

NEWS BULLETIN

AN ASSOCIATION OF INDIVIDUALS

HOLING



OF THE MOLES

ENGAGED IN HEAVY CONSTRUCTION

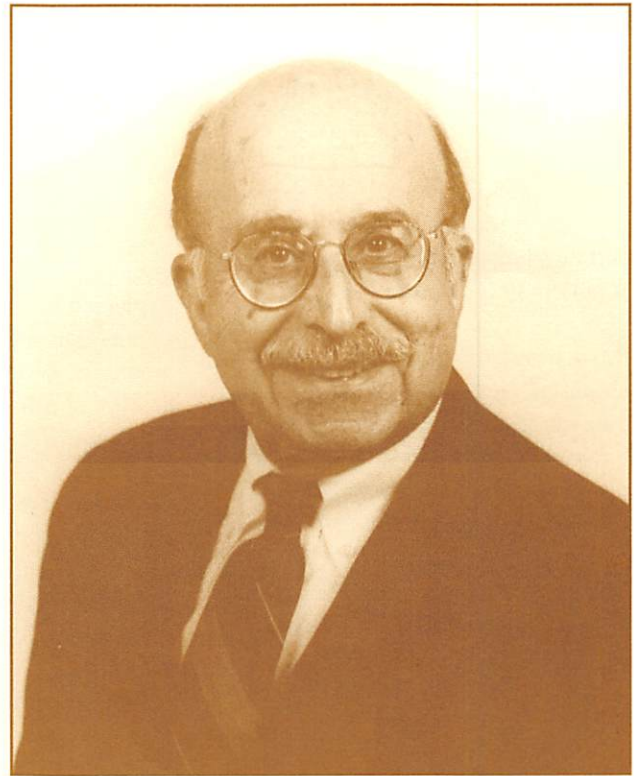
THROUGH

NOVEMBER, 1996

ATHERTON and FEBESH Selected for 1997 Outstanding Achievement Awards



CHARLES H. ATHERTON



MELVIN FEBESH



CHARLES H. ATHERTON, Vice President of J. F. Shea Co., Inc., Walnut, California and MELVIN FEBESH, Chairman of Urban Substructures, Inc., Elmhurst, New York, will receive The Moles Outstanding Achievement in Construction Awards at the Annual Award Dinner to be held on Wednesday evening, January 29, 1997 at the New York Hilton Hotel and Towers.

Charles H. Atherton, known as "Buck", was born in Philadelphia, Pennsylvania on January 12, 1932. He earned a Bachelors Degree in Mechanical Engineering from the University of Virginia in 1955. While serving in the Air Force in 1956 and 1957, Buck was exposed to construction work and this convinced him that he wanted to make his career in construction. Upon discharge from the Air Force, he joined Perini

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MELVIN FEBESH, Member Recipient, was born on August 27, 1927 in New York City. He received a Bachelors Degree in Civil Engineering in 1947 from New York University and a Masters of Science Degree from the University of Illinois in 1948. Thereupon, he embarked on a 25 year career with Spencer, White and Prentis. While with that firm, he was involved in numerous foundation projects. One such project was a Joint Venture with

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Award Chairman



This year's Award Committee Chairman is Raymond R. Oneglia, Executive Vice President of O & G Industries of Torrington, Connecticut. O & G, founded in 1929, has evolved into one of the largest highway, heavy and building contractors and material suppliers in New England.

Ray earned a Bachelors Degree from Union College in 1970 and joined the family owned company upon graduation. Progressing through a number of field assignments, Ray now oversees estimating, marketing and general supervision of the Company's Heavy and Highway Division. Under Ray's direction, O & G has become involved in major heavy construction projects throughout the country.

In addition to his responsibilities at O & G, Ray has served the industry in many ways. He is past president of the Connecticut Road Builders Association and has served on the Board of Directors of the Connecticut Construction Industries Association and the American Road and Transportation Builder's Association.

Ray lives in Litchfield, Connecticut with his wife, Ellen, and two children. He enjoys playing golf and running and has competed in five marathons.

CHARLESH. ATHERTON

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Corporation's training program. In his nine year career with Perini, he was assigned to a number of projects including the Robert Moses Dam on the St. Lawrence Seaway, the Callahan Tunnel in Boston and the construction of the Massachusetts Turnpike in downtown Boston.

