

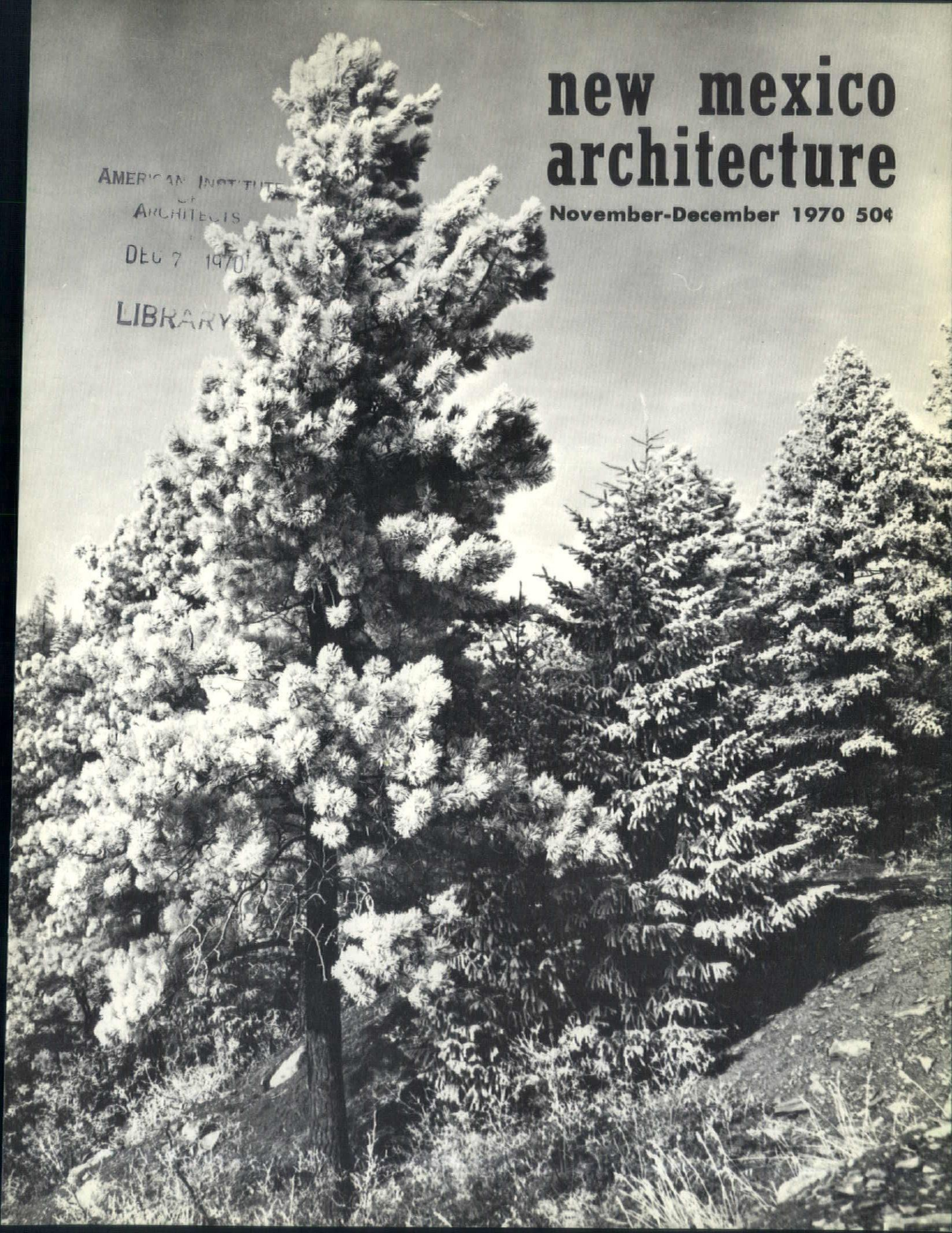
new mexico architecture

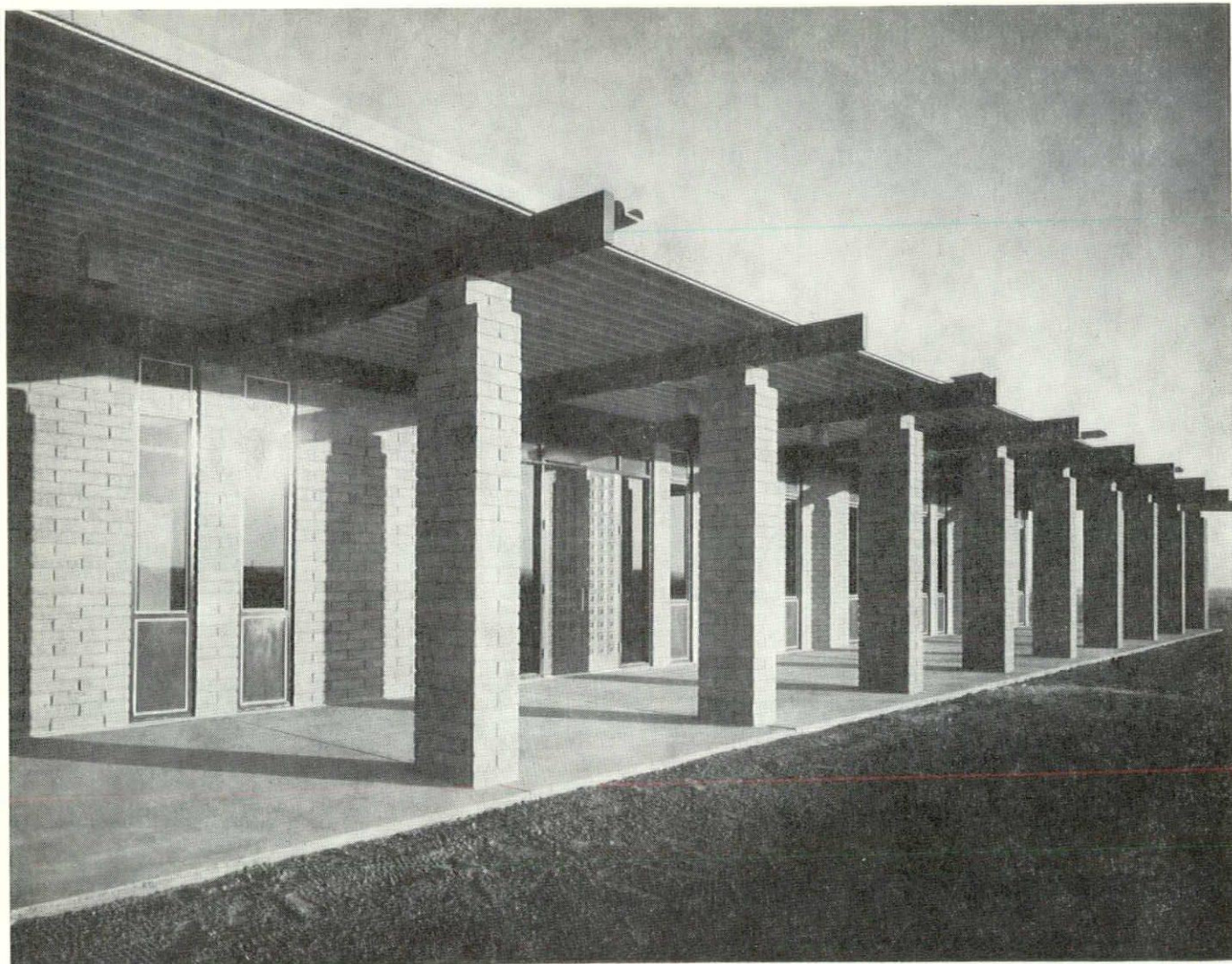
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An Announcement from the
New Mexico Construction Industries
Commission — A correction for the
Albuquerque Press — A new political advisor.

