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# TITLE NEWS

Official Publication

## THE AMERICAN TITLE ASSOCIATION

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Proceedings of 1951 Convention

(Part One)

Volume XXXI

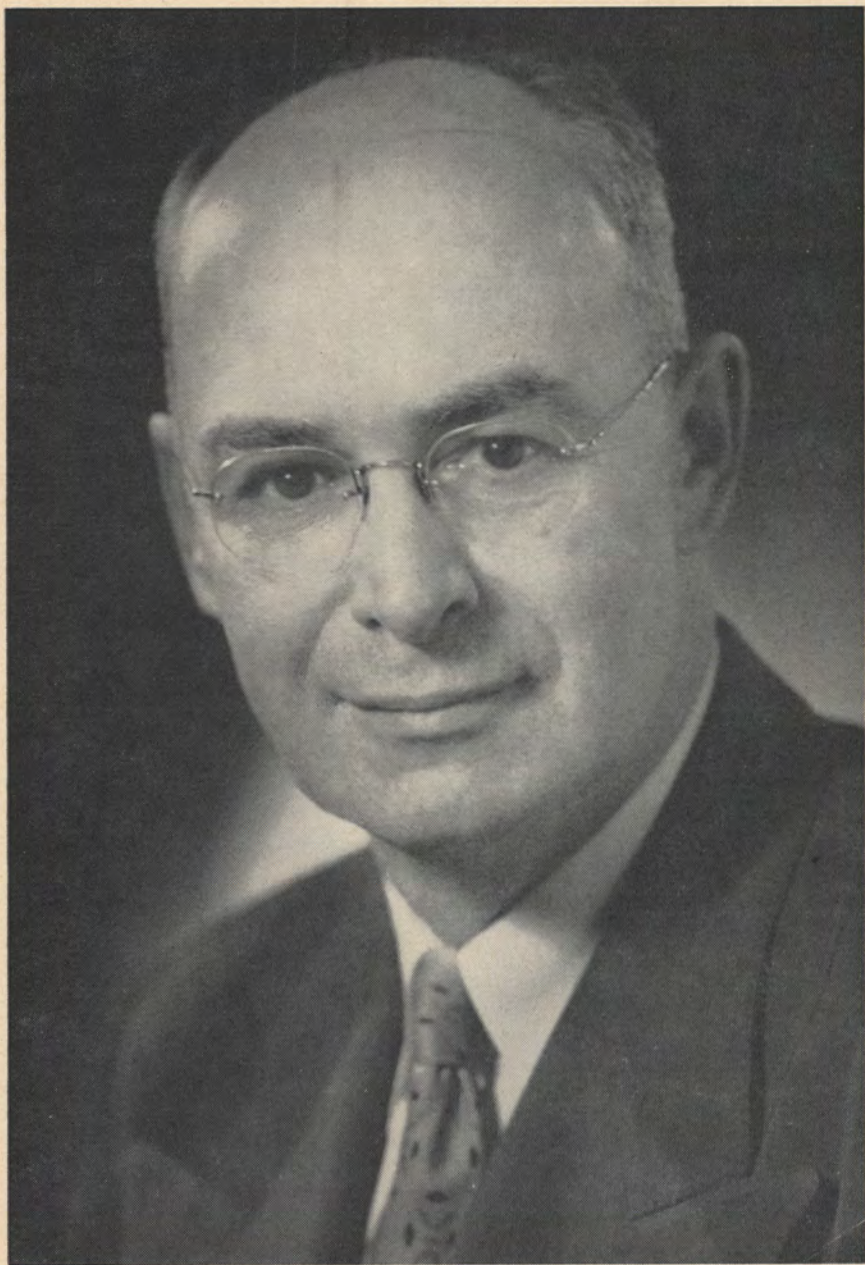
March, 1952

Number 1

# Table of Contents

	Page
Roll of Honor, Past Presidents, A.T.A.....	4
Officers and Board of Governors, A.T.A.....	5
Officers and Executive Committees of Sections.....	6
Committees, American Title Association.....	7
Report of National President..... <i>Mortimer Smith</i>	17
Report of National Treasurer..... <i>William Gill, Sr.</i>	21
"Escrows and Closings By Title Companies"..... <i>William M. McAdams</i> <i>L. J. Taylor</i> <i>John W. Warren</i> <i>George E. Harbert</i>	23
"The Title Plant".....	32
Report of Chairman of Committee..... <i>C. Perry Liverton</i>	32
"Applications of Various Cameras to Title Plant Building and Maintenance"..... <i>Arthur E. Wade</i> <i>Russell S. Ellsworth</i> <i>A. A. Poirier</i> <i>C. A. Webber</i>	39
"Operating and Maintenance Costs"..... <i>Edward D. McCrory</i>	44
"Service and Production"..... <i>LaVerne Herbruck</i>	46
"Tales of a Title Man"..... <i>Harvey Humphrey</i>	49
Advertising—Public Relations.....	54
Report of Chairman of Committee..... <i>Andrew Dyatt</i>	54
Winners in Advertising Contest.....	55
Report of Committee on Public Relations..... <i>Morton McDonald</i>	56
"A Speakers' Bureau, State Wide"..... <i>Stewart Robertson</i>	59

	<i>Page</i>
Judiciary Committee, Report of..... <i>Ralph H. Foster</i>	67
Legislative Committee, Report of..... <i>John W. Ziercher</i>	74
Federal Legislative Committee, Report of..... <i>Paul J. Wilkinson</i>	76
Planning Committee, Report of..... <i>William Gill, Sr.</i>	78
Constitution and By-Laws, Report of Committee..... <i>John J. O'Dowd</i>	79
"A Man's Judgment Is Only as Good as His Information" or "Where Do We Go from Here?"..... <i>Earl C. Glasson</i> <i>George C. Rawlings</i> <i>Stewart Morris</i> <i>A. W. Suelzer</i> <i>Paul W. Goodrich</i>	82
Title Insurance Section, Report of Chairman..... <i>Edward T. Dwyer</i>	91
National Title Underwriters Section, Report of Chairman..... <i>Murray L. Jones</i>	92
Title Insurance Executives, Regional Districts.....	94
Reports of Chairmen	
Central States District, <i>Clarence Burton</i> .....	94
Atlantic Coast District, <i>H. Stanley Stine</i> .....	95
Southwestern District, <i>William Gill, Sr.</i> .....	96
Title Insurance, Losses and Claims..... <i>Henry J. Davenport</i>	97
Title Insurance, Loss Data, Claim Expense..... <i>Murray L. Jones</i>	104
Foreign Divorces ..... <i>J. Mack Tarpley</i>	108



JOSEPH T. MEREDITH

*National President, American Title Association,  
President, Delaware County Abstract  
Company, Muncie, Indiana*

# ROLL OF HONOR

## *Past Presidents of the American Title Association*

1.	1907-08	W. W. Skinner .....	Santa Ana, Calif.
2.	1908-09	A. T. Hastings .....	Spokane, Wash.
3.	1909-10	W. R. Taylor .....	Kalamazoo, Mich.
4.	1910-11	Lee C. Gates .....	Los Angeles, Calif.
5.	1911-12	George Vaughan .....	Fayetteville, Ark.
6.	1912-13	John T. Kenney .....	Elkhorn, Wis.
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10.	1916-17	R. W. Boddinhouse .....	Chicago, Ill.
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13.	1919-20	E. J. Carroll .....	Davenport, Ia.
14.	1920-21	Worrall Wilson .....	Seattle, Wash.
15.	1921-22	Will H. Pryor .....	Duluth, Minn.
16.	1922-23	Mark B. Brewer .....	Oklahoma City, Okla.
17.	1923-24	George E. Wedthoff .....	Bay City, Mich.
18.	1924-25	Frederick P. Condit .....	New York, N.Y.
19.	1925-26	Henry J. Fehrman .....	New York, N.Y.
20.	1926-27	J. W. Woodford .....	Seattle, Wash.
21.	1927-28	Walter M. Daly .....	Portland, Ore.
22.	1928-29	Edward C. Wyckoff .....	Newark, N.J.
23.	1929-30	Donzel Stoney .....	San Francisco, Calif.
24.	1930-31	Edwin H. Lindow .....	Detroit, Mich.
25.	1931-32	James S. Johns .....	Pendleton, Ore.
26.	1932-33	Stuart O'Melveny .....	Los Angeles, Calif.
27.	1933-34	Arthur C. Marriott .....	Chicago, Ill.
28.	1934-35	Benjamin J. Henley .....	San Francisco, Calif.
29.	1935-36	Henry R. Robins .....	Philadelphia, Pa.
30.	1936-37	McCune Gill .....	St. Louis, Mo.
31.	1937-38	William Gill .....	Oklahoma City, Okla.
32.	1938-39	Porter Bruck .....	Los Angeles, Calif.
33.	1939-40	Jack Rattikin .....	Fort Worth, Texas
34.	1940-41	Charlton L. Hall .....	Seattle, Wash.
35.	1941-42	Charles H. Buck .....	Baltimore, Maryland
36.	1942-43	E. B. Southworth .....	Crown Point, Ind.
37.	1943-44	Thos. G. Morton .....	San Francisco, Calif.
38.	1944-45	H. Laurie Smith .....	Richmond, Va.
39.	1945-46	A. W. Suelzer .....	Fort Wayne, Ind.
40.	1946-47	J. J. O'Dowd .....	Tucson, Ariz.
41.	1947-48	Kenneth E. Rice .....	Chicago, Ill.
42.	1948-49	Frank I. Kennedy .....	Detroit, Mich.
43.	1949-50	Earl C. Glasson .....	Waterloo, Iowa
44.	1950-51	Mortimer Smith .....	Oakland, Calif.

# TITLE NEWS

*Official Publication of*

THE AMERICAN TITLE ASSOCIATION

3608 Guardian Building — Detroit 26, Michigan

Volume XXXI

March, 1952

Number 1

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President, Washington Title Insurance Company	
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<i>Chairman</i> —C. PERRY LIVERTON	Philadelphia, Pa.
Ass't Title Officer, Commonwealth Title Company.	
RAYMOND B. HESTON	Camden, N.J.
Secretary, West Jersey Title & Guaranty Company	
A. L. BODLEY	Sioux Falls, S.Dak.
Secretary, Getty Abstract Company	
A. A. POIRIER	Harlowton, Mont.
President, Wheatland Abstract Company	
RALPH L. BATES	Colorado Springs, Colo.
President, Security Abstract & Title Company	
HART McKILLOP	Miami, Fla.
Vice-President, Lawyers Title Insurance Corporation.	
JOHN W. DOZIER	Topeka, Kan.
Vice-President, Columbian Title & Trust Co.	
JOHN H. MURRAY	Flint, Mich.
Manager, Guaranty Title & Mortgage Company	
MISS J. M. EPENETER	Boise, Ida.
The Title Insurance Company	
JAMES L. BOREN	Memphis, Tenn.
President, Mid-South Title Company	
E. D. McCRORY	Houston, Tex.
Vice-President, American Title Guaranty Company	
LaVERNE HERBRUCK	Los Angeles, Calif.
Ass't Sec'y, Title Insurance & Trust Company	
MISS OLGA M. TRUCKS	Baldwin, Mich.
Manager, Lake County Abstract Company	
A. J. YATES	Geneva, Ill.
President, Kane County Title Company	
LEONARD F. FISH	Madison, Wis.
Vice-President, Dane County Title Company	
HARRY V. CAMERON	Tucson, Ariz.
President, Arizona Land Title & Trust Company	
ANDREW DYATT	Denver, Colo.
President, The Landon Abstract Company	
ARTHUR E. WADE	Cleveland, Ohio
Vice-President, Land Title Guarantee & Trust Company	

JOHN V. HARVEY.....	Sioux City, Ia.
Partner, Talley Harvey & Company	
BEN J. DRYMON.....	Sarasota, Fla.
President, Abstract Company of Sarasota	
LEO J. SULLIVAN.....	Buffalo, N.Y.
Exec. Vice-President, Monroe Abstract & Title Corporation	
KENNETH C. KLEPSEK.....	Seattle, Wash.
President, Puget Sound Title Insurance Company	
WALTER R. DOUGLAS.....	Clayton, Mo.
President, Guaranty Land Title Company	
E. HOUSTON SUDDOTH.....	Evansville, Ind.
President, Evansville Titles, Incorporated	

### COMMITTEE ON STATE ASSOCIATION MANAGEMENT, ACTIVITY AND EXPANSION

<i>Chairman</i> —V. HUBERT SMITH.....	McAlester, Okla.
Manager, Pioneer Abstract Company	
PRESTON D. BRENNER.....	Philadelphia, Pa.
Title Officer, Land Title Bank and Trust Co.	
MARSHALL H. COX.....	Cleveland, Ohio
Vice-President, Land Title Guarantee & Trust Co.	
RICHARD H. DeMOTT.....	Winter Haven, Fla.
General Manager, Florida Southern Abstract & Title Co.	
PALMER W. EVERTS.....	New York, N.Y.
Secretary, New York State Title Association	
WHARTON T. FUNK.....	Seattle, Wash.
President, Lawyers Title Insurance Corporation	
MELVIN JOSEPHSON.....	Boone, Iowa
President, Boone County Abstract & Loan Co.	
EARL G. KRUSE.....	Kiowa, Colo.
Secretary, Elbert County Abstract & Title Co.	
EDWIN D. McCRORY.....	Houston, Texas
Vice-President, American Title Guaranty Co.	
M. E. McCURDY.....	Washburn, N.D.
President, Security Abstract & Loan Co.	
MRS. HAZEL PARKER.....	Los Angeles, Calif.
Asst. Secretary, California Land Title Association	
JOHN R. PARKER.....	Lincoln, Ill.
Vice-President, Logan County Title Co.	
MARVIN W. WALLACE.....	Kingman, Kansas
President, Cragun Abstract Co.	

### COMMITTEE ON EMPLOYEE SEMINAR

<i>Chairman</i> —JOHN P. TURNER.....	Kansas City, Mo.
Vice-President, Kansas City Title Insurance Co.	
STEWART ROBERTSON.....	Oklahoma City, Okla.
Mgr., Abstract Dept., American-First Trust Co.	
A. J. YATES.....	Geneva, Ill.
President, Kane County Title Co.	



- ROBERT J. JAY ..... Port Huron, Mich.  
 President, St. Clair County Abstract Co.  
 (Mail Address: Guardian Bldg., Detroit 26, Mich.)
- JOHN B. BELL ..... Boise, Idaho  
 President, The Title Insurance Company
- THOMAS J. LLOYD ..... Pueblo, Colo.  
 President, Pueblo Title Guaranty Co.
- E. M. WALDRON ..... Fort Worth, Texas  
 Vice-President, Elliott & Waldron Title & Guaranty Co.
- BRIANT H. WELLS ..... Los Angeles, Calif.  
 Vice-President, Title Insurance & Trust Co.

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# Proceedings of Annual Convention

(Part 1)

American Title Association

Colorado Springs, Colorado — September 24-27, 1951

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## GENERAL SESSIONS

### Report of National President

MORTIMER SMITH

*President, American Title Association 1950-51*

*Vice-President and Manager, Oakland Title Insurance and Guaranty Company,  
Oakland, California*

We in the title industry have come here to Colorado Springs with a purpose.

No doubt each one of us, were she or he asked to define that purpose, would differ in the approach to that definition and would prepare it and present it in language apart from that used by any other one of us. The portrayed purposes, however, would not look very different, any one from the other.

#### Here We Meet

It does seem to me that we have come here to confer and to listen so that we can achieve the right mental state which will enable us to evaluate the importance of our past activities, to find the best methods of the doing of today and to obtain information upon which to base our judgments of tomorrow. Very definitely most people who have made a living from their work with some degree of success use their analysis of various results of the past endeavors of themselves or of others to portray to themselves the formula that has meant such success. Then they try to apply that most successful foundation to all current and future enterprises.

#### We Thank Our Hosts

That, to me, is why we are here—that this is a renewal of our business mind; and our thanks are heartily and sincerely given to our hosts, the Colorado Title Association, for mak-

ing it possible for us to be here. Earl Kruse, President of our host association, his fellow officers, Roger Ptolemy, Vice-President, Lloyd Hughes, Secretary-Treasurer, and the Executive Committee Richard White, Ralph Callaghan and Robert Kinkel have organized and are presenting to us through their committee chairmen and those helping them four days of the very finest of hospitality.

Don Graham is the General Convention Chairman, Miss Hazel Menke, Thomas Lloyd and Roger A. Ptolemy are receiving and registering us, Ralph Bates is chairman of the Ladies Entertainment Committee (I understand that the competition for that last assignment was most strenuous but that Ralph won out), Donald Smith, Jr., is the Transportation Chairman, R. William Bates is the Chuck Wagon Dinner Chairman, T. W. Sisson is chairman of the ice show and Koshare dancers and Frank W. Renwick is chairman of the group handling the cocktail party.

That is an imposing array of talent and then just for good measure all the members of those committees have been working diligently as has the entire host title association.

The members of the American Title Association salute the Colorado Title Association!

And it is to the members of the American Title Association that we

now respectfully address this report. You, ladies and gentlemen are the generals and admirals of this organization. Your elected and appointed officers and your headquarters staff are here for an annual report to you and an annual inspection by you.

This is our "passing in review" before you, under whom and for whom it has been our pleasure to serve.

### **Committees**

There are twelve committees regularly appointed each year by each new president of the association elected by you. They are the committee on Advertising and Publicity, the committee on Constitution and By-Laws, the committee on Membership and Organization, the committee on Public Relations, the Federal Legislative committee, the Judiciary committee, the National Legislative committee, the committee on Abstracters Liability Insurance and Bond Coverage, the Planning committee, the committee on Title Insurance Standard Forms, the committee on the Lien of Federal Estate Taxes on Real Estate and the committee on Title Plants and Photography.

These are the regular standing and stand-by committees. Everyone of those committees and every single member of every one of those committees is a stand-by in every sense of the word. All stand-by ready, able and willing to perform if a call comes their way and when the call for performance does come, they stand-by the American Title Association worthy and well qualified in their rendition of all possible aid and assistance.

### **Working Members**

There are one hundred and ninety-one individual members of those committees and not anyone of them has by either word or action shown the slightest hesitancy in the performance of his job. There has been no fan-fare for them, nothing but hard work, and the results of their craftsmanship will be unfolded to you as many of them, too, "pass in review" before you as this program progresses.

### **Regional Conferences**

During the association's year, several regional meetings of title insur-

ance executives were held. These are meetings where title executives from states linked together geographically and by customs and practices gather to do in a more detailed way what is impossible to accomplish in a large assemblage. These are brass tacks meetings and your attendance at your own regional meetings is most strongly urged if you would profit thereby. There is probably no man or woman among us but what has mentally berated himself or herself at one time or another for not having taken advantage of some educational opportunity in the past. These regional meetings should not be missed unless once again an advantage offered will be negligently cast aside.

I understand that the chairmen of these regional districts are to report to the Title Insurance Section at a later time upon matters pertinent to that section. I hope that at that time Mr. H. Stanley (Dutch) Stine, who is Chairman of the Atlantic Coast District, is not too modest and gives a real full report on the regional meeting of the Atlantic Coast District of Title Insurance Executives.

Under Stanley Stine's leadership and so ably assisted by all of our title people in and around Washington, D. C., and Baltimore, that conference was the instrument by and through which the American Title Association was able to and did accomplish the cementing of a business and personal friendship between your association and the users of title evidence of all kinds in our nation's capitol. The meeting was attended by Joe Meredith as Vice-President of the American Title Association, by Jim Sheridan and myself.

### **Washington Contacts**

Jim Sheridan took us around upon several series of visitations to all of those departments with whom all of you do practically a daily business. In every office where we went we were most impressed by the warmth of the reception given to our Executive Vice-President; and those welcomes were not brush-offs, politely cordial greetings from someone away down the ladder in authority and prestige, they came from the top in

every case. The names of the American Title Association and Jim Sheridan were an open sesame to every door and all of those gentlemen with whom we conferred discussed all of our mutually interesting problems with the utmost friendliness and personal interest.

Then, upon the evening of the last day of that Washington conference, the Atlantic Coast group helped the American Title Association entertain our users at a dinner party. It was done very well and everyone there made it his or her personal responsibility to see that your association was represented in a creditable way.

You may know with complete satisfaction that your representation in Washington is more than representation, it is a friendship.

### **Clearing House**

Your Detroit headquarters continues to be a clearing house for information of general and individual information in a rather successful manner. It is remarkable with what haste and willingness our members respond with information which will help another member get over a hurdle new to him but formerly overcome by them. These exchanges of material and the good results obtained from them should more firmly than ever before establish in our minds that a problem, all too often, is merely the absence of an idea.

### **A Case in Point**

Last spring Mr. L. V. Ryan, of Jonesboro, Arkansas, principal owner and operator of the Greene County Abstract Company was ordered to remove his photorecord camera from the courthouse. When the matter arrived at the legal proceedings stage, the Arkansas Title Association took its place at the side of Mr. Ryan.

The first notice of this unpleasant situation was received just a few days before the mid-winter meeting of the American Title Association in St. Louis. At St. Louis it was reported to National Headquarters and to the other abstracters in attendance.

The St. Louis meeting was held on February 15th, 16th and 17th. On February 21st, there was mailed from Detroit a four page bulletin to the

presidents and secretaries of all state title associations as well as to all national officers, all members of the board of governors and all officers of the various sections asking each recipient to forward immediately any information, suggestions, court decisions or other data to Judge Warfield, President of the Arkansas Land Title Association.

The response was of real value and of material aid in the successful result obtained by those who carried the ball on behalf of our industry.

### **Miscellaneous**

Many other basic inquiries have been the subjects of other written, telephonic and telegraphic conversations. It is our hope that your association has been of help whenever you have inquired about the torrens, whenever inquiry is made as to what others are doing about the re-insurance of their work. Headquarters has disseminated valuable information upon the question of the taxation of abstract books and plant records. We have tried to show the proper course to take under the provisions of the regulations of the Wage and Hour Division. Inquiry regarding the exchange of starters was answered. The postman has rung many hundreds of times more than twice as your association has gone along trying to help not only on those subjects but also upon scores of others affecting both individual and organization members of our group.

### **All for One**

All of you have received one or more questionnaires during the year. Those who have done the work on those quests for information have labored hard. Either in the appropriate section or in our general sessions the information obtained will be presented for our benefit.

Ladies and gentlemen:

You don't buy a paper—you buy news.

You don't buy glasses—you buy vision.

You don't buy an awning—you buy shade.

You don't buy life insurance—you buy education for the children, can-

cellation of the mortgage and an income for the wife.

And—

You don't buy a membership in the American Title Association—you buy the complete cooperation of the most able title men in the country—a perfect illustration of the fact that five people upon whom you can depend and anyone of whom can depend on you is by far better than five hundred acquaintances.

We cannot, however, let yesterday use up too much of today. We must sell the future and not the past, because we do not want any thirty-eighth parallel in the title business stopping our forward progress.

One of the first steps as far as looking and planning forward by the American Title Association in and of itself is concerned is going to have to be the re-building of our headquarters staff. We report to you that Clyde Morrison, formerly our secretary and the assistant to our executive vice-president, has resigned and has not been with us for the last several months. Also Jim Sheridan's experienced female secretarial staff became depleted because his experienced girls left for better paying positions. Of course, some of the women were replaced but it takes time to built up their experience. These incidents are examples of the fact that organization can be effected only through organization and that is an ever-present chore all the way along the line.

### **Ever Watchful**

Ever-present vigilance is necessary in our state associations and in our own offices to be sure that your organizations can withstand turnover shocks and function smoothly tomorrow regardless of any unexpected happenings of today.

The following formula is credited to Andrew Carnegie as the way to manage any kind of business:

1. Organize—which means to have the right man in the right place.
2. Deputize—which is to give the man full authority to do the job for which you hired him.
3. Supervise—which means to keep after the whole gang to see that

they do what they are supposed to do.

Leadership is not play, and ideas upon ideas have to be used as experiments to result in any thoughts becoming realities.

### **Exchange of Employees**

It has been suggested that much benefit would result to the title fraternity if some system of an exchange of employees between different companies in different areas could be developed. If an average company could send from one to two up to perhaps six employees, depending of course upon the size of the company, to work in another title company for a short period of time, and accept in return the same number of people from that other company, both organizations and not only those employees who were used but all employees would reap untold and unpredictable benefits.

The number one duty of the captain of any vessel, and this is the prescription of the United States Navy, is to maintain and promote morale. You ladies and gentlemen are the captains of your ships and have your number one duty also.

All employees want to be a part of a progressive industry, and it is absolutely necessary that all employees be part of such an industry.

### **Speakers Bureau**

One method of furthering that philosophy based upon factuality is to promote with all the energy you have, a state-wide speakers bureau at home. Later on as part of these proceedings, Stewart Robertson of Oklahoma City, will report to us on how this was done and how it is working in the State of Oklahoma.

Please listen carefully when his explanations are presented to us. If you folks in attendance here who are also presently or are about to become officers of your own state title associations take nothing else home from here but a working idea of a state-wide speakers bureau, your trip will have been that of one hundred percent accomplishment.

From an organization standpoint, we endorse most heartily all the splendid work which is being done

by some of the state associations in creating and furthering the work of their committees on standard practices. The lack of the standardization of forms and practices in any area is a good way to cause economic indigestion in your businesses.

### Manual

On the other hand, what a healthy sign it is if your standardization can reach the stage where a working manual for your state is the result. Point toward this at all of your state conventions and in your talks with your title brethren and you will see it accomplished. Then, keep on working on the idea and at all times your state-wide working manual will be current.

Any hill is too high for a poor climber, but I have found no poor climbers in our group. No task is ever started or finished unless someone has done something about it. Someone has to expand the horizons.

### Within the Family

All the various specific methods of operation within our industry are going along a common highway together. As you know, W. A. McPhail is chairman of a committee on Abstractor-Underwriter Relations. I understand and am most happy to report to you that in Bill McPhail's report, which will be presented to the Abstracters Section, complete accord upon all major situations will

be shown as the current status. Any very small differences are of the kind that can be and are being discussed freely and openly among men of good will and a common purpose.

### The International Situation

At the moment, we are all concerned deeply over the international situation. There is no present basis for anticipating a real settlement of the basic difficulties with the Communists. I have attempted to picture the place of the American Title Association in the general march of progress of the title industry, your business. While there are no doubts as to the final successful outcome of that progress, we must be prepared for the seemingly non-progressive interludes which may come. Beyond those, we can be nothing but optimistic for the long run continued economic betterment of our country.

Necessarily, then, I hold high hopes for our title industry. So long as you—and the companies your represent—are thinking and planning for the future, and our American Title Association can be with all of you in the doing of that, then the services of our industry, as they have been in the past and presently are, will be an integral part of that future.

We have, then, "passed in review", as you are gathered here for today's blueprinting of tomorrow.

Thank you very much.

## Report of National Treasurer

WILLIAM GILL

*Treasurer, American Title Association,*

*Executive Vice-President, American-First Trust Co., Oklahoma City, Oklahoma*

This summer I enjoyed a rather successful three weeks' vacation in "Fisherman's Paradise"—otherwise known as the State of Minnesota—a state which boasts of having ten thousand beautiful, crystal blue water lakes.

Just before leaving, my banker cashed a rather sizeable check, and I returned to the office to take care of any unfinished, urgent matters.

There was laying on my desk a most appropriate verse relating to vacations. Let me read it to you:

Little Bankroll, in a day  
You and I will go away  
To find some good fishing spot,  
I'll return—but you will not.

### Intact

Let me hurriedly assure you anxious ladies and gentlemen that The

American Title Association bankroll is intact. I respectfully ask that you accept this assurance and not demand proof.

Going back to Minnesota for a moment—I cannot verify the fact that there are ten thousand lakes in that lovely vacation land—I merely assume that the Chamber of Commerce figures are more or less accurate. Will you please accept the figures which reflect our financial condition in like manner?

As of August 31st, 1951, we had on hand in the General Bank Account the sum of \$38,261.69, including \$316.54 of "uncancelled" postage stamps. Our furniture and fixtures, valued at several thousand dollars, have a book value of \$1.00. All bills were paid, and on the asset side of the ledger is an item of \$355.50 "pre-paid rent."

There is a cash balance of \$535.31 in a Reserve Bank Account.

#### Bonds

The American Title Association owns U.S. Savings Bonds, Series F, bearing interest at 2.53%; maturity dates ranging 1959 to 1963, at a cost of \$94,313. Of this amount, \$19,573 was invested in March of this year. The maturity value of the Bonds is \$127,450.

The combined assets of your Association, as of August 31st, 1951, was \$133,466.50. This figure does not include interest accrued on Bonds owned.

For fear of boring you with a complete breakdown of income, I will give you our principal sources:

#### Revenue

Dues .....	\$71,653.10
Sale of Blotters .....	3,681.75
ATA Directory .....	862.50
Sale of Revised Title Course.....	1,219.57

(Don't ask me where the 57c came from), and  
 Title News Advertising..... 1,255.52

#### Expense

**Our principal items of expense are:**

Salaries .....	\$18,543.16
Supplies & Misc. ....	3,206.99
Office Rent .....	2,844.00
Telephone & Telegraph .....	1,012.26
Bulletins .....	2,421.79
Cost of blotters .....	3,417.47
Title News & Postage .....	6,806.11
Travel Expense .....	2,600.96

The total of all expenses for the operation of your Association for the first 8 months of 1951 was \$42,414.41.

Our executive Vice-President, Jim Sheridan, the Executive and Finance Committee, and all others comprising the official family of the Association, have held operating costs at a minimum.

Our financial position today, is exceedingly strong. We must keep it that way. One of these days "the rain will cease to fall." Never again should this Association get back into the "financial rut" we have experienced in the past. The only difference between a "rut" and a "grave" is the depth and width, and I prefer enjoying the green grass and flowers firmly rooted in the rich soil, in preference to the bleakness of either a "rut" or a "grave."

#### Personal Thanks

It has been a genuine pleasure to work with those engaged in all phases of the title business during the past year—never have I known a more cooperative and sincere group than those fine men and women who are privileged to be members of the American Title Association.

Respectfully submitted,  
 William Gill, Treasurer

# Escrows and Closings By Title Companies

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## A PANEL DISCUSSION

Members of Panel:

William M. McAdams, Vice-President, Kansas City Title Insurance Co., Kansas City, Missouri.

L. J. Taylor, Vice-President, Phoenix Title and Trust Co., Phoenix, Arizona.

John W. Warren, Manager, Title Guaranty Department, Albright Title and Trust Company, Newkirk, Oklahoma.

George E. Harbert, President, DeKalb County Abstract Company, Sycamore, Illinois.

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### GEORGE E. HARBERT

Real estate has long been recognized as a commodity, the ownership of which is highly desirable. However, complexity surrounding the transfer or pledge of real estate has always been a stumbling block to prospective investors.

#### Long Ago

At the turn of the century a prospective buyer of land expected to meet with long delays and much red tape before he could finally determine whether the person with whom he was dealing was the owner of a tract of land. He also expected that any financing that was done, must necessarily be done locally. The local banker depended more on his personal knowledge than he did on title service and it was not unusual to find a mortgage made without any adequate title search. People stayed "put" and in the smaller communities you were likely to find that generation after generation were born, lived and died within a restricted area.

#### Changes

The last half century has witnessed a remarkable change in our living habits. No longer does a son expect to marry the neighbor girl and settle down in the next block. Whether it is caused by the spread of college education, the travels of our armed forces or just plain restlessness, our young folks don't stay at home. A

good mechanic can move anywhere and find a job, or if he is really good, his company may move him across the continent to assist in operating a branch factory.

#### Investors Demands

Lending, too, has undergone quite a change. Insurance companies and other institutions buy and sell mortgages in far away states. FHA and VA has fostered this trend so that today at least half of the mortgages made in any community are not designed for local consumption. All of these factors have made for more title service, but with the increase in business has come a demand for faster service. Title service today is a far cry from the title service which was available to the public fifty years ago. Our service then was geared to a horse and buggy economy and we furnished a horse and buggy product. The title searcher has likewise changed with the times. His office is no longer in his vest pocket but has increased in size and efficiency. Tract indices have replaced a good memory and by and large he has kept abreast of the times and has met each new demand of his customers by greater plant efficiency.

#### Greater Safety

The demand for speedy title service has been paralleled by a demand for more assurance that the title service furnished is correct. The out-of-state



lender has not the same personalized knowledge of the title that was possessed by the local banker and must depend upon us to furnish a fool-proof, speedy title service. Anything which we can do to accomplish the two objectives of perfect title service should be done and any avenue which will aid us in meeting these twin demands should be explored.

### **Practical Problem**

One of the practical problems which has been present in all title transfers is the lapse of time between the termination of the title search made on behalf of the seller and the actual closing of the deal. Perhaps the gap is only the time necessary for the attorney to examine the abstract or to get the people together to pass the deeds, but whether great or small, the time gap is always present.

### **Stop Gaps**

Many devices have been used to close this gap. Some communities expect the abstractor to search his records while the customer waits to be sure that nothing has happened since the closing date of the abstract. Sometimes the attorney for the purchaser does it and sometimes it just isn't done because everyone knows the seller is honest.

In any of these methods, it is easy to mistake verbal instructions and if trouble does occur, it is hard to fasten the blame on anyone.

Probably the soundest method of closing this gap is by closing a deal through an escrow.

It is the purpose of our panel to consider the possibility of escrow service as an aid in reaching these objectives.

### **"Escrows Defined and Classified"**

Perhaps our first problem is to define escrows and to examine the law with respect to them so that we can know and appreciate the scope of this panel.