In 1967 Buck went to work for J.F. Shea Company as Project Manager in San Francisco on the Powell Street Station and Tunnels for BART. In 1971 he moved to Washington, D.C., as Vice President of Shea and as Area Manager for five WMATA tunnels. These projects included traditional drill and blast work, soft ground work, mixed face work and his first experience with a tunnel boring machine.

Over the next twenty years Buck expanded Shea's east coast operations to several other cities: to Chicago where they were successful bidder on a 100 million dollar Tunnel and Reservoir Project; to Rochester, New York on a 95 million dollar tunnel project; and to Milwaukee, Wisconsin for a number of tunnel projects. In 1988 Shea took on further tunnel work in Washington, D.C. Some of these projects were in joint venture with other companies, particularly Kenny Construction Company.

When tunnel work slowed down in 1991, Buck took on a special assignment in Copenhagen Denmark for Peter Kiewit Sons, Inc., on a joint venture project for a tunnel under Storbelt, connecting Copenhagen with the mainland of Europe. In 1992 he returned to the U.S. and his position as Area Manager for Shea.

Subsequently, he was successful in securing, in joint venture with Schiavone, a 140 million dollar New York City Water Tunnel Project in Brooklyn, New York. Other tunnel

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MELVIN FEBESH

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Soletanche and Rodio which involved what may have been the first slurry wall project in the United States; the project called for the construction of a circular shaft for a Con Edison tunnel under the East River in New York City. The shaft was constructed through a sand island formed by a steel sheet pile cofferdam in the river. Subsequent slurry wall projects included a wall for the Sears Tower in Chicago and construction of the foundations for Building "D" at the World Financial Center in New York .

While in their employ, SW&P obtained the patent for sheeting systems tied back with rock anchors and Mel was involved in the design and construction of the first such projects in this country. He has subsequently worked on over 100 projects using anchors, the most notable being the Atlantic Richfield Garage in Los Angeles where the excavation was 95 feet below grade and the Citicorp Center in New York.

He was Chief Engineer of SW&P in 1968 when he left to join Urban Substructures, Inc. Mel has worked on several hundred projects which involved underpinning of existing structures including the Main Post Office and Monadnock Building in Chicago; Garden State Plaza in Paramus, New Jersey and Harrahs Hotel and Casino in Atlantic City.

He has also been involved in the moving and raising of a number of structures including Woodrow Wilson Hall at Princeton University, the Oblate Fathers Monastery in Cap De Madeline, Quebec and the Coca Cola Warehouse in Maspeth, New York.

There is no person in this country who has had more experience in the design and construction of cofferdams, excavation support systems, underpinning and the

(Continued on Page 3)

KENNY AND NADEL
to present Awards

John E. Kenny, Sr., Chairman of Kenny Construction Company, Wheeling, Illinois, and 1986 Member Award Recipient, will present the Non-Member Award to Charles H. Atherton. Norman Nadel, President of MacLean Grove & Company, Inc., and former President and 1985 Member Award Recipient, will present the Member Award to Mel Febesh.

ATHERTON (continued from page 2)

work that Buck was able to secure for Shea included further work in Chicago and Washington, D.C., a highway tunnel in Arkansas, five small soft ground tunnels in Houston, Texas and a 250 million dollar tunnel outside Boston.

In 1991, Buck was honored by The Beavers with the Golden Beaver Award for Supervision.

Buck and his wife, Marcia, live in Chevy Chase, Maryland and have a daughter, Natalie, and a son, Tom. His favorite past time is competing in tennis.

FEBESH (continued from page 2)

construction of deep foundations. Mel has been with Urban Substructures, Inc., almost 25 years and he now serves as Chairman. Mel is a member of the American Society of Civil Engineers, the American Society of Safety Engineers and TAU BETA PI. He is a frequent speaker at colleges and professional society meetings and seminars. He has authored many technical articles including chapters in "The Handbook of Temporary Construction"; and "The Federal Highway Administration Manual - Lateral Support Systems and Underpinning".

Mel and his wife, Theda, have two grown children, one of whom works for Urban, and two grandchildren.