(Cover — *New Mexico in Winter*)

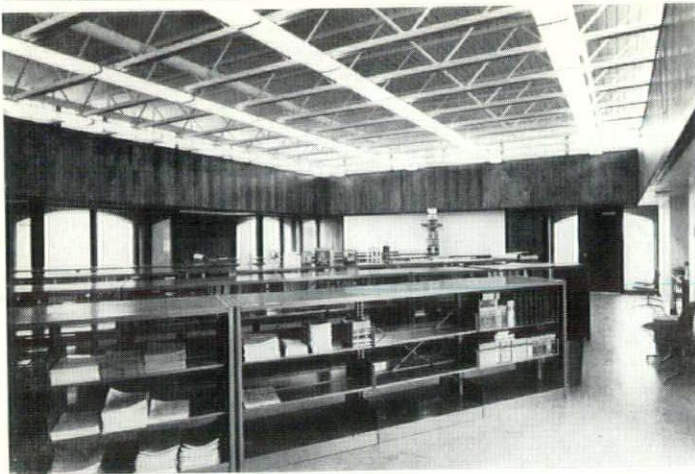
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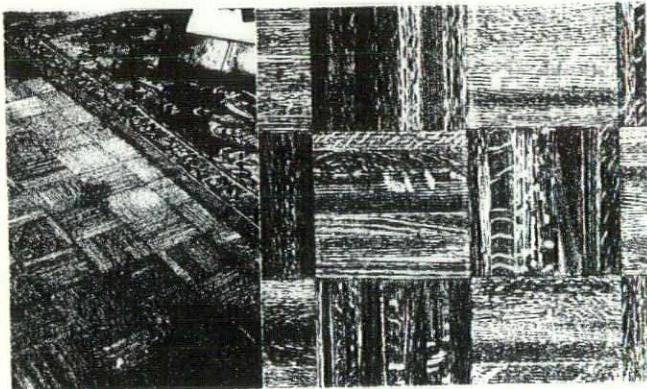


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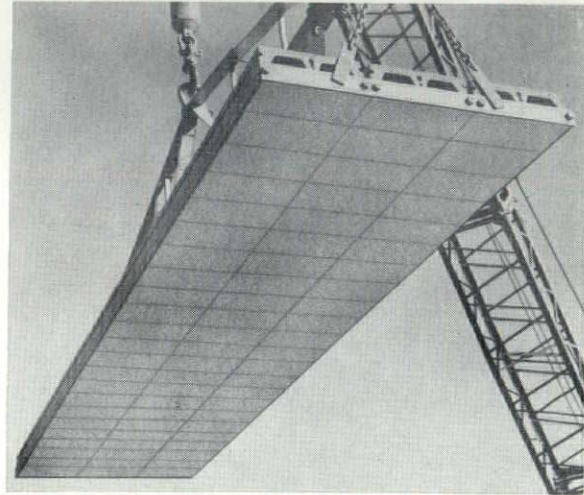
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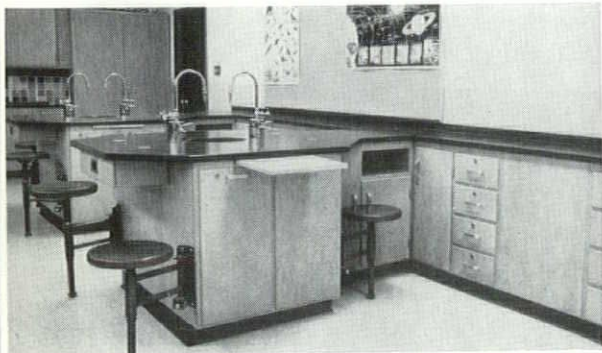
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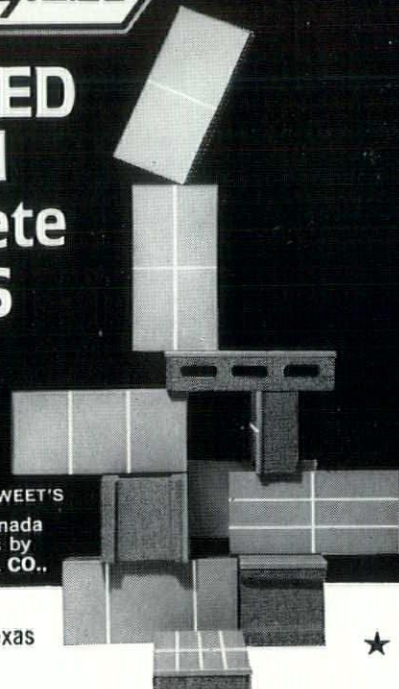
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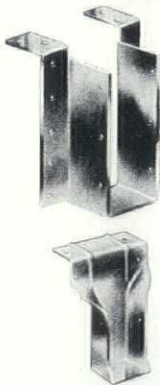


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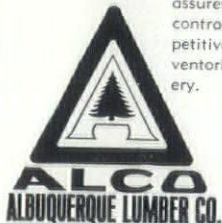
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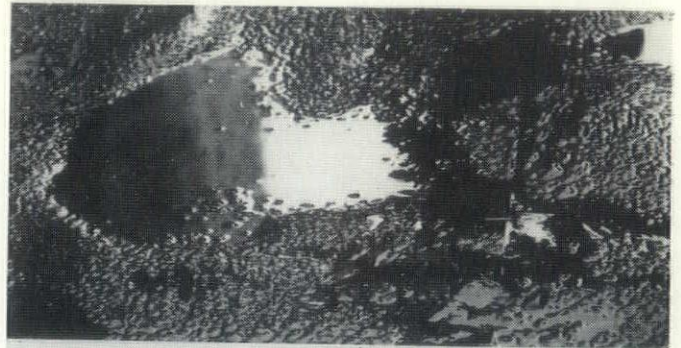