An escrow is defined in corpus juris as "a deed or other written instrument deposited with a third person to be held for delivery to the grantee obligee on the performance of a condition or the happening of a certain event."<sup>1</sup>

The term escrow was originally applied only to instruments under seal for the conveyance of land and in its earliest stages consisted of cutting the deed in half (usually by an irregular cutting and depositing one piece with a neutral holder and giving one piece to the grantee). Today the instrument is deposited intact with the stakeholder or escrowee and the conditions for delivery is set forth in a supplemental agreement.

Likewise, today escrows have been held to include unsealed instruments as mortgages,<sup>2</sup> releases,<sup>3</sup> notes,<sup>4</sup> patents<sup>5</sup> certificates of stock<sup>6</sup> and money<sup>7</sup> as well as many other items.

As we see it there are three classes of escrows.

### **Classes of Escrow**

(1) The contract escrow in which all of the elements of a valid contract are present and mutual obligations are imposed both on the depositor and the grantees of the instruments deposited.

(2) The option escrow in which a deposit is made but no obligation is imposed on the grantee. In this case the escrowee is authorized to do certain things **if and when** the other party complies with certain conditions. This type of escrow usually provides for a return of the deposit upon a day certain upon failure so to comply.

(3) An escrow providing for delivery of the deeds upon the occurrence of a specified event—which may be the death of the depositor.

In all three classes however there are several characteristics which must be present.

(a) The deposit must be with a stranger to the deed or agreement.<sup>8</sup>

(b) The deposit must deprive the depositor of all right to recall the deposit providing the agreement or conditions set forth in the escrow are complied with.<sup>9</sup>

(c) The deposit must be made with the intention that it is only to take effect upon the happening of a certain event or upon the performance of express conditions.<sup>10</sup>

### **The Instrument Must Be Delivered To a Third Party**

One of the essential features of an escrow is the delivery of the instrument to a stakeholder or escrowee. The deposit must be an actual one.<sup>11</sup> It is not sufficient if there is a mere agreement to deliver the instrument to the grantee upon the fulfillment of the specified conditions. Nor will a deposit by the depositor alone be sufficient. There must be an agreement with the other parties who have conditions to perform or at least options which they may exercise.<sup>12</sup> These requirements stem from the element of irrevocability since a mere deposit with an agent who owes no one a duty except his depositor can never be irrevocable.

### **Delivery**

Delivery to a grantee or agent of a grantee even upon condition that he do something is not an escrow.<sup>13</sup> If a deed is delivered to the grantee even though there are conditions attached, it is generally held that the title passes to the grantee at once since this is not a true escrow.<sup>14</sup> It has been held however that the giving of a deed to the grantee with instructions to deliver it to a named third party as escrowee, is not delivery to the grantee, if the deed is actually delivered to the escrowee.<sup>15</sup> But it has also been held that if the third person violates his instructions and does not deliver the instrument, parole evidence will be inadmissible to attempt to establish an escrow.<sup>16</sup>

### **The Delivery to the Escrowee Must Be Irrevocable**

The delivery to the escrowee must be irrevocable in that the grantor must part with all control over the instrument. While it is true that the condition of deposit may be an event over which the grantee has no control, such as the death of the grantor, the essential element is that if the agreement, option, or condition set forth in the escrow agreement occurs, or is fulfilled there must be no power in the depositor to withdraw from the escrow, even though such intention to withdraw was manifest before

the fulfillment of the conditions stated in the escrow agreement.

### **When Complete**

An escrow does not become complete until the conditions, or options, are approved and agreed to by all parties and it therefore follows that a depositor may withdraw his deposit before such agreement, as, it is, at that time, merely an offer to enter to an escrow.<sup>17</sup> Thus a delivery to one's attorney with instruction not to deliver to the grantee until the grantor tells him to do so, is not an escrow and may be recalled by the grantor.<sup>18</sup> Where the grantee does not agree to the conditions imposed at the time of delivery or fails to comply with the conditions or agreements of the escrow the deposit may be withdrawn.<sup>19</sup>

### **Valid Escrow**

There is some controversy among the authorities as to whether a valid escrow is created if there are conditions to be met or duties to be performed by the depositor. The minority rule holds that since the depositor must lose all right to recall the instruments or terminate the escrow, there must be no conditions yet to be performed by him.<sup>20</sup> However, most states take a broader view of escrow, particularly of the contract type of escrow, and treat the transaction as an escrow even though both depositor and grantee have duties to perform.<sup>21</sup>

### **Conditions to Be Performed**

To constitute a true escrow there must be some conditional element to the delivery in escrow. Thus, the grantee must have some duty to perform or some condition must still remain to be met in order to cause the escrowee to deliver the deed to him. If the instrument were handed to a third person to deliver to the grantee unconditionally, there would be no escrow since in fact the third person was merely an agency through which delivery was consummated. The lapse of time, the occurrence, or non-occurrence, of an event, some act or failure to act by the grantee or others have been held sufficient to meet this requirement. It apparently makes no

difference if the event must certainly occur, since the condition may be the death of one party, even of one not a party to the escrow, but there must be something uncompleted at the time of the escrow delivery.

### **Termination of Escrow Before Consummation**

The escrow may of course be terminated by mutual agreement of all parties and in such cases all deeds or other deposits may be withdrawn. In such cases no rights flow from the instruments deposited and no title vests in the grantee.<sup>21</sup>

Since the deposit is made with the escrowee and delivery to the grantee is to occur only when a certain condition is performed or an event occurs, the failure to perform the condition, or the non-occurrence of the specified event, will terminate the escrow. The escrow agreement usually provides for such contingencies and provides for the return of the deposits of the grantor. In such cases no rights flow to the grantee from the executed deeds. It has been held that even though the deeds were recorded in error, the grantee acquires no interest in the property. It has also been held that the rights of parties claiming under him likewise fail.

### **Possession**

The fact that possession has been delivered to the grantee in an escrow does not change any of the basic rules concerning such contracts. Thus if the grantee fails to comply with the conditions of the escrow his rights to possession are terminated and no third party may successfully assert any right against the grantor claiming reliance on such possession.

"A transfer to a subvendee of an instrument, wrongfully delivered to the grantee or obligee, confers no right or title on him where he has notice of such delivery<sup>24a</sup> or is put on inquiry regarding it.<sup>24b</sup> Further, although there is some authority to the contrary,<sup>24c</sup> according to the weight of authority the same rule applies even in the case of an innocent subvendee without notice of the condi-

tions or event stipulated in the escrow contract,<sup>24d</sup> and is especially applied in cases where the escrow has been obtained or delivered through fraud.<sup>24e</sup> According to some authorities, however, the rule that innocent purchasers will not be protected does not apply to negotiable instruments unauthorizably released from escrow.<sup>24f</sup>

### **Unauthorized Delivery**

Where the delivery by the depositor is not unauthorized but valid as being in accordance with the escrow agreement, innocent purchasers are protected,<sup>24g</sup> even though the execution of the deed and the escrow agreement were induced by fraud.<sup>24h</sup> An act which amounts to a ratification of the delivery, but which is intended only to protect the depositor's rights, may not operate as an estoppel as against the claim of other parties.<sup>24i</sup> If the acts of the depositor have not changed the position of the persons claiming an estoppel, the claim is not made out;<sup>24j</sup> and where there is no question of bona fide purchasers, no estoppel can operate against the grantor or obliger unless he has ratified the delivery.<sup>24k</sup>

### **Death**

If the escrow has been consummated neither the death of the grantor<sup>25</sup> nor of the grantee<sup>26</sup> will revoke the escrow. The heirs of the grantee have a right to perform the contract and secure the benefits of the escrow.<sup>27</sup>

### **When Title Passes**

It is generally held that as between the parties the delivery of a deed in escrow does not transfer title to the grantee until the conditions under which it was deposited are fulfilled.<sup>28</sup> Moreover, it has been held that the grantee in a deed from a grantor, who has previously deposited a deed in escrow, will be protected if he had no knowledge of the previous escrow.<sup>29</sup>

It is also held generally that the death of the grantor will not defeat delivery by the custodian when the condition upon which the deed was deposited has been fully performed

even though the performance occurs after the death.<sup>30</sup>

### **Retroactive**

The majority rule holds that upon the fulfillment of the escrow conditions, the delivery of the deed operates retroactively as of the first delivery in escrow. This rule has been asserted to protect the grantee in cases in which the grantor was adjudged insane during the pendency of the escrow,<sup>31</sup> or to defeat the rights of a wife when the marriage occurred after the original deposit.<sup>32</sup>

In a recent Illinois case,<sup>33</sup> the rule as to the time of passage of title was clearly stated. In this case various deeds were deposited with an escrowee to hold. The grantor reserved a life estate in the property and in addition provided that within one year after his death, the grantee pay 1/5th of the expenses of clearing the title of mortgages, etc. There was evidence that the grantee knew nothing of the arrangement. The decision turned on the question of the time of delivery of the deeds.

### **Relates Back**

"The rule that title in cases of escrow agreements vests from the time of the second delivery is not universal. There is a general principle applicable to escrows which is well settled, viz., upon the final delivery of an escrow instrument by the depository, upon the performance of the condition of the escrow agreement, the instrument will be treated as relating back to and taking effect at the time of the original deposit in escrow, where a resort to this fiction is necessary to give the deed effect to prevent injustice, or to effectuate the intention of the parties. (Price vs. Pittsburgh, Fort Wayne and Chicago Railroad Co. 34 Ill. 13; Leiter vs. Pipe, 127 Ill. 287; Phenneger vs. Kendrick, 301 Ill. 163.) See, also, Calhoun County vs. American Emigrant Co. 93 U.S. 124, 23 L. ed. 826, and authorities from many other States, collected in 117 A.L.R. 70. The rule originated in the common law, and is thus stated by Coke: 'The second delivery hath all its force by the first delivery, and

the second is but an execution and consummation of the first; and therefore in case of necessity, \* \* \* it shall have relation by fiction to be his deed ab initio, by force of the first delivery.' Sheppard's Touchstone, chap. IV, p. 59, is to the same effect.

"In Stone vs. Duvall, 77 Ill. 475, this principle was applied in the case of a deed made by a father in favor of a daughter, which was deposited in escrow to be delivered upon the father's death. In the meantime the daughter died, and the court held that upon the death of the father the deed would take effect and vest title by relation back to the date of the first delivery in escrow. (Hathaway vs. Payne, 34 N.Y. 90; Taft vs. Taft, 59 Mich. 185; Smiley vs. Smiley, 114 Ind. 258); Devlin on Deeds, Vol. 1 (3d ed.,) secs. 319 and 320.) The principle is applicable here."

### **Contrary Law**

There is law to the contrary on this point and in the State of Colorado it has been held that the legal title passes to heirs subject to the equitable rights of the grantees.<sup>34</sup>

A deposit in escrow to be delivered upon the happening of a condition certain to occur passes title to the grantee even though the condition was the death of the grantor, and that such a contract is not testamentary in character.<sup>35</sup>

Upon the fulfillment of the conditions of the escrow by the grantee, the title passes to him and the actual delivery of the deed is presumed.<sup>36</sup> On the other hand the unauthorized delivery of the deed by the escrowee to the grantee before the fulfillment of the conditions of the escrow passes no title to such grantee.<sup>34</sup>

Any title acquired by the grantor during the escrow period passes to the grantee even though the delivery is deemed to be retroactive to the date of the original escrow deposit.<sup>35</sup>

### **Liabilities of the Escrowee**

The escrowee is a trustee and will be charged with responsibility for any act of his which is contrary to the terms of his escrow. This includes wrongful delivery of the instruments

deposited.<sup>36</sup> His liability in all cases is limited to the actual damages sustained by the parties.<sup>37</sup> To become liable the escrowee must have agreed to the terms of the escrow and have accepted the escrow deposit<sup>38</sup> and is not liable for any loss which occurs while he is following his escrow instructions without neglect or fraud. Thus it has been held that he is not liable for loss of funds in bank failure where the escrow agreement specified the bank in which the deposit was to be made.<sup>39</sup>

### **Practical Considerations**

Up to this point we have concerned ourselves with the legal aspects of escrows. From our standpoint as title man who are desirous of furnishing speedy and safe title service to our customers let us explore the possibilities of adapting this service to our business.

As I see it, most of us are in the escrow business already. How many of you receive a letter from a customer enclosing various deeds and instructing you to check the records since a certain day and if you find no change in the title, to file the deeds and continue the abstract? How many times does your Building & Loan send you a check to be paid out to John Jones, Attorney, if you find no changes in the title since the day specified? I realize that we do these things gladly for our customers but we are still acting as escrowee when we do it.

### **Methods of Operation**

The ones that worry me are the ones who call in and ask us to check records and report back by phone. They then pay out funds or close deals and later bring over a deed or mortgage for us to record. Many times, because of the lateness of the hour, we have failed to record the deed until the next day, and I have wondered what would happen to us if a judgment or chancery action intervened. It seems to me that escrow closings as practiced in the West have much to offer us, both in speeding up our service to our customers and in increasing our own safety in con-

nection with the closing of deals. Incidentally, the other members of the panel may be able to show us how we can increase our income while so doing.

### **To Meet the Problem**

As I see it, under the escrow system of closing there are two possible methods of operation. In the first case, as soon as a contract of sale is entered into, a deed is drawn, deposited in escrow and then a title search is made. If the search proves the title to be as specified, the deed is filed and covered and a final report made showing title in the purchaser. It may be that the party financing for the purchaser will participate in the escrow. The proceeds of sale are then remitted to the persons entitled thereto and the escrow is consummated.

This approach does not seem to be practical unless coupled with title insurance as the burden of guaranteeing the title is placed on the title company.

However, it is possible to modify this procedure to meet the problem of the abstract-lawyer system. In this type of escrow, the abstract is prepared for the seller as usual, turned over to the attorney for the purchaser and then, after his opinion is rendered the deeds are delivered to the abstracter with instructions to search since his cover date and if he finds no change, to file deeds, etc. He then covers the deeds filed and delivers the abstract to the purchaser's attorney. This method is slower but it is safe. It likewise brings the customers into the abstract office and many times will avoid the stagnation caused by a vicious circle. There are many cases when this type of closing is the only possible way to conclude a transaction. In our office we accept the proceeds of a loan from a non-local insurance company. They may provide that we are to pay off an entire mortgage, clear up a judgment, pay taxes, etc., and remit the balance to the borrower.

### **We Work It Out**

In one recent case a builder became involved deeply. He owned over twen-

ty parcels of land, but owed twice as many creditors. His attorneys worked out a series of deals by which various parcels of land were turned over to individual creditors and some tracts were sold to outsiders. With the money and payment in land he was able to clear all his debts without bankruptcy. We acted as escrowee and held all titles, moneys, etc., while the creditors were sending in satisfactions of mortgages, dismissals of suits, releases of liens, etc. When everything was in our hands we were able to deliver to each party just what he contracted for and everyone was most happy with the result.

Most of my talk has been theoretical, but on our panel we have several experts in escrows who can tell you more about the practical aspects of them.

### WILLIAM M. McADAMS

It's interesting to observe the term "expert" is used in connection with the personnel of this panel. That's fine with me. An "expert" is just an ordinary individual who happens to be away from home—and I'm a long way from Kansas City—so I guess that qualifies me as an "expert."

Yes, we close deals in escrow in our office, we always have, and we probably always will. But we do try to put certain limits on them. In certain, or some, instances where the deal is closed by a title evidence other than a title policy, it becomes our obligation to follow the instruments in the escrow agreement to the letter. Sometimes people get hurt. And, rightly or otherwise, they visit their wrath upon us. All they remember, or seem to want to remember, is the locale of the transaction where they got hurt.

I suppose an ordinary escrow invariably involves some financing. Delivery of the papers to the proper parties and disbursement of the funds are two extremely important features. On these, I think, we cannot go too far to protect ourselves by insisting upon instructions that are clear, completely clear, and concise as reasonably can be expected.

### Discretion

I am not certain I altogether agree with my friend Harbert in his theory that we are trustees. Perhaps the word is loosely used in that connection. It strikes me a trustee, ordinarily speaking, has some discretionary power. As an escrowee, we have no discretion whatsoever; we must follow the instructions of the escrow to the letter.

### Judicial Day

Another point that disturbs me is that hiatus resulting from the refusal of the courts to split the judicial day. Our experience to date has been excellent (business of crossing my fingers) but I fear the time will come when we will have a loss because we have checked records to the last possible moment—and something is going to happen in the extreme tail end of the day. Keep in mind we do not disburse until the following day. We let the entire day lapse after the recording of the papers before we make disbursement, this on the theory that the grantor has agreed to deliver an unencumbered title and if something does come in during the remainder few minutes of the day, we will hold these funds. We may have some losses. But we are certainly going to hold those funds until we get discharges of those late recordings.

### L. J. TAYLOR

In one form or another, we have always handled escrows. In early days, we handled escrows based upon abstracts of title. Since 1926, we have handled no escrows except in connection with title insurance. Consequently, the problem of having the abstract brought to date is one with which we have no familiarity.

### Sales Contracts

Another function which we perform is on sales contracts. We receive the payments under the contracts, and that situation causes me to wonder just a little when an escrow is actually "closed" in our case using the word "closed" as it has been mentioned in this panel—that is, close up the transaction.

### **Not Unilateral**

We do not use any unilateral type of escrow instructions. Our escrows are entirely dependent upon our ability to find a clear title and issue the title insurance policy which is usually called for in the escrow instructions. Those instructions are signed by both parties. We make our title search, finding conditions which must be met to put the title in the required condition. The papers are prepared, are signed, the money received, and on a given date, usually after all papers are ready, we do our recording. We make our check to the minute of recording.

I am not familiar with the idea of a judicial day mentioned by another speaker. We run on a series of numbers and we have always proceeded on the theory that if an instrument were recorded at a given time, and was assigned a stated number, it took precedence over any action which might later happen on that day.

Consider the situation that you record at 9:00 a.m., which is the hour our recorder's office is opened. And you are served with a writ of garnishment at 10:00 a.m. We in our office make a practice of paying out funds on the day we record, without the dread of waiting until the next day. It strikes me if you wait until the next day, there will arise questions such as the effect of that writ upon the buyer, or upon the seller. We stick to the position that we record and pay out the same day unless, of course, there are instructions in the escrow agreement to the contrary. Maybe that's a point that should be studied.

### **Should Have No Interest**

Mr. Warren mentions the possible point that his agents are not sufficiently disinterested parties to constitute true escrow agents. I certainly do believe the escrow agent should be disinterested and should have no interest whatsoever in the transaction other than to perform according to

instructions and to receive his fee for his work.

### **JOHN W. WARREN**

My company is largely a lending institution. We also write title guaranty policies and we do handle a goodly number of closings.

We close loans for the major life insurance companies and in numerous of these we act as escrow agent. In all such cases, we follow the instructions the life company gives us to the letter. As Bill McAdams points out, there is an element of danger because we assume the full burden of accurate and proper disbursements according to instructions.

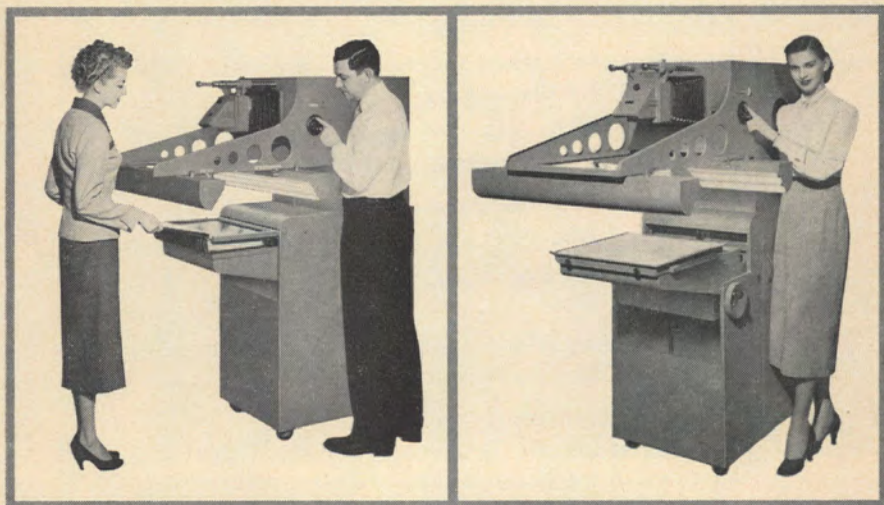
But I differ with George Harbert that escrowee is more closely aligned with trustee than were we to use the word agent or any other designation you might wish to give him. He's at one and the same time not an agent, and yet he is an agent in essence because he acts for several parties, each interested in his own side of the transaction, the purchaser and the seller. And he acts pursuant to definite instructions.

### **Agents**

My company has a number of agents throughout the state. They originate loans which we process. We close in our home office and send out checks, letters and instructions to these agents. Now let us say they are in essence our agents because they have originated the business. But they are also escrowees because they are bound by instructions sent to them. They pay taxes, they pay special assessments, they see to it that mortgages are properly filed, with no judgments ahead of that paper. These agents, it seems to me, although they receive no compensation as true escrowee as an escrowee compensation, nonetheless do receive compensation as an agent and an escrowee all in one package.

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# The Title Plant

"The Title Plant, Systems, Methods, Procedure and Equipment—  
Building and Rebuilding"

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## MEMBERS OF PANEL AND SUBJECTS ASSIGNED

Report of Chairman of Committee on Title Plants.

C. Perry Liverton, *Assistant Title Officer*, Commonwealth Title Company of Philadelphia, Philadelphia, Pa.

"Applications of Various Cameras to Title Plant Building and Maintenance."

Arthur E. Wade, *Vice-President*, Land Title Guarantee and Trust Company, Cleveland, Ohio.

Russell S. Ellsworth, *Treasurer*, The Title Insurance Company, Boise, Idaho.

A. A. Poirier, *President*, Wheatland Abstract Co., Harlowton, Mont.

C. A. Weber, *Treasurer-Manager*, Title Guaranty Company, Yakima, Washington.

"Service and Production."

LaVerne Herbruck, *Assistant Secretary*, Title Insurance and Trust Company, Los Angeles, California.

"Operating and Maintenance Costs."

Edward D. McCrory, *Executive Vice-President*, American Title Guaranty Company, Houston, Texas.

Moderator of Panel: Mr. C. Perry Liverton.

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## C. PERRY LIVERTON

Officers of the American Title Association, Guests, Ladies and Gentlemen:

The Dean Acheson of the Title Industry, our genial friend, Jim Sheridan, tells me that to start our panel there should be a report by your chairman of the Committee on Title Plants and Photography and as this is the third year in which this request has been made, I cannot help but be reminded of the story of a Pennsylvania farmer. As he came in from the field one day he noticed his

hired man busily cleaning and shining an old oil lamp. On inquiry of the lad as to why he was cleaning the lamp so thoroughly he was told that the lad was going to see his girl that night and for that reason he wanted to take the lamp with him. The farmer was somewhat confused and said he did not know why he needed a lamp. He said he never carried a lamp when he went to see his wife. The lad quickly replied, "And see what you got." So, for another convention, you see what you got.

### **Material**

I would like to open this report with a word of thanks to the companies who took the time and effort to answer and return the questionnaires. We had 182 returns. This represents 34 states and the District of Columbia. It was gratifying because the information contained therein showed complete answers and revealed the fact that much time was spent in gathering the facts. These facts, I believe you will realize by the conclusion of the panel, have been of real help to the men participating in our panel. To cover all of the questions and answers submitted in the time allotted to us would be impossible. There is enough information contained in the returned questionnaires to supply a number of panels with material to discuss. It was interesting to find out by reading the letters accompanying some of the questionnaires that some companies, in their efforts to answer the questions contained therein, had learned some things about their own plants that they had not known before. Your committee has endeavored to answer the questions about equipment or anything relating to title plants which have been submitted to us during the past year, either directly or through the national office.

### **Developer**

As a part of this report I would like to mention a very small portable type of microfilm developer. We have had several requests for some type of equipment that might be available for the small offices in the outlying sections, who must send their films of records and daily take off to distant points to have same developed. They find that many times while this film is away there is a need for its use in the local office. This problem can be solved by contacting Mr. Wesley F. Smith at Norristown, Pennsylvania, who owns Smith Film Development Company. His microfilming developer is used daily by the Pennsylvania Railroad, who has general offices in Philadelphia and as much as 700 feet of microfilm have been developed and dried in one day. The space involved for this equipment is negligible. There are two types of

developer available. One is operated by electricity and the other by water. My understanding and knowledge leads me to say that of the two types the electrically operated unit is the more satisfactory. With this you need the Smith Microfilm Dryer. The gentleman who does this work for the Pennsylvania Railroad will back up my statement that this developer and dryer have proven very satisfactory for the Pennsylvania Railroad and are so simple that it is almost possible for a child to operate same. Therefore, anyone interested in this type of equipment can contact Mr. Smith directly and he will be happy to quote prices on the equipment that you may desire. The water operated developer, as you can appreciate, has been made for use in outlying sections where no electricity is available.

### **Problems in Public Offices**

Also, I wish to report that in answering the first portion of the questionnaire, regarding information received from the courthouse records, some companies reported two predominating problems. Many would prefer photography over the handwritten or typed record but find it impractical because of the cost. This problem has been answered by a number of companies who have been able to sell their local recorder on the idea of giving them space for their machine in his office. They then make two copies of the record daily and in some cases sell or turn over to the recorder the extra copy which he uses for his permanent record. Still others have found that they, along with their competitors, are interested in getting a more complete take off. Therefore, they have made the initial move of installing a photographic operation. Extra copies are made and sold to competitors. This has helped to defray much of the cost of operation. Along with this same question of comparative costs your chairman would like to bring you a report which supplements one given by Wm. J. Erwin, Jr., of our company in a paper delivered at the Chicago Convention. At that time we had only had the photocopy method of take off with us for a very short period of time and therefore could

not give any real comparison of costs under the old manual abstract method with the photographic system, but as we have been in this photocopy type of take off for several years I can now give you a definite report. For the year 1950 our cost for supplies, salaries, miscellaneous expenses, and depreciation of our equipment was a total of \$19,530.81 for a volume of 105,722 instruments. Against this, through the cooperation of one of our other large companies in Philadelphia which still makes a typed abstract of take off, we have been able to make a comparison. For the same year based on the same volume of recordings, including all of the items that I have mentioned above with the exception of the fact that there is no depreciation of the electric typewriters given, their total cost was \$18,969.74. I feel that this is interesting for those of us who have followed the photocopy method because this does give a complete year's cost.

#### **More Problems**

The second problem relative to information received from courthouse is certainly a real one. Many companies in getting a take off by some sort of photography lament that the local recorder does not assign the book and page to his instruments until some time after they have been left for record. This same problem faced the Commonwealth Title Company in 1947 when we were endeavoring to go into a complete photographic take off program. In Philadelphia it was at some times as long as six months after the recording that a book and page was assigned by the recorder's office but fortunately we were able to convince the Recorder of Deeds in Philadelphia that it was just as easy, through a printed form, to assign the book and pages to the instruments immediately upon recording. We furnished him with Bates Numbering Machines so that the proper book and page could be immediately stamped on the instruments. There have been no other problems that have followed this change either to the Recorder or to the company and Mr. Robert Benham, the Deputy Recorder of Deeds

in Philadelphia, in a conversation with me, just prior to the convention, expressed the fact that the company certainly did the recorder a good turn in suggesting immediate assigning of book and page as it has saved them considerable time. It has also cut down on their number of operations required and has eliminated many mistakes which were prevalent under the old system due to transposition of figures when assigned at a later date. He would be happy to confirm his experience and the ease of accomplishing same to anyone who might inquire about it. Your chairman is fairly well conversant with this phase of the recorder's operation and will be glad to discuss this further with anyone who might be interested.

#### **New Equipment**

There is another development about which I cannot report too much in a factual manner at the moment. Mr. Arthur B. Harris of the Market Research Department of the Eastman Kodak Company in Rochester, New York, told me when he spent an entire day with me a few months ago that they have a type of machine under development which would be very inexpensive as far as a hand operated machine is concerned. They are also toying with the idea of making an automatic machine. This machine reproduces images, the first copy of which comes out of the machine in 45 seconds. Subsequent copies come out every eight seconds. At the time that I spoke to Mr. Harris they had been able to reproduce eight copies of the same subject which were legible. The cost of each of these copies was approximately one cent. It is an entirely dry operation. Copies are all positives and the ones I saw were reproduced on ordinary bond paper. It is a contact operation using a type of silver sensitized paper. I mention this as a possible future development which could be put to good use by many companies who have to make copies of restrictions, agreements and other items of similar nature.

#### **Costs**

Those who are interested in photocopy operations and have been con-

cerned about the cost of paper and chemicals increasing materially in the last three or four years will be interested to know that we at Commonwealth have been able to maintain approximately the same cost per image in spite of this increase in cost because we have utilized the machine for other work than the daily take off, such as photographing old deeds from the Recorder's Office as we need them for current title orders. Also, we utilize the time of the men on other types of work which has enabled us to maintain the cost of about five cents per image.

### **Photostat**

In several of the questionnaires we found that photostating presented a problem because it was very bulky and required much storage space. This, of course, would be true to a certain degree in our own particular county of Philadelphia because our instruments have averaged between three and four pages. To try to save filing space, as well as to reduce the use of materials needed in the photocopy operation, we have these past few months, with the approval of the Philadelphia Bar Association, designed a new form of deed which requires only two images. In other words, it is a one sheet affair. This will reduce, if used in any quantities, our average number of pages per instrument and will materially save filing space and reduce the costs and the volume of materials needed in the photocopy operation. I have samples of the aforementioned deed in my possession and if anyone would like to look at same at any time during the convention I shall be glad to show the deed.

We shall now go into the panel presentation and discussion. It seems that the title companies are becoming more and more camera-minded. Therefore, we have taken up most of the panel program today with the question and application of various types of cameras and photographic equipment for reproduction of records.

### **Microfilm**

Those having connections with title plants in this period of increasing

costs of supplies, salaries, equipment, etc., and being reluctant to pass the increased costs on to the customers as well as being faced with the problem of continuing to maintain plants so that they are always in a position to serve their customers are facing a real problem. Therefore, we feel that we can gather some helpful information from our next speaker, who is from a section of the country that has been growing rapidly and certainly recognizing the problems that we all face today. We are privileged to have with us as a member of this panel, Edward M. McCrory, Executive Vice-President of the American Title Guaranty Company of Houston, Texas, who has recently been elected to the Presidency of the Texas State Title Association. He will speak to us on "Operating and Maintenance Costs."

In trying to work up a program for discussion at this present convention your chairman realized problems face us, whether we be a small or large company when we have peak periods during the year. Many times we are also faced with the problem of vacations and there have probably been many various thoughts and suggestions to cope with these conditions such as overtime of regular employees, hiring of additional employees, etc. We could possibly find a permanent solution to this problem if we turn to the company which we all know has the largest volume of business of any company in the national association. Through the courtesy and cooperation of P. W. Clark, Vice-President of the Title Insurance and Trust Company of Los Angeles, California, we have with us L. Herbruck, Assistant Treasurer of that company. It is indeed gratifying to have him talk to us at this time on "Service and Production."

The questionnaires led us to believe that there are many companies who are not at all clear in their thinking as to what type of photographic operation is suitable for their companies. I hope that when the men who have volunteered to serve and discuss these various types of camera operations to you have com-

pleted their contribution to this panel that you will more clearly see what type of photography equipment fits your particular need.

#### Mr. Wade

I believe that our first speaker for the subject of "Applications of Various Cameras to the Title Plant Building and Maintenance" needs no introduction to this group. This is the third year that he has given of his time to serve on your Title Plants Committee and participate in a panel discussion. His company had one of the largest dextragraph operations in the country up to a short time ago and has just developed a new machine which will be interesting for many of us to hear about. It is with pleasure that I present Arthur E. Wade, Vice-President of the Land Title Guarantee and Trust Company of Cleveland, Ohio.

#### Mr. Ellsworth

Our next speaker has certainly been of service not only to this committee but to many companies throughout the title industry because of personal contacts with him through his Filmsort operation. I know Russ has traveled extensively and is known to most of you. In his experience he has covered practically the entire field of photography as we know it today. He also is not new to this panel since he has served on it for the last three years. Russell S. Ellsworth, Treasurer of The Title Insurance Company of Boise, Idaho, will continue our panel discussion.

The next gentleman is making his first appearance on the title plants panel. He has something to contribute to all of those present, especially the many operators from the Middle West and other sections of the country who have companies on a comparative scale with the company which Tony heads. He has one of the finest installations in his efficiently organized company in Montana. A. A. Poirier, known to his friends as Tony, is President of the Wheatland Abstract Company of Harlowton, Montana. We'll hear from Tony.

#### Mr. Webber

The final person to discuss camera operations represents a company which has been very diversified because in three of their offices they use a different type of photography. Therefore, he can, without question, give us all personal experiences and comparisons and add much to this panel. I am referring to C. A. Webber, Treasurer-Manager of the Title Guarantee Company of Yakima, Washington. Chet will speak at this time.

#### Tract Book Operations

There has been prepared a list of questions submitted to the panel by Francis B. Norris of the Chicago Title and Trust Company.

Questions re Transition from a Tract Book Operation to a Photostatic Geographic Operation

CHET WEBBER:

1. Assuming we have a complete typed take off in the office—when the conversion is made to a photostatic take off is there any objection to intermingling the two types of minutes in the folders created for each individual ownership?

RUSS:

2. If more than one copy of the take off is required, either for operational purposes or for furnishing the Recorder with one or more copies, what is the best way to get satisfactory extra copies at the least cost?