NEWS OF MEMBERS

RALPH ANGAROLA has joined Underground Construction Managers, as Vice President. The firm provides services for tunnel, microtunnel and pipeline projects.....MEL FEBESH and BEN GERWICK were speakers at the Deep Foundations Institute Annual Meeting and Conference in San Francisco in early October. Admiral Gerwick presented the keynote address and Mel Febesh presented the Hal Hunt lecture.....GEORGE FOX will be presented with the first annual Builders of the City Award by Cooper Union at a dinner at the University Club on Wednesday evening, November 13, 1996. Proceeds from the dinner will help create the George Fox Chair in Civil Engineering at Cooper Union.....The September 9, 1996 issue of Engineering News Record had a cover photograph and a feature article on JOHN E. KENNY and his five sons.....CHARLIE MOLINEAUX was the 1996 Recipient of the Louis Prangey Award, presented by the International Federation of Consulting Engineers (FIDIC). The award was presented in October at the FIDIC Annual Meeting in Cape Town, South Africa. Charlie was the first American and the first attorney to receive the award recognizing significant service to FIDIC.....DON WEISSTUCH, currently serving as President of the New York City Post of the Society of American Military Engineers, was invested into the SAME Academy of Fellows at a ceremony in Boston in October.

Popular Events To Be Continued at Award Dinner

There will be an afternoon reception in the Rendezvous Room of the New York Hilton Hotel from 2:00 P.M. to 4:30 P.M. preceding the Award Dinner on January 29, 1997. As in past years, there will be a SPOUSES DINNER AND SHOW. Dinner will be in the Inner Circle Room of the New York Hilton Hotel followed by attendance at the Broadway hit show "Victor/Victoria". Liza Minnelli will be in the show at that time substituting for Julie Andrews.

THE MOLES

Holing Through is published by The Moles three times a year: April, July and November. The Moles is an organization of people engaged in Heavy Construction. Its purpose is to promote better acquaintance among individuals engaged in heavy construction to the end:

- That past and future friendships and a spirit of fraternization among the members be fostered.
- That meetings and other gatherings be held to exchange construction information and promote good fellowship among the members.
- That advancement of the Construction art be achieved, and outstanding performance be recognized through awards and otherwise.
- That the youth of our country be encouraged to participate in heavy construction by a multi purpose program of education in cooperation with engineering colleges and other associations.
- That, in the public interest, standards of construction shall be raised both as to engineering and business ethics.

The Moles' office is located at 577 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07675. Telephone: 201-930-1923 Fax: 201-930-8501 Executive Director: Gerard J. Carty, P.E.

25 YEAR MEMBERS

CHAUNCEY E. BURTCH retired nine years ago after a 40 year career with Dravo, at one time one of the major U.S. heavy construction contractors. He continues to reside in the Pittsburgh area, spending winters at Hilton Head. He writes that the greatest satisfaction of his career are the friendships developed by both he and his wife, Nancy, many of which continue today. Also, "Always proud to be a Mole!"

GERARD J. CARTY worked during his 40 year career for two construction companies; the first 15 years with Johnson, Drake & Piper, Inc., and the second 25 years with Walsh Construction Company (Division of Guy F. Atkinson Company) from which he retired in 1992 as Senior Vice President. He now serves as Executive Director of The Moles and does consulting and arbitration work.

ANTHONY DE BIASE retired from the Port Authority in 1972 and then moved to Newburgh, New York to be closer to his daughter and grandchildren. He was active as an arbitrator till 5 years ago. He writes a monthly newsletter to 140 Port Authority retirees, 40 to 50 of whom meet monthly for lunch. He spends winters in Florida and has done considerable travelling.

At the time he joined The Moles in 1971, DONALD R. FRERGUSON was Vice President and Eastern Area Manager for Bechtel Corporation. He subsequently was transferred to San Francisco and then to Houston. He retired from Bechtel in 1980 and has been living in Long Beach, California. We have not had any contact with him since 1988 and trust that everything is going well.

ARTHUR J. FOX was Editor-in-Chief of Engineering News Record when he became a member of The Moles in 1971. He continued to mesh professional and industry activities

along with his editorial responsibilities until his retirement in 1988. He took with him into retirement, the half time job as Managing Director of the Construction Industry Presidents Forum. He served as President of ASCE in 1975, one of five Moles members to do so, and received The Golden Beaver Service Award in 1988. He and his wife, Lorraine, reside in Potomac, Maryland where he enjoys golf and tennis.

