were delivered to Oliver's office on the following day, September 27, 1988. On October 25, 1988, CES issued a Clarification which contained the September 27, 1988 drawings and no new

DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

additional information. This was issued because, as of October 25th, Mr. Schrogin had still not given a copy of the agreed design to Paul Ruedi. Mr Schrogin held the clarification drawings for one month before transmitting them to the job superintendent.

(17) "Dining hall front elevation was not defined; we requested clarification on June 30 and did not get a final answer until after November 23."

The dining hall arcade elevation details and descriptions, as originally requested on June 13, 1988, were provided on June 27, 1988, two months before any framing of that building began.

On August 4, 1988, Oliver requested other details for the dining hall, specifically window shape and layout, and masonry details. Answers to these questions were provided by CES on August 23, 1988 in Clarification No. 25.

On August 4, 1988, a further clarification concerning entry doors and sidelights was issued at Oliver's request. Oliver did not order the doors until October 4, 1988, which was six weeks later, and Oliver did not order the side lights for another three months, in mid January, 1989.

(18) "Incompleteness of dining hall truss design, to be discussed below, became an issue which prevented job completion for at least sixteen weeks. The fact that it was decided to raise the Dining Hall walls sixteen inches after they were already in place cost the job time and additionally prevented completion of the attached kitchen building."

Delay on the truss construction must be blamed entirely on Oliver. The dining hall truss design was completed as soon as required conditions were met by Oliver. Oliver's tardiness in satisfying these necessary conditions, caused six months of delay on truss construction. The details have been set forth in full on pages 31-32, under the section dealing with the truss design and sub-contract issue.

DETAILED ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS

**ANALYSIS OF OLIVER'S EIGHTEEN CLAIMS**

We see from the facts about the eighteen claims, that in virtually every case, Oliver has mis-stated facts, and given vent to an extraordinary series of exaggerations<sup>3</sup>.

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<sup>3</sup>The one exception is the case of the window egress, where CES was at fault, and which was remedied by removal of two mullions, and installation of four sets of hinges.

## CONCLUSION

### CONCLUSION

In examining the incidents described by Oliver in its letter of March 3rd, we have come to the conclusion that the delays reported by Oliver were caused almost entirely by Mr. Schrogin's refusal to respect the nature of Process A. The situation was made all the more difficult by the time pressure later injected by Henry Sterngold of HIP. However, it seems to us that the primary blame for delay is due to Oliver.

Delay, to the extent it actually occurred, resulted from Oliver's gradual and then increasing effort to resist the agreed methods of Process A. This led Oliver to quarrel unnecessarily with CES whenever CES came close to something which Oliver considered as its "territory."

In the circumstances where CES tried to build a good building, and required detailed scrutiny of costs, subcontracts, etc., at a level of intensity which Oliver had not encountered before, Oliver resisted the effort and, in many instances, Oliver's resistance led directly to massive time delays.

At first, Oliver was comfortable with these time delays and, indeed, during the first seven months of the job Oliver made no special effort at all to proceed with their work in a fashion consistent with the 300-day time limit set by contract.

When Henry Sterngold unexpectedly began insisting that this time line had to be met, Oliver found itself in a very difficult bind, and decided to solve the problem by blaming CES for the delays which Oliver's own intense reaction to CES had produced.

In fact, the extraordinary time pressure suddenly and needlessly created by Mr. Sterngold is probably the most immediate cause of the delays which were later encountered since his mandates brought a difficult situation to a breakdown.

However, there is no question that Oliver must bear the brunt of the claims which they have made, since they themselves never acted in a way which was consistent with a speedy termination of the construction project. The true

CONCLUSION

nature of Oliver's attitude to time is completely described, summarized and encapsulated by one small but salient fact: To fast-track the building, CES obtained a foundation permit for the building on October 20, 1988. Five months went by before Oliver started work on the foundations in mid-March 1988. This fact stands as a monument.

CENTER FOR ENVIRONMENTAL STRUCTURE

By \_\_\_\_\_

CHRISTOPHER ALEXANDER

Project Architect

May 14, 1989

Al DiLudovico, Director,  
HIP,  
25 East Hedding,  
SAN JOSE,  
CALIFORNIA 95112.

GENERAL CONTRACTOR'S CLAIMS FOR DELAY TIME

Dear Al,

As promised, I am now forwarding the Architect's report, dealing with the matter of Oliver and Company claims for delay, described in Maxim Schrogin's letter of March 3, 1989. I am sorry that the time for preparation of our report has been a little longer than expected, but we decided it was important to provide a very thorough level of fact-checking as the basis for the report.

As you see, and as stated in my previous letter of April 5 1989, we have concluded that Oliver's claims for \$43,245, lack factual merit in almost every respect. On the basis of our analysis, we recommend that HIP should refuse the claim entirely, with the exception of one tiny item, namely: the replacement of two mullions and four sets of hinges mentioned in claim #10. This is explained on pages 42 and 46 of our report.

It is our belief that the claims have been asserted for bargaining purposes, to avoid Oliver's obligation to pay CES the approximately \$50,000 that is owing.

Yours sincerely

Christopher Alexander

cc. Alex Sanchez  
Bo Links