TONY:

3. If deed forms in common usage in your county have only the acknowledgment on the back what is the best way to avoid making an extra exposure and still cover yourself on the acknowledgment?

TONY:

4. What groundwork should be laid in advance of the conversion to prepare the people who will be handling the new form of take off—i.e. examiners, typists, etc?

ART:

5. Assuming the Recorder has been very happy with the brief, typed abstract you have been furnishing

him, what approach would be best to sell him on your photostatic take off?

RUSS:

6. Where the Recorder's space is so limited that installation of photographic equipment is impossible and at the same time the title company files most of the instruments, has there been any experience in persuading the Recorder to allow the instruments not filed by the title company to be removed to the title company's office for photographing?

CHET:

7. In setting up a geographic plant is there any reason for assembling material for each ownership dated prior to the last guarantee order?

CHET:

8. In setting up the folders for a geographic plant is it desirable to set up folders for the whole county first and then go back and begin assembling the material to go into the folders or is it better to handle the job in increments such as setting up folders for a subdivision and then assemble the material for that subdivision before creating folders for the next subdivision?

CHET:

9. In setting up a geographic system how far should you go on properties never before guaranteed? Should you do a complete job on them which would in effect be running a full chain or should a folder be set up merely containing a reference to the tract book which would mean running a dual system on a certain percentage of your properties for some time?

### Personnel

1. Do you try to fill a job with a person who appears to have certain traits for a particular type of work or do you put a person into a job because that is the only spot that is open?

Of those answering this question about 80% try to fill a job with a person who appears to have certain traits for a job. Even though it is

the preferred method, many companies find that because of a limited personnel market from which to draw, it is not always possible to do this. Many companies, especially the smaller ones, try their best to employ persons who can learn many or all phases of the work. 20% of our answering companies fit their new employees to the jobs open at the said time. Sometimes, this is done because of pressure. Often this method works out very well. In many cases the employees are transferred to other work as their various aptitudes and abilities are known.

2. Have you found that in some cases you may have someone in the company who has shown particular talent for a certain job and yet works in another spot within the organization because that was the only job available when he was employed by the company?

### Personnel Problems

As far as personnel problems are concerned the small companies do not have problems in placing employees in wrong departments because their employees must do various phases of the work and often must learn every angle of the work in their respective companies. Also they constantly shift their employees about from one type of work to another. Around 50% of our answering companies admit that employees are often put into any job that is open at the time of employment. Most of this number endeavor to transfer these employees as soon as they possibly can. The other title companies do not meet with this problem at all.

### Training Program

3. Do you have a training program within your organization? Have you ever had one?

About 60% of our answering title companies have some type of a training program. About 15% of this number have a thorough training program by the medium of close supervision and instruction. A few companies have training programs from time to time. One company conducts weekly title classes which are attend-

ed by employees from the title examination, title searching, tax searching, plant, new business and legal divisions departments. Various employees of some companies took advantage of the courses offered under the G.I. Bill. Small companies do not have set training courses, but employees receive detailed instruction so that in many cases they know the entire business. A few companies said that their employees study their state's title association course.

### **Results**

4. Has a training program been successful? What were its results?

Training programs have definitely been successful. Some companies like to employ persons and train them in their own systems and methods. One company that pays for tuition, books, etc., for its employees who take a law course at a local YMCA has been satisfied 100%. It believes that because of this course its employees are loyal to it. Training programs give employees an overall picture of what the company is doing. Usefulness and morale of employees is increased because of courses. Employees become more valuable to their companies. The G.I. courses were not too satisfactory. Some regarded it only as a government bonus. Some companies found that after they had thoroughly trained an employee other companies offered them better positions. One company said that it found some training programs discouraged new employees because they didn't grasp quickly enough. Some companies found that girls left to be married very often, hence, didn't think training programs very practical.

### **"Title Course"**

5. Have you purchased from American Title Association copies of "Title Course, Revised" by Wm. Gill and distributed same to employees?

70% of the answering companies have used the above mentioned course at one time or another. It is rated very highly. Some companies mentioned that it applied mostly to title companies in Oklahoma.

### **Distribution**

6. Do you give each new employee a copy of this course?

Of the 122 companies answering this question, 60% give their employees a copy of Gill's course, 30% do not and 10% have copies available in their offices for those who may be interested in same. Most companies believe it is a very good course. The main objection to it is that it applies mostly to Oklahoma.

### **Interchangability of Work**

7. Have you had any definite program of interchanging jobs within your organization?

Of the 126 companies answering this question 57% have no interchanging program. 17% are small companies and their programs consist mostly of everyone doing all phases of the work. 17% do have a program of interchanging. 9% report that they have an interchanging program to some extent.

### **Results**

8. What has been your experience and value in the results of interchanging jobs?

Most companies report that their reason for having more than one employee know a certain type of work was to enable them to operate efficiently during vacation periods or other absences. A few companies reported that at least two or three persons know how to do each job so that there is always someone on hand who knows how to do each required job. By interchanging jobs it is also possible to transfer persons to rush jobs when necessary. It tends to increase production because clerks who have a greater knowledge of the work are more efficient employees. Persons who understand their co-workers' jobs can do their own work more intelligently. It has been found to be an aid in determining the particular job for which an employee is best fitted. Those who interchange jobs are very much pleased with the results. It is helpful in the training of future supervisors and department heads.

## ARTHUR E. WADE

Over the years, mostly out of sheer necessity, some of our departments have learned to use several types of photography. For some 25 years our Location Service Dept. has used Graphlex cameras for pictures of the identified premises. For about 5 years we have been printing these pictures and accompanying maps with contact printers. By developing and printing our own instead of sending them out we have improved the service by at least one day and at no extra cost, perhaps a small saving.

### Microfilm

Recently we have used 35mm. microfilm to safeguard the key maps and indexes of our Cleveland plant. We have used 16mm. microfilm in substantial quantities to reduce the problem of storage of the policy copies. For half a century the carbons were bound in book form. We no longer bind them, but instead spend about the same amount taking 2 rolls of film simultaneously. One roll is for reference use in the office and the other for safe storage elsewhere. The carbon copies are sold as waste paper.

### Take-Off

The largest of our photographic operations is the Daily Take-Off. The work load or average number of recordings is 100,000 per year, or about 400 per working day. Everything is taken in duplicate because this operation serves our plant and the plant of a competing company. The total cost of this operation is divided between the two companies.

At first the Take-Off was hand written, changed to the typewriter about 1908 and in Sept., 1946, just 5 years ago, changed to photostating with Remington Rand's Dexigraph equipment. By 1927 the cost of the typewritten slips was up to 36c per recorded instrument. By 1946 it had climbed to 47c. For the first 7 months of 1951 the absolutely accurate Dexigraph prints in duplicate cost 33c per instrument which is less than the cost in the mid '20's and is 29% under the cost during the last year of the

typing. This 29% reduction was made in the face of rising costs all around including a 22½% increase in wages for the Take-Off personnel. The two companies together have saved somewhere between \$50,000 and \$75,000 in these 5 years by simply switching from typing to photostating.

### Photostat

About the middle of August we put into operation a new Photostat machine that will further reduce the cost. It is, we believe, the first one ever made to take 2 images of the same subject simultaneously. It grew out of an idea of our Engineering Supervisor, F. C. Sanker, and was developed by him and Mr. Henry Eckhardt of the Cleveland office of the Photostat Corp. It is a regular No. 1 machine with electric paper winding mechanism and conveyor, altered only to the extent that it has a pair of matched lenses instead of one and a baffle plate between the lenses inside the camera extending back to the photo sensitive paper. The result of a single exposure is 2 identical images side by side, each of which is the same size as our former Dexigraph prints, 5½" x 8½". The quality is excellent and we are sure the advantages will far outweigh the disadvantages. We have been using the new machine too short a time to have all of the personnel and mechanical adjustments made and I think it unwise at this early stage to hazard a guess about the savings.

## RUSSELL S. ELLSWORTH

Chairman Liverton, Fellow members of the ATA. When Perry gave me this job this year of dealing with photographic statistics I did not know how to introduce my remarks until I heard of an experience that our new Miss America recently had in Atlantic City. Of course we in Idaho are very proud of the current Miss America. Not only is she a beautiful, well-educated, talented young lady, but she comes from Salt Lake City, which as you all know is a suburb of Boise, Idaho. In any event, as I understand



it, Miss America was standing at the deep end of a swimming pool in Atlantic City when she accidentally dropped her camera into the water. Standing close by was an elderly professor. Miss America turned to the Professor and asked if he would please jump in and get her camera. The Professor was very pleased and readily agreed to do so, but asked Miss America why she had asked him. She said, "Professor, you have apparently forgotten me, but I was in your statistics class last year at the University of Utah and I found that you can go down deeper, stay down longer and come up dryer than anyone I have ever met." Perry Liverton may have had the same reasoning when he asked me to handle the statistics.

### **Growth of Photography**

As you know your title plants committee sent out a comprehensive questionnaire this year—many of the questions dealing with photography. As soon as we had received even the first few answers it was obvious to all of us that the use of photography in the title business was growing by leaps and bounds. Jim Sheridan said that its growth reminded him of a gentleman who hadn't seen his nephew for several years and when he did meet little Johnny he said: "Johnny, you certainly are getting to be a big boy now, aren't you?" "Yep," said little Johnny, "Pop says I'm growing like the public debt." Certainly on the basis of the answers to the questionnaire insofar as photography is concerned, the use of the camera in the title business is growing like the public debt. Let's take a look. Of the 163 companies answering our questionnaire 76 or over 46% said that they used photography in one form or another. Almost half of us then are using photographic methods in 1951 with at least 95% of this usage having come about within the last 7 to 8 years. Most of the reporting companies stated that they were using photography for their daily takeoff. There were a few companies reporting the use of photography without its use in connection with the daily takeoff, using photography

to some extent for taking off extra copies of document, making plats, etc. Of the photographic users, 32 companies or over 40% report the use of microfilm, either Recordak, Eastman or Graphlex with one or two reporting hand made variations of other cameras. Of these 32 reporting companies using microfilm, 11 of them report the use of individualized microfilm, 10 of them being Filmsort users and 1 a self-made device using microfilm in sheet form. 28 of the reporting companies stated they were using some form of Photocopy such as Photostat, Rectigraph, Contura, Portagraph and Hunter with the preponderance being photostat. A second group of Photocopy users numbering 16 of the reporting companies stated that they were using Remington Rand Dexigraph. This takes care of question 1 and 2 which were: 1. Do you use photography? 2. What type of machine or camera and model do you use?

### **"Bugs"**

Question No. 3 was "Do you have any criticisms which have occurred to you since using photography?" The major criticism to photography seemed to be the bulkiness of photocopy, together with the nuisance of chemicals and trays for development. The two objections mentioned to the use of microfilm are: 1. the need for viewers which some users say are still too large; and 2. several companies using microfilm in roll form criticize the lack of accessibility, saying that it slows them up too much. Question No. 4 was "What advantages have you found in the type of equipment you are using?" All users of photography report that the main advantages are speed, accuracy and economy. Question No. 5, "What are the disadvantages?" The answers to this question were generally covered in the response to question No. 3 asking for criticisms. Question No. 6 was "Have you adopted photographic procedures in any department of your company in addition to a takeoff?" Most reporting companies state that they used photography for their daily takeoff only, though there are some

incidental uses mentioned as previously outlined such as multiple copy work, plats, maps, etc. Question No. 7 asks that users of photography for jobs other than the takeoff describe the type of equipment and the use and costs if possible. Since most of the reporting companies use photography for their daily takeoff only, we were not able to obtain sufficient information on this question to be able to supply you with any worthwhile statistics. Question No. 8 had two sections. First, "If you are not using photography, have you considered photographic equipment?" Of the 70 companies answering this question, on the basis that they do not use photography but have considered it, 56 reported that they have considered photographic equipment with 14 not having considered it. The second portion of question 8 was: "If you have considered photography, why did you reject its use?" Of the 66 answers received to this question, the reasons for rejection are as follows: 10 companies are still considering photography, 32 companies claim photography would be too expensive mostly because they are small companies operating in small counties, 8 companies report they are very well satisfied with their present system, 15 companies say that photography would not work well with their present system with 1 company reporting that they have purchased the equipment and it is just now ready to be installed.

I certainly hope that I have not gone down too deep, stayed down too long and come up too dry with these statistics, though I certainly do agree with the Professor, not only would it be a pleasure from what I have seen jobs other than the takeoff describe to return a camera or do most anything else requested by the current Miss America, but it is always a pleasure to attempt to be of service to Perry Liverton and the members of the ATA.

#### A. A. POIRIER

My assignment on this panel is to represent the small abstractor, who

I believe, in numbers at least, constitute by far the majority of our membership in the American Title Association. My short remarks and discussion on this panel here today will therefore be from the small abstractor's point of view, and why photography is practical and has a place in the plant of the small abstractor.

Our company, the Wheatland Abstract Company of Harlowton, Montana, maintains one office in Harlowton, and we do the abstract and title work for Wheatland and Golden Valley Counties. The combined population of both counties, according to the 1950 census, is 4,524, so we are what you would call a small abstractor.

#### Modern Equipment

I strongly believe that the small abstractor can and should maintain an up-to-date plant as well as the larger companies. With this idea in mind our company tries, and I believe does, maintain a good set of tract indices; we have electric typewriters, electric adding machine, steel desks, steel files, etc. We try to keep our desks clean of files, abstract copies and other material not being used at the time. You see so many offices, and I don't mean just abstract offices, with old files, papers and just plain junk piled on top of desks and files and all over the office.

We heard photography discussed at our state and national conventions, as well as regional meetings, for years. Like many another small abstractor we thought photography was way beyond our small plant and limited income.

However, about six months ago we began to investigate photography in earnest, and this summer, with the help of my son, John, during his college vacation, we installed photography in our business. So far we are very well pleased with the results.

#### Filmsort

The machine we bought is the Filmsort machine. The type of camera or machine you buy, of course, depends on your needs and likes and dislikes. The Filmsort camera takes pictures on a 35 mm. film like micro-

film. However, we cut the film and mount the instruments on special cards made for that purpose. We file these cards away by book and page. They can just as easily be filed by Document Number or geographically, whichever system you use. With the use of viewers we abstract directly from these cards.

We eventually plan on photographing all the records in both Wheatland and Golden Valley Counties, so that we will have a complete copy of the records of both counties right in our office. As these cards are only 3½"x 5" in size, the filing space required for all the records will not be more than the space occupied by two or three ordinary 4-section letter files.

With our camera we can also photograph our tract indices and store the film away in a safe place away from the office, so in case of fire or other disaster we could reproduce them.

Switching to photography in our business will probably save us a little money, but if it doesn't we are satisfied it will not increase our cost.

### Reasons

After a thorough study we decided to install photography in our business for the following reasons:

1. To keep our plant up to date.
2. To keep our personnel up to date in new methods.
3. To give better and faster service and improve customer relations.
4. Personnel more interested and happy working in an up-to-date office, therefore makes for better employer-employee relations.
5. Increases the value of our plant, and therefore worth more in case of sale.
6. Save time and therefore save money.

By keeping up to date in modern methods and equipment, the small abstracter can guard against getting into a rut and closing his eyes to progress. I'm afraid many of us smaller abstracters are using the same methods and equipment our fathers and grandfathers used. You have often heard the expression: "If

you stand still you go backwards." Let's not stand still, but go forward.

### Enlarger

At a little additional expense we purchased a Kodak Flourite enlarger with a 35 mm. carrier, and a 2" f4.5 enlarging lense, to develop and enlarge the instruments we photograph at the courthouse.

We have also entered into a contract with both Wheatland and Golden Valley Counties to photograph the instruments submitted to the Clerk and Recorder of each county for recording.

We photograph the original instrument presented for recording and from our 35 mm. film we enlarge and develop the instrument on a 10x14 ledger sheet, punch these sheets, and place them in the books of the Clerk and Recorder. For this we receive a certain percentage of the recording fee.

As far as we know we are the only abstracter in the country who photograph the county recordings for the county, from a 35 mm. film, and with our present type of equipment.

### C. A. WEBBER

Prior to 1947 our company conducted its business with what is generally referred to as the "garden variety" orthodox plant. We had the usual cumbersome tract indices, together with the typewritten abbreviated form of take off. Being strictly a title insurance operation, the form of take off was abbreviated much more than is wished in connection with those who prepare abstracts. Our take off was made on 8½x13 sheets of paper and usually contained from three to four instruments per page. At that time our take off was purchased from our competitor. We were advised that the cost per instrument was about to be increased to 10c. At this time we investigated the photographic form of take off and after considerable investigation we started using a Dexigraph sold by Remington Rand. Since that time we have jumped into photography with both feet and between our operation in Yakima County and a branch office in Grant County, which was

built about a year ago, we have used the Remington Rand Dextrigraph, the Junior Photostat and Microfilm. Our microfilm setup is that commonly known as filmsort, manufactured by Film N File, Inc. Our company was among the first in the Northwest to convert completely to photography for its daily take off. Yakima County has a population of approximately 125,000 and the average daily take off is approximately 60 instruments.

### Costs

For two years we kept a complete record of the cost of our daily take off and after taking into consideration the time required to photograph the instruments and the time for processing them, we arrived at a cost of 6.7c per instrument. Please note that this is a cost per instrument and not the cost for each photograph, as some instruments will require more than one picture. This cost allows for depreciation of our equipment on a 15-year basis and a substantial additional allowance for an increase in water and power bills resulting from the additional use of these utilities in the developing and drying of our prints. This cost also provides for allowing 10% of our paper costs as an expense for developing chemicals. The completed photograph of the instrument comes out on a 9x6 print.

### Paper and Costs

There are some companies using the photostat machine, the paper for which comes in roll form, eleven inches wide with approximately 350 feet to the roll. Two instruments of legal size are photographed side by side and after processing, the sheet is cut in two and a single 8½x 11 sheet produces two instruments 5x8 size. The paper costs under the dextrigraph runs 2½c per sheet for single sensitized paper while the paper costs with the photostat runs 2c per sheet. Each of these reproductions produces a very readable take off and those who have worked with them have experienced no difficulty in examining titles from the reduced copy. It is our experience that the take off produced by the photostat machine is somewhat slower

than the operation of the dextrigraph, and being a roll feed, the duplitzed paper cannot be used. The only reason for using the duplitzed paper is the saving of space. One sheet of the duplitzed paper consumes less space than two sheets of single paper, although the cost of the duplitzed paper is more than double the cost of the single paper.

### 16mm

One of our competitors in Yakima County makes his take off on 16 mm. film and then blows up the image to 9x6 print. The cost of this method is the same as the cost with the dextrigraph machine but consumes more times as it is necessary to develop and process the microfilm before prints can be made from it. During the time of processing the microfilm a large number of your prints made with the dextrigraph could be processed, ready for use.

In our Grant County plant operation, which we built about a year ago, we have used the filmsort equipment manufactured by Film N File, Inc. The cost of building a plant and the cost of the daily take off under this system is only about one-half of the cost of the other photographing systems and considerably more than one-half the cost of the abbreviated typewritten form of take off. The cost of our daily take off in Grant County is running about 3½c per instrument.

### Drawbacks

The main drawback of placing your take off on the photographic paper is that it consumes considerable space in your office. What you thought was enough space for years of growth, you soon find like the proverbial guinea pig, that you have your prints spread from the floor to the ceiling. We found that in measuring the cubic space consumed by the photographic prints, it was 50% more than the space consumed by the typewritten abbreviated form of take off. This problem then forced us to consider the possibility of culling or discarding the instruments when having been once examined in connection with a title examination. The culling of your plant on used instru-

ments is probably one of the most feared projects in the title business. For years we have always prided ourselves in having a complete record of every document filed in the courthouse and many of us tucked them away in vaults and generally pampered them like new-born babes. However, when an instrument covers a single parcel of land, especially mortgages which you have insured, the lien of the mortgage, the mortgage is satisfied, you have insured the lien of the second mortgage, we see no possible reason for keeping in our file the satisfied mortgage and the release of it. So—we adopted the practice of destroying these instruments when once having been covered by a title examination. To date we have encountered no difficulty as a result of destroying these instruments. Should it be necessary to review these documents, we can always look at the courthouse copy, although for the life of me, I cannot think of any reason when it would be necessary to again look at a satisfied mortgage and release thereof, when it has been completely covered by title insurance.

#### **Advantages**

One of the advantages of photography in your daily take off is that the type of help required to operate your photographic equipment needs to have had no experience in the title business. We are using a Junior College student to photograph and process the instruments. One person can take, develop, wash, dry and sort 100 instruments in approximately 2½ hours. This allows a half hour for the washing of the prints. The time consumed in the washing can be reduced approximately 15 minutes by increasing the temperature of the washing water to about 70 degrees.

For about a year after we started using photography for our daily take off we furnished one of our competitors with an additional copy. Our experience shows that photography does not lend itself too well with the supplying to your competitor an additional copy of the take off insofar as a reduction of costs are concerned for the second copy. The cost of the paper represents about 30% of your

overall costs and the cost of the additional time in the processing is practically doubled by making the additional copy. The photographing of the additional copy consumes very little additional time.

Our Grant County plant is completely built around microfilm, each frame of film being placed in a 3x5 card which will take a four-page instrument. The small desk model viewer is used in the examination and posting. One of the objections that we have heard concerning this method of operation is that the viewer required too much space. It is true that this viewer does consume some space but takes no more than your typewriter. It is easy to handle and by placing the viewer on a movable table it can be shared by two typists.

#### **Cuts Costs**

It has been our experience that photography has reduced our costs considerably and after having examined a title based on photographing of the original document there comes a feeling of a sense of security that is lacking when examining from an abbreviated typewritten take-off.

The costs of the installation of a dark room for processing with the microfilm or the prints, can be held to a very minimum or can be expanded to a sizable sum depending upon the scope of your operation. Any nook or corner in your office that has available to it hot and cold water can be very inexpensively converted into a dark room.

#### **EDWARD D. McCRORY**

In beginning this paper, I want to first thank Perry Liverton for the honor he has bestowed on me by asking me to be a member of this panel. The subject of the speech assigned to me—OPERATING AND MAINTENANCE COSTS—is not a subject that I would have selected. I consider myself very much of a youngster in this business, although I have been practically raised in an abstract and title plant. I still think I am much more capable of asking for advice than attempting to give it, especially on this subject; for during all of the

years that I have spent with this one company, all of my energy and efforts have been expended toward production and obtaining new customers.

Your business and mine is a service institution and must be geared to rendering proper and efficient service to the public.

My first thought was that possibly some mistake had been made in requesting that I deliver a speech on the subject matter of OPERATING AND MAINTENANCE COSTS. Upon reading the advance program for the Convention which was distributed by Jim Sheridan, I became finally convinced that a mistake had been made. My name had been spelled McCototy. My name has been misspelled in many numerous ways, but I believe Jim wins the prize for the most original, and especially for being the most incorrect way I have ever seen it.

After due consideration of Mr. Liverton's request, it suddenly dawned upon me that now would be an opportune time to give some thought to a subject which is becoming more and more an acute problem. I am sure that all of you for the past ten years have enjoyed a tremendous increase in business, thereby necessitating an expansion of your personnel and plant while still endeavoring to render quick and efficient service to the public. Under pressure attending to this part of your operations, I am sure that we have all concentrated on production, giving little thought to costs and probably saying to yourselves, "Hang the cost, let's get the business out."

#### **Common Problem**

At one time or the other, probably all of you have felt that you have your own special operating and maintenance problems; we in Texas feel the same way, but I think the ultimate was reached not long ago when I attempted to hire an office boy. During the interview I was trying to determine whether or not the applicant was a serious-minded boy, so I decided to put him through a little test. I said, "Johnny, what would you do with a million dollars?" "Gosh, I

don't know; I wasn't expecting so much at the start" came his reply, and believe me, ladies and gentlemen, although we do things in a big way in Texas, that situation has become too true to be funny. Seriously, though, all of us who operate and maintain title plants have many problems in common: our daily take-off, proper posting or filing of the daily take-off, and the forever and continual job of working on the plant to make it as near as possible a modern and up-to-date plant.

#### **Common Take-Off**

There are seven title plants operating in Houston. Some of the plants are fairly new, but over a period of a number of years it has been our practice for one company to handle the take-off. As long as I can remember, our company has been handling this take-off, making an exact number of copies to supply each company in the group with one copy of each instrument. We buy all of the supplies, including even desks and typewriters, and pay the salaries of the take-off girls and proof readers. At the beginning of each year we estimate the total costs, which includes depreciation of equipment, and each company contributes its proportionate share each month. At the end of each year, the total cost is computed and then a final settlement is made. A number of years ago, the companies who were then within the group decided that our take-off should be full and complete, showing all pertinent data including special exceptions, consideration and other data necessary for the examiner. Our proof reader is qualified to pass on the signatures, acknowledgments and form of the instrument, and we depend on the take-off then in our examination.

We found that this system increased our costs somewhat, yet felt that it was more than off-set by eliminating the necessity of either having the instruments copied or examined at the courthouse. I feel that a proper take-off of this nature is rather expensive, and the question that has been running through my mind for the past few years is this: Could

some sort of a film process be used to eliminate a large amount of this cost? That is one of the questions to which, I hope, I may find the answer while I am here in Colorado.

### Costs

If any of you might be interested, our total cost for the take-off only, and not for posting, was \$24,723.54 during the year; during that period 134,218 instruments were filed. This does not include district court, probate or abstract of judgment filings. I would be interested in comparing these figures with some of you here who might be operating in a county comparable to our county.

The vital part of a title plant is the take-off and proper posting of the take-off to the plant records. In fact, that is the abstract plant, and for that reason I have given more time to this subject possibly than can be afforded in a ten minute speech.

### Always Additional Services

On this wise observation I would like to pass on to another point. In Texas the general procedure that is followed is that all deals on which title insurance is to be issued, the transactions are closed in the title office. As the popularity of title insurance has increased, so also have the numerous types of services which a title company renders. It is in this particular type of the operation that hidden expenses are encountered. The mortgage companies and lending institutions (bless their souls) as well as individuals, are becoming more and more accustomed to the title company rendering additional services in closing. That is good; we like for them to ask for our services. In many parts of Texas, and especially in Houston, we are called upon to furnish form after form, including special closing statements, tax information, multiple copies of restrictions, filling out certificates to be furnished to the Veterans Administration or Federal Housing Administration, and many other and numerous services which require hours of clerical help.

All of this has been built up over

a period of years, not all at one time, but slowly.

### They All Add Up

As each new item has been added to the requirements, the title company has been inclined to say, "Well, this will not take much effort or expense to furnish," but when all of these items are added together, your hidden costs have now actually come to the fore; they have become an acute problem, to be solved only by means of making a fair and reasonable charge for same. Even though, as many of you know, our premium charges have not been increased yet as a general rule the premium of each deal has been increased by reason of the increase in the value of the properties involved. Many have said that by reason of this the title company should be satisfied and should not ask to increase its premium charges. I cannot agree with this thought. If we cannot increase our premium charges, then we must take stock of the many services we perform. A charge should be made for many of these services. If we do not carefully watch our increasing costs, we will one day wake up to find, and very soon, I fear, that even though our volume of business has not decreased materially but remains on an even plane, our margin of profit has become slimmer and slimmer.

As I stated before, I have been in this business practically all of my life. I do not profess to know the operations of other businesses, yet, it has always seemed to me that for the amount of effort involved, the amount of capital invested, the number of long and hard hours of work involved, the owners and employees of a title plant receive less return than any other type of business I know of. I am heartily in favor of changing this situation.

### LaVERNE HERBRUCK

Surrounded by photography experts and exponents, I feel as forlorn as a saddle salesman at the National Auto Show.

In these minutes I have been asked

to discuss plant maintenance, as well as service and production.

Immediately it occurs to me that in our operation we have quite a sharp line dividing the mechanics of plant maintenance and use of the plant, i.e., searching and the examination which results in the policy.

### **The All-Important Product**

By the same token, we think of service and production, whether properly or not, in conjunction with the preparation of the search and policy because in such segregation we are considering the product, rather than the implements. In other words, the plant is basic and production becomes a factor only when a policy has been requested.

In point of order, therefore, I should initially dissect the plant and its maintenance. Actually our operation is substantially the same as that of any title insurer. The prime variation between the home office and any of our branches which range from a man and a girl to about 35 people, is volume.

### **The Life Blood**

I always think of the life blood of a title plant as the take-off in the recorder's office. Our take-off is type-written on six-part fanfold paper directly from the original instruments. The abstract form includes only the bare essentials required by the title examiner — the elements of proper execution are the responsibility of the abstractor, and absent any indicated defects, the abstract in conclusive.

### **Paper Specifications**

The sheet is 5 x 8, and the permanently bound copy is 13 lb. rag bond paper. The other copies are a sulphite or wood pulp paper. One copy of the latter type is perforated and bound in such a manner that it may be detached for inclusion in the search.

### **With Current Orders**

Of the total daily recordings, about 45% are instruments which we submit for recordation in conjunction with current orders. Having been previously considered by a title examin-

er, a formal take-off as to such instruments is unnecessary. Therefore, a skeleton take-off is made by a night staff as the instruments are enroute to the recorder's office.

### **Court**

The take-off of proceedings filed in the municipal and superior courts located throughout the county, and the federal district court, is made on the same type of fanfold, and is bound in the same book as the recorder's take-off.

### **Permanent Copy**

The permanent copy of the take-off, prior to the binding, is used as the medium for posting the tract books. We consider that posting is facilitated and hazard minimized by a specialist designating on the take-off the account or accounts to be posted where the description has any involvements. The tract book binders are 17x18, and where possible contain about 125 sheets.

### **Tract Book Binders**

These books, with plastic covers, weigh about 17 or 18 pounds, and are maintained in counter - high steel racks. Our first departure from a thick, canvas-covered binder, was to bakelite. The latter covers were not satisfactory in that they warped, cracked and chipped. We then discovered, and are converting to, a ½ plastic binder, built on linen. This seems to be practically indestructible — if the demonstrations indulged in by some of our more muscular people are conclusive. The number of tract books per rack is increased 10% by these binders.

### **Tract Book Sheets**

The tract book sheets are 16 x 17½ of 36 lb. linen ledger paper. As to subdivided or arbitrated lands, space is provided for 20 accounts per sheet. On government sectionalized lands, the sheet is divided, as to the account portion, into sixteen quarter-quarters.

### **Self Indexing**

The tract books are entirely self-indexing; numbered tracts are in numerical sequence, and name tracts are alphabetical, etc.



A portion of the take-off, of course, is posted to the general index. These accounts are coded by Soundex, and the books, as to the number of sheets, are about the same size as the tract books. The sheets are 15½ x 13¼.

### Maps

The plant contains an exact copy of all recorded maps maintained in books which correspond in numbers and pages to the county recorder's. We are furnished a transparency from which we make our reproductions. These are then roto-printed for policy purposes.

### Copy of Policy

The final plant operation involves the two copies of each policy which are prepared when the policy is written. One copy is permanently bound, and the book and page accorded each policy is posted in red to the tract book account of the land affected. The other copy, though bound, is detachable and is used for starter purposes.

### Taxes and Assessments

I have not mentioned city or county real property taxes, bonds, assessments or special district levies, etc., in the interest of time. Actually, a separate plant and staff are maintained for this service, and a complete report is delivered directly to the title officer within a day or two after the order is received.

Assuming, then, an adequate plant, which is completely posted every night, we move to consideration of how it is used when an order is received.

### Procedure

Basically, two people are involved—a searcher and a title officer, and the function of each is clearly established.

Theoretically, when the searcher has finished, he delivers a product to the title officer from which he may make a complete report on the title without leaving his desk. To accomplish this, the searcher obtains a starter by detaching the copy of the last policy issued, completes the chain from the tract books, compiles a search to conform with the chain by detaching the duplicates of the take-

off, runs the necessary names on the general index, examines appropriate maps, has any necessary engineering or description work done, and orders from the legal division whatever opinions may be necessary as to court proceedings encountered in the search. His work is concluded with the assembly of the search. A searcher who will average fifteen completed searches a day is rated a very good producer.

### When Not Available

We have devoted considerable time and study through the years to the form of take-off, and the form completed by the searcher in lieu thereof when the duplicate of the take-off has been detached and it not available. The object has been to include a write-up for the copyist of the particular instrument as it will be reported and appear in the policy. We consider that, aside from uniformity, considerable advantage accrues to the searcher and the title officer in that writing is minimized. The significance of this program fails without exhibits.

### Speed

Unrelated to the plant, but in line with service, is a comment that we attempt to deliver or mail all policies and statements on the day that the documents are recorded. The customers are few for whom "Manana" is soon enough—they like policies and charges NOW.

When an order is to be closed, we run the search to date at night and record it in the morning before any public recording is done, provided no change has occurred. Under this arrangement we have found that pre-writing a vast majority of policies works very satisfactorily.

By now I should have succeeded in making it quite evident that we have wrought no miracles. At the same time, I would like to say, with all modesty, that 48 hour service is an actuality and not a fiction. Also, that we are not unaware of current developments in the industry—rather, that we remain unconvinced, as yet, that they are better for our particular operation than what we now have.