ALBERT J. MAIORANO had just started working for Walsh Construction Company (Division of Guy F. Atkinson Company) when he became a Moles' member in 1971, after having spent 23 years with Porier & McClane Corporation. Al recently retired from Walsh as Vice President of Construction and writes that over the next six months plans to visit, along with his wife Mary, their five children now living in Massachusetts, Minneapolis, Redmond and Seattle, Washington and Australia. When not travelling and doing some consulting work, Al continues to enjoy golfing at Knollwood Country Club.

When MATTHEW R. MC INERNY became a member of The Moles in 1971 he was employed by Conduit & Foundation Corporation. Subsequently he was President of Morris Associates, Inc., Construction Consultants. He is now retired and lives in Melbourne Beach, Florida. His son, Denis, also a Mole's member, is President of Frontier-Kemper Constructors.

EUGENE G. MURPHY spent his career working on tunnels for Gordon H. Ball, Granite Construction Company, Grow Tunneling Corporation, Kiewit and J.F. Shea. He continues to work on a part time basis as a consultant. He is living in San Clemente, California and is taking courses in cooking, calligraphy and astronomy.

STEPHEN M. OLKO was Founder and Principal of Olko Engineering when he became a member of The Moles in 1971. He continues in that capacity today. The firm specializes in waterfront related civil engineering and has worked on over 900 projects worldwide.

PATRICK A. "ERIC" O'NEILL served as President of Franki Foundation Company for many years. In 1985 he acquired New England Foundation Company where he continues to serve as President. He is a regular attendee at all Moles meetings and functions.

ALBERT J. PERINI, a son of Lou Perini, was working for Perini Corporation on the west coast when he became a Moles' member in 1971. He continued working and living in California for many years prior to recently moving to the Perini headquarters in Framingham Massachusetts, to assume a key executive position in the Perini Heavy Construction Group.

ALEXANDER S. "ALEX" ROGERS writes from his retirement home in Tucson, Arizona that he continues to work on improving his tennis game and enjoys visiting with his granddaughter on weekends. After retiring from American Bridge in 1983, he continued to do consulting work for seven years. He sends his best regards to Dan Lazar, Dave Fine, Herb Wasserman and George Vogel.

FREDERICK L. SAGER worked for MacLean Grove in 1971 when he became a member of The Moles. His career was spent in tunnel work and he worked on such jobs as the Third Tube of the Lincoln Tunnel, the 6th Avenue Subway and the BART tunnel in San Francisco. In 1978 he went to work for J.F. Shea and subsequently moved to Illinois, where he currently resides.

25 YEAR MEMBERS - continued

JOHN DAVID SAUNDERS started working for Slattery Construction Company, upon his graduation from Cornell in 1948 and spent his entire career with that company. He served as President of The Moles in 1983 and received the Member Award the same year. John continues to keep active with consulting work and continues to be an active member of The Moles.

PETER H. SMITH joined Gibbs & Hill after his discharge from the Navy in 1947 and was President of the company when he became a member of The Moles in 1971. He remained with Gibbs & Hill until his retirement. He now makes his home in Osprey, Florida.

DONALD E. UNBEKANT was Vice President of Cayuga Corporation in 1971 when he became a Mole. In 1984 he joined the Perini Corporation where is now Executive Vice President responsible for all Civil and Environmental work. He is living in downtown Boston, and for the first time is enjoying the benefits of

“City” living. He is an avid fisherman and each year makes two trips to great fishing holes in Alaska, the Northwest territories in Canada or Mexico. He also enjoys playing golf.

RUDI J. VAN LEEUWEN learned the engineering and construction business during the earlier part of his career with Spencer, White & Prentis. The later part of his career was spent with Perini Corporation. Rudi recently retired from Perini and is relocating to Virginia.

PETER J. WINKLEMAN is now retired and living in Wellington, Florida. His second interest, after construction, is horses and he is now an active member of the Palm Beach Polo and Country Club. After closing out the family owned construction company, D.W. Wirkleman Company in Syracuse, New York, he became involved with a Virginia based construction company. Although now pretty much retired, he continues to maintain a keen interest in what is going on in the construction industry.