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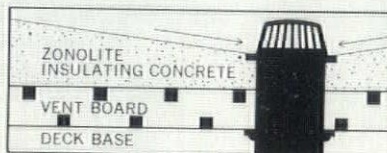
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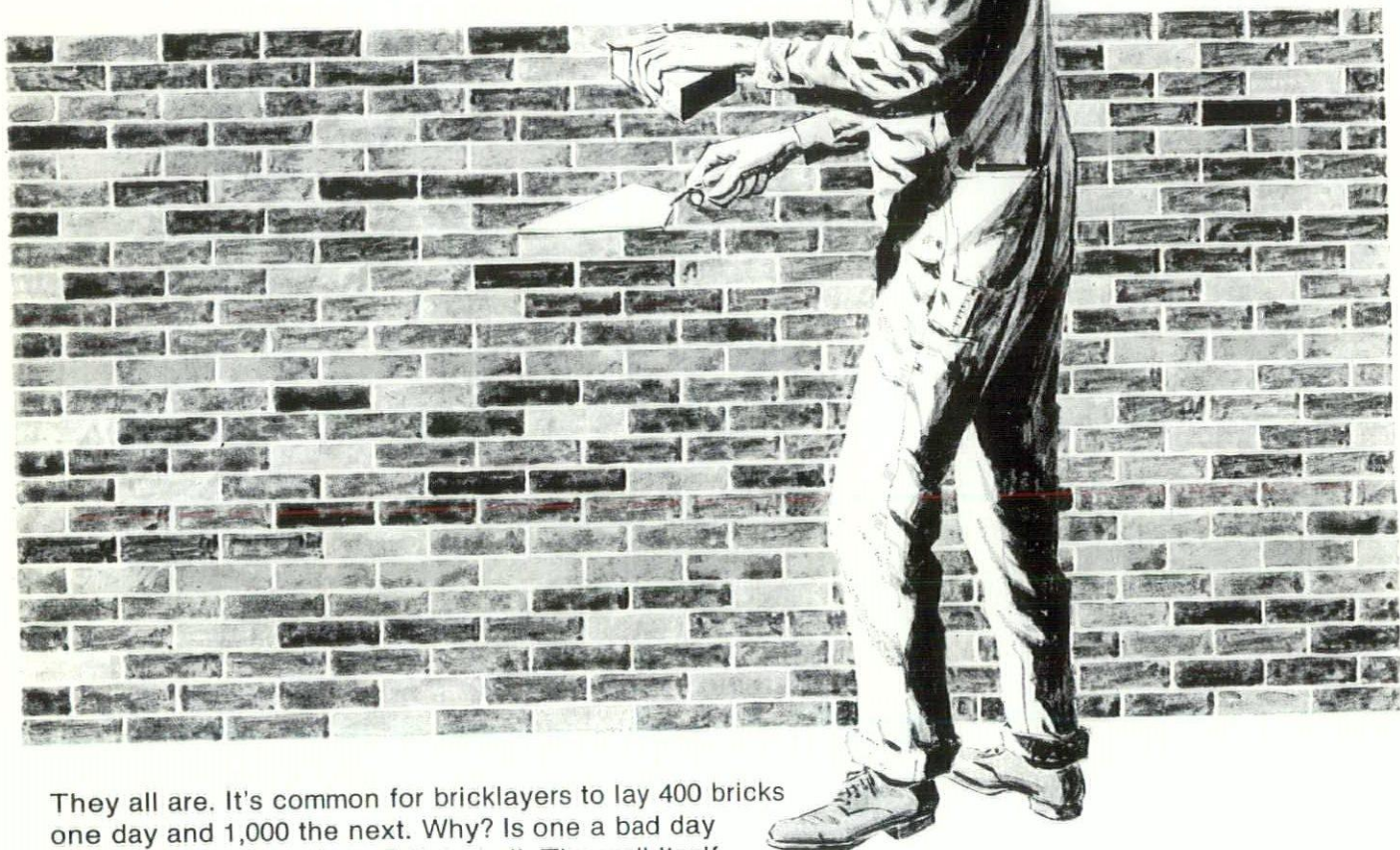


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The fact is that bricklayers are laying more brick than ever before. For instance, a 1910 building cost handbook said, "400 bricks a day for veneering a frame house is a good day's work." Today, it's common for bricklayers to lay 500 or more bricks per day on veneer walls.

A recent survey of mason contractors showed that bricklayers average about 725 bricks per day. That's one brick every 40 seconds. It means lifting almost two tons in an eight-hour day. (It also produces a cheaper—often more than 50% cheaper—permanent wall than do competitive materials.)

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New Mexico needs arbitration legislation . . .

Not long ago, New York City newspapers reported that a school building under construction had to be torn down and rebuilt because the concrete was defective. Experts had ruled that the structure was not safe; the concrete had been improperly cured. City officials, contractors and architects had red faces, and taxpayers to whom concrete is concrete were surprised. But those in the construction field know that any number of controversies have centered around the quality of the concrete used in a building.

Some of these costly controversies have been aired in the hearing rooms of the American Arbitration Association, as specific recourse to AAA arbitration is provided under many contracts involving architects, builders, owners and tenants. Numerous contracts contain a clause such as this:

Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

A recent case heard at the AAA concerned alleged defects in the ready-mixed concrete which had been delivered to a building site. The buyer contended that the concrete did not meet specifications. As a result, he charged, defects had developed in columns and structural elements in the building under construction. These columns had to be torn down and replaced.

The buyer cancelled the agreement for sale of the concrete, accused the seller of breach of contract and filed a demand for arbitration with the regional office of the AAA. He demanded compensation for the costs of tearing down and replacing the columns and consequential damages for the delay in completing the building.

The seller answered that, if the structure were defective, the flaws resulted from negligence on the buyer's part. Denying any liability, the seller filed a counterclaim seeking payment for the concrete already sold and delivered and damages for rescission of the contract.

Both parties agreed upon a single arbitrator to decide their dispute. From AAA lists they chose a prominent engineer of considerable experience and acknowledged competence.

At the hearing, the buyer introduced into evidence a report from an independent testing laboratory on the quality of the cement. Witnesses for both sides testified to delivery schedules, procedures at the construction site and practices in the industry.

The testing laboratory had reported that the concrete sample had failed one test. However, it devel-

oped that this test was not relevant. Moreover, the sample subjected to analysis had not been taken from construction at the site during the period of the controversy. Further testimony revealed that the buyer's employees had added an excessive amount of water to the concrete at the site.

In his written award, the arbitrator disallowed the buyer's claim in its entirety. He ruled that the curing of the concrete had been erratic and inefficient. The arbitrator found no breach of warranty by the seller and held that the latter was entitled to payment for the concrete. In addition, he awarded the seller damages for the contract rescission. This is just one example of how arbitration works.

There are seven good reasons for using arbitration in construction disputes.

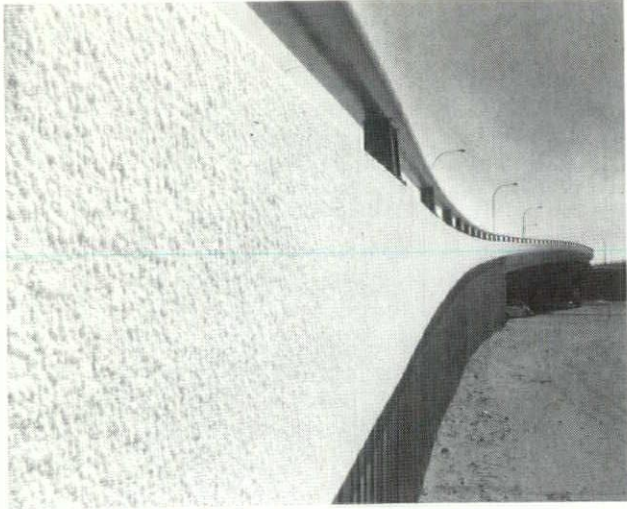
1. *Expert "Lay Judges"*—In construction disputes, especially, the expertise of the arbitrator is a distinct advantage to the parties. For many cases involve not only a question of law, but also a question of fact. Was the construction work defective? Were the substituted materials equal in quality to those specified? Did the completed structure meet the specifications of the architect? Were costs excessive? Who was responsible for defects or failures in the structure: the architect, the contractor or the owner?