# Tales of a Title Man

HARVEY HUMPHREY

*Director Community Relations, Title Insurance and Trust Company, Los Angeles, Calif.*

Following the presentation of our Treasurer's Report at the California Land Title Convention, earlier this year, several of the A.T.A. big wheels suggested we make a talk at this meeting. "What shall we talk about?" we asked. "Well," said Ed Dwyer, "you've been talking finances to the California group for 22 years; why not give us a West Coast slant on the A.T.A. financial set-up?" But knowing that Bill Gill and Charlie Buck are the financial wizards of the A.T.A. you now know what we've suspected all along; they're professionals, and clear out of our class. And speaking professionally, a surgeon was taking a walk with his wife when a young and vivacious blonde greeted him gaily. The doctor's wife eyed him narrowly. "Where," she asked, "did you meet that person, my dear?" "Just a young woman I met professionally," he explained. "I see," murmured his wife, and then, "your profession or hers, dear?"

Said Pres. Mort Smith, "After listening to your California treasurer's reports, over the years, I think the A.T.A. financial setup would limit you. I'll bet a dollar to a doughnut that you could bring us a worthwhile message on the financial state of the nation." We seriously considered that but, after seeing what our financial advisers in Washington have done to our dollars, we realized that Poker-Player Smith was again offering short odds, so we decided to hang onto our doughnuts.

## We Polish the Apple

Jim Sheridan said, "You've staged 1 national and 17 state title conventions. Why not tell 'em about conventions." You have some strange experiences handling conventions. This year, we were staging the annual meeting for our boss, Herb Allen, and naturally, we were very anxious to do a good job. In the matter of reservations, we wrote the hotel the

circumstances and wound up our letter, "Please see that our President and boss has the best of rooms, surrounding, etc., etc., etc." Arriving at Arrowhead Springs, Herb was shown to the best suite in the hotel. After expressing approval of his bedroom, he stepped into the parlor where sat three gorgeous creatures. "And who are these young ladies?" he asked. "Those are the three et ceteras your chairman requested," explained the hotel manager.

After considering and rejecting these splendid suggestions, we were at a loss for a subject. We went back and perused the former convention proceedings and studied Jim Sheridan's convention publicity. Then it came to us, like a bolt from the blue. All of you come to these meetings to learn about the title business. Then, why not tell you something about it?

## Our Idea of Definitions

Being in the public relations end of the business, we naturally see it from that angle. Ours is a technical business and it's fantastic how few of our customers understand either what we do or any of the technical terms we use in describing our operation. Perhaps, in the time allotted, we can define some of these terms; so that you, in turn, can clarify them for your customers. One axiom of public relations is, the better your customer understands you and your business, the less chance there is for misunderstanding.

Consider **Take-Off, Search, Examination, G.I., Slips, Plant, Review, Chain, Policy, Abstract**—all words that we use many times a day but words which, to our customers, may each have a dozen meanings.

## Plant

Let's start with **Plant**. When we use the term, we know we're referring to **title plant**. On the other hand, our customer may think of a potted plant, or a manufacturing plant. If

he looks for definitions in the dictionary, he'll find: "sapling; concealed plunder; a trick or swindle; a bed of oysters; or a chess or billiard term." Definitions are sometimes funny things. Saw a new one of T.V. the other day: "Television is giving people who do nothing a chance to watch people who can't do anything."

And then there's **G.I.** To the public these days, **G.I.** means but one thing, an American foot soldier. A youngster, in process of becoming one, was answering a doctor's questions, as he took his physical. "Have you any physical defects?" asked the sawbones. "Yep," answered the boy. "What kind?" queried the doctor. "No guts," answered the prospective **G.I.** Yes, it's very easy, on this term which we use for **General Index**, for people to get confused.

### **G.I.**

It's up to us to explain that our **G.I.** contains powers of attorney, judgments and decrees affecting status—bankruptcies, divorces, changes of name and insanity commitments — which reminds us of a young **G.I.** who was rapidly reaching that state of incompetency, when he would soon become an entry in our **General Index**. Shaking all over, he approached the army medico and said, "Doctor, I feel terrible!" "Take it easy, son, while we ask a few questions. Do you smoke much?" "Yes, I do, doctor—from 5 to 8 packs a day." "Gosh, man! That alone would make you nervous." "Yes, I thought of that, doctor." "Do you get enough sleep?" "Well, hardly, doctor. You see I go out with the girls five or six nites a week and I don't get too much sleep." "That's a pretty stiff schedule, even for a man your age." "Yes, I thought of that too, doctor." "Do you drink much?" "I drink considerable, doctor." "Considerable?" questioned the doctor. "What do you mean by considerable? As much as a fifth a day?" "Oh, my goodness, doctor! I spill more than a fifth a day!"

### **I Search—But Not My Soul**

Next, take the terms **Search** and shouldn't be too tough to explain. "To

**Searcher.** Here are words that examine carefully; to probe, explore, or penetrate," and finally, our customer's dictionary tells him, "to search, as for encumbrances." And here are several interesting definitions for **Searcher**: "One who examines guns, butter firkins, the bladder for stones, ocular eye-pieces or dead bodies; a Scottish civil official who apprehends idlers during church services or on the Sabbath; and finally, a searcher of public records."

### **Play It Safe**

The thing we must do in explaining these words to our customers is to use **caution**, as did the little bantam rooster who always found foraging best in a big stall where two huge percheron horses were stabled. One day, as he scratched industriously for corn, he noted the big animals were particularly restless. Three or four times he narrowly escaped being stamped into the floor. Finally, he looked up and said, "Let's be careful, fellows, or we're liable to step on each other's toes."

We recently heard of a young mother who was not cautious enough. Like us, she had coined a few words, in bringing up her little 3-year-old girl and had taught her to say, "I want to travel," whenever she needed to go to the bathroom. Everything went fine until an old school chum visited the mother. They were so engrossed in gossip that the child's repeated, "I want to travel" was put off with an "In a moment, dear." Finally, the child called out in a loud frightened voice, "Mommy, I'm traveling!"

But after all, as our friend Rod McLean says, "Training a child is more or less a matter of pot-luck."

Incidentally, we have a doctor friend at home who says, "Modesty has ruined more kidneys than hard liquor." And then.

There was a young fellow named Sidney

Who drank 'til he ruined his kidney.

It shrank and it shrank

As he sat there and drank

But he had a good time doing it  
didn't he?

### Expert Opinion

But how in the world did we ever get off on this subject? To travel back to our learned discussion on title terms — **Chain** and **Chainman**; **Review**; **Examine** and **Examiner**. These are not too far-fetched, as we use them. Of course, the customer's first mental picture, when he hears the term **Chain** might be of an Albert Chain for a watch, or a chain of circumstances; and of **Review**, perhaps a formal military inspection, if he were an ex-soldier; or a critical article regarding an artist, which would evoke a letter from Pres. Truman, if he were a music critic. These words are more nearly descriptive of our work than of some of the others. They are more like the expression used by a little boy who was talking to a chum. "My pop is so fat, when he stands around in his shorts, he looks just like a bureau." "What do you mean, bureau?" "Aw, you know, a big thing with drawers."

### Take-Off—But What?

The term **Take-Off** is the one which really throws the customer. He sees a plane rising in flight, or a track athlete leaving the ground in a broad-jump. **Take-Off** is defined: "To remove things or persons; to kill; to drink off or swallow," and finally, if he looks at the last definition in the dictionary, he may get a faint glimmering, when he sees, "to reproduce or copy." All of which indicates that usage and meaning depend largely on viewpoint. In the current Jim Thorpe movie, an Indian student tosses aside a history book and grunts, "History, Ugh! White man lick Indian—great battle! Indian lick white man—massacre!" Our favorite history story, however, concerns another history student who was asking his instructor why he had not passed his test. The professor answered, "Well, your answer to the question, 'Why did the pioneers go into the wilderness?' was interesting from a standpoint of sanitation, but it was still incorrect."

Always remember, we must be tolerant and understanding with customers who don't get these trick

phrases of ours on the first bounce. We mustn't take the attitude of the old lady in Montreal who resented the approach of the American tourist season. She recalled old Montreal with nostalgia and winced whenever she saw visitors in outlandish garb. Her young nephew remonstrated, "But think of the money they bring, Auntie." "Well," sighed the old gal peevishly, "that's all very well, but I don't see why some arrangements can't be made, whereby they could just send their money up here and stay at home."

### Oh, No!

And when you tie **Take-Off** onto **Slips**, and particularly **Pink Slips**, your customer pictures your office as a **Plant** where **G.I.'s** with **Chains** run around **Searching** for **Examiners** who are **Reviewing** girls in the act **Taking Off Pink Slips**.

Let's look at this term, **Slip**. Here is a word with some 75 different meanings. We'll skip the 65 more familiar usages and just cite a few which could easily throw our friends off the track. "To loose the dogs of war; to backslide; a narrow pew in a church; a dish of curds made with rennet wine; black whale blubber; a counterfeit coin; a wrought iron cylinder used in manufacturing gunpowder; or a geological fissure." Yea, verily, our task in explaining these terms is one of education. It can be compared with that of progressive educators, whose object is to make infancy as interesting to infants as adultery is to adults.

Next we come to **Abstract**. Now, there's a word that is **abstract**. We've even heard some title people say, "Well, when you've got an abstract, what have you got?" Of course, this is the vilest of slander but let's see what abstract means to people not in our business.

### We Read the Classics

From Cousin's Fragments Philosophiques, "We say those thought (**intellectus**) are by **abstraction** (**per abstractionem**), which either contemplate the nature of any form in itself, without regard to the subject

matter, or think any nature indifferently, apart . . . On the other hand, we may speak of subtraction, when anyone endeavors to contemplate the nature of any subject essence, apart from all form. Either thought, however, the **abstracting**, as well as the subtracting, seems to conceive the thing otherwise, than as it exists." Believe we'll all agree that this is the meaning most attorneys adopt, regarding items in our abstracts, as "other than as they exist."

### We Swallowed a Dictionary

Sully said, "**Abstraction** means etymologically the active withdrawal of attention from one thing, in order to fix it on another thing." Sully would be a handy employee to have around an abstract office, to withdraw a technical attorney's attention from an imperfect conveyance in an abstract, in order to fix it on a perfectly good deed.

**Abstract** is a noun, a verb, an adjective. It is used in grammar, crystallography, mineralogy, pharmacy and in mathematics, such as **abstract** numbers: For instance, in Alexander Hamilton's works we find, "**Abstract** calculations, in questions of finance, are not to be relied upon." Would that someone could bring that fact home to some of our congressmen!

### Wow!

Every good abstracter wishes his **abstracts** to be complete, so, when a customer inquires as to the meaning of **abstract**, we would suggest the Hegelian definition, which carried with it a tacit condemnation of the method of analytical mechanics and of all application of mathematics. Hegelianism, you know, was the philosophical system of George Wilhelm Friedrich Hegel, leader of metaphysical thought in Germany in the last century. It purported to be a complete philosophy, undertaking to explain the whole universe of thought and being, in its abstractest element and minutest detail. (Just like a complete **abstract**, you see—minutest detail). This it did by means of the Hegelian dialectic, a then new logic, the real law of the movement of thought, the

scheme of which was thesis, anti-thesis, the original tendency, the opposing tendency, and their unification in this metaphysical system.

### Abstract

Now that we've clarified **Abstract** for you, we move on to **Policy**. Of course we know we're talking about **Policy of Title Insurance**, but for weeks, all of us have been hearing about **Policy** or rather, lack of **Policy**, in our public affairs. Taking this set of meanings: "Foreign Policy, Domestic Policy, Public Policy," there has been a sad lack of any of them. Since the administration doesn't seem to understand such terms, we might recommend to it the next definition which appears in the dictionary; namely: "Policy — the prudence of wisdom in action or, 'Honesty is the best Policy.'" Of course, this last maxim applies equally as well in the **abstract** or **title** business.

Policy also means "the pleasure grounds of a nobleman's house in Scotland; and a form of gambling." Suppose you have heard who the greatest gambler of all times was? It was Lady Godiva. She put her all on a horse. She didn't win but she showed.

### Nobody Agrees

Finally, the dictionary tells us that **Policy** is a written contract of insurance. That's the meaning we want but, since some title insurance companies themselves cannot agree on what the fine print in each of their policies means, we advise caution in trying to explain to the customer just what he is getting. This last observation is by a rabid abstracter who objected to the title insurance company's description of an **abstract**. But lest some outsider gets the idea that abstracters and title insurance advocates do not respect each other in this Association, let us say that they get along like the two gentlemen of the cloth. The Protestant minister needed funds urgently to erect a new church. He sent appeal-circulars far and wide, and one found its way to the desk of the parish priest. The minister and he had been good friends for years but it was unthinkable that he should

subscribe to a Protestant Church building fund. After some thought, however, he wrote, "Dear Rector: You will appreciate that I cannot assist in building your new church, financially or otherwise. But I take great pleasure in enclosing \$10.00 towards pulling down the old one."

### One Way to Settle It

Let's sum up, by settling this discussion as an abstracter settled a discussion in his home recently. It was his teen-age daughter's first dance and she desperately wanted an off-the-shoulder frock. Her mother felt she wasn't old enough to wear anything so sophisticated but our abstracter - father finally settled the heated family discussion with, "Let her try one on. If it stays up—she's old enough to wear it."

So don't place yourself on the spot with your customer by talking title gibberish to him, unless he understands it. For instance, on the spot was Ellen, a country maiden lady who came to work for the family of a Colorado Springs title man. She agreed to do housework, only if she were treated as one of the family. She insisted she was a lady. One evening, she answered the door bell and our titleman overheard the following conversation: "Are you the madam of the house?" the caller asked. Red-faced Ellen replied, "No, but I am one of the ladies."

### Clear

As we said in the beginning, the important thing is to avoid misunderstanding. We must clarify our business and our business terms to the point where the customer knows and can see what we're doing. We can't afford to be like the blind beggar who had seven children. When asked by a man, "Do you think it's sensible for a man in your condition to bring all of these children into the world?" he shrugged helplessly and said, "Can I help it if I can't see what I'm doing?"

### Public Relations at Their Best

The wife of an Indiana title man invited some friends to afternoon tea. All preparation perfected, the hostess

took a little nap to be fresh and sparkling for the occasion. The tea, however, proceeded strangely. The guests entered without ringing the door-bell, greeting her in low whispers, and treating her with extreme caution. All seemed ill at ease. Finally, one brought the matter out into the open. They had found a note pinned to the front door which the hostess had intended for her teen-age boys, to prevent their disturbing her nap. It read, "The door is unlocked. For goodness sake, come in quietly. If you must talk to each other, just whisper. And, for Heaven's sake, don't ask me for anything!"

And so I leave you, completely exhausted from explaining to you how you should explain the title business to your customers. If the explanation has not been entirely clear and you must talk, talk to each other. For heaven's sake, don't ask me anything.

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*NOTE: Mr. Humphrey was taken ill while traveling to the convention. We are happy to report as of this later date, his full recovery. In his absence, his paper was read by Mr. Ernest J. Loebbecke, Treasurer, Title Insurance and Trust Company, Los Angeles, California, who added his own comment, as follows:*

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There you have it—the butchered remains of what would have been an outstanding address had Harvey been here. Instead—I am the one who is exhausted and Harvey, thank heaven, is resting quietly at home, enjoying the tender care being lavished on him by Ethel—blissfully unaware of the tragic end of his brain child.

Trying to take Harvey's place is a terrifying experience but in my own way—as an accountant—I shall someday balance the books—I'll write a very dry and technical speech on "Audit Procedures and Practices as They Relate to Title, Abstract and Related Industries"—and make Harvey deliver it for me.

# Advertising — Public Relations

## Report of Committee on Advertising and Publicity

ANDREW DYATT, *Chairman*

*President, The Landon Abstract Co., Denver, Colorado*

To find out how little you know about the subject of advertising is to agree to serve as Chairman of the Advertising and Publicity Committee.

The program for the year consisted of an Advertising Contest, to work for an interesting and attractive advertising exhibit at this convention, and a comprehensive questionnaire to be sent to the membership asking them for their ideas on the best and most effective type of advertising that they had used during the past years. However, the committee ran into difficulties on the last item of the program, being unable to decide on just what the questionnaire should contain.

### Wide Field

Advertising and Publicity covers a very wide field, as you all know. It covers not only advertising as such, through newspapers, classified ads, blotters, novelties, historical booklets, radio, bill boards, and direct mail campaigns, but in good service, devoting our time in the name of our business to worthy civic and charitable enterprises, and making public appearances telling others of our business. We all know that the title industry needs to create public confidence and understanding for the acceptance of our product. Your committee wish that we could report some very outstanding and worthwhile ideas which would be the answers to all our advertising and publicity problems. This, we are sorry to report, we are unable to do. The question of how an individual company should proceed to improve public acceptance within its community is difficult to describe. There is no universal answer, local conditions and circumstances vary, and what might be good in one community might not necessarily work in another.

### All Should Advertise

Your committee believes that every member of the American Title Association should believe in advertising, even when business is good. Each of us owes it to the public, to his profession, and to himself, to tell others just what we do, why all the equipment, the many skilled employees, and voluminous records are necessary to turn out title evidence, and what this protection and responsibility means to the public. We believe our story has not been completely told. Where our members have told the public their story well, through advertising and good public relations, the public demands the product and services of established, reputable firms. Where it has not been done, the public accepts the work of curbstoners. The advertising you see on display here is proof that some of our members are doing a good job of advertising.

### Assemble Good Material

Your advertising committee was disappointed that more of the members did not enter the contest and send in material that they have found helpful in their promotion programs. The committee feels that there should be at Association headquarters a series of scrapbooks or portfolios covering various types of advertising, then if a member of the Association needed some help in an advertising program, complete information would be available to the inquiring member on short notice. Such a plan would be very inexpensive, but would not work unless each and every member in the ATA would forward to headquarters copies of the different items used in his advertising program.

### Personal Thanks

In closing, we wish to thank you members who so graciously forward-

ed advertising information to Mr. Jeremiah of New Jersey. And we wish to express our appreciation to those of you who wrote in giving us helpful suggestions, and particularly to Mr. Harvey Humphrey of the Title Insurance and Trust Company of Los Angeles who has assumed the major part of the responsibility for assembling the advertising material.

\* \* \*

### THE WINNERS!

#### Advertising Contest Winners

1. GRAND PERPETUAL TROPHY for the most effective advertising program of the year carried on by any abstract, title, or title insurance company in the Association.

WINNER: Commonwealth Title Co. of Philadelphia, Philadelphia, Pa.

2. ANNUAL CAPITAL PRIZE for the best single ad, series of ads, publicity story, or series of publicity stories, during the year, for any ABSTRACT COMPANY.

WINNER: The Landon Abstract Co. of Denver, Colo.

3. ANNUAL CAPITAL PRIZE for the best single ad, series of ads, publicity story, or series of publicity stories during the year for any TITLE or TITLE INSURANCE COMPANY whose combined capital and surplus exceeds \$1,000,000.00 or which employs outside professional advertising counsel.

WINNER: American First Trust Co. of Oklahoma City, Okla.

4. ANNUAL CAPITAL PRIZE for the best single ad, series of ads, publicity story, or series of publicity stories during the year for any TITLE or TITLE INSURANCE COMPANY whose combined capital and surplus is less than \$1,000,000.00 and which does not employ professional advertising counsel.

WINNER: Reliance Title Co., Santa Ana, California.

### 5. CERTIFICATES OF MERIT:

CLASSIFICATION A: Newspaper and magazine advertising  
FIRST: Washington Title Ins. Co., Seattle, Wash.

SECOND: Phoenix Title & Trust Co., Phoenix, Arizona.

THIRD: Land Title Bank & Trust Co., Philadelphia.

CLASSIFICATION B: Booklets, pamphlets, financial statements, etc.

FIRST: Title Insurance & Trust Co., Los Angeles.

SECOND: Burton Abstract & Title Co., Detroit, Michigan.

THIRD: Title Insurance Corp. of St. Louis, St. Louis, Mo.

CLASSIFICATION C: Blotters

FIRST: Home Title Guaranty Co., New York, N.Y.

SECOND: Tennessee Title Co., Nashville, Tennessee.

THIRD: Phoenix Title & Trust Co., Phoenix, Arizona.

CLASSIFICATION D: Direct mail campaigns, including letters and series of printed messages, etc.

FIRST: Chicago Title & Trust Co., Chicago, Ill.

SECOND: Title Insurance & Trust Co., Los Angeles, Calif.

THIRD: Reliance Title Co., Santa Ana, Calif.

CLASSIFICATION E: Miscellaneous advertising, including novelties, gifts, etc.

FIRST: American First Trust Co. Oklahoma City, Okla.

SECOND: Phoenix Title & Trust Co., Phoenix Arizona.

THIRD: Pioneer Title Ins. & Trust Co., San Bernardino, Cal.

CLASSIFICATION F: Business and office forms which carry advertising such as legal forms, office maps, policy or abstract covers, etc.

FIRST: American First Trust Co., Oklahoma City, Okla.



SECOND: Land Title Ins. Co. of St. Louis, St. Louis, Missouri.

THIRD: Reliance Title Co., Santa Ana, Calif.

CLASSIFICATION G: Publicity releases.

FIRST: Home Title Guaranty Co., New York, N.Y.

SECOND: Chicago Title & Trust Co., Chicago, Ill.

THIRD: Boulder County Abstract & Title Co., Boulder, Colo.

CLASSIFICATION H: Radio Advertising.

FIRST: Chicago Title & Trust Co., Chicago, Ill.

SECOND: Lawyers Title Ins. Corp., Richmond, Va.

THIRD: Reliance Title Co., Santa Ana, Calif.

CLASSIFICATION I: House organ or company publication.

FIRST: Union Title Ins. & Trust Co., San Diego, Calif.

SECOND: Lawyers Title Ins. Corp., Richmond, Va.

THIRD: Title Insurance & Trust Co., Los Angeles, Calif.

CLASSIFICATION J: Posters, display cards and exhibits.

FIRST: Commonwealth Title Co., of Philadelphia, Philadelphia, Pa.

SECOND: Lawyers Title Ins. Corp., Richmond, Va.

THIRD: Chicago Title & Trust Co., Chicago, Ill.

## Report of Committee on Public Relations

MORTON McDONALD, *Chairman*

*President, The Abstract Corporation, DeLand, Florida*

In submitting this report, the members of the committee wish to state that we have endeavored to stay out of the field of advertising and publicity, but since they are so closely related to public relations, we may have encroached at times in this report.

### Publicize Our Meetings

It is the opinion of the members of this committee that we should do more in publicizing our annual conventions and mid-winter conferences. We feel that copy should be prepared by the staff in our national office to be presented to the newspapers in the vicinity of our convention and mid-winter conference. This copy should contain items of interest to the public concerning the meeting. Mats should accompany this copy, these mats to be photographs of the President or any other outstanding personage attending these meetings, and pictures that might be of interest to the public concerning the meeting. In this connection, we recommend that copy and mats be prepared and sent to the

local papers in the home town of national officers or other title men when stories of interest could be written. It is our idea that local papers would use this copy and pictures of local people much quicker if sent from national headquarters.

We suggest that the national office should encourage and assist state title associations in obtaining this type of publicity on the state level.

We feel that the national office might send a photograph or mat of our national president each year to the editor of the official magazine of the service club to which our national president belongs, along with a short story concerning him, so that the service club publication might use this information in their magazine.

### Allied Organizations

We feel that better public relations can be developed among the various groups who use our services by attempting to provide speakers at national and regional conventions of the Building and Loan League; the Na-

tional Association of Real Estate Brokers; the Mortgage Bankers Association, and other similar groups. It is our idea that we should not await their invitation to appear on their programs, but should offer our services through our national office. The expenses of such speakers would possibly be paid by these various groups, but it is our idea that we should offer to supply speakers free of charge, and the expense to come from our treasury. This type of service should also be encouraged on the state level.

### **Guest Speakers**

Realizing that we have had various mortgage men attend our meetings in the past, we feel that we should encourage the attendance of these key men, particularly at our annual conventions. We feel that we should specifically invite at least one person from the allied fields to address our convention each year. We suggest that the officers of the various state associations be encouraged to invite such men as above mentioned who live in their respective states to appear on programs and attend state conventions.

### **Speakers Bureau**

It is highly recommended that the state associations develop a speakers bureau and encourage contacts for speaking engagements throughout the state at real estate meetings or meetings of service clubs or other places that might listen to the title story. We would suggest that the national office make available material for suggestions in preparing such addresses.

### **For Every Member**

This covers our suggestions to the national office and matters that might develop better public relations on the national level and state level. We now would like to make a few suggestions to the individual members. This report was developed through correspondence with the members of this committee, and I would like to especially mention the suggestions received from Mr. L. A. Reuder, Vice President of Title Insurance Company of Minnesota.

Mr. Reuder classifies his suggestions as follows:

MEMBERSHIP IN CLUBS  
SPEAKING ENGAGEMENTS  
PERSONAL CONTACT  
ADVERTISING  
SPECIAL ENTERTAINMENT  
CHRISTMAS REMEMBRANCES

I would like to quote in part Mr. Reuder's suggestions. First, on MEMBERSHIP IN CLUBS; and Second, PERSONAL CONTACTS. His suggestions are well taken and I heartily agree, and therefore pass on this information for your benefit.

### **Club Memberships**

"MEMBERSHIP IN CLUBS: It has been the practice of this company to let as many men, particularly officers, as can spare the time join service and civic clubs such as Kiwanis, Chamber of Commerce, Junior Chamber of Commerce, Rotary, Lions, Optimist and other similar clubs, and in case of lawyers, the company sees to it that they join the local and state bar associations. Mere joinder, however, without active participation, will bring no results, and while a good many people say they join organizations of this kind for no selfish purpose, we all know the real object and purpose is to gain contacts and become better acquainted with men who are important in our community. We urge our people to accept committee jobs and help carry out the functions of the particular organizations to which they belong. Merely going to noon luncheons accomplishes little because the time element does not permit a great deal of contact. Therefore, we tell them to attend the golf parties, stag parties and mixed parties which are scheduled by the group to which they belong.

It is only by active participation and contribution to the group that beneficial results can be obtained. The old saying holds true that you cannot get any more out of an organization than you put into it, and it certainly would be better not to have a company officer, or employee belong to a group if there is no intention to participate in the activities of the organi-

zation, or share the burdens and responsibilities with the officers.

### **Personal Contacts**

"PERSONAL CONTACTS: I am a firm believer in personal contacts with the customer and I find from experience that there is nothing that can equal it. I personally know that a great deal of business has come into our office by reason of our employees calling on people who had never done business with us before, and who had no contact with the company whatsoever. It is quite natural that a person likes to do business with someone with whom he is acquainted or has met or talked to previously. It is much easier to carry on a long distance telephone conversation or correspondence with someone with whom you are acquainted and who knows the policies of your company. Personally I have made a great many of these contacts and in travelling about never fail to renew these acquaintances, and as years go by, not only have fine business relationships developed, but many personal friendships which I would not give up for anything. This applies to both out-of-town customers and customers located in the community where you do business.

Of course, I fully realize that in our business when the pressure is on, it is almost impossible to let employees leave the office to go about the city and call on customers. Everybody seems to be in a rush to have their business attended to. Consequently, all the personnel is needed on the job to carry on the business so that the customer may get the service to which he is entitled to and so frequently demands. However, we do try to have certain people call on our local trade, not only the customers who have been on our books for

years, but on people who have not been our customers, and it is surprising that after a certain number of calls new business develops as a result thereof. In making these personal contacts, particularly with members of the real estate board and Mortgage Bankers, we find that it is exceedingly profitable to be able to give them information, not only on our business, but on matters that affect them more directly. For instance, some mortgage men might be interested in FHA procedure or GI regulations, or he may be interested in knowing to whom he can sell a commercial loan and things of that kind. If they find that you are a source of reliable information, they not only welcome a call from you, but frequently come to your office for information."

### **Educate the Public**

The membership as a whole, through activities in local service clubs, speaking engagements and personal contacts, can do much to educate the public concerning the activities of the Title Association and create better public relations among our fellow citizens.

This report is submitted by:

- Glade R. Kirkpatrick, President, Guaranty Abstract Company, Tulsa, Oklahoma.
- Preston D. Brenner, Title Officer, Land Title Bank and Trust Company, Philadelphia, Pennsylvania.
- Senator Alfred Featherston, Manager, Guaranty Abstract and Title Company, Murfreesboro, Arkansas.
- L. A. Reuder, Vice President, Title Insurance Company of Minnesota, Minneapolis, Minnesota.
- Morton McDonald, Chairman; President, The Abstract Corporation, DeLand, Florida.

# A Speakers' Bureau, State Wide

STEWART ROBERTSON

*Manager, Abstract Dept., American-First  
Trust Co., Oklahoma City, Okla.*

Two years ago the Public Relations Committee of the Oklahoma Title Association mailed between 350 and 400 letters to a select group of (1) examining attorneys, (2) insurance companies, (3) oil companies, (4) realtors and (5) all savings and loan associations. This letter asked for frank expression, and criticism of the methods, form of abstracting, accuracy, neatness, service, etc. encountered. It also asked for suggestions for the general improvement of our profession.

The 136 replies received covered a multitude of topics, but there was one in particular that asked the "\$64.00 question," so far as I was concerned. Here is what a prominent Oklahoma attorney had to say.

## Public Education

"If I have any further suggestion with reference to the making of an abstract, it goes to the psychological problem in connection with land titles in general. A great many people still are of the opinion that when they have their abstract 'brought down to date', they have a perfect title; and when an attorney subsequently criticizes the title, the owner is quick to say that he knows the title is good because John Doe, the abstracter, 'fixed that all up 10 years ago.'

"I have often wondered why it would not be entirely ethical and proper for the abstracters to attach to the abstract, by sticker or special sheet, a statement to the effect that the abstract is not for the purpose of showing the validity or invalidity of the title, but that it is merely a record of the instruments on file affecting the land title, the validity of which is not approved or disapproved by the abstracter."

This attorney was talking right "down my alley." I am sure I am not alone in this large group of abstracters and title people, when I say I have heard a customer remark

all too frequently, "I know my title is good—I have an abstract." And, everytime I have heard that statement made I have not thought of the customer as being ignorant. I have thought of him as being uninformed. Ladies and gentlemen, whether you like it or not, since we are representative of the abstract profession it is our job to inform.

## Informative Speaker

The idea of an informative sticker or special sheet as suggested in the attorney's letter was given careful consideration by our Public Relations Committee. While I am sure we will all concede there is much merit to this suggestion, the idea, with our Public Relations group, did not exactly "click." In an attempt to draft the copy for such a form, we found as much individuality expressed as there were members of the committee. While the idea "died a natural death" in our group, that does not necessarily mean it would do the same in other state organizations. I am still of the opinion there is merit to the idea. It is our job to inform!

What that letter did succeed in doing, was making its contribution toward sowing the seeds of thought in the minds of the Public Relations Committee that something needed to be done by and for our state title organization toward educating the public—our customers.

## Agenda

Consequently, the next year when our committee met to discuss our program for the year, we had on our agenda for discussion

1. Advertising.
2. Radio.
3. Speakers' Bureau.
4. Educational Films.
5. Specialized course of instruction in state schools of higher education dealing with titles. (See Exhibit "A").

The Speakers' Bureau idea seemed

to be a "natural." Our committee was unanimously agreed that such a project should be our number one activity. (See Exhibit "B"). Apparently we had found something—which reminds me of a story.

The car of a traveling salesman completely broke down one night near the town of Moore, Oklahoma. The salesman, seeing a lighted farm house, walked to it and told the farmer his plight—a typical traveling salesman story. The farmer, after hearing the story, told the salesman he was sorry, but he had only one extra bed—and there was already a red-headed school teacher in it.

The salesman upon hearing this, and with a sly smile, announced to the farmer, "Sir, I'll have you to understand that I'm a gentleman!"

Whereupon, the farmer also with a sly smile, replied, "Yes, and so is the red-headed school teacher!"

So, as the traveling salesman became informed,—our Public Relations group decided we had found out something—that it was our project to inform. This is the "Why" of why our state-wide Speakers' Bureau came into being.

The "how" of the project resolved itself into two problems. First came the personnel problem—who would do the speaking? Secondly, and equally as logical—what would the speakers talk about.

### Our Committee

There were four of us on the Public Relations Committee and this is not a moment too soon to give credit where credit is due—to these committee members:

Chas. E. Bledsoe, Lawton,  
Kenneth Sadler, Muskogee, and  
John Warren, Newkirk.

We needed help—additional personnel from every corner of the state. Letters went out to 7 additional people. This, then, gave us a combined force of 11 persons—located in strategic sections of the state they could be called upon to cover. I am more than a little proud to announce that not a one rejected our request. In fact, here is a sample of the replies received:

"I have just returned from an ex-

tended vacation broke and somewhat the worse for wear, and find your letter of July 25. I don't know a damn thing about it, never expect to know much about it, but my feeling is if it is for the benefit of O.T.A. and you think I'm suited, naturally it is my desire to do my part."

As for our Speakers' Bureau members, that has been one of our easiest problems. Their cooperation and willingness has been of the highest order and from newspaper and other accounts reaching me, they have really "wowed" the groups they have appeared before.

### Personnel

It is worthwhile to note here that we have not yet had occasion to use all the persons enlisted in our Speakers' Bureau. I would like to give you their names, and I am sure if you care to correspond with any of them, they will be very glad to render any assistance they can. They are:

1. Helen Bizzell, Holdenville
2. J. L. Bowman, Jr., Claremore
3. O. L. DeArmon, Vinita
4. M. M. Hightower, Duncan
5. Roy C. Johnson, Newkirk
6. J. Herb Loyd, Stillwater
7. T. D. Nicklas, Lawton.

The "draft" caught a couple of more of our good OTA members—and ATA members, too—to-wit:

Wm. Gill, Sr., Oklahoma City, and  
V. Hubert Smith, McAlester.