FLORIDA WINTER MEETING

The Moles will be returning to The Indian River Plantation in Stuart, Florida for the 3rd Annual Winter Meeting. The dates are February 27, 1997 to March 1, 1997. The past two years the timing for the Winter Meeting conflicted with other events, such as AGC meetings and the closing of schools for the winter break. The Committee feels they have scheduled this year's meeting so it will be convenient to all members.

Those who have attended in the past have had, without exception, a thoroughly enjoyable time. It has provided members an opportunity to become better acquainted with fellow Moles' members and their guests. The setting is beautiful. The facilities at Indian River offer all forms of activities: swimming, golf, tennis, fishing, etc. There will be an open Executive Committee Meeting and other sessions of interest to members.

If The Moles office is not aware of your interest, please fill out the enclosed flyer or call the office (201-930-1923) and a brochure and reservation form will be sent to you.

**REMEMBER AWARD DINNER
NEW YORK HILTON HOTEL - JANUARY 29, 1997**

A MOMENT OF SILENCE

LOUIS BERGER, founder of Louis Berger, Inc., died on August 14, 1996 at the age of 82 after a short illness. Dr. Berger was a 1936 graduate of Tufts College with a Civil Engineering Degree. He went on to earn a Masters Degree in Geology from MIT and a Doctors Degree in Soil Mechanics from Northwestern University. After teaching briefly at Penn State, he went on to form his own engineering company in 1952.

ARTHUR P. CHASE died on August 5, 1996 at the age of the age of 76. He became a member of The Moles in 1959 when he was working for MacLean Grove & Company. He was a graduate of Cooper Union and worked on a number of major tunnel projects including the Third Tube of the Lincoln Tunnel, the West Delaware Tunnel for the NYC Board of Water Supply and the Canyon Power Tunnel in California.

WILLIAM J. GREEN died on July 17, 1996, at the age of 90. Joe was a former blocking back for Red Grange at the University of Illinois and the officer responsible for cutting the 400 mile Ledo Road through the jungles of Burma during World War II. He then went on to a 25 year career with S.J. Groves & Sons Company serving as Vice President and Chief Engineer.

CLYDE C. INGRAM died on August 12, 1996 at the age of 83. At the time he became a member of The Moles in 1977, he was Vice President of Gordon H. Ball, Inc. Previously he had spent 17 years with Kiewit. He continued working for the Dillingham Corporation, until his retirement in 1986. He spent his entire career working on tunnels and others heavy construction projects.

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PLANS FOR MOLES' SCHOLARSHIP FUND NOW TAKING SHAPE

The Scholarship Fund Advisory Committee, along with Fund Raising Chairman Steve Greenfield, has been working diligently formulating plans for a fund raising drive. A brochure has been prepared and is being distributed to all members.

Special recognition will be given for various levels of giving from a Platinum Circle level of \$100,000 or more to a Contributor level of \$1,000.

The Committee has set as its goal to raise \$2,000,000. All members will be contacted and the Committee is looking for every member to give generously to this worthy cause.

A particularly effective way to contribute is by donating appreciated property. If one has shares of stock that were purchased at a cost of \$2,000 and the stock is now worth \$10,000 and is donated to the Scholarship Fund, the donor can claim a charitable contribution of \$10,000 and will not have to pay any taxes on the increased value of the stock.

Those of us who are dealing with planning our estates, know that after making full use of the marital exemption which allows us to pass \$1,200,000 tax free to our heirs, the tax on the remainder of our estate will be at the rate of at least 55%. Wouldn't it be better to put that money to work helping a deserving student and our industry?

Deceased Moles' member Joseph A. McAlinden thought so much of the Moles that he donated \$100,000 to our organization, which represented a substantial portion of his estate, for the purpose of establishing scholarships for the children and

grandchildren of Moles' members.

The Moles has meant a great deal to us. We all had a great measure of pride and accomplishment when we were elected to membership in this prestigious organization. Participation in our various activities (Annual Award Dinner, Clambake, Members' Dinners and Committee Meetings) has provided us with a wonderful opportunity to meet and socialize with our peers and to make lifelong friends. It has added an important dimension to our lives.