The architects, engineers, construction men and attorneys on the Construction Industry Panel of the American Arbitration Association are fully qualified to hear and resolve disputes over construction. Nominated to the Panel by their own business and professional associations or by other experienced arbitrators, they have the insider's knowledge of the trade and its customs, a reassuring feature to the parties in a case.

In these controversies, the expert "lay judge" can assess evidence and weigh testimony. There is no need to explain to him what technical terms mean, to interpret complex reports for him and to hope that he has grasped the essentials of a complicated situation. Further, with an arbitration panel composed of knowledgeable professionals, expert witnesses are not often required.

The American Arbitration Association reports that architects have been especially generous in contributing their experience and talents to the settlement of disputes. AAA, which takes pride in the high caliber of its commercial arbitrators, believes that because of these public-spirited men, the business world can adjust its inevitable differences without interference or hindrance by any agency outside that sphere. Solutions arrived at by professional men who understand the exigencies of business life are apt to be closely attuned to practical realities.

There is no reason why a professional man should think that, because he does not have legal training, he is not qualified to become an arbitrator. The qualities



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that a lay judge needs—integrity, sound judgment and specialized knowledge—are basic to any reputable architect. Furthermore, a man who is new to the arbitral procedure ordinarily begins by serving as a member of a board headed by a more experienced colleague. In addition, AAA furnishes each arbitrator with a manual explaining its procedures and the standards that should govern his conduct; the Association's staff stands ready to provide guidance.

In addition to the expert knowledge of the man in the construction field, the participants in an arbitration occasionally want the broader view of an executive from another industry. In supplying the names of prospective arbitrators, the American Arbitration Association is guided by the wishes of the parties. This ease in obtaining lists of qualified arbitrators is one of the advantages of arbitrating under AAA rules and standards. The Association sends both sides a list of prospective arbitrators. Each party crosses off the names of the men to whom it objects and numbers the remainder in the order of preference. Should the parties be unable to agree on arbitrators, AAA has procedures for making administrative appointments.

2. *No Publicity*—The privacy of arbitration appeals to professional men. In some disputes, the charge is made that the architect was deficient in carrying out his responsibilities—that structural flaws, inefficient facilities and unsatisfactory materials were the fault of the architect. When made public, charges such as these can damage the reputation of an architect or his organization, even if later proved untrue. Arbitration is a private proceeding. Hearings are closed and awards not publicized. Thus allegations of poor professional performance are not aired publicly, and the possibility of injury to reputation is minimized.

3. *Economy*—AAA rules provide that in prolonged or special cases the parties may agree to pay the arbitrators a fee. Ordinarily, arbitrators contribute their services without charge. They believe that this is in fulfillment of their obligation to their profession, much the same as doctors donate their time to clinics.

In an AAA administered arbitration, fees are based on a sliding scale, in proportion to the amount of the claim. According to AAA rules, the arbitrator allocates these fees in equal shares or in any proportion he considers fair. Where the claim is nonmonetary, as for specific performance of a contract, the fee for each party is \$100.

4. *Legal Representation*—The parties to an arbitration usually are represented by counsel. Although the arbitrators are not legally bound to follow established rules of the law of contract interpretation, they are virtually certain to do so. Representation by their attorneys assures the parties that legal principles and precedents will not be overlooked.

Lawyers with a knowledge of the construction industry serve on many panels hearing disputes over the design or construction of a building. This can be invaluable to the participants; even when a dispute is

a technical one, a question of law may also be involved. Parties sign contracts containing language they expect will be interpreted in accordance with principles already established through years of litigation. The attorney-arbitrator will give full weight to the judicial meaning of words in a contract.

5. *AAA Administration*—The American Arbitration Association, from whose files the cases in this article have been drawn, has administered all kinds of arbitrations—labor, accident claims and commercial—for more than 44 years. The Association brings to case administration the facility born of experience. Its procedures are designed to protect the parties against undue delay and needless expense. For example, questions as to locale of an arbitration can be decided by AAA; disagreement over arbitrators can be resolved by administrative appointments. Convenience is provided by the Association's Regional Offices, which are located throughout the United States, and by the National Panel of 26,000 arbitrators in more than 2,000 communities.

Not the least advantage of AAA administration is the orderly procedure. Although arbitration is informal, it is by no means haphazard. AAA rules provide for impartial procedures along every step of the arbitration route from the filing of the demand to the issuance of the written award. The Association's rules and standards are intended to assure regularity in case administration and to result in awards that can be enforced, if necessary, through the courts.

Safeguards as well as positive encouragement of arbitration are provided by law in the 26 states that now have modern arbitration statutes. New Mexico is not one of the 26 states with modern arbitration statutes. In all states, awards may be enforced under common law whenever the parties have participated in the arbitration. The arbitration statutes, however, provide an expeditious method for enforcing awards. They also stipulate that agreements to arbitrate future disputes are enforceable.

These modern laws are a further guarantee of "due process." The courts can intervene on those rare occasions when an arbitrator exceeds his authority, when there has been evident misconduct or fraud on the part of an arbitrator, or when a party has been forced into an arbitration to which he never consented. The statutes then prescribe the corrective action to be taken by the courts.

6. *Speed*—The Association's facility in administering arbitrations makes it possible for parties to obtain speedy resolution of their differences. This is especially important where large sums of money are in dispute.

A contracting organization that planned to branch out from low-cost home building into large-scale cooperative apartment house construction appreciated the speed with which AAA administered its case. A group of home owners had charged the builders with faulty workmanship in the houses in a suburban development. They instigated a suit for \$100,000. Although the builders were sure they could defend

1970 HONOR AWARDS

themselves successfully, a suit tying up that much money would delay the apartment house project and perhaps terminate it entirely. The home owners also were interested in speed, so that when the attorneys for both sides proposed arbitration, they readily accepted the suggestion.

With the assistance of the AAA, a three-man arbitration panel was chosen, and, only a few weeks after the submission to arbitration was filed with the AAA, the first hearing was held. After the hearings and a visit to the development, the arbitrators were prepared to render their award. They found that the contracting organization was at fault in some instances. They directed the company to finish the specified repair work with a set time limit or to refund money to the home owners who could then call in outside contractors to do the work. Although the builders lost the arbitration, they gained the use of funds that otherwise would have been tied up indefinitely and so were able to continue their plans to expand operations.

7. *Other uses for arbitration*—The advantages of AAA arbitration—speed, economy, privacy, convenience, also applies to other kinds of controversy, such as those arising from partnership agreements and individual employment contracts.

Not long ago the American Bar Association distributed a handbook advising attorneys on procedures to follow and cautions to observe in setting up law firms. The handbook contains a recommendation that partnership agreements contain a clause providing for arbitration, under AAA rules, of certain kinds of disputes that may arise. Architects may also find it practical to include arbitration provisions in their partnership agreements.

As evidenced by the examples stated in this article, arbitration can be beneficial to everyone involved in the construction industry, as well as to those who rely on the construction industry to build buildings for them. Even though arbitration is an acceptable procedure in New Mexico, it would behoove us to work to have modern arbitration statutes adopted in New Mexico, and to use arbitration whenever required.