Numbered among our "Honorary" members are:

Jim Doss, Eufaula  
George Goetzinger, Woodward  
John McCue, Fairview, and  
Irvin Mullican, Chickasha.

because of their interest and activity on behalf of this project. As this Speakers' Bureau activity continues to grow—and we anticipate it will—we will enlist the aid we need to fit the demand.

What have our speakers talked about?

### Interesting Displays

Just preceding the American Title Convention in Oklahoma City a year ago, we had a meeting of our Speakers' Bureau and one of the Speakers' Kits was given to each member of

our group. In each kit is some interesting title evidence, all photostated. Here's an old English deed, 207 years old; several Patents which are the inception of title as to Homestead allotments; Indian Surplus allotments; land from the United States of America; and land from the School Land Dept. of the State of Oklahoma, an old "shirt-tail" abstract, and a more "modern" one, last certified to June 6th, 1899. This abstract has a certificate in it which has been "fancied up" with a ten-cent revenue stamp. And, on the cover of this abstract is an attorney's opinion on the title, the like of which I have never seen before—and never expect to see again. For brevity, it is incomparable, I am sure you will agree.

It reads, "I hereby certify that I have carefully examined the within abstract and find that title to said property is vested in Chas. F. Johnson in fee simple." (See Speakers' Kit—Exhibit "C").

If the displaying of these instruments has aroused your interest—they are running true to form—and to the use for which they are intended. Actually, it has been my experience that a lay group is just as interested in this sort of thing, and perhaps even a little more so, than a group of title people.

### **"What Would You Say?"**

Here is another addition to our Speakers' Kit—it's a booklet entitled, "What Would You Say?" On the back page of the booklet, its author is identified as one Wm. Gill. In view of the fact I hang my hat in the same office as this author and it is his signature that validates the pay roll checks, I'm sure you will find it quite understandable when I say "this is one helluva good booklet."

If you should doubt my word—or if you should have occasion to make a speech and stand in need of some interesting material to incorporate in your talk—then I suggest you get out your Vol. 29, No. 10, Oct., 1950, edition of Title News and judge the value of this work for yourself. In it, McCune Gill, Past-President of the American Title Association, and a great title man of St. Louis, Mo., will again see in print his Biblical story

of the first transfer of title of record as taken from the 23rd Chapter of Genesis. I am convinced that in Civic Club circles in Oklahoma, this has been the most frequently told Bible story during 1951.

### **No Canned Subjects**

Our Speakers' Bureau members have not been operating from "canned" speeches. They have all preferred to work from an outline and I think it worthwhile to rapidly review the outline used by M. M. Hightower of Duncan, Okla., and which was printed and distributed as a supplement to the Speakers' Kit.

This is the "how" of a state-wide Speakers' Bureau—both as to lining up your speakers and placing at their disposal the working tools of such a project.

Getting the activity under way was accomplished by announcing to our state association membership through this sort of letter (Exhibit "D") that our Speakers' Bureau was set up and ready to go. Attached to the letter was an application (Exhibit "E") for a speaker. Several subsequent announcements were also run in our state association publication, the "Titlegram," plugging the activity of the Speakers' Bureau.

Now we get to the meat of this project. What was accomplished? Did the results justify the effort? In the light of our experience—what would we do differently today?

### **Results**

To date our speakers have appeared before 40 groups representing approximately 2306 individuals. 20 of the 40 groups have been civic clubs (American Business Club, Lions, Kiwanis and Rotary) with an attendance of 1116.

Fourteen appearances were before either local real estate boards or regional meetings of the Oklahoma Real Estate Association, with approximate attendance, 865.

Four classes of G.I.'s were addressed with 150 persons in attendance.

One vocational group in the high school at Fairview was addressed with approximately 25 students present, and it was my pleasure to ad-

dress the junior and senior students in the Law School at the University of Oklahoma with about 120 students present.

There you have it to date. Forty speeches with over 2300 persons "given the word." Later on this fall we are due to appear before the Oklahoma Savings and Loan League (state convention), and The Daughters of the American Revolution at Durant, and the state convention of the Oklahoma Lumbermen's Association.

On the question "Did the results (of our accomplishments), justify the efforts?" I'm going to let others answer that. Hubert Smith of McAlester talked to the Lions Club at Durant, and here is a report from Fred D. Blalock, of Durant, who secured the invitation. "Am glad to report that Hubert Smith made an excellent talk and received a lot of favorable comment. We had about 80 at our club meeting to hear him."

This comes from one of our speakers, M. M. Hightower of Duncan, who recently caught a double-header. At Waurika, Okla., on August 20th, he talked to the Lions Club at noon, then to Rotary at 7:00 p.m. He says, "Made my noon talk at Waurika today, first of the double-header. Am leaving in a few minutes to talk to Rotary Club. Strange as it may seem, they seem to like to hear about titles, and the "Remarkable Will" continues to WOW 'em."

### Enthusiasm

Another of our speakers, Chas. E. Bledsoe of Lawton, after having Hubert Smith address his Rotary Club, evidenced his enthusiasm thusly: "The more I see of the Speakers' Bureau program, the more convinced I am that no member of the association should overlook an opportunity to present these programs in his county."

And of Charlie Bledsoe's speaking ability, Dave Boyer of Walters, Okla., had this to say, "Thank you and the association for sending our friend Judge Bledsoe of Lawton. He made a fine and interesting address—his talk was immensely interesting and he received the congratulations of the Rotary members when he left."

Such comment as this is not the exception to the rule—it is the rule. Consequently I think our Speakers' Bureau is accomplishing a two-fold purpose. First, it is tangible evidence the state association is doing something for the individual members from the standpoint of informing the public about our business. And, secondly, while helping the local abstracter primarily, such a program also contributes its part toward strengthening the state organization through such organizational activities.

### Planned Program

And in conclusion, the question, "In the light of our experience, what would we do differently today?"

1. Do a better job of educating our state association membership of what we have to offer them. This is the first time this story has been told. I believe more invitations for speakers would have originated through our state group had they known more of the background of this project.

2. Contact the state headquarters for Rotary, Kiwanis, Lions, 4-H and F.F.A. clubs., etc., and make known to the state officers for their official publication, the facilities we have to offer.

3. Exercise more effort in getting news items published in the local papers, concerning the speaker, Oklahoma Title Association and nature of the discussion on titles. This sort of thing is valuable free publicity and we are entitled to it.

This subject of Public Relations and state-wide Speakers' Bureau can be pretty well summed up in the following eight lines:

The fish it never cackles 'bout  
Its million eggs or so  
The hen is quite a different bird—  
One egg—and hear her crow  
The fish we spurn, but crown the  
hen  
Which leads me to surmise—  
Don't hide your light, just blow  
your horn  
It pays to advertise—

Remarks of Stewart J. Robertson,  
American Title Assn. Convention  
September 25, 1951  
Colorado Springs, Colorado.

## EXHIBIT "A"

### Suggested Outline for Discussion at O.T.A. Public Relations Committee Meeting—Sunday, July 9, 1950

#### I—Scope of Program

##### A. Advertising

1. Newspapers
2. Legal Publications
3. Oil Directories
4. A.T.A. Directory
5. Mortgage Bankers publication (if any)
6. Savings & Loan League publication (if any)
7. Commercial Bankers publications (if any)
8. Miscellaneous publications we should consider.  
Estimated cost of proposed advertising \$.....

##### B. Radio

1. No particular suggestions here. We might discuss the possibility of providing an interesting script, if any radio stations would be interested in putting on a free (to us) program presented in the interest of general public information.  
Estimated cost of proposed radio programs \$.....

##### C. Speakers' Bureau

1. Organization of Speakers' Bureau
  - (a) Personnel—How many do you think should compose this group? Who (specifically)?
  - (b) How many times should a member be called upon to speak?
2. Topics upon which we can offer speakers
  - (a) World Wide Title Evidence
  - (b) "Loused-up" Titles—Title requirements
  - (c) Do you own your home—or just think you do?
  - (d) Real Estate—a complicated business
  - (e) Abstracting for a living (for high school or education groups)
  - (f) Abstracting—Whether you are selling, buying or borrowing

- (g) What other topics do you think would be appropriate?

##### 3. Groups before whom our association should appear

- (a) Civic groups.
- (b) Graduating seniors.
- (c) Local, district, regional or state oil meetings.
- (d) Local, district, regional or state Savings & Loan League.
- (e) Local, district, regional or state Mortgage Bankers Assn.
- (f) Local, district, regional or state Comm. Bankers Assn.
- (g) Local, district, regional or state Bar Associations.
- (h) Junior and Senior Chambers of Commerce.
- (i) Local Real Estate Boards.
- (j) Joe Scott, State Board of Agriculture.
- (k) Farm Bureaus.
- (l) 4-H and F.F.A. groups.
- (m) What other related or interested groups should we ask to appear before or solicit the representation of our association at their meetings or on their programs?  
Estimated cost of proposed Speakers' Bureau \$.....

##### D. Educational Films

1. We would be pioneering in this field. Do you want to "kick-the-ball-around" on this subject with the thought in mind of starting a long-range project? Estimated cost of Educational Film Survey \$.....

##### E. Specialized Court of Instruction in state schools of higher education dealing with titles.

1. Such a course of instruction would be beneficial not only to our group, but also to oil companies, mortgage companies, attorneys, banks, etc. Should we develop this potential as a part of our public relations program this year? It would necessarily be a part of the long-range public relations program. Estimated cost \$.....



## EXHIBIT "B"

### Budget Request of Public Relations Committee to Budget Committee

At a meeting of the Public Relations Committee, held Sunday, July 9, 1950, a program for the current year was adopted and it is anticipated the following phases of our program will need the amount of revenue noted:

#### A. Advertising:

*Oklahoma Petroleum Directory .....	\$ 50.00
*Oklahoma Law Review.....	54.00
Oklahoma Bar Journal .....	50.00
Oklahoma Bankers .....	50.00

Actual and Estimated  
Cost .....

(Note: The Executive Committee has already approved the first two items listed above and marked with an asterisk (\*).

#### B. Radio:

No recommendation by our committee. It is our thought the local abstracter will develop this local advertising medium if he is interested.

Estimated cost \$ None.

#### C. Speakers' Bureau:

The concensus of opinion among our committee members is that the Speakers' Bureau will be our most effective means of educating the public and thus promoting the number one objective of O.T.A. public relations.

We should at least expect to pay automobile mileage for our speakers. We estimate possible 60 speeches will be made which will involve average trips of 100 miles. Cost estimate—6,000 miles at 5c, \$300.00.

#### D. Educational Films:

No recommendation being made for this year. This should be investigated in the future and developed as a long-range project. Estimated cost \$ None.

#### E. Specialized Course of Instruction:

Same recommendation as (D) above.

Estimated cost \$ None.

## Summary

Advertising .....	\$204.00
Speakers' Bureau .....	300.00

Total Estimate.....\$504.00

Respectfully submitted,  
STEWART J. ROBERTSON,  
Chairman, Public Relations  
Committee.

## EXHIBIT "C"

TO: Members of Public Relations Committee and Speakers' Bureau.

It appears a paper will be given at the American Title Association Convention in September as to the activities of our Speakers' Bureau. Jim Sheridan has noted our publicity and the request for the paper has originated from him.

Those of you who have made speeches as a representative of the Speakers' Bureau have been called upon to supply me with the following information. The name of the organization you addressed; the place and time of meeting; number in attendance and the title of your address. Did you pass out any advertising material (if so, will you please send me a sample of such material). Was your address prepared in manuscript form? (If so, will you please furnish me with a copy of the manuscript).

As an example of the information needed here is an addition to your speakers' kit, which originated from M. M. Hightower when he addressed the Lyons Club at Comanche, Oklahoma, February 20th. About thirty persons were in attendance.

I used no manuscript—talked from notes, an outline of which is as follows:

### TITLES TO REAL ESTATE

How many of you gentleman own a piece of real estate or hope some day to own real property?

History of titles.

McCune Gill of St. Louis tells of first real estate transfer. (Bible reference).

Ceremonies dealing with land transfers. Handful of dirt, etc. Acceptance.

Old English Deeds. Samples.

The Statute of Frauds.

Louisiana Purchase.  
Treaty of Dancyng Rabit Creek.

Samples.

Patents. Samples.

Present recording system.

Cases in various courts, and instruments recorded in Stephens County. Number of tax rolls. Lien dockets. Federal Income Tax books. Gave number of each.

Who could keep a record of all real estate transactions, find all instruments of record, etc. The Abstracter.

Oklahoma Title Association.

Abstracter's Bond.

Shirt tail abstract. Sample.

New abstract. Sample.

Land is the basis of all our wealth.

There isn't a square inch of land in the world not owned by someone.

Many times the ownership is hard to determine, but nevertheless, ownership exists.

You do not own the house, the lot, or the land, you own the TITLE.

Various kinds of deeds.

Safeguards in buying real estate. Buy real estate as though you were buying it for your widow and children.

Insist on an abstract.

Attorney's opinion.

Survey.

Know the persons with whom you are dealing.

Minors. Incompetents.

Check your Deed against the Abstract or Survey.

Revenue Stamps.

Recording the Deed.

WILLS. Sample.

Keep a list of your real estate.

That's about it Stew, except the speech was perforated at several spots with some of my appropriate (?) corny jokes.

You can see Bill Gill's footprints all over this outline, as I used his very thorough and complete booklet "What would you say?" to good advantage.

I passed out about forty or forty-five of those booklets, "Their First

Home." Some of the boys wanted four or five copies.

The boys seemed to enjoy the following most of all:

#### A REMARKABLE WILL

More vividly than a portrait does untutored hand, which tediously en-scribes the holographic will, depict the nationality, character and idiosyncracies of the testator.

The remarkable specimen of a man's last will and testament, which we print below was offered for probate at the July 1934 term of the County Court of Anderson County, Texas. For its authenticity we vouch.

"I am writing of my will mineself that des lawyir wand he should have to much money he ask to many answers about the family. First think i want done, I dont want my brother Oscar got a dam thing. I got he is a mumser he done me out of four dollars foreteen years since.

"I want it that Hilda my sister she gets the north sixtie akers of at where I am homing it now I bet she dont get that loafer husband of hers to brake twenty akers next plowing. She cant have it if she lets Oscar live on it i want i should have it back if she does.

"Tell mama that six hundret dollars she has been looking for ten years is berried from the bak-house behind about ten feet down. She better let little Fredrick do the digging and count it when he come up.

"Pastor Licknitz can have three hundred dollars if he kisses the book he wont preach no more dumhead talks about politiks. He should a roof put on the meeting house with and the elders should the bills look at.

"Mama should the rest get, but i want it so that Adolph should tell what not she should do so no more irishers sell her vaken cleaner, they noise like hell and a broom dont cost so much.

"I want it that mine brother Adolph be my executor and i want it that the judge should pleese make Adolph plenty bond put up and watch him like hell. Adolph is a good bisness

man but only a dumkoph would trust him with a bested pfennig.

"I want dam sure that Schleimial Oscar done nothing get tell Adolph he can have hundret dollars if he prove to Judge Oscar dont get nothing; that dam sure fix Oscar."

At our State Convention coming up soon the association membership will be encouraged to use our Speakers' Bureau facilities to the utmost so we will have an ambitious program to report on at the American. When you are called on to make addresses in the future if you will please send me the information requested herein, that will provide the basis for the paper to be prepared. It is certainly gratifying to receive the reports from the places where addresses have been given and to learn that both our speakers and the group addressed are so enthusiastic over what we have to offer.

#### EXHIBIT "D"

ALL MEMBERS OF OKLAHOMA  
TITLE ACCOCIATION

Greetings:

The Speakers' Bureau of your OTA is set up and at your service. The effectiveness of the group is now up to you. If we have an opportunity to appear before civic groups and other organizations over the state, we will achieve in a large measure, the goal we have set for ourselves.

We now appeal to each member of the OTA to help us in this project which is designed to benefit not only each of you as individual abstracters, but also the state group as a whole. To that end we attach an application

for a speaker which is self-explanatory. Any group in your locality who wants a speaker, the request for that speaker can be originated on the attached form.

For your information you can assure any group desiring a speaker there will be no fee or expense involved to them. The speakers are currently donating their time, and mileage expense has been provided for.

Please help us get this program on the move. A new Public Relations Committee will be appointed following our next state convention in March, therefore the time is limited for you to use these facilities.

Yours very truly,

Your Public Relations Committee

#### EXHIBIT "E"

APPLICATION FOR SPEAKER

TO: Stewart J. Robertson  
American-First Trust Company  
101 First National Building  
Oklahoma City, Oklahoma

We would like a speaker to appear before..... (Name of Group)  
at..... (Place of Meeting)  
on the following date..... at the  
following town....., at  
..... o'clock A.M.-P.M.

I understand confirmation of this request will reach me shortly so I can pass it on to the interested group.

I also understand the OTA is making this speaker available to our group without expense to us.

(Signed) .....

(Company) .....

(Address) .....

# Report of Judiciary Committee

RALPH H. FOSTER, *Chairman*

*President, Washington Title Insurance Co., Seattle, Washington.*

## Adverse Possession

Thomas J. McDermott of Mansfield, Ohio, reports two Ohio cases on adverse possession:

Where a drain line has been constructed with the consent and co-operation of the servient owner, it must be concluded that original use was permissive. *Graw vs. Kramer*, 41 O.O. 332.

The building of a permanent structure on the property of another is an adverse possession, unless the possession is under a contract or license. *Wilberforce University vs. College of Education*, 86 App. 121, 40 O.O. 521.

## Bankruptcy—Homestead

Lawrence L. Otis of Los Angeles, California, reports an interesting case involving the homestead of a bankrupt:

*Sampsell vs. Straub* (C.A. 9, 5-22-51) 189 F. (2) 249.

Hall, D. J., ordered residence of bankrupts set apart as exempt although the declaration of homestead was not **recorded** (necessary to validate under State law) until **after** the date of bankruptcy.

Held: **Affirmed**; *White vs. Stump*, 69 L. Ed. 301, decided in 1924, not controlling in view of *Myers vs. Matley* (1943) 87 L. Ed. 1043, upholding a homestead declared under Nevada law, not recorded until after the adjudication of bankruptcy.

The rationale of the present rule is that on adjudication, the trustee in bankruptcy has the rights of a creditor holding a lien on the property by legal proceedings (Bankruptcy Act, sec. 70C) and since, under State law, a homestead might be perfected before **sale** on execution, the status of the trustee upon adjudication did not prevent the subsequent claim of homestead.

In California a money judgment is not a lien until an abstract is recorded; therefore it is not a lien "by legal proceedings" but by election of

the judgment creditor, and the trustee in bankruptcy is **not** in the same position as a creditor having a **judgment** lien which admittedly ranks a subsequently declared homestead. The theory that **title passed** at date of bankruptcy to the trustee in bankruptcy so that, thereafter, the bankrupt had no title to support the homestead is not applicable to **exempt** property (Sec. 6) and thus not applicable to property which the bankrupt could exempt by filing his declaration of homestead (within a reasonable time) after bankruptcy.

"At the date of adjudication and thereafter, the trustee remained subject to the persisting right which the (State) law gave the bankrupt as against the creditor categories under which the trustee's rights were subsumed, to assert and perfect a homestead exemption."

## Boundaries

Maclin F. Smith of Birmingham, Alabama, reports two cases on boundaries:

*Lundy vs. Northington* 50 Southern Reporter, 2nd Series, page 237.

This was an action to settle a disputed boundary line. Two brothers had acquired from their deceased brother and mother all interest in a quarter section. Prior to the death of their brother and mother, who had owned separate tracts, there had been long established a boundary line between the lands of the deceased brother and deceased mother. After the deaths of the brother and mother, the two brothers divided the land, each giving to the other a deed to his respective tract. Then, one of the brothers conveyed his parcel to an outsider, Northington, using the same description as in the deed from his brother. Northington claimed the land described in his deed, whereas the other brother insisted that the old boundary established between the deceased brother and deceased mother

was the proper line. Under these circumstances, the Supreme Court held that Northington took the property described in his deed.

**Milstead vs. Devine et al.**

**Miles et al. vs. Devine et al.**

Decided by Supreme Court of Alabama November 9, 1950. Reported in December 14, 1950, Advance Sheets.

The Court reiterates the doctrine of long standing that where one of two coterminous owners of land erects a line fence, and both parties exert acts of ownership over the land to the fence over a period of ten years or more, title to the land in each owner is perfected by adverse possession even though the fence may not be on the proper line. The Court then holds that when the title becomes perfected by adverse possession in this manner, it can only be divested in the same manner as a title conveyed by deed, and is unaffected by parole agreement with an adjoining land owner to join in a survey to ascertain or readjust boundaries.

There is a distinction between a case in which the claimant has, prior to the running of the full period of adverse possession, made an admission that his possession is not adverse and a case in which the title has already been perfected by adverse possession before such an admission was made.

**Covenants**

R. W. Jordan, Jr., of Richmond, Virginia, reports two cases on covenants:

**Adams vs. Seymour et al.**, 191 Va. 372, 61 S.E. (2d) 23 (1950).

By duly recorded deed, defendant owner of realty conveyed to Hanlon certain timber with removal rights. Afterwards, defendant deeded the same realty to plaintiff, defendant's deed not referring to the timber deed to Hanlon and conveying with covenants of general warranty, seizin in fee, right to convey, quiet possession, freedom from encumbrances, and further assurances. Plaintiff had both constructive and actual knowledge of the timber deed. Plaintiff later conveyed to Wade, omitting reference to the timber deed, but conveying with

general warranty and the additional covenants above set out. Wade sold part of the timber to Gough, who cut the timber. Plaintiff paid Hanlon's claim and thereupon sued defendant for the amount of such claim on the theory of breach of covenants in defendant's deed.

**HELD:** Affirming the lower court judgment for plaintiff, the Court declared: "A grantee may rely for protection on the covenants in his deed, even though he had constructive or actual notice of encumbrances."

**Oliver vs. Hewitt et al.**, 191 Va. 163, 60 S.E. (2d) 1 (1950).

Plaintiff owned and operated a store near two other lots also owned by him. Plaintiff conveyed the two near-by lots to J. P. Hewitt and Alexander by duly recorded deed containing the covenant that neither the grantees "nor their assigns, shall sell in any building to be erected upon said lots, any groceries or bottled drinks, except that bottled High Rock may be sold on said premises, on any day after six o'clock P.M." J. P. Hewitt and Alexander deeded the two lots to Pauline Hewitt, the deed not containing or referring to the above covenant. Pauline Hewitt took with actual and constructive notice of said covenant. She thereafter leased to Boyd, who had constructive, but not actual, notice of the covenant. Boyd sold on the leased lots groceries and soft drinks of any character. Plaintiff sought an injunction against the violation of the covenant.

**HELD:** The restriction is a personal covenant for plaintiff's sole benefit as distinguished from a covenant that runs with the land. This personal covenant falls with "That class of covenants which at law bind only the original parties as it does not run with the land; but, in equity, one is bound by such a personal restrictive covenant even though it does not run with the land if he takes title with knowledge of its existence, even though the deed did not recite the restriction." So long as plaintiff conducts his store for the sale of groceries and soft drinks, he can by injunction enforce in equity the coven-

ant against Pauline Hewitt and her lessee, Boyd.

In *House vs. Cotton*, 52 So. 2d, 340 the Supreme Court of Florida in a 4 to 3 decision held that a covenant by a lessee to reassign a liquor license to the landlord on termination of the lease was enforceable.

### Dedications

McCune Gill of St. Louis, Mo., reports two cases on common law dedications:

There can not be a statutory dedication of a street unless the city approves the plat but such a dedication can be common law dedication if accepted by the public. *Smith vs. City*, 238 S.W. 2d, 457.

Paving part of lot between building and street is not a common law dedication of the strip as part of the street. *Nickel v. City*, 239 S.W. 2d 519.

Mr. Gill also reports the case of *McBee vs. Twin* 238 S.W. 2d, 685, in which it was held that a deed of trust on building includes land on which building is located even though not included in description and deed can be reformed by court to include such land.

In *Pope vs. Bain*, 78 A 2d, 820, it appeared that during his lifetime the intestate had title to land purchased with his money, placed in the name of his sister to avoid payment of an existing judgment. In an action by the intestate's widow and children to impress a trust on the realty held by the sister, the Supreme Court of New Jersey held that the widow, who had no part in scheme to defraud creditors, was entitled to her dower right in the land held by the sister. But the heirs at law stand on a different footing, said Oliphant, J., since their estates are essentially derivative and successional and they can acquire no greater estate than their ancestor could have taken.

### Recording

Mr. Gill reports the case of *Pahler vs. Young*, 232 S.W. 2d, 393 in which it was held that the recording of deed by grantee with knowledge of grantor is conclusive evidence of delivery and also evidence that the deed is not a

mortgage. Possession by grantee is also evidence that deed is not mortgage.

### Adoptions

Mr. McDermott reports *National Bank of Lima vs. Hancock*, 85 App. 1, 40 O.O. 30., in which it was held that under Ohio law that where an adopted child dies intestate leaving no spouse or issue, his property passes to his blood kin and not to his kin by adoption, even though such property was inherited by the adopted child from his adopting mother and brother by adoption and identifiable as identical.

### Missing Person

David E. MacEllven, of San Diego, California, reports the case of *Sevier, as administratrix vs. Bank of America National Trust & Savings Association, as Trustee*, 225 P2d 3, in which the District Court of Appeal of California held that the statutory scheme for the administration and distribution of the estate of a person missing over seven years is constitutional, both insofar as jurisdiction and due process of law in general are concerned even though the statute does not provide for restoration of the property to the missing person irrespective of the length of the period of absence after which he reappears.

### Devise

Mr. Gill reports the case of *Glidewell vs. Glidewell*, 230 SW 2d, 752 in which it was held that a devise to wife "but if upon the death of wife there shall be any property remaining undisposed of then to Church" gives wife a life estate with power of disposal but that implied power of disposal does not give power to devise by will.

He further reports *Scullin vs. Trust Co.*, 234 SW 2d, 597, in which it was held that in a devise to wife of son without naming her the wife at date of execution of the will was meant and not the second wife who married soon after testator's death.

Maclin Smith reports *Stratford vs. Lattimer*, 50 So. 2d, 420, as follows:

In a deed executed in 1898 by S. Cornelia Graham to her daughter, Eugenia Stratford, the granting clause

read as follows: "... do hereby grant, bargain, sell and convey unto the said Eugenia Stratford, for and during the term of her natural life, and after her death to her children, the following described real estate."

The habendum clause of the deed reads: "To have and to hold the afore-granted premises, together with the appurtenances, privileges and improvements thereunto belonging, unto the said Eugenia Stratford for and during the term of her natural life and after her death to her children or their descendants; **that is, if any of the said Eugenia Stratford's children shall die before the said Eugenia, leaving a child, or children, such child or children shall take the interest in said lot to which the parent would have been entitled had it been living.**"

The court held that there was no real inconsistency between the granting and the habendum clauses and that they should be reconciled; and then states, "We think it sound to hold that the language of the conveyance from Mrs. Graham to her daughter, Eugenia, imports a contingent stirpital disposition of the property to the grantee's children after the grantee's death, resulting that the appellent, child of Jorn B. Stratford, received his deceased father's share on the death of said grantee, notwithstanding the fact that the father of John B. Stratford had, during his life, joined with his brothers and sisters in a conveyance of all their right, title and interest in the property to the said Eugenia Stratford."

#### **Child Born After Will**

In Thornton vs. Anderson, 64 S.E. 2d, 186, the Supreme Court of Georgia had before it a Georgia statute providing that the marriage of testator or the "birth of a child to him," subsequently to the making of a will in which no provision is made in contemplation of "such an event" shall be a revocation of the will and another statute providing that an adopted child shall be considered in all respects as if it were a natural child. It was held that an antecedent will, which made no provision in contemplation of an adoption, was revoked

by implication or inference of law by the legal adoption by testatrix of a minor child.

#### **Insanities**

Mr. McDermott reports the case of Shupp vs. Farrar, 85 app. 366, 40 O.O. 239, in which it was held that with respect to a transaction by a person prior to adjudication of insanity, no presumption of insanity at the time of such transaction arises, but evidence of such adjudication within a reasonable time thereafter may be considered along with direct evidence relating to competence.

#### **Municipality**

He reports also the case of Miller vs. Brookville, 152 O.S. 217, 40 O.O. 277, holding that when a conveyance of land owned in fee simple is made to and accepted by a municipality in perpetuity for use as a park, and there is no provision for forfeiture or reversion, the entire estate of the grantor is divested, and the title of the municipality thereto is not a determinable fee but a fee simple.

#### **Sale Under Execution**

Mr. Gill reports the case of Pankey vs. Wilker, 228 S.W. 2d, 915 holding that a sale under execution to outsider during appeal without bond is valid even though judgment is later reversed.

#### **Tenancies**

He reports also Hutcherson vs. U.S., 92 Fed. Supp., 168, holding that a tenancy by entireties becomes a tenancy in common upon divorce and husband and wife become tenants in common each an undivided one half interest.

#### **Tenancies—Remaindermen**

He further reports Noyes vs. Stewart, 235 S.W. 2d, 333 holding that a partition suit can be maintained between four life tenants but not between the life tenants and contingent remaindermen.

#### **Restrictions**

Mr. Gill reports a case involving building restrictions holding that where 5 acres were sold out of 40 acres, a restriction on remaining 35 acres against business or flats is void

as a monopoly and against public policy as to future owners.

Dean vs. Monteil, 239 S.W. 2d, 337.

In Wiggins vs. Young, 206 Ga 440, 57 S.E. 2d 486, 13 A.L.R. 2d 1237, it was held that the erection of a church building was not in violation of a restriction against use for business purposes.

### **Racial Restrictions**

The United States Supreme Court holding which barred a state court from decreeing specific performance of a racial restrictive agreement was construed by Federal Judge Holtzoff in Roberts vs. Curtis, 93 F. Supp. 604, as being broad enough to cover actions for damages as well. Judge Holtzoff's opinion makes no mention of the holding of the Supreme Court of Missouri in Weiss vs. Leason, 359 Mo. 1054, 225 S.W. 2d 127 to the contrary effect.

### **Restrictive Covenants**

Mr. McDermott reports the following four cases involving restrictive covenants:

One or more lot owners can not enforce observance of building restrictions against another lot owner in the same allotment unless it appears that the restrictive covenants were designed and adopted for the protection of all lot owners pursuant to a uniform plan, or unless such covenants were inserted in the deed for the benefit of such lot owner seeking injunctive relief. Grant vs. Hickox, 84 App. 509, 40 O.O. 9.

Building restrictions will not be enforced against the purchaser of lots without restrictions notwithstanding the fact that in the deeds to eleven lots out of sixty-six in the allotment, the original owners of the allotment and the purchasers covenanted that in the conveyance of other lots in the allotment the deeds shall contain like restrictions. Edwards vs. Trailer Park, 84 App. 518, 40 O. O. 13.

Notice of restrictions on lots purchased does not charge the purchaser with knowledge that like restrictions are contained in deeds to purchasers of other lots on the plat. Equity will grant injunctive relief where the de-

fendant purchased with actual notice of a general building plan. Smith vs. Volk, 85 App. 347, 40 O.O. 231.

When restrictions according to a general plan are inserted in each deed of an allotment, other lot owners can not enforce the restrictions against a certain purchaser unless the restrictions set forth such right to enforce, or unless such purchaser had notice of the general plan at the time he purchases. Blum vs. Hodapp, 55 Abs. 203. (App.)

### **Suit to Rescind**

John P. Turner of Kansas City, Mo., reports the following case:

Lohmeyer vs. Bower, 170 Kan. 442; 227 P 2d 102.

Lohmeyer, the plaintiff in the action, filed the suit to rescind a contract executed by him to purchase a house and lot in Emporia, Kansas, from Bower. The contract provided that the seller was to furnish a good, merchantable title, subject, however, to restrictions and easements of record. After the contract was executed, plaintiff discovered that the house was located within 18" of a side line, although a city ordinance called for a 3 foot setback, and that restrictions of record called for a two story house, and the house in question was only one story.

The court released the buyer from the contract, holding

- (1) that the provision in the contract relative to the title being conveyed subject to restrictions of record applied only to restrictions which were not violated, and
- (2) that the violation of the restriction, as well as the violation of the ordinance, rendered the title unmarketable.

### **Zoning**

Mr. Gill reports Kansas City vs. Wilhoit, 237 S.W. 2d 919 in which it was held that a city can enforce zoning law against boarding house even though other owners have violated without interference and even though there is a housing shortage.



### Performance of Contract

Harry J. Kane, Jr., of Washington, D.C., reports a decision of the United States Court of Appeals No. 10, 760, Allison vs. Mackey, decided January 25, 1951, concluding that a husband may not avoid performance of his contract to convey realty on the mere ground that his wife refuses to join in his conveyance, if the purchaser is willing to accept a deed from him alone, without indemnity or abatement of price because of the outstanding dower.

### Federal Income Tax Lien

Mr. Otis reports the following case: on priority of federal income tax lien: **United States vs. Fisher**, (U.S. D.C. Cal.) 93 F. Supp. 73.

By statute, the lien for unpaid federal income taxes arises when the assessment list is received by the Collector and is **prior** to all liens except in case of a mortgagee, pledgee, purchaser, or **judgment** creditor, prior to filing of notice of the federal lien. (26 U.S.C.A. sec. 3672)

**HELD:** The lien upon a fund garnished under writ of **attachment** in a creditor's suit against the taxpayer is **subject** and **subordinate** to the lien for federal income taxes where the assessment list was received by the Collector and demand made on the (garnished) fund in the possession of the Sheriff **prior to judgment** in favor of the attaching creditor.