Now it is time for us to give back to a new generation some of the success we have garnered. What better way than to assist deserving civil engineering students in pursuing their education. Some of these students will likely form the next generation of Moles.

Over the course of the next several months, every Moles' member will be contacted regarding a contribution to the Scholarship Fund. Let's consider our contribution in a generous spirit commensurate with the success we have found in the construction industry.

LEVELS OF GIVING

<i>Platinum Circle</i>	<i>\$100,000</i>
<i>Gold Circle</i>	<i>\$50,000</i>
<i>Silver Circle</i>	<i>\$25,000</i>
<i>Bronze Circle</i>	<i>\$10,000</i>
<i>Brass Circle</i>	<i>\$5,000</i>
<i>Contributor</i>	<i>\$1,000</i>

Arrangements can also be made to endow a Moles scholarship at a particular school in memory of a loved one or in honor of an organization.

A MOMENT OF SILENCE

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JAMES J. KERR died on July 13, 1996 at the age of 70. He worked twenty years for Spencer, White & Prentis and was Senior Vice President when he left in 1982 to form his own firm, Kerr Construction, Inc. The firm worked in sub-surface construction specializing in underpinning, sheeting, bracing and tiebacks.

The Moles only recently became aware of the death of GEORGE N. MARTIN on October 14, 1995. He was 88 at the time of his death. He had a 40 year career with Bates & Rogers, a large construction company based in Chicago, and was President at the time of his retirement in 1968.

GUY V. SPERRY died on May 20, 1996 at the age of 91. He had a long career with Utah Mining and Construction Company, at one time a very prominent heavy construction company. He resided in Arizona for many years prior to his death.

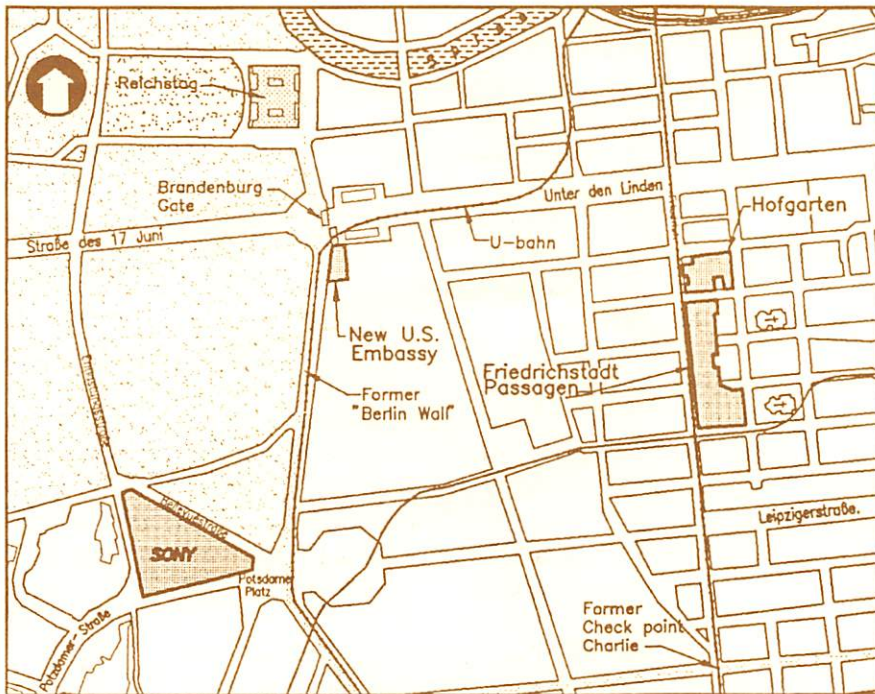
RICHARD A. TOWER died on October 1, 1996 at the age of 86. After graduating from the University of New Hampshire in 1934, he embarked on a 40 year career with J. Rich Steers, where he became Vice President and Director of Heavy Construction. He served as Chairman of the Membership Committee and as a Trustee of The Moles.

Lapel Pins

A lapel pin with The Moles' logo is available from The Moles office for fifteen dollars each. Many members have already purchased these pins and have been wearing them to meetings and other events.