American Arbitration Services, formerly provided in New Mexico from the Dallas regional office, have been transferred to the Phoenix office. The address of the Phoenix office is: American Arbitration Association, 132 South Central Avenue, Phoenix, Arizona 85004. The Regional Director is Paul A. Newnham.

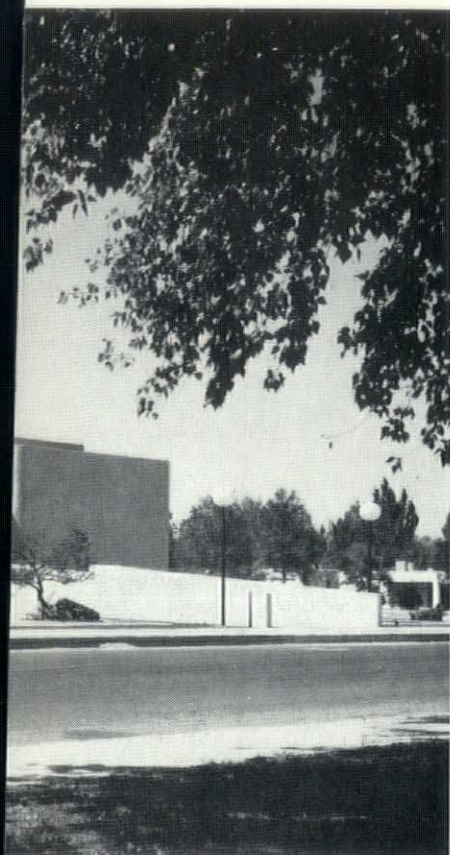
—Joe Boehning, AIA.



1. San Pedro Branch Library, Albuquerque.
John Reed—Architect



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2. Addition to the Biology Building, U.N.M.
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Flatow, Moore, Bryan
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—Architects

3. Los Alamos Main Exchange Complex, Mountain Bell.
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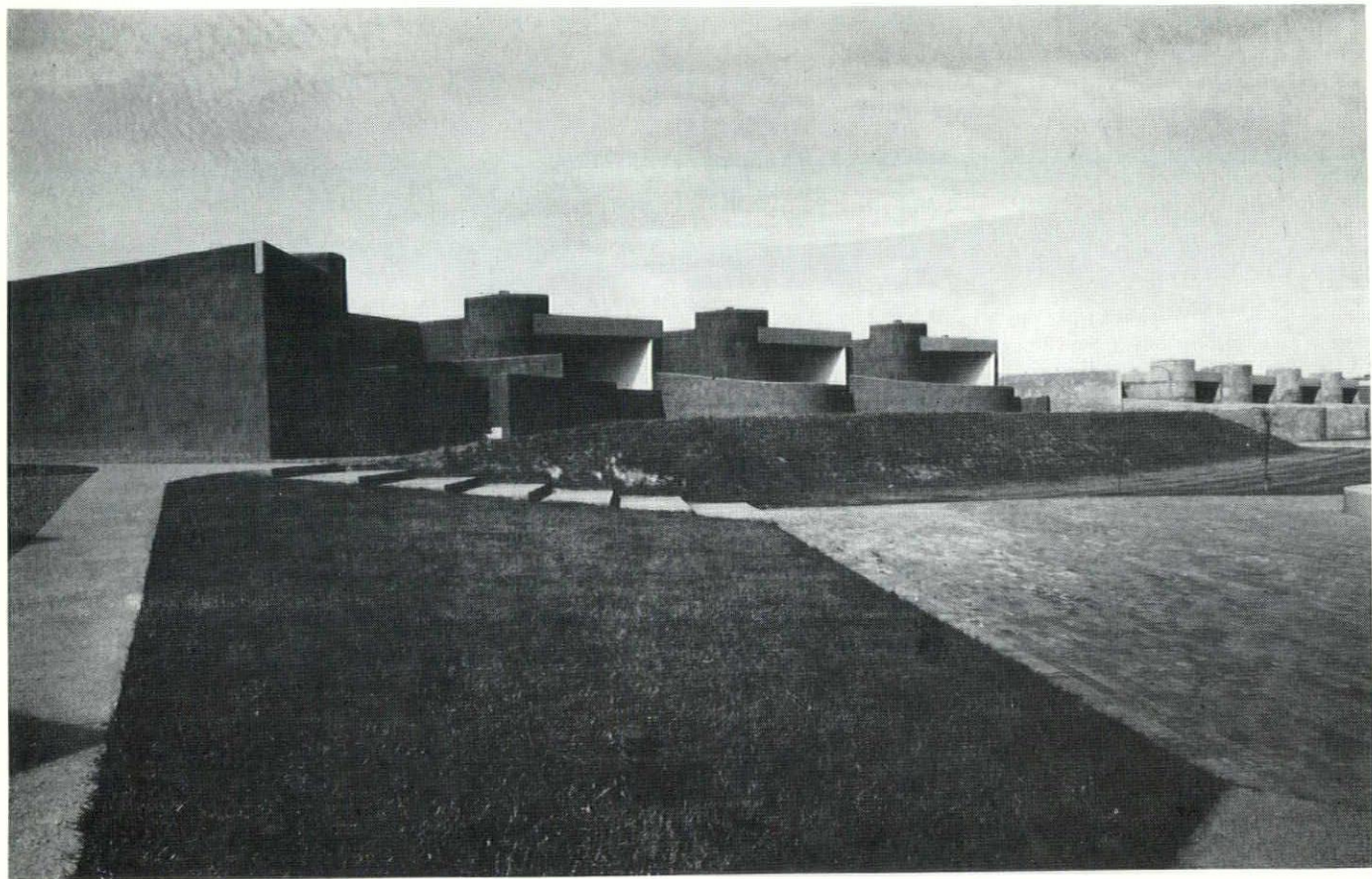
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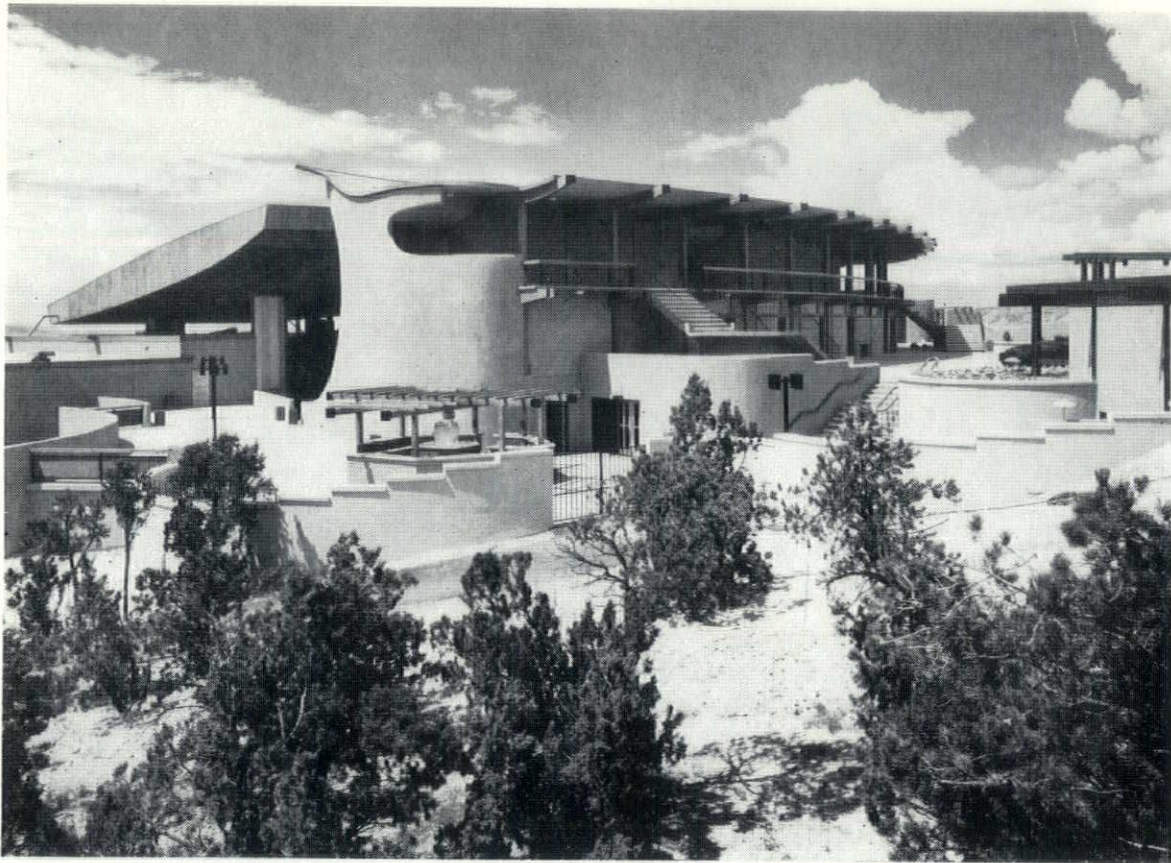
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Merle Clark, Chief Planner, State Planning Office