While an attachment is now treated as creating a lien (but see, infra, holding of U.S. Sup. Ct.), it is **not** embraced in the liens accorded priority over the U.S. under sec. 3672. The lien of the U.S. had attached to the fund before the **attaching** creditor had become a **judgment** creditor.

**HELD,** further, that where the state had issued a warrant against funds, which warrant is given by law the effect of an **execution** levy, the state has the status of a **judgment** creditor, and thus acquired priority over the U.S. lien.

See, also **U.S. vs. Security etc. Bank**, 19 L.W. 4005, decided by the U.S. Supreme Court Nov. 14, 1950, reversing 93 C.A. (2) 608 (Cal. App.) and hold-

ing the U.S. tax lien **superior** to a prior attachment lien. The court there states that an attachment lien in California is contingent or inchoate; merely a *lis pendens* notice that a right to perfect a lien exists.

### Income Tax Lien

Grover W. Devine of Clayton, Mo., reports the following case:

Income tax lien filed against the husband is not a lien on property held by the husband and his wife as tenants by the entirety. **Hutcherson vs. U.S.**, 92 Fed. Supp. 168.

### Special Improvement Bond Lien

Mr. Otis reports a case involving a special improvement bond lien: **Thibodo vs. U.S.** (C.A. 9—2-15-51), 187 F (2) 249.

The United States had acquired the land by condemnation. Plaintiff, holder of a special improvement bond issued under the Improvement Act of 1911 (which constituted until paid a lien on the land for the full amount), had not been made party to the condemnation suit or been served therein, so he sued, under the Tucker Act (28 U.S.C.A. 1346 [2]) for compensation for what he claimed to be the appropriation by the Government of a valuable property interest.

The Government raised two defenses: (1) that the bond register in the city treasurer's office was not such public record as constitutes actual or constructive notice to the United States; and (2) that the United States did not take or destroy any lien belonging to the plaintiff—relying, however, upon cases ruling situations where the bond or lien right did not embrace installments accruing after the taking.

Held: for plaintiff on both points—that (1) the record of the assessment in the office of the street superintendent (and, after bonds issue, in the office of the city treasurer) is, under state law, notice to all persons and of the same force and effect as other public records; and (2) that under California law the plaintiff had a present proprietary interest in the land to be taken which conferred the right to have such interest considered

and determined in the eminent domain proceedings.

### **Lien for Taxes**

Mr. MacEllven reports *People vs. Chambers*, District Court of Appeal of California 101 A.C.A. 684 holding that a proceeding to enforce a lien for taxes on land held by the State Park Commission in trust for public use, and a tax deed issued pursuant to such proceeding, are void; and an asserted title resting on such deed and the payment of subsequent taxes, adverse to the states interest cannot be established by operation of the statute of limitations.

### **Bankruptcy**

He reports also *Beck vs. Unruh*, 231 P 2d 13, involving a tax deed to property of a bankrupt. The property was sold to the state in June, 1927. The bankruptcy petition was in November, 1927. The property was deeded to the state in December, 1932.

In December, 1936, the trustee in bankruptcy was discharged. In May, 1944, the property was deeded by the state to defendants' predecessor. In May, 1947, the bankruptcy proceedings were reopened and in December of that year the trustee sold the property to plaintiff. The District Court of Appeal held the tax deed to be void but the Supreme Court held that the tax sale to the state was not invalid but that the trustee took the title subject to the lien of the delinquent taxes and with the right to redeem therefrom, holding also that the trustee became entitled to the possession of the property. Proceeding on the doctrine of constructive abandonment the title was sustained on the theory that the deed from the state was valid since, at that time, the property was not in the active administration of the bankruptcy court.

### **Tax Deed Void**

Maclin Smith reports *Merchants National Bank of Mobile vs. Lott*, 50 So. 2d 406, in which the Supreme Court of Alabama upheld title under a void tax deed because of the bar of a statute limiting actions for the recovery of real estate sold for taxes to a period of three years.

### **Service**

W. R. Kinney of Cleveland, Ohio, calls attention to a prediction he made in 1949 concerning a holding in *Lenz vs. Frank*, 152 O.S. 157, that when a decree in a tax foreclosure suit is based upon residence service alone and a deed is issued pursuant thereto, the decree and deed may be set aside in a subsequent action in which it is proved that the summons was left at a place which was not in fact the defendant's usual place of residence. Mr. Kinney predicted extension of the doctrine beyond the narrow limit of tax foreclosure suits and got it in *Conner vs. Miller*, 154 O.S. 313, in which the court held that under the facts shown, the copy of process and return mailed it to defendant's last known residence was not sent to his "last known address" within the meaning of the code and that the judgment was therefore void. The court resolved a conflict with *Hendershot vs. Ferkel*, 144 O.S. 112, by modifying part of the syllabus in that case.

### **A Tax Sale**

Maclin Smith calls attention to the case of *Crim vs. Holcombe* decided by the Supreme Court of Alabama on December 14, 1950, which puts that court in step with the doctrine that a lessee may not defeat his landlord's title by purchasing at a tax sale.

### **Title Means Complete Ownership**

Mr. MacEllven calls attention to a case involving title insurance coverage decided by the Court of Appeal of California and reported in 226 P 2d, 24. The case is *Hocking vs. Title Insurance & Trust Co.* in which the court held that in an action on a title insurance policy in which complaint contained no allegation that the grantors of the property did not have a fee simple title, or that their title was unmarketable or defective, it must be presumed that a good fee simple title was conveyed. The word "title" commonly means complete ownership, in the sense of all the rights, privileges, powers and immunities an owner may have with respect to land, but does not include a guaranty that a city will issue build-

ing permits or permit the grading and paving of streets in an illegally subdivided area, or make a title unmarketable because of those restrictions, within the terms of a title insurance policy expressly disclaiming liability for loss by reason of "any governmental acts or regulations restricting, regulating or prohibiting the occupancy or use of said land or any building or structure thereon."

### Usury

Palmers Everts of New York reports an interesting case on usury:

In an action to foreclose a mortgage on real property, the defense of usury was interposed by the defendant, Cooper. The bond and mortgage were executed and delivered by her allegedly as collateral to secure the repayment of \$14,000 made by the plaintiff to Vale Products, Inc., a New York corporation on which a bonus of \$2,100 was concededly charged in addition to interest at the rate of 6% per annum. Where a borrower and a lender desire to effect a loan at a rate of interest in excess of the legal rate of interest, it has been held entirely valid for the borrower to incorporate

even though such act is solely for the purpose of taking the loan in the name of the corporation. Apparently in this situation form prevails over substance (*Jenkins vs. Moyse* 254 N.Y. 319). "Here the corporate entity has been created because the statute permits a corporate entity to make a contract which would be illegal if made by an individual. The law has not been evaded but has been followed meticulously in order to accomplish a result which all parties desired and which the law does not forbid." The defense of usury not being available to a corporation is not available to its individual guarantors or endorsers (*Ollendorf vs. Lissberger*, 176 Misc. 661, affd. 263 App. Div. 814; *Salvin vs. Myles Realty Co.*, 227 N.Y. 51). Nor may the lender be prevented from resorting to the security or collateral deposited by such guarantors. (*General Phoenix Corp. vs. Cabot*, 300 N.Y. 87). The defense of usury was dismissed and a judgment of foreclosure and sale directed. *Kings Mercantile Co., Inc. vs. Cooper*, 199 Misc. 381.

Respectfully submitted

RALPH H. FOSTER,  
Chairman

## Report of Legislative Committee

JOHN W. ZIERCHER, *Chairman*

*Title Officer, Lawyers Title Insurance Corporation, St. Louis, Mo.*

I want to thank all members of the Legislative Committee who co-operated by sending in their reports. I am sorry to report that all members of the National Legislative Committee did not respond to my request for a report as to whether or not their State Legislature enacted any laws affecting the abstract and title industry, and it necessarily follows that this report is not complete as to these states, and the following are those states from which no report was received:

Arkansas	Ohio
Connecticut	Oklahoma
Florida	Pennsylvania
Georgia	Rhode Island
Iowa	South Dakota
Louisiana	Texas
Massachusetts	Washington
Michigan	West Virginia
Nebraska	Wisconsin
New Jersey	Wyoming
New Mexico	

Some states reported no legislation and they are as follows:

Kentucky	Montana
Minnesota	North Dakota
Mississippi	South Carolina
Missouri	Utah
Missouri	Virginia

California, Delaware and Maryland reported that their Legislature was in session and final report would be made when the Legislature adjourned, but this final report has not been received to date.

The following states reported legislation as follows:

**Alabama** abolished the separate acknowledgment of the wife to release her homestead right.

**Arizona** increased to \$3500.00 the value of an estate which may be assigned to the surviving spouse or minor children and amended the statute governing the sale of real property in a decedent's estate by eliminating the necessity of filing a petition for sale and publication of notice thereof and providing for notice of sale by mailing to all interested parties.

**Colorado** revised their schedule of fees for filing various instruments with the County Clerk and Recorder.

Added a new section authorizing the Recorder of Deeds in Counties over 100,000 population to record by the use of microfilm.

Increased the Homestead exemption to \$5,000.00.

The Statute of Limitations to foreclose tax liens fixed at 15 years from maturity of bonds.

Extended the Lien of a Mortgage by a Corporation to the United States of America to include after acquired property if after acquired property of said Corporation is pledged in said Mortgage and whether or not in existence at the date of said Mortgage.

Authorized the District Court to determine within one year the descent of intestate property in a decedent estate.

Extended the lien of Mortgages or Deeds of Trust to thirty years upon filing an extension agreement within 15 years from maturity of Mortgage.

Action to redeem from tax sale must be brought within 5 years from delivery of deed by Treasurer with a saving clause for those under legal disability.

Authorized County Clerks and Recorders to make abstracts of deeds,

etc., provided there is not a licensed abstracter in his county.

**Idaho** limited the right to foreclose a Mortgage to 5 years from date of maturity thereof or as fixed by extension agreement filed within 5 years from maturity.

Revised the Schedule of filing fees, authorized the County Recorder to charge \$7.50 for certifying an abstract of title. By way of comment, County Clerks in Idaho have long been authorized and instructed to furnish abstracts of title to any person demanding same for the fee of 75c per instrument.

Created a lien for Income Taxes due the State of Idaho which shall constitute a lien for 5 years from date of certification of lien is filed in County where real property of taxpayer is situated.

Enacted a statute making the files of all incompetency proceedings confidential.

**Illinois** passed a bill which is designed to permit a tax buyer to acquire a merchantable title through a tax deed.

Amended the title insurance law by requiring all title insurance companies, domestic or foreign, prior to doing business in the State, to deposit \$50,000.00 for first county and \$5,000.00 for each additional county up to \$500,000. When the \$500,000 deposit is made such insurance company shall be entitled to insure titles in all counties of the State.

**Indiana** passed a Statute authorizing the recording of plats of subdivisions outside the corporate limits of any city or town and legalized those plats outside the city limits previously recorded.

Enacted a Statute providing for the succession of a surviving spouse to the decedent's interest in a land contract executed to them as tenants by the entirety.

Amended their recording Statute so as to provide than any mortgage or deed of trust encumbering both real and personal property shall constitute a mortgage lien upon the personal property when recorded in the Recorder's office of the county where

in such property is situated to the same extent as though actually filed as a chattel mortgage.

**Kansas** passed a bill requiring that the death of one joint tenant and the devolution of title to the property held in joint tenancy be judicially determined by the Probate Court.

**Nevada** amended their title insurance law by placing the administrative authority in the Insurance Commissioner instead of the Controller; and to require a deposit of \$100,000; to file schedule of prices for title risk insurance and imposed a tax of 2% upon the total title risk insurance premium income.

**New York** clarified its Statute authorizing a Notary Public to take acknowledgments anywhere within the State; added a provision requiring mailing of a copy of publication of service for infants and incompetents to a person upon whom personal service may be made on behalf of such infant; the County Court is given jurisdiction to determine claims to real property; the provisions of Public Housing Law concerning emergency housing for veterans and others are extended to March 31, 1952;

An action to recover real property cannot be filed after 30 years from the date cause of action accrues;

The New York State Soldiers and Sailors Relief Act was extended to April 1, 1953.

**North Carolina** reduced their Will Contest period to 3 years; authorized married women under 21 to execute purchase money mortgages and construction loans and broadened their recording Statute.

**Oregon** increased the homestead exemption to \$5,000.00; granted a Divorce Court power to extinguish dower and curtesy; repealed the Statute relating to Wills by married women;

Revoked the power of a Conservator to sell or mortgage the real property of his ward.

**Tennessee** enacted a statute authorizing the state to secure title insurance on property being purchased or sold by it.

**Vermont** enacted a law that foreclosure actions must be brought in the County where the real property lies and also that real property owned by husband and wife is not subject to State Inheritance Tax upon the death of one of them.

## Report of Committee on Federal Legislation

PAUL J. WILKINSON

*Vice-President, The Title Guarantee Co., Baltimore, Md.*

Mr. President, Ladies, Gentlemen and Guests of the American Title Association.

Shortly after I had been honored by being appointed Chairman of the Committee on Federal Legislation I wrote to all of the members of the committee asking for advise from them upon matters under our jurisdiction. All of the members replied promptly with helpful suggestions, and I am deeply indebted to all of the members, who will be named at the end of this report, for their valued assistance. One of the replies which I enjoyed thoroughly read as

follows: "Dear Paul: You are the most optimistic man I have encountered in a long time to expect help from a member of your committee. The Chairman of the Committee is supposed to do the work and the members are just window dressing." He and the members of his company have been most helpful to me in many legal matters and I appreciate being put right on the duties of committee members in the American Title Association.

In worrying about laws passed by the Congress my attention was called to a city ordinance put into effect in

a large southern metropolis when the health department became fearful of an epidemic of diphtheria. Every citizen was required to be vaccinated, and in order to simplify the operation the voting places in all precincts were designated for use and no one could be taken care of out of his precinct. A reasonably young colored woman appeared at one location, and after giving her name and address, was told that she would have to go to another location as she would have to be vaccinated in her precinct. The woman stated out in a huff and was heard to say, "Dat's de way wid dese white folks. Dey just vaccinates a white gal on her arm or leg, but us colored gals has got to be vaccinated in our precinct."

Many laws are before, or have been passed by, Congress which indirectly affect our title business, but we have tried to limit our report to those directly affecting us.

#### **Tidelands**

There is at present before Congress the Tidelands bill, by which coastal states would be given permanent rights to resources in submerged lands off their coasts for a distance of three miles. The passage of this bill, HR-4484, would nullify three Supreme Court decisions which held that the Federal Government has paramount rights to tidelands. From the three-mile limit out to the Continental Shelf would still be considered subject to Federal ownership.

This bill was passed by the House by a vote of 265 to 109, and was sent to the Senate on July 31, 1951. Hearings have been conducted before the Senate Interior Committees, but no action has been taken as yet.

#### **Big Corporations**

Senate Bill S-1659 was introduced by Senator Humphrey of Minnesota to make it unlawful for any person to be an officer, director or employee of more than one corporation having total assets in excess of \$60,000,000—, but this would not apply to banks, trust companies and common carriers subject to Interstate Commerce Commission jurisdiction, nor would it prohibit an officer, director or employee of a parent corporation from acting in a similar capacity with a subsidi-

ary when more than 50% of the voting stock of the subsidiary is owned by the parent corporation.

#### **Defense Housing**

Both houses of Congress are conferring on Defense Housing Bill (S-349) which seeks to establish statutory limits on home-financing credit controls under Regulation X.

#### **Relief for Home Owners**

The House of Representatives has passed HR-62 which provides that where profits have been made in the sale of a home it is not necessary to pay income tax thereon provided that the proceeds are used in the purchase of another home within a specified time. **Note. Passed later and now law.**

#### **Power of Appointment Act**

The Powers of Appointment Act HR-2084, was passed by Congress and was signed by the President on June 28, 1951, which authorizes the giving of a power of appointment to some one by deed or will to dispose of property in any way except to the appointor's own estate or to his own or his estate's creditors without liability for the payment of Federal Estate or Gift Taxes in the appointor's estate. The act also affects powers of appointment given before the act was passed provided that a part of the power is formally given up before November 1, 1951. This act is retroactive to October of 1942. The act is too complicated to discuss fully in this report, but should be the subject of a special discussion, as it is quite important in determining liability of property for payment of a Federal Estate or Gift Tax.

There may be other legislation, of interest to the title industry, which may have been passed during the year, or which may be now pending, but your committee believes that it has covered the main matters.

Respectfully submitted,

George C. Rawlings  
E. DuVal Taliaferro  
Herman Berniker  
Gordon M. Burlingame  
James G. Schmidt  
Carlross Morris  
Paul J. Wilkinson

Committee.

# Report of Planning Committee

WM. GILL, SR., *Chairman*

*Executive Vice-President, American-First Trust Co., Oklahoma City, Okla.*

Since the appointment of this committee by President Al Suelzer in 1945 an original and five supplemental reports have been submitted and unimously approved by the membership. Time does not permit specific mention of the contents of same.

The committee continues to stress that fact that all of these reports cover a rather long range program, and its recommendations were not intended to be put into effect by the Board of Governors except and only, as finances would permit and conditions warranted.

Reports of committees containing proposed additional services, etc., are worthless unless constantly kept in mind, and unless action is taken thereon. The Board of Governors cannot, at any of its always crowded meetings, give the time required to carefully consider these recommendations. It is not my intention to criticize any of the acts of the official family of the American Title Association. I do, however, recognize the usual tendency of trade associations to sometimes thoughtlessly let matters of importance become "shop worn" and "moth eaten."

The hours of work and effort devoted to our problems during the past 5½ years—as reflected by these reports should be of sufficient importance to command constant thought and study—plus a little more action. A projected program becomes a "scrap of paper" when forgotten.

## Screening Committee

The committee submits the following fine recommendations:

1. That a committee of three be appointed to review or screen all of the Reports of the Planning Committee to determine if any more of its recommendations can be put into effect during the coming year. (Since this report was prepared such a committee has been appointed with myself as Chairman, and Past President Al Suelzer and Earl Glasson.)

## Convention Issue

2. That the proceedings of this convention be published in one complete volume, either as a "Convention Proceedings Issue of Title News" or as a separate publication of the Proceedings of the 1951 American Title Association Convention. (Since this report was prepared the Executive Committee has authorized the publication of the convention proceedings in one volume and in due course of time you will receive the proceedings in "one package.")

## Title News Standardized

3. That the Executive Committee consider the advisability of making all future issues of Title News uniform in size—that size to be 6 x 9, even though such uniformity of size may result in reducing our revenue from commercial advertising or increases the cost of publication. (Since the report was prepared the Executive Committee agreed to this item.)

## Directory

4. The American Title Association Directory has heretofore been published during the latter part of the year—it contains the names of officers, members of the Board of Governors, Chairmen of Sections, and standing committee of the Association, etc.—all of this information becomes obsolete following the election of officers, etc., at our annual convention. It is recommended that consideration be given the advisability of publishing future issues of the Directory following each national convention commencing with the year 1952. This may present complications but as nearly as possible the Directory should contain the list of current officers, board members, committees, etc.

## Past Presidents Council

5. It is recommended that there be created a Council of Past President of this Association, to be composed of Past Presidents of the American

Title Association, which council shall serve purely as an Advisory Council.

If adopted, it is recommended that this proposal be referred to our Committee on Constitution and By-Laws for appropriate action, looking to constitutional recognition of said council.

The purpose of this council, in the opinion of the Planning Committee, should be that of an advisory group, with their services available to current officers. These distinguished Past Presidents have a vast fund of experience and talent and it is completely in order that the organization should continue to avail itself of these talents. (This excellent suggestion comes from our Executive Vice-President, James E. Sheridan.)

The members of the Planning Committee do not have a monopoly of ideas for improving the services which may be furnished by your Association.

### We Solicit Ideas

The committee asks that you ladies and gentlemen, engaged in the title business, by letter or otherwise, tell us how the American Title Association can better serve you.

Those who are responsible for watching operating costs of the Association are not going to recklessly spend Association funds. Our financial position is strong—for the first time in many years we have sufficient funds available to invest in most any worthwhile activity. I repeat the request—"tell us how we can better serve you."

Your membership dollar is now earning a reasonable return—the official family of the American Title Association is desirous of further increasing the value of your membership.

## Report of Committee on Constitution and By-Laws

JOHN J. O'DOWD, *Chairman*

*President, Tucson Title Insurance Company, Tucson, Arizona*

Certain proposals, as later defined, were put forth at the 1950 Convention of this Association, held in Oklahoma City. The proposals were approved at that convention, and the matter was referred to the Committee on Constitution and By-laws for appropriate action.

Proposals to amend our Constitution to conform to the action taken in Oklahoma City were presented at the 1951 Mid-Winter conference of the organization, held in St. Louis.

Notice of these proposals was sent to all members of the Association under date August 17th, 1951, all of these steps being in conformity with the provisions of our Constitution on amendments thereto.

Your Committee on Constitution and By-laws now presents to you, for final action, certain resolutions that the Constitution of this Association be amended as follows:

"BE IT RESOLVED that Article IV of the Constitution of American Title Association be and the same

hereby is amended to read as follows, to-wit:

### "ARTICLE IV—SECTIONS

Section 1. The following sections of this Association are hereby established:

(a) Abstracters Section, which shall include all abstracters except those who, by reason of affiliation with a member of the Title Insurance Section, elect to join that Section;

(b) Title Insurance Section, which shall include all title insurance members, abstracters who elect under the provisions of the above paragraph to join this Section, and attorneys individually eligible for active membership under the provisions of this Constitution. On section matters each member shall vote only as a member of such section.

Section 2. Each section may adopt such by-laws and conduct such activities as are not inconsis-



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ent or in conflict with the constitution and by-laws of this Association.

Section 3. Administration of the affairs of each section shall be vested in an Executive Committee composed of seven members together with the President of this Association, ex-officio. On the first day of the annual section meeting held concurrently with the annual Convention of this Association the members of each section shall elect a Chairman, Vice-Chairman, and Secretary, which officers shall also be Chairman, Vice-Chairman, and Secretary, respectively, of the Executive Committee, and at the same time elect four other members of the Executive Committee. Such officers and members shall hold office for one year commencing with the ending of that annual section meeting and until their successors are elected and assume office."

"BE IT RESOLVED that Section 1, Article VI of the Constitution of American Title Association be and the same hereby is amended to read:

#### "ARTICLE VI—MEETINGS

Section 1. This Association shall hold an annual convention meeting at such time and place as may be fixed at the preceding annual convention meeting or by the Board of Governors. The Association shall hold an annual business meeting which shall be known as Mid-Winter Conference at such time and place as may be fixed by such Board."

"BE IT RESOLVED that Section 1, Article XII of the Constitution of American Title Association be and the same hereby is amended to read as follows, to-wit:

#### "ARTICLE XII—AMENDMENT OR REVISION

Section 1. Motions or Resolutions for amendment or revision of the Constitution and By-Laws may be offered at any mid-winter conference or annual convention, by a vote of two-thirds of the active members in attendance and voting there. Notice of such proposed amendments or revisions shall be sent to each member of the Asso-

ciation by the Executive Vice President not less than thirty days prior to such next annual convention meeting and posted in a conspicuous place at such next annual convention meeting by twelve o'clock Noon on the second day of such meeting."

BE IT RESOLVED that Section 13 of Article VIII of the Constitution of American Title Association be and the same hereby is amended to read:

"Section 13. At each annual convention meeting there shall be a Nominating Committee composed of the seven last past-presidents who shall be in attendance thereat.

It shall be the duty of this Committee to nominate candidates for the offices of President, Vice-President, Treasurer, Chairman of the Finance Committee, and five members of the Board of Governors provided for in Section 1 of Article VII of this Constitution. The report of this Nominating Committee shall be posted in a conspicuous place at the Convention Meeting by 6 o'clock P.M. on the second day of the Convention Meeting. Other nominations may be made for any of the offices above mentioned, provided the names of such nominees are posted in such conspicuous place at the Convention Meeting at 9 o'clock A.M. on the third day of the Convention Meeting, over the signatures of seven voting members in good standing in the Association, no two of whom shall be accredited from the same state. The report of the Nominating Committee shall be made on the floor of the Convention and such additional nominations, if any, shall be announced by the Chairman at the Session of the Convention Meeting.

The election of Officers and Governors shall be held on the last day of the convention meeting.

Nothing contained in this Section shall be construed to affect the election of Officers or Executive Committees of either of the Sections of the Association."

The resolutions were duly seconded and carried unanimously.

# "A Man's Judgment Is Only as Good as His Information"

or

## "Where Do We Go From Here?"

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### MEMBERS OF PANEL

Earl C. Glasson, *President*, Black Hawk County Abstract Co., Waterloo, Iowa.

Paul W. Goodrich, *Vice-President*, Chicago Title & Trust Co., Chicago, Illinois.

Stewart Morris, *Vice-President*, Stewart Title Guaranty Co., Houston, Texas.

George C. Rawlings, *Executive Vice-President*, Lawyers Title Insurance Corporation, Richmond, Virginia.

A. W. Suelzer, *President*, Kuhne & Company, Inc., Fort Wayne, Ind.

Mortimer Smith, *Moderator; Vice-President*, Oakland Title Insurance & Guaranty Co., Oakland, California.

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### EARL C. GLASSON

"A man's judgment is just as good as his information." No one can take exception to that statement. Only as we are informed are we able to decide our course of action.

But "Where do we go from here" takes us to an entirely new field. If we of this panel are supposed to tell you exactly what will happen in the next month, or six months or a year, I fear you are to be disappointed. But we can, and I am sure will, tell you our thoughts.

I think every title man has come to the conclusion, as I have, that conditions in the title business parallel closely economic conditions of the country at large. Therefore, any analysis of current national trends and current national conditions is a guide to an analysis of the conditions which will confront us in the operations of our own business.

### Clearings and Debits

To satisfy myself, I kept track of bank clearings and bank debits—ordinary dollar turn-over of business activity in my community—over a period of years. By comparing the ups and downs of the figures thus

revealed, as against the figures representing my own order intake, I discovered there was a very close parallel. If there was any great divergence, it was because of local conditions. By reference to the newspaper files, or through my own memory, I could discover the reason.

Therefore, I think if we keep ourselves advised on current national conditions, we will be advised on probabilities within our own businesses.

### War Prosperity

At the moment, we have a prosperous condition in the country. But we must admit that is largely due to the fact our government is spending freely for a specific (and gruesome) purpose. The money is pouring out from the Federal treasury in all directions and for many goods and services. It has created a condition of prosperity, and the title business is profiting along with all other industries.

I am convinced if we keep in mind we are tied in with the national picture, we will be in better position to evaluate the future of our own business, than if we merely thought, "Today John Jones must have a house. That means business for me.

Tomorrow John Jones doesn't need a house; I might just as well go out of business."

It isn't so, because John Jones, of course, is replaced by Jim Smith and Jim by his successors, and so forth. The more prosperity there is in the country, the more money John Jones and Jim Smith and their successors have to spend for housing.

You might take marriage records; you might take death records; or birth records. All these have a bearing upon that in which we are most interested—the volume of orders for title services.

### **PAUL W. GOODRICH**

While the entitlement of this panel makes it appear that a collection of seers and prophets is to appear before you, the contrary is true. We don't have to appear as experts, but every one of us from day to day and month to month has to make certain decisions and take specific action whether there is enough information available or not. We are experiencing times when some of the factors that historically have influenced our business are of less relative importance. Nowadays action taken by the government which is inflationary or deflationary; which restricts money and materials or releases them is of primary importance in analyzing the trend of business.

#### **By Government Order**

Chicago with many other areas has been showing a decline in real estate activity for almost a year. Just a year ago the Federal Government through the FHA and other agencies announced a complete reversal of its policy with regard to the construction of new housing. War conditions in Asia and growing inflation at home prompted it to decide that beginning immediately new housing instead of being encouraged by every method which could be devised would thereafter be discouraged. It was stated quite frankly that the volume of construction of new residences would be curtailed by one-third within the ensuing year.

### **Regulation X**

The Federal Reserve Board issued Regulation X cutting down the ratio of the amount of mortgage loans to value on residential building financed by institutions under its direct control. The FHA and VA also announced similar policies. Later almost all financial institutions voluntarily conformed to somewhat similar policies under the persuasion of the Government agencies. This later applied to Federal Savings and Loan Associations which are such a large factor in current mortgage lending.

### **Government Bonds**

The most effective restriction, however, was an indirect one. In March, 1951, the Federal Reserve System removed in part its support of prices of long term government bonds and permitted them to decline several points. Insurance companies and other large lenders on housing had part of their funds "temporarily" stored in that type of governments. These financial concerns were unwilling to sell their bonds at a loss in order to make commitments on mortgages at interest rates as restricted by FHA and VA so most of them bowed out of the market.

### **Restrictions on Materials**

In addition to these restrictions on financing, the Government began issuing restrictions on the use of materials under National Production Authority orders, with which you are familiar.

### **Net Result**

The combination of all these various forces designed to restrict residential building has been felt in varying degrees all over the country. In some areas new starts on housing have been most drastically reduced. To a somewhat lesser degree the sales of used or existing houses have also fallen off.

There is some evidence that the Chicago area may have been affected less drastically than some other parts of the country. For the first six months of 1951 our business was off only 1.5% compared with the same period a year ago. The third quarter

of 1951 however shows a more substantial decline of approximately 10% below the 3rd quarter of 1950. It must be remembered, however, that in the 3rd quarter of 1950 real estate activity was at its highest peak since May of 1946.

### **Encouragement**

However, there are a number of more encouraging factors that have appeared in the Chicago area in the most recent period and these have been reflected in our orders.

August sales of real estate increased 7% compared to the previous month. There was also an increase in the number of loans made in August over July of about 5%.

### **A Suggestion System**

In times like these where the volume of business is largely determined by policies adopted in Washington, we have determined that it is of utmost importance to continue our studies toward simplification of our routines. We have been aided in this by a Suggestion System which was inaugurated in 1949. Since it was put in operation we have adopted 245 suggestions made by employees and have paid out over \$6,000 in awards ranging up to \$700 for a single award. In aid of the suggestion system, we are planning a work simplification program to help employees in thinking of more economical ways of doing their own jobs.

Through the adoption of improved procedures and methods and by upgrading the level of employee, the productivity of the individual employee has been increased by more than 100% over a period of twelve years.

### **Staff**

Another problem that confronts all of us in times like these is the one of maintaining an adequate well trained staff and in being able to maintain a fair program of salary administration.

### **Expedients**

We have been able to maintain our staff by adopting a number of expedients. We have been forced to adjust a number of our operations so that

we could use part time help. We have had as many as 45 employees who worked shorter hours each day that were convenient to them. Our experience in this field has been more favorable than we had hoped. During the summer months we were able to augment our staff with a number of temporary employees. As these have mostly left us we are finding it difficult to replace them with full time help.

Ever since the outbreak of the Korean war and continuing through the present time, the market for boys generally is better than that for girls. Our company has enjoyed considerable advantage by continually holding its doors open to young men regardless of their draft status. It has to be confessed that the mental attitude of these young men is very similar to what it was at the outset of the Second World War. Their knowledge that the continuance of their civilian work is contingent upon the military situation gives them a basic insecurity not only in their work, but in their total environment. Continually, they are torn between constructive work and education endeavors and the point of view that says "What difference does it make? —I'll soon be in the army anyhow." This fluctuating point of view adds tremendously to labor turnover both in civilian and war industry.

### **Job Evaluation**

Inevitably, where there is high-level employment coupled with large military demand, individuals available to supply their services are able to command high salaries that by no means are commensurate with their ability and performance. Positions advertised in the newspapers invariably are at higher salary levels than those enjoyed by people who are working at the same jobs. Inflation continues with every news bulletin. As is always the case, general levels of salaries and wages lag behind the increases in costs of living. As is well known, however, certain wages subject to collective bargaining have increased in greater percentage than costs of living, and have forced pro-

duction price increases and further inflation. The fact that salaries and wages have been frozen has, of course, been a partial deterrent. So far, it has been a more successful program than was the case in the Second World War. Both business and government have profited from their last experience. Business, for the most part, has improved and perfected the job evaluation and salary administration programs that were organized prior to or during the previous salary and wage controls. Government already has taken a realistic view toward the operation of well organized salary administration programs, and more recently has shown a practical approach toward cost of living changes. Because of the fact that we have had a job evaluation system, we have been able to continue to give wage increases where they were not outside the ranges established in the job evaluation system for the positions involved.

### Summary

To summarize in the words of the subject of this panel, I believe that we are going on from here to give increasing attention to simplifying and streamlining our procedures. We are going to have to adjust to a tighter labor market and to administering wages in an inflationary market subject to government controls.

### STEWART MORRIS

First let me report that our gross income for 1951 was up considerably over 1950. 1950 had been our biggest year. 1951 gross income is above that. But our net, or profit, is considerably less. That is caused by factors we all experience. We are now in the second six months of the year, and the pinch is on, with costs remaining high and income dropping rapidly.

In March or April of 1950, it was reported the Administration wanted more public housing "because private industry could not meet the needs." It was indicated we needed 850,000 housing units. The year wound up with about 1,400,000 housing units, so private industry greatly exceeded what had been predicted it could do

According to the Bureau of Labor Statistics public housing starts in June, of 1951, totaled 42,300 units, being an increase over the number of public housing starts in June of 1950.

In the same period, private industry was being forced to curtail its housing activities and private housing "starts" January to June, 1951, decreased by 26%.

So here's a situation where private industry reduces its housing starts because of inflation dangers, and the necessity of conserving critical materials. As against that, it would appear thousands of public housing units, far in excess of any number previously started, are to be thrown on today's market in competition for materials and financing.