LETS ALL GIVE GENEROUSLY

NEW POLITICAL SITUATION IN EAST BERLIN HAS FORCED U.S. MOLES UNDERGROUND



The Collapse of the USSR and its East German (DDR) satellite has forced several U.S. Moles to go underground in East Berlin. Moles Brand, Hahn, Powers and Tamaro from Mueser Rutledge Consulting Engineers have taken advantage of the new political climate and have burrowed deeply into the ground at two sites on Friedrichstrasse (the Berlin Fifth Avenue) and at one site at Potsdamer Platz (the site of the former "Wall").

The first hole they burrowed was for the three city block Friedrichstadt Passagen project. The 16 m (52 ft) deep excavation was two levels deeper than an earlier abandoned project which had to be demolished to permit construction of the new complex. Severe government limits on pumping dictated a complete water cutoff around and across the bottom of the site. Mole Ressi of ICOS helped surround the 20,000 m² (5 acre) site with a 50 m (164 ft) deep slurry wall to cut off horizontal water flow. Two thousand temporary tiedown anchors

were used to hold down the foundation mat to permit early shut down of the pumping system. Permanent anchors were required in atrium areas where there was insufficient building weight to resist hydrostatic uplift pressure.

The MRCE Moles then moved one block north to the Hofgarten site where they burrowed the deepest hole in Berlin. The 19 m (62 ft) deep excavation for the five level parking garage was shoe-horned between two streets and three existing buildings. Site constraints were met by a deep slurry wall and three different lateral support systems. Temporary soil anchors were used to support the majority of the wall. At one corner, tieback interference problems required that the anchors be installed at a horizontal angle of 45° from the face of the wall. Elsewhere corner bracing was used to

advantage. At the south end of the site existing temporary anchors in the street from the Friedrichstadt Passagen project prevented the use of tiebacks for the Hofgarten Project. A modified top down scheme utilizing the permanent interior framing was used to solve the interference problem. The bottom of the site was effectively sealed with a silica gel grout blanket.

Moles Brand and Tamaro are currently burrowing into the ground at Potsdamer Platz for the six building Sony Project. The 25,000 m² (6 acre) site is surrounded by slurry walls and sealed at the bottom with a silica gel grout blanket. A 26 story tower at the east end of the site is to be supported by 44 1.5 m (5 ft) diameter bored piles and a 2 m (6.5 ft) thick mat.

Moles Tamaro and Brand are burrowing forward to their next Berlin project, the foundations for the New U.S. Embassy at the Brandenburg Gate.



HOFGARTEN PROJECT

The Editor is grateful to George Tamaro for putting this article together for Holing Through.

A CONTROVERSIAL DECISION BY THE COURT

Perini Corporation was awarded a contract by the New York City Department of Transportation, for the reconstruction of the Pulaski Bridge. During the course of work, the DOT forced Perini to stop work. Perini claimed the City breached the contract thus causing delay damages. The City moved for summary judgment on the grounds that the claim was filed too late. The contract clause the City relied upon was as follows:

“No action shall lie or be maintained against the City by the Contractor upon any claim based upon this Agreement unless such action be commenced within four (4) months after the date of filing in the Office of the Comptroller of the City of the certificate for the final payment hereunder or within four (4) months of the termination or conclusion of this Agreement, or within four (4) months after the accrual of the Cause Of Action, whichever first occurs.”

The Court granted the motion for summary judgment claiming that a cause of action for breach of contract accrues at the time of breach.

Perini argued that while this may be true as to the ordinary contract, the cases have clearly established in New York State, and in many other jurisdictions, that a cause of action arising out of a continuous indivisible construction contract accrues when the work is substantially complete. In spite of the fact that Perini asked for a re-hearing and set forth at length the legal authorities in New York State fully supporting its position, the Court denied the motion for reargument.

The opinion appears to be clearly erroneous. There are numerous cases decided in the New York State Court of Appeals and in various other jurisdictions, which recognize that where the construction contract is an entire contract and not divisible, the Statute of Limitations does not begin to run until final performance. The practical result of this decision, if upheld, would require a multitude of law suits on major construction contracts. It is contrary to the established law which requires a plaintiff to state all of its causes of action in one complaint and which prohibits “splitting” causes of action.