Upon presentation of this award, Mrs. Ernestine Evans, Secretary of State, read the following statement:

Tonight, the New Mexico Arts Commission presents its award for "excellence in the field of historic preservation."

This award is given to Mr. Merle Clark, Chief Planner of the New Mexico State Planning Office.

The most obvious reason for honoring Merle Clark tonight is the New Mexico State Plan for Historic Preservation, the first phase of which is nearly complete and ready for the printer. This superb piece of work is second to none of its kind which has been produced in this country. More than to anyone else, its authorship belongs to Merle Clark.

The publication of this state plan represents years of work and is based upon a number of significant earlier achievements. Mr. Clark has had a dominant part in the formulation, refinement, and final enactment into law of the Cultural Properties Act of 1969, one of the most distin-

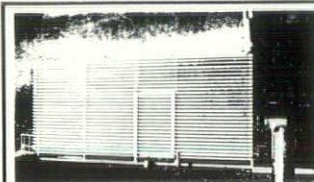
guished preservation laws so far achieved by any of the United States. His, also, was the most vital voice in the organization of the Cultural Properties Review Committee, to which he has given dedicated and inspiring leadership.

Also, this award is appropriate because of another kind of achievement. Merle Clark has given the first real recognition and encouragement to a number of public benefactors to whom the people of New Mexico owe a great cultural debt. Several of our most important architectural monuments have been preserved intact by private citizens throughout many years of public unconcern.

Mrs. Frank Hill and Janaloo Hill at the town of Shakespeare; Mrs. U. L. Clegg at the Mills House in Springer; and Mr. and Mrs. K. E. Deaton and Mrs. Betty Buck at the Dorsey Mansion in Chico, N. M.; and others have given most of their time, energy, and money to keeping intact these irreplaceable cultural documents. Through the official and unofficial activities of Merle Clark, these previously unrecognized people owned by buildings have at last some reason to believe that the people of New Mexico may finally come to know and appreciate what they have done.

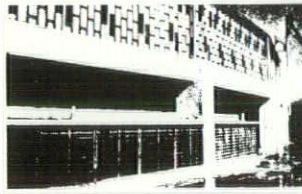
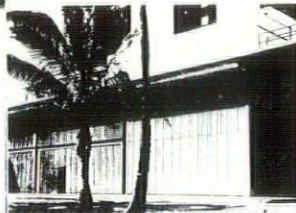
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To build or not to build, that is the question;
Whether it's smarter, after all, to live
With rent, and clauses in outrageous leases,
Or to take leave of this whole mess of problems
And by owning your own thing, end them?

To build, to rent no more,
And by this step to hope to end
The headaches and the thousand daily shocks
That go with renting; it's a combination
Devoutly to be wished. To build, to sleep,
To sleep in your own pad, perchance to dream,
Ay, there's the catch,
For in that sleep of debt what nightmares come
Before we've shuffled off the mortgage bond
Will make us stop and think. Now there's the
problem

That we should live so long and work so hard

For who today can pay, even on time,
The legal fees, the contractor's low bid,
And stand the pangs of FHA delays,
The insolence of workmen, and the spurn
That builders make of our requests for changes.

And all the time you know
That you could be your own contractor
And in a one-man office, do as well,
(With a bare bodkin just for cutting costs)
If you but had the time.

But who'd assail the local building code
To grunt and sweat the current interest rate
Just to add something real to your estate
When you could buy a cottage in Vermont
That undiscovered country from whose bourne
No commuter returns, and for excellent reasons!

Decision twixt the two puzzles the will
And makes us rather bear the bills we have
Than contract others we know naught of.

Thus money doth make cowards of us all,
And the great scheme we had, in full color,
Is sicklied o'er with a thick coat of doubt
And enterprises of great pith and moment,
With this regard, wind up high on the shelf,
And lose the label "active"... and never get built.

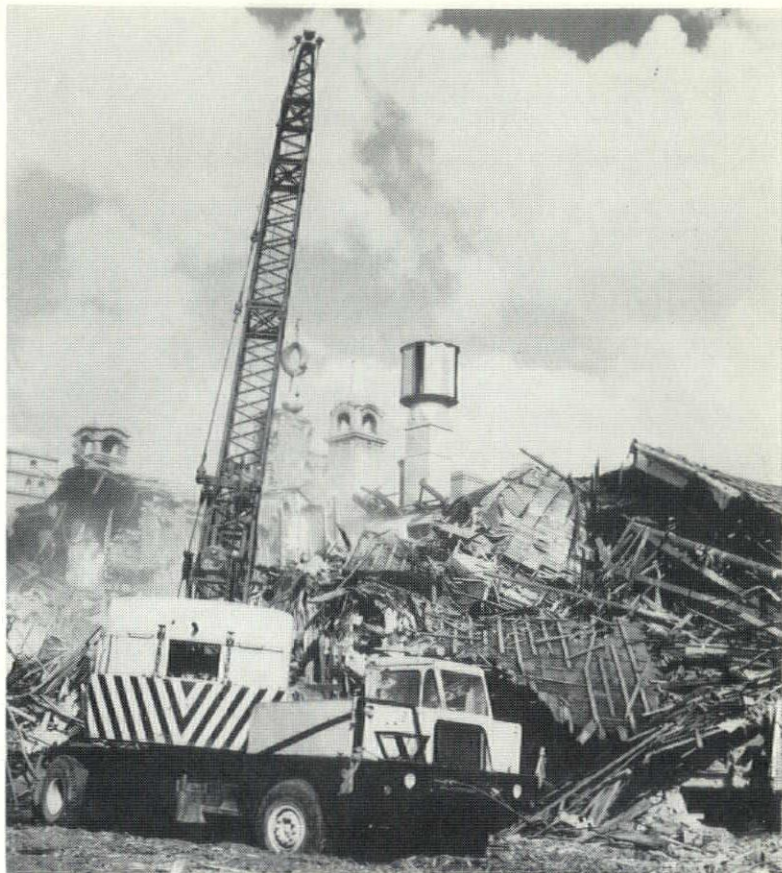
Oh well. Fair Ophelia!
At three hourly dollars, fringe benefits,
Fifty words a minute, and atrocious spelling,
Up from thy teen-age orisons, and take a letter!