### Credit Restrictions

Credit restrictions have put another curb on business.

Many of our smaller communities have not experienced public housing. Public housing, political public housing, more aptly describes it. In the last session of our Legislature in Texas, we formed a coalition of mortgage bankers, lumber men, the real estate fraternity and the title companies, and we were able to persuade the Legislature to pass a bill prohibiting the City Government, by its Council or Aldermen, from voting a public housing proposition. It must be submitted to the people for a vote by the people at a general election. We had such a proposal in Houston and I am happy to report we beat it there.

Life is being extended through improved medical care. Births are on the increase. We're getting more people in the world and we're getting more families—and that means more title work.

### Free Enterprise

I know our country has a great future if we can only preserve our way of doing business, our American way, and our title business is part of that business enterprise of America.

### More Advertising

I am satisfied if we all stepped up our advertising and public relations work, the results would be more business. I am not criticising you in mak-

ing this statement; my own company could do much more than it does.

### Lower Priced Homes

There could be some improvements in the type of house built, in my judgment. Builders seem to prefer to build nothing that costs less than \$10,000, maybe more. A great majority of city workers can't afford such a house. As mortgage money becomes available, I think it would pay us to urge builders to construct a house to cost less—maybe \$5,000 or \$6,000. And that would be taking a big forward step to shut off some of this public housing agitation.

An optimist is one who sees opportunity in every calamity. A pessimist is one who sees a calamity in every opportunity. I am an optimist.

### GEORGE C. RAWLINGS

Several years ago, one of my associates presented me with a crystal ball for a desk ornament with this verse:

"Unaccustomed as you are  
To crystal ball gazing,  
We think the time is ripe for you  
To make with the amazing  
And solve your problems one and  
all  
By revelations from this ball."

I tried on various occasions to make use of this crystal ball but with dubious results. However, when Mort Smith asked me to participate on this panel to discuss "A Man's Judgment Is Only as Good as His Information" or "Where Do We Go from Here?" I concluded that the time had come to place implicit confidence in the crystal ball; therefore, what I will say concerning the future may be considered truly as crystal ball gazing and any similarity to my own thinking is purely coincidental.

In any consideration of the future, it seems to me you have to break the subject down to—

- (a) The immediate future, which we will say one to five years.
- (b) The reasonable future, which may be considered as a generation or even more.
- (c) The ultimate future, which is the end result.

For the purpose of this discussion, we will consider these different theoretical periods of time in reverse order.

### The Ultimate Future

It would take a dyed-in-the-wool "fair dealer" or an out-and-out "socialist" to express at this time any degree of optimism as to the ultimate future. The entire world is engaged in the greatest long range armament program known to man, the result of which may create an explosion at any minute. The United States is looked upon as the money bags of the world. We now have a national debt of \$257,000,000,000. For the present, we are scheduled to spend 40 to 60 billions of dollars annually in an effort to avoid war and at the same time be prepared for the conflict if it materializes. Under the circumstances, no one can predict the ultimate size of the national debt.

In the face of this crisis, we continue to indulge in so-called social reforms beyond our ability to pay. Various pressure groups demand subsidies in one form or another without any regard for the people as a whole, all of which must be paid for by taxes and increased debt, which in turn means more taxes.

### Inflation

Unless by some miracle there is a change in the trend, which I doubt, then ultimately in my opinion one of two things must happen—runaway inflation, which means ruin, or repudiation of its obligations by our government, which means ruin. Either one means the end of free enterprise and the democratic form of government. It may take a generation or more for the blowup to come, but come it must as I see it! Therefore, I despair of the ultimate future.

### The Reasonable Future

We then have what we term as the reasonable future. The utter disregard for the taxpayer's money and the gradual elimination of the free enterprise system, which will ultimately result in our financial ruin, will, strange as it may seem, contribute in a large measure to apparent pros-

perity for a period of time. What that period of time will be is beyond my knowledge and ability to forecast.

### **More Taxes**

In order for the government to carry the continually increasing public debt and to furnish the public subsidized luxury, it is absolutely essential that the amount of taxes collected each year continue to increase. The percentage of our gross income which is presently being paid in taxes is such as to preclude any substantial increase percentage-wise or you kill the goose that laid the golden egg, and, therefore, additional taxes can only come from increased gross income. This increased gross income can only be attained by the process of inflation which process the government controls.

Increased gross income means, of course, everyone will be doing more and more business in dollars. Our economy will be kept at a very high level by artificial means. The real estate and building business is such an integral part of our economy, and the title business is geared so closely to the real estate and building business it would naturally follow that the title business would also be at a high level.

### **Some Do, Some Don't**

I don't mean to convey that I expect business to be maintained at a high level without any letup of downswing of any consequence. I don't believe, however, that world affairs or the politics of this country will permit a major depression or any appreciable deflation until the ultimate blowup comes, at which time I doubt if any of us here today will be around to participate.

Again, I don't mean to convey that life is going to be so easy that we won't have to work just as hard as ever to operate a successful business. For some time to come, initiative, hard work and intelligent management, or the lack of it, will result in some being on top and some on the bottom of the pile. It will be a matter of degree, and, as time goes on, those on top and those on the bottom will find themselves nearer the middle.

### **The Immediate Future**

Now to get down to the third period, or the immediate future, I will have to be more specific because it is a simple matter for you to check my analysis of the situation and question my conclusions.

The fact that the title business is geared directly to the real estate, mortgage and building activities means that any consideration of the future outlook for the title industry must necessarily be based on an analysis of the real estate, mortgage and building business.

Most of you are familiar with Roy Wenzlick, the real estate analyst, and his charts showing the real estate cycles for the past hundred years or more. Historically, according to Wenzlick, the present real estate boom has more than run its course. He still has faith in his 18 year real estate cycles, but admits that Government controls and planned economy may prolong the present boom. Far be it from me to take issue with such an eminent economist, but in my opinion Government controls and planned economy, which is another way of expressing the same thing I have already said, will knock the 18 year real estate cycle into a cocked hat. Surely, there will be ups and downs. Some localities will be affected more than others, but the duration of the down-swing will be limited to the time it takes the planners to cook up another sedative or pump-priming program. So as I see it, there will be no prolonged real estate depression.

A year ago in Oklahoma City I predicted at a luncheon of the Oklahoma Real Estate Board that in face of credit restrictions and the possible material shortages, the number of new housing units started in 1951 would not exceed 750,000 units. This compared with 1,350,000 started in 1950. It subsequently developed that the planners had set up the credit restriction on a basis of controlling the number of new housing units to 850,000 in 1951. It was contended by authoritative sources, and particularly officials of National Association of Home Builders that the controls which



had been put into effect would not permit more than 500,000 units to be started in 1951. None of these estimates as far as I know took into account the change in the mortgage money market which occurred in early spring of this year.

### **Mortgage Money**

Ready availability of mortgage money is an important factor in our overall picture, and it may be well to explain briefly what happened. The mortgage lending institutions, and particularly life insurance companies, had made large commitments to purchase mortgage loans based on the assumption that they could convert part of their Government bond portfolio into cash to supplement funds usually available for investment. The Federal Reserve Board had, previous to March, 1951, pegged government bonds at slightly above par, which in effect permitted holders of such bonds to consider them as cash. In early March, without previous announcement, the Federal Reserve Board stopped supporting Government bonds with the result there was an immediate decline in the Government bond market. This, together with the decision of the Treasury Department to permit the exchange of 2½% 1972 bonds for non-transferable 2¾% long term bonds, seriously affected mortgage loan interest rates and, obviously, made 4% GI loans and 4¾% FHA loans less desirable. Life insurance companies and other lending institutions found themselves in a position where it would be necessary for them to take a substantial loss on the sale of Government bonds and, therefore, were required to digest outstanding mortgage commitments without the sale of bonds as had been contemplated. They also had the problem of what to do about interest rates as well as the payment of premiums on loans and other acquisition cost. This situation caused most life insurance companies to immediately get out of the mortgage loan market.

### **A Carry Over**

In face of the target of 850,000 units set by Government planners,

the estimate of 500,000 units as predicted by informed sources and the drying up of mortgage money, to say nothing of my own estimate of 750,000, how can we account for the fact that it is now estimated that there will be between 900,000 and 1,000,000 new housing units started in 1951? The answer obviously is the tremendous amount of carry-over from 1950. [There was no way, at least the information was not available to me, to translate as of the fall of last year the plans for housing projects ready for early construction and outstanding mortgage loan commitments into new housing units.]

The bare fact remains, the title industry has been living off its fat or backlog to a large extent in 1951. In the case of my own company, the difference between current orders and policies issued is conclusive proof. We will probably wind up 1951 with about the same or a slight increase in gross business over 1950, but this is accounted for by the large increase in gross business in the early months of the year. The percentage of increase has been steadily down, and I have no doubt the last quarter of the year will practically wipe out the increase reflected as of this time. This is particularly true because the last quarter of 1950 was by far the largest of the year.

### **Outlook for 1952**

Further evidence that the business enjoyed by the title industry in 1951 was not originated in 1951 is the fact that FHA approvals in 1951 are approximately 50% less than in 1950. Now, all of this would indicate a rather pessimistic outlook for 1952, except for several factors. There is some evidence that mortgage money is loosening up. It is thought by the end of the year the life companies will have fairly well digested a large part of their outstanding commitments; therefore, the trend should be for easier mortgage money. Statistics show that individual savings have materially increased during the year and should be reflected in more potential homebuyers, but, most of all, the planners are at work. We now have

a new housing bill with modified credit restrictions and other modifications. Fanny May appears to be ready to open up the secondary market to some extent. R.F.C. has under consideration a plan for furnishing construction money.

### **Always Subject to War**

There is no way to tell what the war situation will be and, therefore, to what extent it will further affect availability of materials. In any estimate of the immediate future, we will have to assume that the war situation will not become more acute.

It is estimated that 450,000 to 500,000 new housing units are required annually to keep pace with new families being formed and old housing being replaced. To this may be added another 150,000 to 200,000 units as a result of undoubling of families and slum clearance or rehabilitation of obsolete units. With this estimate as a basis and my theory that our planned economy will not permit a major or prolonged depression, I arrive at the conclusion that for the period designated as the immediate future, the building and real estate business, and therefore the title industry, may use 500,000 to 600,000 units as a norm and expect business to fluctuate up and down from this point, depending upon the influencing factors which prevail at the particular time.

### **Decline in 1952**

In view of the fact that at present we have pretty well exhausted our backlog and it will take some time for the stimulus of the relaxed credit restrictions and provisions of the new housing bill to be reflected in completed transactions, as well as the fact it will probably be some months before investors will be aggressively soliciting mortgage loans, I would expect a sharp decline in business for the first quarter of 1952 as compared with the same period of 1951. It would be my opinion that the trend should be upward after the first quarter and pick up momentum the rest of the year, which of course will be the reverse of what happened in 1951.

It would surprise me if (the potential for) completed business for the industry in 1952 would exceed 75% of that in 1951, and it could be considerably less.

### **A. W. SUELZER**

I have just greatly labored with a shaky pencil and, I fear, that like the mountain, I have brought forth a mouse. For better or worse, I am going to turn it loose and find out whether those of you who make the better mousetraps can catch it.

I hope I can decipher it. More and more advancing age and decrepitude are reflected in my handwriting, the more so understandably under the smouldering impact of last night's hospitality as so generously extended by the Colorado State Title Association.

Happily for me, my words fall during the period of wavering interest.

I was intrigued by the topic assigned this panel, particularly the part that asks so naively a question that has been troubling all mankind since the dawn of time,—“Where Do We Go From Here?” The first part of the panel question namely, “A Man's Judgment Is Only as Good as His Information” left me baffled, as something way out of reach for me and I abandoned it with a great sense of relief, as of weighty problem satisfactorily solved.

It seemed to me, as I thought of the panel topic, that I am on the wrong side of the table; and that as trends in the title business baffle me more and more and I have less and less left over from Truman at the end of the year, it is I who need information.

Perhaps President Mort meant to include in the question the impact of Washington policies and politics on the national economy. If he did, may I note that the only titleman I know who is a serene and confident passenger with Truman at the helm of the ship of state, and who seems to know where it and we are going.

—is most unfortunately not on the panel. I refer, of course, to the distinguished member from Tucson.

President Mort, in a letter addressed to the panel, named one more tangible item we might talk about—and I clutch at it as a straw,—namely, coffee. I am intrigued by the fact that coffee is on the agenda for serious discussion at this National Title Convention, about to become history, and I would like to say a word about it.

My opinion about it is, I fear, like that of the old maids and bachelors on the proper way to rear children, because in my shop, I do not dispense coffee or cokes, or histamine or vitamin tablets, or induce feverish energy by the cadence of sweet sound.

I have a fairly strong conviction that those things—and I group with them pensions, insurance and sick benefits,—do not, as applied to the employee, get the lead out, do not move him to remain in your employ, do not attract applicants for employment to come in. I believe that all those things he considers part of his wage for which QUO, he feels it is quite a bit of alright to give the least possible QUID, and takes the

position that, if you don't like it, you know what.

As a corollary to that view, I have the thought that the only thing that weighs with the employee is his TAKE HOME PAY.

I believe that if you were to have your employees vote on the question of more TAKE HOME PAY and less lollypops, they would vote for more pay.

I believe that if you made your pay the highest in town, you could enforce the discipline of an honest days work; you could hold your employees and promote in them the qualities you want them to have; that applicants for your employment would make a beaten path to your better mousetrap.

And, I believe also that the savings from lollypops would enable you to raise pay very substantially without any substantial increase in costs of operation.

In any case that is my policy and I probably have no greater personal problems than do those among you who go in for a constantly growing miniature welfare state in your office.

# TITLE INSURANCE — LEGAL

## Proceedings in Meetings of Title Insurance, National Title Underwriters and Legal Sections (Joint Sessions)

### Report of Chairman, Title Insurance Section

EDWARD T. DWYER

*Exec. Vice-Pres., Title & Trust Co., Portland, Ore.*

The most difficult task of the Chairman of the Title Insurance Section, I have found, is that of preparing an annual report. Duties performed, which at the time of performance loomed so important, seem to fade into insignificance upon their completion.

#### **Prepare Good Program**

The real bugbear, of course, is that of framing a program for the Title Insurance Section for the Convention. No matter how much time and effort is spent choosing interesting and instructive topics, and exercising the greatest care in the choice of the right men to handle the topics, there result too many rejections and refusals. The past two years have, I assume, been the rule rather than the exception, although in all fairness I must admit this year was far better than the previous one. This year, only about 50% of those originally invited to participate refused.

As in other organizations, a small percentage of the membership are willing workhorses. And what a relief it is to Jim Sheridan and the chairmen of the several sections that we have such men. I need not mention these gentlemen by name. You know them.

There is an old saying to the effect that familiarity breeds contempt. As a general proposition this may be true, but in my opinion, if more of the members of the Association would familiarize themselves with the workings of our organization, their appreciation of it and their willingness to participate in its activities would increase one-hundredfold.

I am reminded of a thought ex-

pressed by Goldsmith in "The Deserted Village," "Those who came to scoff, remained to pray."

Did it ever strike you that our organization is unusual? Our membership, scattered as it is throughout the land, is composed of people operating under different property laws and customs, many of them differing greatly in their method of operation, yet able to present a solid front as a national association. One would think that even our committees, comprised as they must be of men from all sections of the country, with diverse interests and thinking, would be an impotent force, yet the reverse is true. In truth, this factor seems to lend charm and potency to our organization.

To me, at least, it would appear there is nothing we need to make our organization greater than the simple expedient of inducing more of our people to serve in its activities.

#### **Member Interest**

Along this line, I wish to prove my point by the following comment: During the past six years, our company has acquired seven additional offices, and strange to say, the only title plants we acquired in which we were disappointed in their mechanical setup had been owned by title men who were always too busy to attend any of our national conventions and few if any of our state meetings. One would think that idle curiosity, if nothing else, would have prompted those men to fraternize and talk with men from other places to see how things were done in other counties. Not one of the owners of those plants, to my knowledge ever took a spot on a

program. They chose to let their minds shrivel up, busying themselves with their own petty affairs, consuming time and effort in attempting to accomplish what others had already accomplished. Valuable information would gladly have been imparted to them had they availed themselves of the opportunity to meet with their fellow title men.

The routine matters of my office have, I trust, been taken care of in a

more or less satisfactory manner. The only proof I have for this statement is that our esteemed Executive Vice President has not had me on the carpet once during the year. I cannot close without expressing my gratitude to that same efficient guardian of our destinies.

I wish to add my thanks to those gentlemen with whom it has been my good fortune to have worked during the past year.

## Report of Chairman, National Title Underwriters Section

MURRAY L. JONES

*Vice President, Kansas City Title Insurance Company, Kansas City, Mo.*

I have been a member of the Executive Committee of this section for the past ten years. During that period I don't believe that it has ever been of much benefit to the title insurance industry or even to the companies in the section. I don't believe this year will be any exception. So, two or three years ago when merger of this section with the Title Insurance section was suggested, I was heartily in accord and resolved that were I ever Chairman, I would sponsor and work for this change. Your Board of Governors beat me to it by taking such action last fall at Oklahoma City while I was out of circulation with pneumonia. Their action has my hearty approval and, under the circumstances, I think it is entirely fitting that I should officiate at the interment.

### Identical Problems

Through the years I have served on this Committee I have come to feel that the interests and problems of the companies in this section are identical with those of all other title companies and that our personnel can be of much more service to the title insurance industry by being a part of, and participating in, the activities of the title insurance section. I speak on behalf of all members of my Executive Committee in pledging our utmost in co-operation and help.

The past year has been a busy one

for all of us but our section has found time to discuss and study the following matters which should prove to be of general interest:

### Reinsurance and Coinsurance

1. Reinsurance and coinsurance for companies outside of the scope of the National Title Underwriters section. We did not during the year present any comprehensive plan for this, for various reasons. First, any participation in a reinsurance program by the group would mean that companies seeking reinsurance would often, in effect, be purchasing it from companies with whom they were in competition. Second, any plan for reinsurance by the group of companies would necessitate rating and approval of the applicant company by several companies. I believe that agreement on this would be difficult, to say the least. It is therefore my opinion that every title insurance company needing reinsurance facilities can and should make satisfactory arrangements with some other larger company in its own state or area for the procurement of such reinsurance by contract agreement. Certainly it is most desirable from every standpoint to do everything possible to keep this reinsurance business within our title fraternity. Most of you are at least vaguely familiar with the type of reinsurance contract furnished by Lloyd's of London. Some of you are

using this company for various reasons. Despite the exceedingly low percentage rates, which look attractive at first glance, I maintain that this type of contract is costing you more and affording your customers less protection than the contracts currently in use among the title fraternity. If any of you still prefer this type of coverage, I do not hesitate to predict that you could get this same general form of contract from several of our own title insuring companies.

#### **Standard Owners Form**

2. The member companies of our section decided nearly a year ago that it would be advisable for many reasons to have in use, at least among ourselves, a standard owner's policy. It is with great pride that I report to you that the executives of our companies unanimously agreed that John Q. Public should be afforded the protection he feels he is getting in a title insurance policy, and our efforts have been devoted to this end result. While many items of this form are still in controversy, I do predict that such a policy will be approved by our companies in the very near future; and we will be glad to make the standard form available to any of you who are interested. (This form has now been adopted and a supply has been deposited with National Headquarters for any companies which requests a copy.) Personally, I believe that every form and every pro-

cedure which title insurance companies can standardize is a long step in the right direction. I feel that we owe much to Mr. R. W. Jordan, Jr., and his sub-committee for their excellent work in preparing this new form.

#### **Leasehold Policy**

3. And last, we have, during this past year, started to study and work on an entirely new concept of leasehold title insurance. The formula now followed by most of our companies is as obsolete as the Model T Ford. With long term leases on the increase, especially by national corporations, I believe that our title insurance companies have not only missed the boat on this business, but have also missed what otherwise might have been a very substantial and lucrative business. Mr. E. J. Eisenman, the president of my company, is Chairman of this committee. To date not much progress has been made, but when and if a practicable plan is worked out, it will be made available to the entire industry, and I can assure you that henceforth we will work with your committee on standard forms.

I wish to thank the members of my own Executive Committee and also the Chairmen of the other sections. It has been a privilege to work with you and I appreciate the opportunity of having been Chairman of the now defunct National Title Underwriters Section. Thank you!

# REGIONAL DISTRICT CONFERENCES TITLE INSURANCE EXECUTIVES

## Southwest

Arkansas  
Colorado  
Kansas  
Louisiana  
Missouri  
New Mexico  
Oklahoma  
Texas

## Central

Michigan  
Ohio  
Indiana  
Illinois  
Wisconsin  
Minnesota

## Atlantic

Delaware  
Dist. of Col.  
Maryland  
Massachusetts  
New Jersey  
New York  
Pennsylvania  
Rhode Island  
Virginia

## Central States District

### Report of Chairman

Clarence Burton, First Vice-President, Burton Abstract & Title Company,  
Detroit, Michigan

The Central States Regional Title Insurance Executives' Conference, of the American Title Association, was held June 4th and 5th, 1951, at the Edgewater Beach Hotel, Chicago Illinois.

On the first day the following topics were discussed:

#### Agenda

1. Fee (or owners) policies with full coverage.
2. Mechanic's liens, reversionary clauses, FHA and VA regulations regarding racial restrictions.
3. Co-operation between title companies within the same locality.
4. Free services rendered, such as tax searches on existing policies, recording, payment of taxes and revenue stamps, including advancement of cash for same.
5. Pet requirements of various mortgage companies and government agencies.
6. Requirements to be met in the future, such as discharge of an existing mortgage which has been paid off but the discharge has not been received as yet.
7. Attaching a copy of the subdivision plat and a copy of the

applicable building restrictions to each owners policy.

8. The "unit plan", so called, of plant operation.
9. Co-insurance and re-insurance joint and several policies.
10. RFC mortgages which include all other land the mortgagor now owns or may hereafter acquire during the life of the mortgage.  
How are you protecting yourselves against this all inclusive clause, particularly on mortgage policies?
11. Removal of any of the standard exceptions on fee policies, such as, mechanic's liens, rights not of record and questions of survey, when issued to Federal Housing Commissioner, after foreclosure of FHA mortgage and when the mortgage was formerly insured on a without exception mortgage policy.
12. Expenses involved in settling a claim over and above the actual amount paid on the claim.

On the second day the following topics were discussed:

1. Any innovations in plant operation.
2. The question of allowing attorneys employed steadily with a title company practicing law

after hours and to what extent. Does the company recommend an outside attorney to a customer if asked?

3. Pension, retirement and profit sharing plans.
4. Personnel problems, salaries, overtime and bonuses.
5. As usual, we tried to gaze into the crystal ball and prognosticate business conditions for the last ½ of 1951. Also comparison of business of the first ½ of 1951, with the first ½ of 1950.
6. Costs over last year.
7. Regulation "X". Secondary mortgage market now that Federal National Mortgage Association is all but gone, and the advisability of a title company procuring an outlet for a secondary market for customers.
8. Impounding of abstracts submitted with applications for Title Insurance for examination purposes, either with or without the consent of the applicant.
9. To close the session, Bill Gill,

gave an excellent talk on advertising, followed by discussion on same.

Our meeting this year was attended by twenty-one senior title insurance executives from title insurance companies in Michigan, Ohio, Indiana, Illinois, Minnesota and Wisconsin, besides our illustrious Executive Vice-President, Mr. James Aloysius Sheridan, without whose help I would have been hopelessly lost, and Mr. William Gill, of Oklahoma City.

I believe, I can speak for our whole group in saying that we find these conferences instructive and well worth our while. I would like to urge everyone eligible to attend these meetings. The group is small enough to be very informal.

Our meeting, I believe was successful except for the last five minutes, when all present were worn out, tired and weary and wanted to go home, so they quickly slipped into a coma and re-elected your present chairman for another year.

## Atlantic Coast District

### Report of Chairman

H. Stanley Stine, Executive Vice-President, Washington Title Insurance Company, Washington, D.C.

The fifth annual regional conference of title insurance executives of the Atlantic Seaboard District of your Association was held at the Statler Hotel in Washington, D. C. on May 4th and 5th, 1951.

This conference might more accurately be called inter-regional for, executives from other districts always being welcome, we had present, representatives from every other region in the country. There was one from Oakland, California, one from Oklahoma City, two from Kansas City, Missouri, two from Chicago, one from Muncie, Indiana, two from Detroit, one from Birmingham, Alabama and one from Jacksonville, Florida. These are all in addition to the twenty-five members of our own district in attendance.

As a matter of fact, the conference assumed the proportion of a miniature national convention for the entire executive committee of your Association was present and a goodly number of delegates were accompanied by their wives.

### Informal

The pattern of past conferences was followed. None of the proceedings were recorded and the meetings were entirely informal. There were no speakers and although the chairman had a partial program planned in advance, all discussions were strictly on a round table basis where any member is welcome, and a number do, advance any particular problem for discussion to his heart's content.



We covered every subject common to title insurance men including management, operating costs, production, the important man power situation, and what effect the defense program may have on our industry. Individual problems of common interest embraced the request of the Federal National Mortgage Association to have an owner's policy issued after acquisition of title by its pursuant to a foreclosure; the requirement of the Veterans Administration with respect to the chattels or personal property covered by certain loans; regulation X; issuance of the form of title policy approved by the Department of justice for use by the government; limitations or rights of aliens to hold real estate; increasing mechanic's lien filings and loss experience occasioned thereby and others too numerous to record here. Naturally, no one came up with any all inclusive answers, but it was healthy to hear how the other fellow solved his problem, which may be yours and mine tomorrow.

I must report, however, on one phase of the conference in which our members have at last attained unanimity. Each member company present indicated that it was now equipped to obtain and furnish all of the co-insurance and re-insurance it might need to protect against any size risk it may write. This, to me, is a long step forward in our industry.

#### **Entertainment**

But all was not work. There was

some recreation. Washington, D.C., being unique in that it is the Capital City of our great nation, offers possibilities not enjoyed elsewhere, so we decided to experiment with an innovation. We planned a cocktail and dinner party, to which we invited certain public officials as guests. Our list of invitees included the top officers of various government agencies, whose work has to do with land or titles to land and the response was indeed gratifying. Of those who accepted, three were from the Department of Justice; six from the Veterans Administration; one from the Atomic Energy Commission; two from the Reconstruction Finance Corporation; three from Federal National Mortgage Association; one from Federal Housing Administration; two from the Interior Department; two from the Department of the Army; the General Services Administration and one of the Commissioners of the District of Columbia. I need only to report that the party was a tremendous success and further elaboration would be anti-climax.

The ladies had previously enjoyed a sociable afternoon of their own, starting with a luncheon at one of our choice spots in the suburbs.

It might be worthy of note that our conference now boasts of a small treasury of \$139.00, which is deposited in and earning the current dividend of a building association in Washington. I would like to recommend to my successors that they expend it prudently.

## **Southwestern District**

### **Report of Chairman**

**William Gill, Sr., Executive Vice-President, American-First Trust Company,  
Oklahoma City, Oklahoma**

Before reporting on the SW Regional Conference, I want to pay tribute to the most excellent manner in which Stanley Stine handled the Atlantic Coast meeting and Clarence Burton the Central States District.

It was my good fortune to attend both of these meetings, I picked up

some good pointers from the "fast stepping Title Company executives in attendance.

By all means try and go to one of the three conferences to be held next year. You will find it worthwhile and profitable.

The Southwest Regional Confer-

ence of Title Guaranty and Title Insurance Company officers held its 5th consecutive meeting in Oklahoma City, June 1st and 2nd, 1951, with 27 in attendance from the states of Texas, Louisiana, New Mexico, Colorado, Kansas, Missouri, Michigan, Tennessee, Indiana, Arkansas and Oklahoma.

Numerous matters pertaining to management and other operations were discussed. Perhaps the most spirited argument pertained to mechanic and labor lien coverage.

### Loss Records

Another important question was "what kind of a loss record does your company keep?" During the discussion it developed that some companies only record as losses actual cash paid to the beneficiary. In most cases the time and miscellaneous expense, including clerical and stenographic labor, telephone, telegraph and travel expense, etc. exceed the cash paid out. Certainly, all items of expense constitute a portion of the total loss. Because attorneys of a legal department are on the payroll of the title company is no reason why their time and work in handling numerous legal matters, conferences and even the trial of a case, should not be considered a legitimate item of expense and a charge made comparable to the fees charged by non-salaried attorneys.

I believe a title company is "kidding itself" with reference to total losses and claims paid unless its records truly reflect what the total loss

may be—the actual cash settlement never represents the full loss sustained.

A college boy on a blind date was parked underneath one of Oklahoma's beautiful elm trees with a lovely moon playing peek-a-boo behind the clouds, being in a rather romantic mood, inquired of his most charming company, "what would you think if I stole a kiss?" The young lady snuggled in his arms, with her golden locks upon his shoulder, smiling sweetly, replied, "what would you think if a fellow stole only the windshield wiper when he could have stolen the whole automobile."

### Modernize

When it comes to keeping a record of losses, I suggest that you use the complete automobile and not merely the windshield wiper.

Those attending the SW Regional Conference were so impressed with the prevailing Oklahoma City hospitality or perhaps its burlesque shows and its bright night spots, that the 1952 Conference will be held in the capitol city of one of the greatest football states of the nation.

The latch string will be hanging out for any title company officer interested in any question pertaining to the business, regardless of whether such companies operate in the great eight state area comprising the Southwest District, which by Roger Babson has been so appropriately designated as the "Magic Circle" of the North American Continent.

## Title Insurance—Losses and Claims

HENRY J. DAVENPORT

*President, Home Title Guaranty Company, New York, N.Y.*

### LADIES AND GENTLEMEN OF THE CONVENTION:

I am bringing to you this report on title losses, claims and expenses with considerable hesitation. The results of my efforts to obtain information sufficient to make an authoritative report have been, to say the

least, discouraging. However, I feel in honor bound to fill the spot allotted to me in your program if for no other reason than to keep faith with the officials of those title companies who have been willing to divulge the facts of their operations and who have taken the trouble to answer these

questionnaires. Also, it has seemed to me and to some others that the subject is of sufficient importance to be kept alive for discussion even though the views expressed in this paper may perhaps be characterized as personal and not sufficiently documented to have authority.

### Gage

I can perhaps properly begin with quotations from recent writers on title insurance. Dr. Daniel D. Gage, Jr., in his book, "Land Title Assuring Agencies in the United States," published in 1937, said: "Particularly in the matter of statistical data concerning title costs and the income and losses of assuring agencies is there need for further inquiry."

### Goth

Otto A. Goth in an article on Title Insurance in California appearing in the "California Law Review" for the month of June, this year, said "The amounts and causes of losses constitute the great mystery of the title insurance business. Very little has been done until recently to exchange loss experience. Reports to state insurance departments are meager and incomplete, and title companies have not disseminated loss history perhaps for fear of adverse title publicity. This might be either because of the low percentage of losses or because the information tends to make the company appear careless."

### Smith

The late brilliant title man, Laurie Smith, in a paper appearing in the February, 1939, issue of "Title News" said what should perhaps have been the final word and said it in his usual picturesque language: "I deny that the title losses which have been suffered by the title industry have been sufficiently heavy to warrant a study and analysis animated solely by a desire to obviate their recurrence.

"I assert that our approach to the subject of title losses has been frequently fallacious, and, in some instances, almost assinine.

"Such title losses, properly analyzed, interpreted and publicized, may

serve to awaken thought in the dormant intellect of the nitwit, who, wholly devoid of accurate or adequate information, disparages title insurance."

However important a study and knowledge of title losses may be in connection with either developing or defending rate schedules, the immediately compelling reason which influences me is a matter of "public relations."

### Hall

Charlton Hall, in "Title News" for November, 1941, reported that one individual, commenting on the small ratio of losses to title company charges, stated "this is the kind of a racket that makes the slot-machine operator turn green with envy."

Unlike life insurance, fire insurance, bonding insurance, there is no universal practice which induces the use of title insurance. As far as I know, there are only two spots in the country where title insurance is anywhere near universal in its use and many places where it is not used. Even in the high value heart of the City of New York many transactions close with the use of other evidences of title and in a widening circle away from the center title insurance has a decreasing spread. It is still the job of all of us to sell our product to the community.

The underlying concept which pervades the sales resistance to title insurance is the widely accepted belief that "all titles are good" and that "there are no title losses."

For the dissemination of this idea, and you all know that it is widespread, we in the title industry have only ourselves to blame. In spite of the fact that Laurie Smith, Lawrence Zerfing, Ed Dwyer, Charles Fogg and others have pled with us over the years at our conventions and conferences, it still seems to be true that our companies, or the great majority of them hide or sharply minimize the costs of meeting their obligations under their title policies.

### Questionnaire

Last June a questionnaire went out to 115 companies. 45 were returned.

42 includede loss statements. 70 companies, carefully selected as being representative of the title industry from coast to coast, failed to return the questionnaire. I believe that we may assume either (1) their officers are not sufficiently interested in the subject to do the work involved, or (2) that their records are not sufficient to develop the answers, or (3) that they are unwilling to disclose the facts of their operations.

It seems likely that the second reason may have been the strongest because several companies reported that they had no record of the amount of title insurance issued, others that they had no record of losses and two reported that they had had no losses.

Sadly enough, the reports of only 22 companies were sufficiently complete to be used as a basis of analysis.