The Judiciary have been striving mightily in recent years to limit the number of lawsuits. This decision can create a multitude of actions for one contract. A reading of the clause relied on by the City shows that all of the three

incidents referred to would normally accrue at the completion of the work. The first date is the filing of the certificate of final payment in the office of the Comptroller; the second the termination or conclusion of the agreement; and the third within four months of the accrual of the cause of action, which the law has previously established would be at the time of completion when the contractor is in a position to know what his cause of action are and be able to ascertain his damages.

It should be pointed out that the clause the City relied upon covers all claims and actions based upon the contract and it cannot be intended to be interpreted in the manner in which the Court has done since some of the disputes which constitute a breach of contract are required to proceed under the provisions of the Dispute Review Board. Such proceedings can easily take more than four months and the Contract specifically grants an additional four months after a decision by the Dispute Review Board for the contractor to appeal that decision.

Further, the City contract provides that a contractor is barred from commencing an action for breach of contract unless a verified statement of claim is served upon the contacting agency of the City and the Comptroller not later than 40 days after mailing of the final payment.. A proper reading of the City’s contract provisions indicate that the City, which prepared the contract, intended that an action for breach of contract would have to be filed within four months of the date the contract was completed at which time the contractor would have received the final estimate and final payment and would be able to ascertain his damages.

The Court’s interpretation flies in the face of common sense and the practicalities of handling disputes under City contracts. It is bad enough that the City has reduced the Statute of Limitations from a one year Statute to four months after the accrual of the cause of action but is is unconscionable that a Court would impose the Statute of Limitations of four months from the date of an initial breach when it is impossible for the contractor to ascertain the full extent of the breach and the extent of the damages incurred or to be incurred.

The editor is grateful to Thomas B. Treacy, Esquire, for putting this article together for Holing Through

CLAMBAKE- 1996 ANOTHER EXCITING SOFTBALL GAME

For six innings, it looked like a remarkable repeat of last year's surprising victory by the Consultants over the Contractors. In fact, Roy Durig, veteran pitcher for the Consultants, held the Contractors scoreless for 4 innings while the Consultants squeezed out one run in each of the first, second and fourth innings. In the fifth, Scott Shylanski's double scored two for the Contractors. The Contractors threatened again in the sixth inning but shortstop Mike Chow's unassisted double play, best of the game, preserved the thin lead. Finally, in the seventh, Bob Murbach led off with a score-tying home run and the Contractors edged ahead 4-3, with hits by Connena, Shylanski and Pflug. Winning pitcher John Beljan retired the side with Peewee Palahnuk poling a long fly out.

Captains were Steve Price for the Contractors and Charlie Vachris for the Consultants. Vachris promised the press that he would be back "next year" and is taking calls, faxes and e-mail from scouts. Max Reimbold was official scorekeeper and Charlie Molineaux was again the umpire.

A superb buffet luncheon was enjoyed by everyone before the afternoon activities. The weather was typical August weather: sunny, hot and humid. Of course, in addition to softball, there was tennis, volleyball, swimming, horseshoes and other activities. Thanks to Spearin, Preston & Burrows, the tugboat George Burrows, was again available to take members and guests on cruises on Long Island Sound. The turf and surf dinner was exceptional. Dinner was followed by the awarding of prizes.

Earlier in the morning, the Mole's golfers (60 in number) teed off at Leewood Golf Club in Eastchester.



CONTRACTORS

Front Row: Scott Shylanski, Leo Pflug, Jeff Cruz, John Beljan
Back Row: Geoff Searle, Tom Connor, Steve Price (Captain), Steve Connena, Bob Marbach, Charles Mantalbano, Paul Beljan



CONSULTANTS

Front Row: Steve Treacy, Paul Martin, Tony DePasquale, Mark Riley, Tony Alliano, Michael Chow
Back Row: John Larson, Roy Durig, Mike Russillo, Nestor Palahnuk, Gary Mueller, Rick Rivara, Charlie Vachirs (Captain)

A GOOD TIME HAD BY ALL WHO ATTENDED THE 1996 CLAMBAKE



ENJOYING LUNCH



THE "GEORGE BURROWS"



WHEEL OF FORTUNE DRAWING



TALK AMONG FRIENDS



ENJOYING THE POOL



A GAME OF TENNIS



A GAME OF VOLLEYBALL



PAUSE THAT REFRESHES