*Robert H. Mutrux, AIA
Wilton, Connecticut*

THE N.M.S.A. 1970 FOLLIES AWARDS - - -

In the field of Historic Preservation.

The Atchison, Topeka, and Santa Fe Railway Co., for the Alvarado Hotel.



In the field of Fine Arts.

The Albuquerque Airport Board and the Albuquerque Fine Arts Board for the recently installed mural at the Sunport.

And

In the field of Environmental Contribution.

The Santa Fe Urban Renewal Agency for the Santa Fe River Park.

Note:

In making these awards the jury wishes to call attention to opportunities lost. If properly preserved the Alvarado Hotel structure could have been a major key in the revitalization of downtown Albuquerque. (See NMA Nov/Dec 1969.) The land is now another parking lot. About the Sunport mural, the jury thought: "Ah, what might have been!" In making this particular award the jury realized that it was criticizing one of the Society's own members, but that's the way of juries. The Santa Fe River Park could have been a lovely addition to the already landscaped section of the river immediately to the east — but the result is simply expansive and generally dull.



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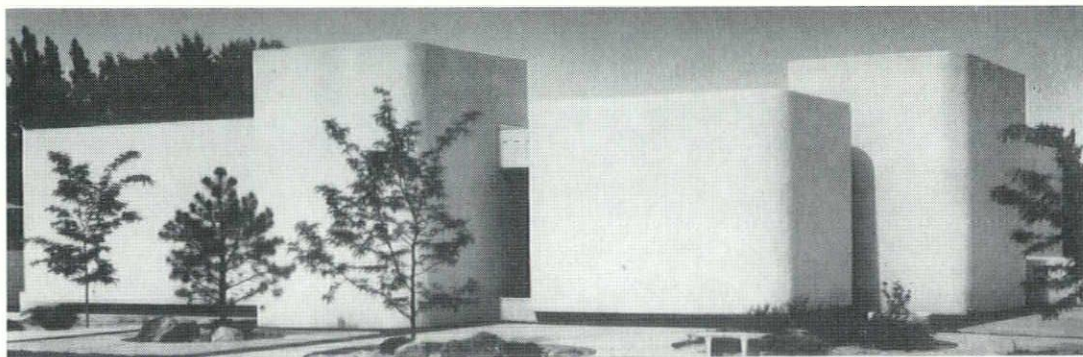
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The Construction Industries Commission would be most grateful if you could help us disseminate the following information in your official publication. We are particularly anxious that architects, engineers, and municipal authorities who award construction contracts of all kinds become aware of these facts:

Sec. 67-35-15, Construction Industries Licensing Act:

No bid on a contract shall be submitted unless the contractor has a valid license issued by the commission to bid and perform the type of work to be undertaken... The commission shall define and establish all license classifications and the licensee shall be limited in his bidding and contracting (as provided above).

Rules & Regulations, page 2, General:

The license number appearing on any license held by the licensee shall be posted in a conspicuous place on the premises where any work is being performed by the licensee... The license number and classification shall be placed on all written bids submitted by the licensee, as well as on the container of the bid.

The Commission welcomes inquiries as to the current status of any license, including the classifications carried and the dollar-amount of work which may be performed. A licensee should not bid over the dollar-amount shown on his current license card.

Another phase of the Act which causes some confusion is the fact that licenses are not transferable. (Sec. 65-35-20). This is amplified very clearly in the Rules, as follows:

"A contractor's license is not transferable. A change in name, business structure or qualifying party of a licensee, without proper notice, shall have the legal effect of operating without a license. Therefore, all such changes must be reported to the Commission, by registered mail, within thirty days after making any such change.

Establishment of a corporation results in a legal entity which requires a license even though one or more stockholders have a contractor's license. A license held by a stockholder cannot be authority for a corporation to engage in contracting.

The dissolution of a corporation, partnership or joint venture which has been licensed, operates to terminate the license, and no person thereof may operate under such license.

The change of members of a partnership either by the addition of a partner or partners, or by the withdrawal of a partner or partners, results in a new legal entity which shall necessitate obtaining a new license.

Establishment of a partnership or *joint venture* results in a legal entity which requires the partnership or joint venture itself to be licensed.

A license is neither assignable or transferable and may be legally used only by the entity to whom it is issued. Any attempt to assign or transfer a license, or to permit any other person to bid, contract or do work under such license will subject licensee to suspension or revocation of his license."

The Commission is particularly anxious to have the rule concerning joint ventures publicized, as a contract may not be awarded to an unlicensed joint venture, even though either or both of the parties to the joint venture carry licenses of their own. Both the legal and the financial responsibility change in such a case, and the new legal entity involved must obtain its own license and carry its own financial responsibility.

If the Commission can be of assistance to any authorities receiving or awarding bids, it stands ready and willing to do so.

ELMER L. KAEMPER
Executive Director

A CORRECTION OF THE FACTS FOR THE ALBUQUERQUE PRESS

A recent news release by the University of New Mexico Public Information Office has done a disservice to two architectural firms in Albuquerque and thusly has misrepresented the recently announced 1970 Honor Awards of the New Mexico Society of Architects. (See pages 12-17 of this issue).

The opening statement of the news release states:

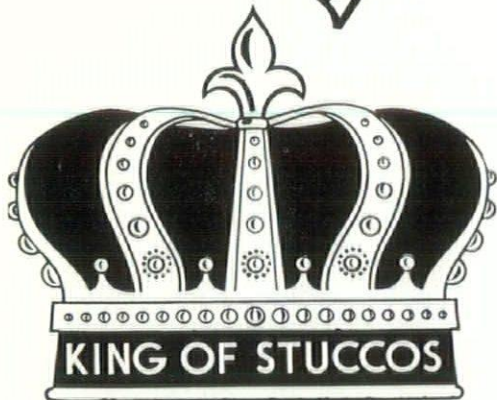
"The University of New Mexico Biology Building has been chosen as the top state example of architectural design by the New Mexico Society of Architects." The structure, actually a major addition to the older Biology Building, did receive a coveted *Honor Award*, but equally so did two other buildings in Albuquerque. Further, an Honor Award was presented to a completed planning report and an Environmental Achievement award was presented to an apartment complex. The Society considers all Honor Awards to be of equal weight. Only in the case where a single Honor Award might be presented could the press assume that there was one "top----example." In no way should this statement be considered a denegation of that excellent Biology Building Addition, but, rather, a correction of the facts to elevate the other winners to a position of equal prominence. —JPC.