It appears that prior to 1947 most of us reported our losses, if we reported them at all, on a basis that would show the lowest amount of dollars a year, which would be the amount actually paid to policyholders. That must have been the approach of the two companies reporting no losses. Payments to policyholders will always be low because holders of title policies, unlike the holders of other kinds of insurance, do not want to collect dollars of losses from the company but do want their titles made good.

#### **Kept Low**

It is submitted that there are several other loss elements, the omission of which so minimizes a statement of losses as to make it inaccurate, if not completely deceptive. (1) There are amounts paid out to others than policyholders in order to cure defects insured against. (2) Payments made to outside attorneys and court costs involved in disposition of claims whether with payment of loss or without. (3) The whole or an accurately allocated part of the salaries and expenses, rent, light, traveling, stenographic, of inside counsel and claim adjustment departments. (4) That part of officers salaries and other items which, by a proper cost accounting system, may be allocated to losses and claims.

#### **Backman**

Professor Jules Backman in his monumental work on "Surety Rate Making" says "all claims must be examined and therefore claim expenses are incurred even if the claim is not allowed and no payment is made. Over a 25-year-period claim expenses accounted for about 22 per cent of total losses including claim expenses."

If that is true of surety companies, how much more true must it be in the title field, as we all know from our day to day experience that the vast majority of claims on title policies are cleared at nominal cost or none, except for the considerable labor cost involved.

If we include all of the above listed elements of title loss, we may be said to be reporting our losses on a 100 per cent or maximum basis.

#### **Maximum Basis**

For the year 1947 one company reported its losses on a maximum basis. From the evidence in hand this would seem to have been a pioneering act. From the questionnaires received it appears that one additional company so reported for its operations of 1950 and that the officers of four additional companies have declared their intention to so report for the year 1951.

The reports of the forty-two companies answering the questionnaire as to losses, in some cases not for the full ten-year period, show losses paid of \$2,618,000.

This figure must, obviously, be adjusted upwards in order to include the essential element of loss expense. A careful consideration of the replies to the questionnaire, and in spite of some evidence that loss expense is more than 100 per cent above losses paid, I have taken what I believe to be a conservative 50 per cent, which, added to the losses paid, gives us an adjusted loss experience of those forty-two companies of \$3,927,000, a tidy sum which may hardly be laughed off by those whom Laurie Smith described as the "nitwits who disparage title insurance."

So far this has been relatively simple; now we get into the difficult

part of the job. Messrs. Gage and Goth and all other commentators whom I have read have taken what they could find about losses, set them up against either the amount of insurance written or the total title charges of the companies, by either method establishing preposterously low loss ratios, certainly in comparison with the loss ratios of all other forms of insurance, which run normally from 40 to 60 per cent.

Now, obviously, this method of consideration is screwy, and unless the title companies can find and justify a different base for establishment of ratios we are going to suffer, some of us sooner than others, from attacks upon our precious rate schedules.

#### **Limitations**

From here on my consideration must be only of those companies who wholly or largely limit their business to local titles produced by their own staffs. Whatever conclusions I may have formed are not intended to be applicable to those companies who do what we have come to call a "national" title business. Among the reasons for omitting the "national" companies are (1) that only two of such companies returned the questionnaire, only one complete, and (2) that their basis of operation presents at least the possibility that their facts and figures must be analyzed on a quite different basis.

#### **Basis**

With only 22 companies over the country reporting with sufficient completeness as to form a basis for analysis, I have further reduced the geographic spread and limited my analysis to the three states of New York, Pennsylvania and California. This limitation seems justified for several reasons: (1) in number of companies it is just about half of the completely reporting companies; (2) New York reports are practically complete, Pennsylvania information is complete and we have a sampling from California; (3) in all those states the business of the companies is largely limited to their own localities and largely produced by their own staffs;

(4) these are three of the oldest jurisdictions to adopt title insurance and three of the states having the largest volume over the longest period of time.

#### **Criteria**

In order to establish and determine the loss experience of the title insurance industry we must first establish certain insurance criteria. An accepted standard in the insurance field is the "loss ratio." Professor Backman in his study of the economics of suretyship defines "loss ratio" as "the percentage which incurred losses bears to premiums."

We have already noted the difficulty in obtaining the facts as to losses. When we come to premiums we are still further in the fog, and it is probably true that there are almost as many ideas as to what constitutes premium as there are title companies in the country.

The factors of indemnity and risk sharing in title insurance are secondary to the process involved in the elimination of risk, which may be called loss prevention, carefully and painstakingly searching and examining public records and other proofs of title and drawing definitive conclusions therefrom all before the underwriting operation begins. The trick is to sever our varying gross charges into (a) cost of examination and (b) premium for insurance.

#### **Sufficiency**

It is easy to say that the charge or premium should be of sufficient amount to compensate for losses incurred, to cover underwriting expenses, a share of acquisition cost and to provide an adequate rate of profit, but that is not sufficient for our purposes. We must consider it also from the opposite angle, that the premium is what is left of our gross charge after deducting our total cost of title examination and loss prevention work, provided there is anything left of it.

Parenthetically, we may note that three of the companies reporting (not in the three named states) showed receipts of gross title charges of one company just under \$3 a thousand of

insurance written and two of less than \$2 a thousand. These companies would not seem to have much left to carry their title departments.

### **Premium**

With considerable hesitation and prayerful consideration, and realizing that circumstances and conditions with many companies and in many areas may indicate a different figure, I have arrived at an arbitrary premium amount of 1/10 of 1 per cent of the amount of insurance written, or \$1 a thousand. I have used this as the premium basis in considering the losses of the companies in the three states which I have named.

There is some official acceptance of this rate of premium. In New York State this premium is used as the basis of the premium, or franchise, tax by the state taxing authority. This has been true for some fifty years. It is also true in Connecticut and in New Jersey and in some other states.

### **Torrens**

Apologizing in advance for raising an ancient spectre, it is interesting to note that the pioneering Torrens law in the State of Illinois, enacted in 1895, contained the provision "indemnity fund payment is based upon 1/10 of 1 per cent of the value of the property."

In 1908 the New York Torrens Law, being Article 12 of the Real Property Law, states, "Upon the original registration of real property, there shall be paid to the registrar one-tenth of one per centum of the value thereof on the basis of the last assessment for local taxation, as an assurance fund for land registered in the county."

The Superintendent of Insurance of New York, in a brief presented to the United States Court of Appeals some few years ago, stated "the taxpayer and other title companies agreed with the New York State Authorities that, for purposes of the New York State tax on premiums, of the title fees charged by the companies . . . 1/10 of one per cent, of the amount of the policy be considered as the premium, and the balance be considered as com-

pensation for the work of examining the title."

### **Adjusted Loss Figures**

Now from the information we have from New York, Pennsylvania and California companies, we have an analysis of 1,538,000 policies; \$18,990,000,000 of insurance written; \$113,282,000 of gross title fees received. With our adopted arbitrary premium of 1/10 of 1 per cent that gives us total premiums of \$18,990,000. The losses paid, as reported, were \$1,533,000. Adjusting that by an addition of 50 per cent for loss expense gives us an adjusted loss figure of \$2,300,000. The ratio of losses to premiums is thus established at just above 12 per cent. This is still a low ratio compared with other forms of insurance but is undoubtedly defensible considering the greater underwriting expenses, the heavy capital structures which must be carried and the substantial reserves, both statutory and voluntary, which must be set up in anticipation of bad years to come.

We must clearly recognize that the figures we have been analyzing are based upon the losses in the kind of a period when the losses are demonstrably at the lowest ebb. We have been through an unusually long period of advancing prices and increasing activity. There is some indication that that heyday has passed, and it is an axiom that during bad times in the real estate market title losses and certainly loss expenses are at their peak.

### **Over the Years**

Then, too, in all considerations of premium rates in all forms of insurance it is established that the losses of a considerable number of years of experiences must be analyzed. Our business depends inevitably upon the real estate market. The real estate cycle is the longest of all the business cycles, a minimum of eighteen years. It would seem that the experience of not less than one and one-half cycles, or 27 years, is required as a sound basis for establishing or justifying premium rates or risk cost for our type of insurance. Perhaps it will be agreed by all that it is now time

that we should begin to produce the facts which may form the basis of that long term experience. If we do not have the facts, we may well be in the unfortunate position of the small boy, who was "caught with his pants down."

It is interesting to note in this connection that Professor Backman's study, to which I have already referred, and which was done on order of the Surety Association, is now freely credited with being of the utmost practical value, really essential to, the current effort to secure increases in surety premiums.

Most important, however, for immediate use, in our public relations effort and as we find necessary in our sales effort—we now have impressive loss figures in dollars and an established substantial ratio of losses to premiums—which any of us may cite to confound the "nitwits" who say: "there are no title losses."

To produce an accurate or 100 per cent loss expense item requires for each of our companies an adequate cost accounting system. More than that, if our combined figures are to be of value, our accounting systems must be, at least in essentials, uniform.

What is happening in New York State may well be of interest to the whole country if for no other reason than that over the past many years the New York Insurance Department has held a position of leadership among the insurance departments of the country. Ten or fifteen years ago the New York Superintendent of Insurance inaugurated the filing by title companies of periodical operations reports. The form of these reports was arrived at in consultation with the title companies. It soon became apparent that different accounting systems in the different companies made the reports of little value.

### **Uniform Accounting**

Pursuant to legislation recently enacted, our Superintendent is now requiring that all the title companies adopt and operate a uniform accounting system. A committee of the State Title Association is now actively at

work formulating a system to set up and maintain such uniform accounting. This same committee will recommend to the Association that an energetic effort be made to have adopted a form of annual report especially prepared, and appropriate, for the operations of a title insurance company, instead of using, as we now do awkwardly, the report form of the surety companies. Now, I don't know what our Insurance Department will do with all this information when it gets it, but I have considerable doubt that it will be just filed away and forgotten. We know also that in some jurisdictions there is an active present departmental interest in title rates.

With full realization of the difficulties involved, the amount of labor, the extent of good will and desire to cooperate which will be required, I make the following recommendations:

### **Recommendations**

1. That all title companies set up and report their title losses on a complete and accurate basis.
2. That all companies adopt sound and realistic cost accounting systems.
3. That sufficient uniformity in accounting practices be attained so that the essential facts of our operations may be reported on a basis making a pooling of those facts a sound basis for analysis.
4. That reports of such essential facts of our operations be made at least annually to the Association's office.
5. That a standing committee of this Association be created to be charged with responsibility to study, analyze and report upon the facts disclosed in the combined reports, and to preserve them for use when required.
6. That the Association advocate for use by all insurance departments a form of annual report specifically for title insurance companies.

The first of the two precepts inscribed upon the Delphic oracle was: "Know Thyself." Our state and national associations and the devoted leaders of the title industry have done

an amazing job in the study, and in spreading the knowledge, of the technique of title examination. There has been a frank and generous exchange of experience and information as to the operations of our title departments. Our methods of plant management, of preparation of abstracts, of handling and disposing of objections and exceptions have been freely told to the great and lasting advantage of all of us in the industry. My plea is for more and more knowledge of ourselves in that department of our business which is the underwriting of title insurance.

### 1951

### QUESTIONNAIRE

Intended to Develop the Experience of the Title Industry as to

#### Title Insurance Losses and Claims

Please fill out and mail to Henry J. Davenport, President, Home Title Guaranty Company, 135 Broadway, New York 6, New York.

#### A

#### Fees and Premiums

1. Is yours a single rate inclusive of both the examination and the insurance of the title? (Yes or No)
2. If the answer to No. 1 is yes, do you for your own purposes or as required by public authority, break this charge down into (a) examination and (b) premium? (Yes or no)
3. If answer to No. 2 is yes, state the formula for the breakdown.
4. Is either the whole or a part of your business done on a basis of charge for insurance only (premium)? (Yes or No)

#### B

#### Premiums and Franchise Tax

1. In your state what formula is used to establish the amount of premiums on which you pay annual premium or Franchise Tax? (Answer fully)
2. If you operate also in other than your home state, do you use the same formula as a basis for Franchise Tax in the other states? (Yes or No)

3. If your answer to No. 2 is no, state fully the formula or formulae used.

#### C

#### Loss and Claims and Loss Expense

1. In your annual reports of losses do you limit them to the amount paid out to the policyholders for settlement of claims and to amounts paid out to others to cure defects? (Yes or No)
2. If your answer to No. 1 is no, do you include in your statement of losses an item for loss expense? (Yes or no)
3. If your answer to No. 2 is yes, does your reported loss expense include only the amounts paid for outside attorneys and court costs in settlement of claims? (Yes or No)
4. If your answer to No. 3 is no, does your reported loss expense include also the whole or an allocated part of the salaries of inside counsel and claim and adjustments departments? (Yes or No)
5. Does your loss expense item also include that part of Officers' salaries, rent and other items which by your cost accounting system are allocated to the operations of your losses and claims? (Yes or no)
6. If your answer to No. 1 above is yes or if your answers to Nos. 2, 3, 4 and 5 indicate that any of the kinds of expense referred to therein are not included in your report of annual losses, what is your estimate of the relative dollar amount of the items not included as to the items included in your reports, such as equal to, one-half of, etc.?

#### D

#### Volume of Title Insurance

Please record in the following columns for each year the number of policies issued, your annual receipts for title insurance premiums in accordance with your answers to A above. In the last column give the total amount of title insurance issued each year.



Years	No. of Policies	Annual Insurance Fees & Premiums	Title Insurance (omit 000)	Year	Losses	No. of Losses
1941				1941		
1942				1942		
1943				1943		
1944				1944		
1945				1945		
1946				1946		
1947				1947		
1948				1948		
1949				1949		
1950				1950		

\*Includes loss expense and cost of handling all claims. The uncaptioned column shows, since 1946, the number of claims disposed of.

F

**Important Case Histories**

On a separate sheet or sheets please give detailed histories of any single losses and their disposition, involving upwards of \$2,500.

Also tell about the disposition of claims, on their face serious in amount, but which were disposed of after litigation, resulting in decisions sustaining the titles, also reciting the total cost involved in disposing of each litigation.

Dated: June....., 1951 .....  
By.....

E

**Ten-Year Loss Experience**

Please show in the following record for each year the amount of your losses and include your loss expense if and as the answers to questions in C above show that you have included loss expense in your annual report; in the next column the number of losses paid during each year.

**Title Insurance—Loss Data**

**Claim Expense Incident Thereto**

MURRAY L. JONES

*Vice President, Kansas City Title Insurance Co., Kansas City, Mo.*

At long last I believe we are on the right track and have made a long step forward in this matter of practical approach to loss and claim expense. While I do not agree with some of the methods used by Henry Davenport, in his questionnaire, most certainly we all owe him a debt of gratitude for having taken the lead in this subject and for having compiled a great deal of valuable information. To those of you who have not as yet found time to complete this questionnaire and return it to him, I urge you to make it your first order of business upon your return

home. The more companies which furnish such a report make the compilation of figures just that much more valuable. For instance, five companies reporting for a period of five years, give an experience table equal to one company's report for 25 years. Because of the fact that it is extremely difficult for most companies to furnish comprehensive reports covering long periods we need the shorter experience of as many companies as possible.

**Claim**

Let me review briefly for you the

circumstances which have given rise to the extreme need for this loss and claim expense data. With the exception of the states of New York and Texas, and the three West Coast states, state supervision and especially rate regulation of title insurance companies was practically nonexistent until after the United States Supreme Court decision in the South-eastern Underwriters case. Then followed Public Law 15 giving the states a moratorium in which to enact adequate legislation for such supervision and regulation, in order to keep the Federal Government from stepping in and taking jurisdiction. The next step was the appointment of a joint committee by the National Association of Insurance Commissioners and insuring companies from all segments of the industry except title insurance. After many months this joint committee prepared a bill acceptable to both sides, which was popularly known as the N.A.I.C.-All Industry model bill. It was enacted either as written or with some minor variations by nearly 40 of the 48 states, in which it was felt that present legislation was inadequate. As to rates, the standard or test set up by the bill was that all rates must be adequate, not excessive, and not discriminatory. This is still the only yardstick which we have as to rates. The new legislation resulted in such a flood of rate filings, hearings thereon, and subsequent adjustments, that the Insurance Departments of the several states have for the past two or three years been so swamped that they haven't as yet found time to give much attention to the title insurance industry. There are, however, straws in the wind that strongly indicate that our particular industry will shortly be called upon to file rates where such filing is presently not required and then to justify the rates which are filed. In fact, to my knowledge, such justification has been called for from title companies in at least four states outside of New York, Texas, and the Pacific Coast states. In some cases we have been able to get an extension of time on the ground that figures were in process of being compiled. In other states temporary approval has been

given by the Commissioner on the basis of loss data which we have been able to furnish.

### Uniformity

Now, to get back to the importance and value of a uniform system of compiling such data. Several years ago an Association of the National Title Underwriting companies was formed. About four years ago it was reactivated and revitalized and it has been my privilege to serve as Secretary-Treasurer of this Association since that time. Upon its reorganization, the member companies all recognized that most of us had in the past kept very inadequate records on losses, and especially on the items of expense and overhead, which is an integral part of the handling and settlement of every claim, however trivial; in fact, our accounting methods in this respect were not much better than those of the old-fashioned country grocery store. I venture that every fire company, casualty company, or surety company, in the country would have been appalled at the manner in which we handled our accounting practices. These companies have had to justify their rates in many states by actual loss experience for many years. They all have claim departments in which the proper overhead, officers and employees salaries, telephone and telegraph expense, travel expense, and various other items are properly charged to claim expense. Further than that, their reports break down their premium income whereby their percentage of loss and claim expense is figured against a net earned premium; in other words, they take into account acquisition costs and unearned premiums in computing their percentage. And that is not all—they also tabulate and make a part of their compilation their operating and general administration expense, all taxes, state, federal, local, premium, licenses, etc., and also Federal income taxes. They also take into account the amount of increase in their statutory premium reserve. This, as you can well imagine, results in a loss percentage that is practical and impressive and which not only makes for uniformity, but re-

sults in figures which enable them to justify rates that are in effect, oftentimes much more excessive than ours.

Compare this, if you will, with the last report on this same subject by some of our larger member title insurance companies. I still shudder every time I recall the pride with which the executive officers of these several companies reported their extremely low loss ratios at the mid-winter meeting in Memphis in 1948. This resulted from figuring percentages against gross premiums which, in all cases, if I am not mistaken, included record searching, examination cost and oftentimes closing and escrow fees. Further, no account was taken of any cost incurred in settling these claims for officers and employees salaries, overhead, telephone and telegraph expense, or travel expense. The result was a so-called loss ratio of anywhere from 1.2% to 1.7%. Certainly it would have been absolutely impossible with these figures as a basis to have justified much of any premium for our underwriting risk.

### Uniform System

Due to this state of affairs, and foreseeing the need for uniform and practical data in the near future, the seven companies in the National Title Underwriting group, four years ago, undertook to work out a practical and uniform system of accounting to take care of this problem. The first thing which was done was to secure from some of the more advanced State Insurance Departments and from the National Association of Casualty Underwriters, forms which were in use in computing and reporting loss and claim expense data. From the several forms thus secured, we took the best features of each and compiled a form of our own, which has since been in use among our companies. I have had prepared a number of these forms with explanatory notes regarding their use. I am sorry that it was impossible for me to have prepared enough of these forms to go around; however, I have here about 30 copies with instructions as to their use and preparation. I will be glad to give them to any of

you who are interested as long as they last. The reason I did not have them printed was that in all probability there will be some slight changes made in the near future. Incidentally, Mr. R. W. Jordan, Jr., of Lawyers Title Insurance Corporation, and his committee were instrumental in compiling this form and we feel that he did an excellent job and deserves a great deal of credit.

### Difference of Opinion

The one big difference between our business and that of other forms of insurance is that whereas they all collect premiums on an annual basis we only collect one premium. Of course this enables them to make their reports on an annual basis for each current year. This is where I differ violently with Henry Davenport and the method he has used for obtaining his loss and claim expense percentages. After considerable study and argument, the seven companies in our national group came to the unanimous conclusion that the only proper way in which we could arrive at accurate percentages was to charge all losses and claim expense against the underwriting premium income for the year in which that particular policy was written. We believe this is self-evident and I think you will agree with us if you will take time to adequately analyze the situation. We write a policy in 1938. The only premium we receive for the liability on that risk was received in 1938. Why, in Heaven's name, should any loss thereon be charged against premium income for 1951 when the loss occurred? Because of the ever-increasing annual premium income of all title insuring companies, to charge a 1938 loss against 1951 income gives a terribly untrue and distorted picture. This was forcibly brought home to me when we first started to use this system of loss tabulation. Where we had used the old formula of charging losses paid in 1950 against 1950 premium income, we came up with a very low loss ratio. Where we adjusted these figures to properly charge the loss against the year's income in which the policy was written, the result would oftentimes be 5, or 6, or even 10 times as great a loss

percentage. Furthermore, as we now compile each year's loss data by allocating each loss to the year's income in which the policy was written, we find that we are constantly revising our loss percentage upward for former years. In fact, the astounding result of this practice has shown that in many years, back in the late twenties and early thirties, the reporting companies' loss and claim expense, together with other allowable expense items, is in excess of 100% of the premium income. What more does one need to justify existing rates or even to justify an increase in rates, if such is found advisable? I can assure you that if our title insurance companies were running on the same level of business each year, it would not be long before we were all attempting to justify rate increases.

So much for the proper compilation of this data.

### **Keeping Records**

As to the methods of individual companies in keeping proper records so that proper compilation can be made, there are at present widely diversified systems and practices. Probably any one of them is ample and sufficient, provided they take into actual account the items of expense which go into the handling and settling of a claim, to which I have called attention earlier. Again, Mr. Jordan, of Lawyers Title Insurance Corporation is entitled to much credit for taking the lead in formulating a simple method for properly keeping this expense. He devised a card, which has been previously mentioned in these meetings, which the McBee Company prepared. It is so good and so comprehensive that its use has been adopted by all of the companies in the National Title Underwriting group. I have had these cards distributed so that each of you have one. It may be that there is more detail on the card than some of you wish to bother with. Nevertheless, the card is an excellent medium for keeping track of every item of expense that goes into the settlement of a claim. Our own practice is to attach one of these cards to the front

of a file as soon as a claim or a possible claim has come to our knowledge. From then on, every officer or employee who spends any time on the matter jots down the date and the amount of time, travel expense, telephone expense, or other miscellaneous items. All of you would find it useful and very convenient from that standpoint also; however, the information which may be assembled, by its use, goes much further than that as you will see by examining it. We, for one, are completely filling out all information called for. We think that the result, 5, 10 or 15 years from now will result in a fund of information extremely instructive and valuable and which will enable us to take possible steps to cut down those expenses due to various factors. The cost of the card is very nominal and if you have not already in use a comprehensive system for keeping track of loss and claim expense, I urge you to adopt this system. Cards may be ordered direct from the McBee Company at Athens, Ohio, and number of the card is B-78717, and you will find it printed in the upper right-hand corner. As I recall the cost is about \$23.50 per 1000, and for an additional \$3.50 you are furnished with conductor's punch to notch the edges and an ice-pick like affair with which to sort the cards, if you want to go that far.

In summing up, I want to again emphasize the value of uniformity. It is impossible to reconcile for an intelligent compilation, figures which are not based on the same factors. It is as useless as trying to add several different fractions without first reducing them to a common denominator!

### **Underwriting Premium**

I notice that Henry Davenport has used an arbitrary figure of \$1.00 per 1000, whether owner's or mortgage policy, for his underwriting premium. Personally, I do not believe this is enough and that it could not be justified as adequate if statistics were required. Regardless of "overall" or "all inclusive" rates which many of you have in use and which most of our national companies use in their own local territories, the seven com-

panies which have furnished the loss data to the National Association have all used the so-called national rate for pure insurance, which is \$3.50, \$3.00 and \$2.00 on owner's policies, and \$2.50, \$2.00, \$1.75 and \$1.50 for mortgagee policies. We do not, from our compiled data, doubt that these premium rates can easily be justified by the yardstick presently in force—that they are adequate, not excessive, and not discriminatory. I commend them to your use in preparing future loss data in the event you do not already have a pure insurance premium

established for use in making your compilations.

If my plea here this morning results in even one of your companies establishing an adequate accounting system for the purpose of establishing this data, I will feel well repaid. And if it results in making you think about, and discuss this subject, no matter how much you may disagree with me, I will feel doubly repaid. If there are any questions, I will be glad to answer them from the floor if time permits; if not, I will be glad to discuss them with any of you later on. Thank you.

## Foreign Divorces

### Titles as Affected by New Aspects and Decisions Involving Foreign Divorces

J. MACK TARPLEY

*General Agent, Kansas City Title Insurance Company, Little Rock, Arkansas*

For the purpose of this paper a foreign divorce will be treated solely as a divorce granted by a state other than that in which a right incident to the marriage so dissolved is sought to be enforced.

In our country each state has the constitutional power to enact its own laws concerning the family institution, and where we have free ingress and egress from one state to another tangled marital situations arise. For this reason careful consideration must be given to the decisions of the Supreme Court of the United States which govern the extent to which divorce decrees must be given effect in other states under the full faith and credit clause of the Federal Constitution although it must be said that on all recent cases involving this subject the court is divided in opinion.

The Supreme Court decisions on this subject may be summarized as follows:

#### Constructive Notice

##### I.

A divorce decree obtained upon constructive service in a case in which the nonresident defendant did not ap-

pear and participate is entitled to full faith and credit if plaintiff, at the time of filing suit, was domiciled in the state granting the divorce, except where the divorce is sought to be used for the purpose of terminating the defendant's right under a previous maintenance decree granted by a court of another state, which exception may extend to other property rights affected by a divorce. In any event the question of domicile as basis of the jurisdiction of the court granting the divorce may be re-examined in a sister state in which the full faith and credit effect of the divorce is put in issue.

Certainly a decree obtained upon constructive service in a proceeding in which the nonresident defendant did not appear nor participate, is not entitled to full faith and credit in a sister state, where none of the parties were domiciled in the state granting the divorce at the time when the suit was instituted.

#### Domicil

The foregoing statement raise the question as to who is to determine the jurisdictional fact of domicile, the court granting the divorce or the

court of a sister state in which the full faith and credit issue arises, or the Supreme Court of the United States on review of a judgment of the latter court.

While a divorce decree based on a finding that one of the spouses was domiciled in the state granting the divorce must be given full faith and credit where such finding is not questioned in the sister state in which an issue as to its recognition arises, the mere fact that a court granting a divorce found that it had power to award the decree cannot foreclose re-examination by another state. The courts of the latter state are entitled to examine the question whether the plaintiff had a bona fide domicile in the state in which the divorce was granted, and the foreign divorce decree may be impeached by showing that neither of the parties had acquired bona fide domicile in the state granting the divorce, contrary to the findings of the court in that state.

The burden of proof that the plaintiff in the divorce proceeding had not acquired a domicile in the state in which the divorce was granted is on the party attacking the validity of the decree, and a finding by a court granting a divorce that plaintiff was domiciled in the state is sufficient to support its jurisdiction until overcome by adverse testimony.

#### **By Federal Law**

It is apparently settled that the concept of domicile, as we here discuss that term, is governed by Federal, and not by state law, and that the Federal concept of domicile implies a connection between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance.

In determining whether a divorce decree is entitled to full faith and credit the Supreme Court may face conflicting findings, that is, a finding of domicile by the court granting the divorce, and finding of the lack of it by the court of a sister state in which the validity of the decree is in issue. The finding of the latter court will not be disturbed where it appears that the reciprocal duty of respect

owed by one state to another's adjudication has been fairly discharged in the judgment under review, that proper weight has been given to the claims of power by the court granting the divorce, that the burden of proof has been properly placed, that such issue of fact has been left for fair determination by appropriate procedure and that a finding as to lack of domicile is amply supported by the evidence.

In no event will the Supreme Court independently determine the question of domicile or retry the facts.

Constructive service as used in connection herewith not only means where service is by publication and the defendant is unlikely to have actual notice of the pending proceedings, but also where defendant is actually notified of such proceedings, for instance, by delivery of a copy of the summons and the complaint, outside the state in which the proceeding is pending.

#### **Property Rights**

In addition to the rights grouped under the term "consortium," which are terminated by divorce, there are subsidiary rights of a property nature such as support, alimony, distributive interests in personalty dower and inheritance. Even though a decree obtained solely upon constructive service by a spouse domiciled in the state granting the divorce against the non-resident spouse is valid and entitled to full faith and credit in any sister state as concerns protection of the parties in their changed status, such as, from presecution for bigamy, or protection of their children from the stigma of bastardy, such a decree may, nevertheless, not be entitled to full faith and credit, where the issue concerns a subsidiary property right.

The above distinction has been made as a matter of principle, but has been extended only as to the issue of whether such a decree terminated the defendants right to alimony under a previous separate maintenance decree for her in the state of matrimonial domicile.

## II.

Irrespective of the nature of the right affected by a divorce, a divorce decree based on a finding of domicil and entered in a proceeding in which the defendant appeared and participated is entitled to full faith and credit, and in this situation the question of domicil as basis of the jurisdiction of the court granting the divorce is not open to re-examination in a sister state.

If a defendant in a divorce proceeding fails to take advantage of the opportunities afforded him, the responsibility is his own; and his dereliction does not provide a basis for a subsequent attack in the courts of a sister state on a decree valid in state in which it was rendered.

Earlier cases taking a different view are no longer authority.

## III.

Under no circumstances does the full faith and credit clause compel a state to give a divorce decree of a sister state a greater effect than it has in the state granting the divorce.

And now some decisions and legislation from my home state of Arkansas:

### Decrees Valid

In 1947 the Arkansas Legislature passed an Act which, since Arkansas has a 90-day residence law for divorce created a problem, not only for attorneys and title companies operating in Arkansas, but for attorneys and title companies in other states. Act 42 of the Acts of 1947 provided: Hereafter, there shall be an additional Chancellor for the First Chancery Circuit, whose jurisdiction in the trial and final determination of all chancery cases shall include and be limited to the County of Pulaski, except on exchange of circuit with some other chancellor as such exchanges are now provided by law. The chancery court of the First Chancery Circuit shall be divided into two divisions, to be known as the First Division and the Second Division of the First Chancery Circuit of Arkansas. The Chancellor now in office in said Circuit shall be the Chancellor of the

First Division of the Chancery Court in all of said counties in said circuit.

**The Chancellor of the Second Division of the Chancery Court of Pulaski County, as herein created, shall be the present Master in Chancery of the Chancery of the Chancery Court of Pulaski County, who shall hold said office until January 1, 1949.**

In a suit testing the validity of the above act, in the Case of Howell vs. Howell 213 Arkansas 298 (January 12, 1948), the court said:

"In examining the Act of which we have judicial knowledge, it appears (1) that the General Assembly functioned in two respects: It exercised the inherent right to legislate, and then assumed the executive function of appointment—a power it did not possess. This being true, the so-called decree signed "Ruth F. Hale, Chancellor" imports no judicial authority and must be treated as a nullity." Further holding by the Court that Ruth F. Hale was not a "de facto" Chancellor, that the entire Act was unconstitutional, and that judgments, orders and decrees of Second Division Court are without legal force.

However the court came to our rescue in the Case of Pope vs. Pope 213 Arkansas 321 (April 19, 1948), holding: "Since the provisions of Act. No. 42 of 1947 creating a Second Division of the Chancery Court are separable, the attempt of the General Assembly in Section 4 thereof to appoint the Chancellor does not though ineffective as beyond the legislative power, affect the validity of other Sections of the Act." Ruth F. Hale was a de facto chancellor and decrees signed by her are valid and binding decrees.

### Arkansas

Now for the latest decision of the Supreme Court of Arkansas involving a foreign divorce.

Tolley vs. Tolley 210 Arkansas 144—May 27, 1946.

Lillie Mae Tolley and James Alvis Tolley were married in Arkansas in 1925, separated in 1941 and after each party made an unsuccessful attempt to obtain a divorce in Arkansas, Lillie Mae Tolley obtained a divorce in Wy-

andotte County, Kansas, based on personal service.

The judgment of the Kansas Court contained the following language: "It is further ordered and decreed that plaintiff be and she is hereby awarded the following described real estate to-wit: The Southeast Quarter of the Southeast Quarter of Section 10, Township 7 North, Range 5 West, consisting of 40 acres of land, more or less, in White County, Arkansas, free and clears of all claims and liens of the defendant."

The present suit was brought in the Circuit Court of White County by Lillie Mae Tolley seeking possession of the forty acres in White County as described in the Kansas judgment. The court said:

#### **Without Jurisdiction**

The decree of the Kansas court was a decree in rem by the Kansas court, attempting to settle title to real estate in Arkansas by operating directly on the title. The full faith and credit clause of the United States Constitution does not afford any sanctity or force in the State of Arkansas to such judgment of the Kansas Court, be-

cause the Kansas Court was without jurisdiction to vest title to Arkansas real estate in the form in which this judgment was rendered. It is not in the power of one state to prescribe the mode by which real property shall be conveyed in another. This principle is too clear to admit of doubt. The full faith and credit clause does not extend the jurisdiction of the courts of one state to property situated in another.

Since jurisdiction to render a judgment in rem inheres only in the courts of the state which is the situs of the res, a divorce decree which attempts to settle the title to lands in another state, by operating directly on the title, and not by compelling the holder of the title to convey, is void and not res adjudicata on the same claim in an action between the same parties and involving the same land.

It is permissible for courts of one state to enter in personam judgments and decrees in suits involving foreign land, but the Kansas judgment here involved did not require the appellee to execute a deed, so as to be an in personam decree.

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*Additional and valuable addresses delivered at the 1951 Convention of the Association will be carried in the next issue of "Title News."*

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