A NEW POLITICAL ADVISOR

In several appearances throughout the Santa Fe area film star Gregory Peck has been urging us to vote the Democratic Party slate. Currently in Santa Fe for the filming of his latest movie, it is good to know that this dedicated citizen of another state has the depth of knowledge about problems

(Continued on page 22)

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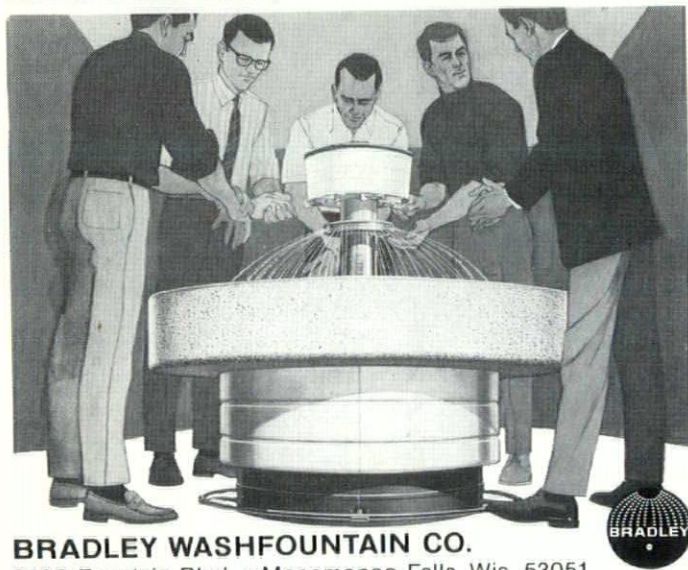
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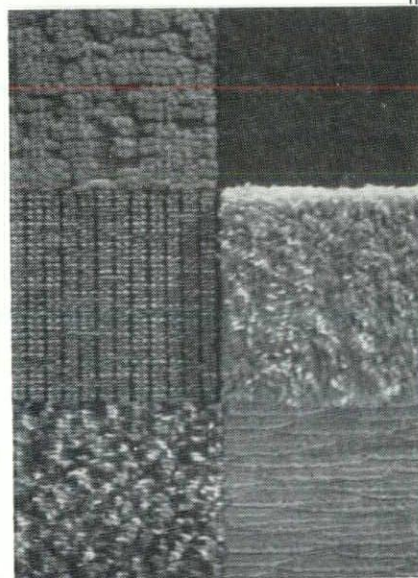
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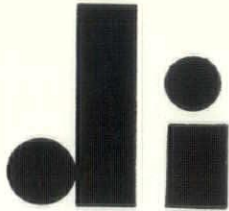


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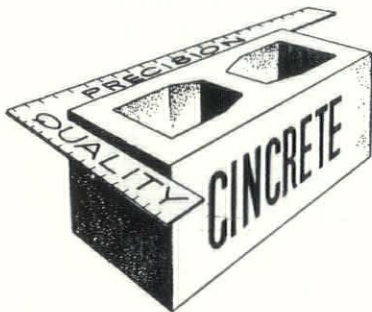


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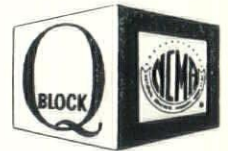


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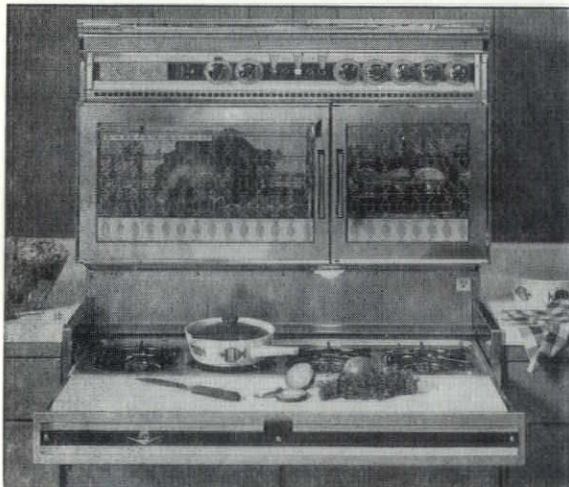
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of New Mexico to be able to advise us on the choice of candidates capable of solving these problems. Perhaps New Mexico should return the compliment (?) by sending an equally unqualified advisor to Peck's home state of California. —JPC.



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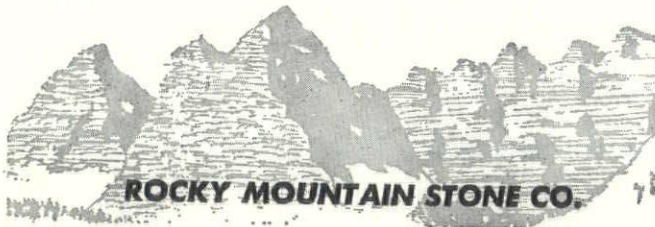
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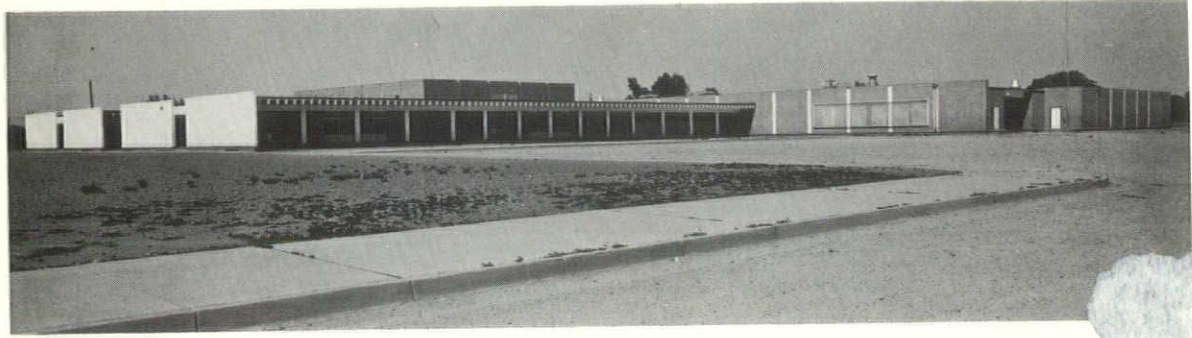


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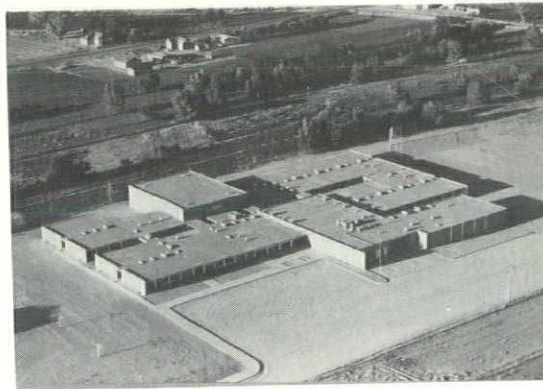
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